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**Thursday, April 6, 2017**

# **Child Protection Policies and Practices Seminar**

Presented by GKH Attorney  
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# Disclaimers:

This presentation is for educational purposes only. It is not intended as legal advice. Individual situations must be evaluated before legal advice can be provided.

The information presented here may change if additional legislation is passed, the Department of Human Services issues additional interpretive guidance or Pennsylvania Courts render new decisional law.

# Overview of Legal Responsibilities

- Common Law Duties
- Statutory Law Duties
- When in Doubt: Protect the Child



# Child Protective Services Law (CPSL)

Between 2014 and 2016, **twenty-four (24) bills were signed into law**, amending Pennsylvania's Child Protective Services Law (CPSL).

## Pennsylvania: A statistical outlier

- In 2014, **nationally**, 43.7 per 1,000 children were the subject of a report of suspected child abuse.
- In 2014, in **Pennsylvania**, 9.3 per 1,000 children were the subject of a report of suspected child abuse.
- Statistics from the 2014 Child Maltreatment Report

## Pennsylvania: A statistical outlier

- In 2014, **nationally**, 9.4 per 1,000 children were determined to be child abuse victims.
- In 2014, **in Pennsylvania**, 1.2 per 1,000 children were determined to be child abuse victims. PA was the state with the lowest rate of child victims, in large part because our previous law and child abuse definitions made it difficult to substantiate what most reasonable people would agree was child abuse.
- Statistics from the 2014 Child Maltreatment Report

## Evidence of Change after CPSL revisions

- The number of Pennsylvania children who **received an investigation of suspected abuse increased by 65% from 2014 to 2015**. Only one other state saw a larger year-to-year increase.
- 2014: 9.3 children per 1,000
- 2015: 13.2 children per 1,000

\*From the 2015 Child Maltreatment Report



## Evidence of Change after CPSL revisions

- The number of Pennsylvania children who were **determined to be victims of child abuse increased by 17.3 percent from 2011 to 2015.**
- 2011-2014: 1.2 children per 1,000
- 2015: 1.4 children per 1,000

\*From the 2015 Child Maltreatment Report

## **CPSL: Three significant changes for churches:**

- 1. Volunteers are Mandated Reporters of suspected child abuse.**
- 2. Employees and volunteers who have direct contact with children are subject to background checks.**
- 3. Employees and volunteers must report suspected abuse to authorities directly. No more “chain of command” reporting within institutions.**

# Who is a Mandated Reporter?

- **Sixteen categories of adults have a legal responsibility to report suspected abuse. TWO categories especially relevant for churches:**
- **A clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious organization.**
- **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, is a person responsible for the child's welfare or has direct contact with children.**

# Mandated Reporters need to know:

- How is **child abuse** defined?
- What **triggers the obligation to report** suspected child abuse?
- **Under what circumstances** must a report be made?
- **To whom** must a report be made?

# Basis to Report Suspected Child Abuse

A mandated reporter shall make a report of suspected child abuse. . . if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

# Four Circumstances when Mandated Reporter must report suspected abuse

1. 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.

## Four Mandatory Reporting Circumstances (cont'd)

2. 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.

## Four Mandatory Reporting Circumstances (cont'd)

3. A person makes a specific disclosure to the Mandated Reporter that an identifiable child is the victim of child abuse.
4. An individual 14 years of age or older makes a specific disclosure to the Mandated Reporter that the individual has committed child abuse



**NOTE:** If a person makes a specific disclosure to a Mandated Reporter that a child is a victim of abuse, or an individual age 14 or older makes a specific disclosure that he or she has committed abuse, **the Mandated Reporter must report, regardless of whether the disclosure occurs within the context of the institution or program giving rise to the Mandated Reporter's status.**

## Two mandated reporting clarifications:

1. 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.
2. Nothing in this section shall require the Mandated Reporter to **identify the person responsible for the child abuse** to make a report of suspected abuse.

