



THE LAW AS IT APPLIES TO MANDATED REPORTERS IN CHURCH

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1. BACKGROUND CLEARANCES

A. FOR WHOM, WHICH CLEARANCES, AND HOW OFTEN?

i. *Employees*

"any individual 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"

a. Which clearances?

State Criminal History (Pennsylvania State Police - PSP) \$10

Child Abuse Clearance (Dept of Public Welfare) \$10

FBI Criminal History (though fingerprints are submitted to PSP) \$27.50

b. How often?

Every 36 months, *effective December 31, 2014* (i.e. must be completed by that date, and then every 36 months thereafter)

ii. *Volunteers*

"any adult applying for an unpaid position as a volunteer responsible for the welfare of a child or having direct contact with children"

a. Which clearances?

State Criminal History (Pennsylvania State Police - PSP) \$10

Child Abuse Clearance (Dept of Public Welfare) \$10

FBI Criminal History (though fingerprints are submitted to PSP) \$27.50

*NOTE: Volunteers only have to submit the first two clearances, and NOT the FBI check, provided ALL of the following apply:

- the position the prospective volunteer is applying for is in fact unpaid;
- the prospective volunteer has been a PA resident for the entirety of the previous ten-year period
- the prospective volunteer swears or affirms in writing that s/he is not disqualified from serving pursuant to the conditions listed below under WHO SHOULD BE DENIED, and has not been convicted of any of the enumerated offenses, or equivalents from another jurisdiction

b. How often?

Every 36 months, *effective July 1, 2015* (i.e. must be completed by that date, and then every 36 months thereafter)

B. ARE CLEARANCES 'TRANSFERABLE' BETWEEN DIFFERENT PROGRAMS IN THE SAME INSTITUTION?

Yes. *Any person* (whether paid or unpaid) who has obtained the proper clearances may transfer or provide services to another subsidiary or branch *established and supervised by the same organization*

OR

any such person may serve in a *volunteer* (unpaid only) capacity for *any* program, service or activity (even if outside the former organization), during the length of time the clearances are current

C. IS ANYONE GRANDFATHERED IN?

Yes. Any PSP/DPW/FBI clearances secured prior to the above effective dates shall be valid for a period of 36 months

D. WHAT IF A CLEARED EMPLOYEE/VOLUNTEER LATER BECOMES DISQUALIFIED?

S/he has 72 hours to alert the supervisor in writing of such disqualification; s/he should be removed from employment/ the volunteer position. If s/he willfully fails to provide the required written notice, it is a misdemeanor in the third degree

E. WHO SHOULD BE DENIED?

Any applicant (whether prospective employee or prospective volunteer):

i. who is named in the Statewide database [pursuant to a DPW Child Abuse History Clearance] as the perpetrator of a founded report committed within the last five years;

ii. whose PA State Police Criminal Background check OR FBI check reveals a conviction for *any* of the following at *any time* in the past:

criminal homicide; aggravated assault; stalking; kidnapping; unlawful restraint; rape; statutory sexual assault; involuntary deviate sexual intercourse; sexual assault; aggravated indecent assault; indecent assault; indecent exposure; incest; concealing death of child; endangering welfare of children; dealing in infant children; prostitution and related offenses; obscene and other sexual materials and performances; corruption of minors; sexual abuse of children; OR the attempt, solicitation or conspiracy to commit any of the above offenses;

OR

iii. whose PA State Police Criminal Background check OR FBI check reveals a conviction for a drug or drug-related felony in the past five years.

F. WHAT HAPPENS IF THE CHECKS AREN'T DONE?

- i. If the person who is responsible for employment decisions or selection of volunteers intentionally fails to require the above submissions before hiring that individual commits a misdemeanor of the third degree
- ii. If there is an incident, and it turns out the required checks weren't done, the church will also likely be sued in civil court

2. MANDATED REPORTERS

A. THE GENERAL PRINCIPLE

"Mandated Reporters" must "report" "suspected" "child abuse"

B. WHO IS A MANDATED REPORTER (specifically in the church context)?

- i. A clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious organization
[i.e. senior/associate/assistant pastors, priests, nuns, elders, deacons]
- ii. 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;
[i.e. volunteer children's sunday school teacher, youth group leaders, camp counselors]
- iii. An individual supervised or managed by a person listed above, who has direct contact with children *in the course of employment*.

