



To: Pennsylvania Conference Ministers

From: Office of General Counsel

Date: April 6, 2022

PENNSYLVANIA CHILD ABUSE PREVENTION LAWS UPDATE

The Pennsylvania legislature enacted a number of child abuse prevention laws in 2014. The law has been updated a number of times since then. This memorandum is a summary of the provisions that most directly affect clergy, churches, and other religious organizations in the United Church of Christ. Please note that the Pennsylvania Department of Human Services has a website with extensive resources related to the child abuse prevention laws. Currently, that site is located at: <https://www.dhs.pa.gov/KeepKidsSafe/Pages/default.aspx>.

I. Duty to Report Suspected Child Abuse

The child abuse prevention laws include who is required to report suspected child abuse and how that suspected abuse must be reported.

A. Who has the duty to report suspected child abuse?

We all have a moral duty to protect the most vulnerable members of our society. In the United Church of Christ, we encourage anyone who suspects that a child is being abused,¹ at any

¹ For the definition of child abuse, see <https://www.dhs.pa.gov/KeepKidsSafe/Pages/FAQ.aspx>.

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time and under any circumstances, to report² that information immediately to the appropriate authorities, regardless of whether an individual is required to do so under the law. Pennsylvania also encourages anyone who suspects child abuse to report the abuse. 23 Pa. C.S. § 6312. So long as a person makes the report in good faith, the law protects the reporter from legal liability if the report is ultimately deemed to be unfounded.³ 23 Pa. C.S. §§ 6318(a) and 6303(a).

Certain individuals are required by law to report suspected child abuse immediately to the appropriate authorities. The law refers to these individuals as mandated reporters. Clergy are mandated reporters in Pennsylvania. 23 Pa. C.S. § 6311(a)(6). Individuals who are responsible for a child’s welfare or who have direct contact with children as part of the individual’s integral role in a regularly scheduled program, activity, or service are also mandated reporters. This includes both paid workers and volunteers. *Id.* at § 6311(a)(7).⁴ Some examples of programs, activities, and services include, but are not limited to youth camps or programs, recreational camps or programs, sports or athletic programs, community or social outreach programs, enrichment programs, troops, and clubs. *Id.* at § 6303(a). Sunday school, youth group, youth retreats, summer camps, regional youth gatherings, community youth activities sponsored by churches or Conferences, parents’ night out programs, and preschools and daycares are all examples of common church activities that come under the definition of “program, activity, or service.” Many other church- or Conference-related activities are also likely to be included.

This means that many Local Church volunteers who are involved in regular youth programming are mandated reporters under the new laws.

B. When does the duty to make a report arise? Don’t I actually have to see the child or know who the abuser is?

² For details on how to make a report, <https://www.dhs.pa.gov/KeepKidsSafe/Pages/Report-Abuse.aspx>.

³ An “unfounded report” is one in which no official finding of abuse in accordance with the definition of “founded report” has occurred. 23 Pa. C.S. § 6303(a).

⁴ This memorandum is not intended to be a complete discussion of all categories of individuals who are mandated reporters in Pennsylvania. For a complete list of categories of individuals who are mandated reporters, see <https://www.dhs.pa.gov/KeepKidsSafe/Pages/FAQ.aspx>.

The duty to make a report can arise in several different ways, but the following points should be kept in mind: the mandated reporter does not *ever* have to see the child for the duty to report to arise, and the mandated reporter *need not* identify the person responsible for the abuse. *Id.* at § 6311(b)(2) and (3).

First, a mandated reporter must make a report if they come into contact with a child in the course of the mandated reporter's employment, occupation or practice of a profession, or through a regularly scheduled program, activity, or service, and suspects that the child is a victim of abuse. Pa. C.S. § 6311(b)(1)(i). One example of this would be a youth group trip chaperone or a Sunday school teacher who suspects that a child participating in the program is being abused. Another example would be a confirmation camp counselor who suspects that a child is being abused. This would also include a Local Church pastor who suspects that a child in the congregation is being abused.

Second, the duty to report can also arise if the mandated reporter is directly responsible for the care, supervision, guidance, or training of the child, or is affiliated with an agency, institution, church, or religious organization that is directly responsible for the care, supervision, guidance, or training of the child, and suspects that a child is the victim of abuse. *Id.* at § 6311(b)(1)(ii). For example, a Local Church pastor may suspect that a child who is enrolled in the church's preschool may be the victim of abuse; the pastor is required to report the suspected abuse.

Third, a mandated reporter must also report suspected abuse if another person tells the mandated reporter that a specific child is the victim of abuse. *Id.* at § 6311(b)(1)(iii). This provision includes a child disclosing to a mandated reporter that the child themselves is being abused. Note that the law does not provide a particular set of circumstances under which this duty arises, nor is there any case law interpreting this provision in Pennsylvania. A broad interpretation of this law may not restrict the provision to applying in circumstances in which an

individual is acting in the capacity that defined the individual as a mandated reporter. It is possible that this provision could be interpreted to require a Local Church pastor whose neighbor tells the pastor that a specific child on the next street over is being abused to report the abuse, if the pastor suspects that it might be true, even if the pastor has no contact with the child or their family in the pastor's professional capacity.

Finally, a mandated reporter must make a report if an individual, aged 14 years or older, tells the mandated reporter that the individual has committed child abuse. *Id.* at § 6311(b)(1)(iv).