# Protections

- Both individuals and institutions are immune from civil and criminal liability related to the report of suspected abuse if reports are made in good faith.
- Mandated and permissive reporters of suspected abuse are both protected from employment discrimination and discharge so long as they acted in good faith.
- No church or other agency can reveal the identity of a Mandated Reporter to anyone except authorities investigating the alleged abuse.

# Penalties for “willful” failure to report

- **First offense: Misdemeanor of the 3<sup>rd</sup> degree**  
-Max: 6-12 mths jail plus \$2,500 fine
- **Second offense: Misdemeanor of the 2<sup>nd</sup> degree**  
-Max: 1-2 yrs. jail plus \$5,000 fine

Penalties are increased in certain circumstances, with factors including the severity of the abuse committed against the child, whether the Mandated Reporter has “direct knowledge” of the abuse, and whether the failure to report is a continuing course of action

# Failure to report: Two (more) cautionary tales

- Clay Township Pastor
- YMCA of York's Chief Executive Officer

# Direct reporting requirement for church staff and volunteers

Old Law

Chain of command: The “person in charge” or “designated agent” had the legal obligation to report or cause a report to be made

# Direct reporting requirement

## Old Law

~~Chain of command: The “person in charge” or “designated agent” had the legal obligation to report or cause a report to be made~~

## New Law

Direct reporting: Mandated Reporters in institutions shall “report immediately . . . and shall **immediately thereafter** notify the person in charge” of the institution, school, facility etc.

# Reports by Mandated Reporter

- A Mandated Reporter shall immediately make an oral report of suspected child abuse to the department via the Statewide toll-free telephone number . . . or a written report using electronic technologies ...
- A Mandated Reporter making an oral report shall also make a written report, which may be submitted electronically within 48 hours to the department or county agency assigned to the case in a manner and format prescribed by the department.
- A Mandated Reporter who submits an electronic report of suspected abuse and receives receipt of confirmation need not submit an additional oral or written report.



# Where are reports made?

- Preferred avenue for Mandated Reporters to report suspected child abuse is on-line via the PA “portal”:

<https://www.compass.state.pa.us/cwis/Public/home>

- People who are not Mandated Reporters may not use this system.
- Each Mandated Reporter must set up an individual account and identify the primary organization s/he is affiliated with. If s/he is a Mandated Reporter in more than one organization, s/he may add additional organizations.

# Background Checks for Employees

- Three background checks for employees having direct contact with children:
  - PA State Police Criminal History Record Information (\$8)
  - PA Child Abuse History Clearance Certification (\$8)
  - Federal Criminal History Background Check (\$25.75 through DHS; \$27.00 through PDE), with submission of fingerprints.

# Background checks for Volunteers

- Which volunteers? Those responsible for a child's welfare or having direct volunteer contact with children.
- Which checks? Same three as are required for employees; however, volunteers need not pay for the two required state checks.

# CPSL Definitions

**Direct contact** with children: “The care, supervision, guidance or control of children, **or** routine interaction with children.”

- Employees “responsible for the child’s welfare” or having “direct contact with children” must undergo background checks

**Direct volunteer contact:** “The care, supervision, guidance or control of children **and** routine interaction with children.”

- This definition was added to the Law in 2015 to clarify which adult volunteers are required to obtain background checks.

**Person responsible for the 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.

**Routine interaction:** “Regular and repeated contact that is integral to a person's employment or volunteer responsibilities.”

- This definition was added to the Law in 2015.

# Background checks for volunteers

- **The FBI criminal check can be waived if ALL of the following are true:**
  - the person is applying for an **unpaid position**
  - the prospective volunteer has been a **resident of Pennsylvania during the entirety of the previous ten-year period, AND**
  - the prospective volunteer swears or affirms in writing that s/he is not disqualified from service due to a conviction in any jurisdiction of an offense similar to disqualifying offenses under Pennsylvania law.