C. HOW DO I REPORT?

- i. Call the ChildLine: 800-932-0313 *immediately*, THEN
- ii. *Immediately thereafter* inform your supervisor (who shall facilitate the church's cooperation, or face criminal charges for intimidation/retaliation/obstruction), THEN
- iii. Submit (you, not your supervisor) a written report *within 48 hours*

NOTE: The mandated reporter may *not* talk to a supervisor before making the immediate oral report, even to discuss the propriety of making a report. If the mandated reporter is unsure whether the situation warrants a report, s/he may *immediately* call an attorney for advice on the spot (i.e. no callbacks allowed). However, if an attorney is not reached *immediately*, a report must be made *immediately*.

D. WHEN DOES A SUSPICION MANDATE A REPORT?

When the mandated reporter has *reasonable cause* to suspect that a child is a victim of child abuse under *any* of the following circumstances (i.e. reasonable cause to suspect child abuse PLUS any of the following):

- 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 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;

OR

- iv. An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

NOTE: neither seeing the child nor being able to identify the perpetrator is a prerequisite to making a report

E. WHAT IS "CHILD ABUSE?"

Intentionally¹, knowingly² or recklessly³ doing any of the following⁴:

- (1) Causing bodily injury to a child through any "recent" (i.e. within two years) act or failure to act.
- (2) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (3) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (4) Causing sexual abuse or exploitation of a child through any act or failure to act.

¹ Meaning that you meant to cause the abuse by your act or omission

² Meaning that while you did not intend to cause the abuse, you nonetheless committed an act or omission which you knew would result in abuse

³ Meaning that while you did not intend to cause the abuse, nor did you know it would happen, you nonetheless created and disregarded a substantial and unjustifiable risk that your act or omission would result in abuse; Recklessness is a gross deviation from reasonable conduct

⁴ The next and last step down the ladder of culpability is "negligence," which means that you neither intended to cause the abuse, nor did you know your act or omission was abusive, nor did you create and disregard a substantial and unjustifiable risk that your act or omission would result in abuse; you simply were careless and failed to exercise the standard of care of a reasonably prudent person. Negligent acts or omissions do NOT constitute "child abuse."

- (5) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (6) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (7) Causing serious physical neglect of a child.
- (8) Engaging in any of the following recent acts:
 - (i) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
 - (ii) Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.
 - (iii) Forcefully shaking a child under one year of age.
 - (iv) Forcefully slapping or otherwise striking a child under one year of age.
 - (v) Interfering with the breathing of a child.
 - (vi) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.
 - (vii) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:
 - (A) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed.
 - (B) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.
 - (C) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).
- (9) Causing the death of the child through any act or failure to act.

F. WHAT IS NOT "CHILD ABUSE?"

- i. Child on child contact - harm or injury to a child that results from the act of another child aged 13 years or younger, unless that act constituted a sexual assault or indecent exposure (in which case it IS child abuse);
- ii. Reasonable parental discipline - the use of reasonable force by a parent on or against the parent's child, for the purpose of supervision, control and discipline;
- iii. The use of reasonable force on a child by that child's parent or person responsible for that child's welfare, constituting incidental or minor physical contact, or other actions designed to maintain order and control/ avoid greater physical harm;
- iv. The omission of medical care to a child, based on the sincerely held religious beliefs of that child's parents/ close relatives, which beliefs are consistent with the tenets of a bona fide religion, *provided* that such omission of medical care *does not cause the death of the child*;
- v. Environmental Factors - injuries resulting solely from environmental factors, such as inadequate housing, furnishings, income, clothing and medical care, that

are beyond the control of the parent or person responsible for the child's welfare with whom the child resides

G. MAY A REPORT BE MADE WHERE IT IS NOT MANDATED?

Yes. *Provided* a person makes a report in good faith because s/he has *reasonable cause to suspect* that a child is a victim of *child abuse*, anyone *may* make a report, regardless of whether the one making the report is a mandated reporter, and regardless of whether the circumstances mandate it. Even if it is later determined that no abuse occurred, a person in such circumstances shall enjoy *civil and criminal immunity*. Such a person also has a '*cause of action*' against an employer, if that employer fires the person for making a report.

However, it is a *crime* (misdemeanor of the second degree) for a person to *intentionally or knowingly make a false report* of child abuse, or to *intentionally or knowingly induce a child to make a false claim* of child abuse. DPW will maintain a registry of such false claims (which are distinct from claims made in good faith, which turned out not to have merit).