Churches should obtain signed affidavits from each volunteer who seeks waiver from the FBI check.

## Background checks for volunteers

The FBI criminal check can also be waived for a volunteer who has not been a resident of Pennsylvania for the entirety of the past ten years but who obtained an FBI certification at any time since establishing Pennsylvania residency.

# Legal Disqualifiers

- Clearance results for employees and volunteers must be checked against a list of disqualifying offenses (some permanently disqualifying, some disqualifying for five years).
- Disqualifying offenses include certain criminal offenses and a statewide registry listing “founded” reports involving the abuse or exploitation of a child.
- **Staff and volunteers whose clearance results have any of the listed disqualifiers must be denied the opportunity to work with children or be dismissed.**

# An Employee or Volunteer Subject to Background Check Requirements

- **Must notify his or her organization in writing ...** if arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or if named as a perpetrator in a founded or indicated report of child abuse.
- **Such notification must be made in writing within 72 hours of the event triggering the notice requirement.**



# Additional Disqualifiers Permitted

The CPSL explicitly permits organizations to require additional screening measures or establish additional criteria for working with children beyond those listed in the “legal disqualifiers.”

- *Example:* Persons listed on the statewide registry as the subject of an “indicated” report of child abuse.

# Recordkeeping Duty

- Those responsible for employment decisions or the selection of volunteers shall require applicants to submit to all background requirements.
- ***Intentional failure to require submissions before approving the applicant for employment or volunteer activity is a misdemeanor of the third degree.***

# Special Topics

- Clergy Confidentiality under the CPSL
- Child-on-child abuse under the CPSL

# Is there still a clergy confidentiality privilege under the revised CPSL?

- **General rule:** The privileged communications between a mandated reporter and a patient or client of the mandated reporter shall not:
  - Apply to a situation involving child abuse
  - Relieve the mandated reporter of the duty to report suspected child abuse.
- **However:** Confidential communications to a member of the clergy are protected.
- **Recommendation:** Although the pre-existing, very narrow clergy confidentiality privilege was preserved, we recommend you contact legal counsel if contemplating relying on this privilege as a basis to not report suspected abuse.

# Defining Child Abuse BEFORE 12/31/14

Most definitions of child abuse included the phrase “by a perpetrator.”

For example:

- (i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.
- (ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

# Defining Child Abuse AFTER 12/31/14

- Causing bodily injury through any recent act or failure to act
- Fabricating, feigning or intentionally exaggerating a medical symptom or disease
- Causing or substantially contributing to serious mental injury
- Causing sexual abuse or exploitation
- Creating a reasonable likelihood of bodily injury
- Creating a likelihood of sexual abuse or exploitation
- Causing serious physical neglect
- Engaging in any of the following recent acts: (“Per se” acts)
- Causing the death of a child through any act or failure to act.
- Engaging a child in a severe form of trafficking in persons or sex trafficking.

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# Defining “Perpetrator” under the CPSL

Before 12/31/14, the definition of perpetrator did not include any references to a person’s age.

# Defining “Perpetrator” under the CPSL

A person who has committed child abuse and is one of the following:

1. A parent of the child.
2. A spouse or former spouse of the child’s parent.
3. A paramour or former paramour of the child’s parent.
4. A person 14 years of age or older and responsible for the child’s welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service.



## Defining “Perpetrator” under the CPSL

5. An individual 14 years of age or older who resides in the same house as the child.
6. An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.
7. An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking ...

## In Sum: Report child-on-child abuse

- Mandated reporting emphasis is on what happened to the child – was it “child abuse?” Not, base your decision to report on: Do we have a “perpetrator”?
- If a Mandated Reporter has reasonable cause to suspect that a child was a victim of abuse, she or he must report, regardless of the age of the person believed to be responsible for the acts. Let authorities determine if a “perpetrator” will be added to the statewide database.

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QUESTIONS & ANSWERS

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