H. IS THERE A PENALTY FOR FAILING TO MAKE A MANDATED REPORT?

Yes. Depending on the circumstances, it can either be a criminal *misdemeanor or felony* to *willfully fail* to make a report, where one is mandated to make one.

NOTE: the *law encourages* erring on the side of *over-reporting* when in doubt

I. ARE THERE ANY EXCEPTIONS, WHERE A REPORT MAY NOT BE MADE, EVEN THOUGH CIRCUMSTANCES OTHERWISE MANDATE IT?

- i. Yes. The clergy / parishioner privilege (originally called the "priest/ penitent privilege") still applies. Here is the law:

No clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization, except clergymen or ministers, who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers, who while in the course of his duties has acquired information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.

However, this is a narrowly-construed privilege, only intended to apply to a paid church leader in the context of a one-on-one, private meeting with a parishioner, for the purpose of spiritual counseling. Do not rely on this exception to omit making a report unless an attorney has advised such.

J. WHAT WILL HAPPEN AFTER A REPORT IS MADE?

i. IN GENERAL

- a. The county Office of Children and Youth Services (CYS) will immediately ensure the safety of the child and determine whether either *protective services* or *social services* are warranted;
- b. CYS may contact the police/District Attorney's Office, who may join in the investigation, if it appears a crime has occurred;
- c. CYS has 60 days to determine that the report is either "*indicated*" (it has merit, as determined by CYS), "*unfounded*" (it doesn't have merit) or "*founded*" (it has merit, as proven by a court disposition). Otherwise, the report shall automatically be deemed unfounded, and expunged within 16 months of the making of the report.

(DPW may audit the county CYS if it does not investigate within 30 days of the report)

ii. WHAT WILL HAPPEN TO THE CHILD?

- a. If CYS determines such is warranted, the child may be taken into *protective custody*, though not without a *prior court order* on the basis that to fail to do so would be contrary to the welfare of the child
- b. If so, the parents shall be notified immediately, and a court hearing shall be held within 72 hours. That may lead to dependency proceedings, if the child is alleged to be without proper parental care or control. Otherwise, the child will be returned to his/her parents
- c. If protective custody is not warranted, CYS may nonetheless still offer social services to assist the family, if appropriate

NOTE: A Mandated Reporter in the church context may not take a child into protective custody.

iii. WHAT WILL HAPPEN TO THE ONE COMMITTING THE ABUSE?

- a. They will receive a written notice of the making of a report, and have an opportunity, if desired, to speak with CYS about the allegation. Criminal charges may ensue, depending on the circumstances.
- b. An indicated or founded report is not itself a criminal conviction, but will permanently affect the person's ability to work/volunteer anywhere children are present.
- c. There are provisions in the new law for expunging (clearing from one's record) *indicated* reports of child abuse, upon good cause shown. *Founded*

reports may only be expunged if the underlying adjudication was reversed or vacated. Typically, one must *appeal within 90 days* of having been notified of a report.

NOTE that under the law only a "perpetrator" can be the subject of an indicated or founded report of child abuse. Only the following may be considered a "perpetrator" of an *act* of child abuse:

- (i) A parent of the child.
- (ii) A spouse or former spouse of the child's parent.
- (iii) A paramour or former paramour of the child's parent.
- (iv) A person 14 years of age or older and responsible for the child's welfare.
- (v) An individual 14 years of age or older who resides in the same home as the child.
- (vi) 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.

Only the following may be considered a "perpetrator" for *failing to act*:

- (i) A parent of the child.
- (ii) A spouse or former spouse of the child's parent.
- (iii) A paramour or former paramour of the child's parent.
- (iv) A person 18 years of age or older and responsible for the child's welfare.
- (v) A person 18 years of age or older who resides in the same home as the child.

iv. DOES THE STATUS OF THE PERSON COMMITTING THE CHILD ABUSE (AS A "PERPETRATOR," OR NOT) AFFECT ONE'S OBLIGATION TO MAKE A REPORT?

No. Remember that the obligation arises when a mandated reporter has reasonable cause to believe the child is a victim of child abuse. There is no requirement that you also determine who committed it.

v. WHAT HAPPENS TO THE ONE MAKING THE REPORT?

- a. See above regarding civil and criminal immunity;
- b. The one making the report may call to find out whether the report was deemed indicated, founded or unfounded; and what, if any, services were provided to protect the child
- c. The identity of the one making the report is kept confidential, except in limited circumstances (which do not include revealing the reporter's identity to the child/family/perpetrator)

3. HAVE A POLICY AND FOLLOW IT

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