A mandated reporter must make the report *immediately* upon suspecting the abuse. *Id.* at § 6313(a). It is not enough for the mandated reporter to tell their supervisor, if one exists, about the suspected abuse. In fact, if a mandated reporter is working or volunteering for an institution or organization, the mandated reporter is required to make the report *first*, and then notify the person in charge of the institution. The person in charge of the institution is required to facilitate the cooperation of the institution in the investigation. *Id.* at § 6311(c).

C. Does the mandated reporter have to be certain that the child is the victim of abuse? What if it turns out the child is not being abused?

No reporter of suspected child abuse, whether mandated or not, needs to be certain that a child is the victim of abuse. An individual reporting suspected child abuse, regardless of whether the individual is a mandated reporter, does not need to have proof that a child is being abused. All that is required is that the individual have a reasonable suspicion that a child is being abused. The reporter does not need to, and should not, investigate the suspicion independently; any investigation should be left to the appropriate authorities. So long as the report is made in good faith, a reporter is immune from civil and criminal liability for making such a report. 23 Pa. C.S. § 6318(a).

D. Doesn't the clergy-penitent privilege prevent a clergyperson from making a report?

No, the clergy-penitent privilege does not prevent a clergyperson from making a report, regardless of how the clergyperson learned of the suspected abuse. The Office of General Counsel routinely receives questions regarding what some perceive as a conflict between a duty to report child abuse and a clergyperson's duty to treat certain information as confidential. In the United Church of Christ, we distinguish between secrets and confidences. Secrets are not intended for further disclosure to any person at any time. Clergy should not keep secrets in the course of their ministry. We define confidentiality as telling people who need to know, what they need to know, when they need to know it. Clergy should honor confidences. Should a clergyperson suspect that a child is the victim of abuse, even if that information was given to the clergyperson confidentially, the best course of action is to report the information to the authorities, who need to know so that the child can be protected from further harm.

The clergy-penitent privilege applies in very limited circumstances in Pennsylvania. It applies only to confidential communications between a penitent and a clergyperson in their role as confessor or spiritual counselor. *Commonwealth v. Stewart*, 547 Pa. 277, 283 (1997). The privilege functions to prohibit a clergyperson from disclosing information that the clergyperson has received "secretly and in confidence" from another person in a "legal proceeding, trial, or investigation before any government unit." 42 Pa. C.S. § 5943.

Pennsylvania law provides immunity from civil and criminal liability, however, for a person who reports suspected child abuse in good faith. 23 Pa. C.S. § 6318(a). A clergyperson thus has significant protection against a claim that they disclosed privileged information in making such a report. While clergypersons are not required to report suspected abuse if they learn of the abuse in the very limited context of confidential communications as a spiritual counselor or confessor, a clergyperson's first consideration should be the welfare of the child, and not whether they will face liability for making the report. 23 Pa. C.S. § 6311.1(b). Moreover, the pastoral ethic of confidentiality is best understood as a moral imperative intended

to assist all people in getting help for their problems, but it is not intended as a shield that precludes some people from being held accountable for their actions. As ethicist Sissela Bok has noted, the premises supporting confidentiality are important, but they do not justify practices of secrecy that undermine, if not contradict, the respect for human beings that clergy confidentiality, like all aspects of ministry, is meant to promote.

II. Required Certifications/Clearances

Pennsylvania requires certain certifications/clearances to be obtained by paid employees and volunteers having direct contact with children.

A. Do these laws apply to churches and other religious or charitable organizations?

Yes. No exceptions exist under the law for churches and other religious or charitable organizations. Churches and religious and charitable organizations are required to comply with the law.

B. Are employees and volunteers required to provide clearances, certifications, or other documentation?

Employees and volunteers are required to provide, and employers are required to collect, certain documents and information. These documents and information are sometimes referred to as “certifications” or “clearances.” Both terms are used in this document.

1. Employees

Employees are required to provide certain information at the time of hiring and periodically thereafter to their employers if they have routine interaction with children. “Routine interaction with children” is defined by the statute. It is “regular and repeated contact that is integral to a person’s employment or volunteer responsibilities.” Pa. C.S. § 6303(a). The law requires that individuals who are 14 years old or older applying for or holding a paid position as an employee with a program, activity, or service as a person responsible for the welfare of a

child, *or* as an employee having direct contact with children, submit the following information to the person responsible for employment decisions:

- A Pennsylvania State Police criminal history report;
- A Pennsylvania Child Abuse History Certification; and
- A federal criminal history report (“FBI clearance”).

Pa. C.S. § 6344(a) and (b).⁵ An employee has “direct contact with children” if the employee engages in the care, supervision, guidance, or control of children *or* has routine interaction with children. *Id.* at § 6303(a). Note that the law expressly prohibits certifications obtained for the purpose of volunteer certification from being used for purposes of employment certification. *Id.* at § 6344(b.3).

Employers are required to collect this information from employees meeting this definition. Most clergypersons who are Local Church pastors have routine interaction with children and should expect to comply with these requirements.

2. *Volunteers*

The same requirements apply to adult volunteers who are applying for or holding an unpaid position with a child-care service, a school or a program, activity, or service as a person responsible for the child’s welfare or having direct volunteer contact with children. *Id.* at § 6344.2(a). “Direct volunteer contact” is defined by the statute as “the care, supervision, guidance or control of children and routine interaction with children.” *Id.* at § 6303(a). Volunteers, however, need not submit an FBI clearance if the volunteer position is unpaid, the volunteer has been a continuous resident of Pennsylvania for the 10 years prior to applying for the position, or if not a resident for the entire 10-year period, has received an FBI clearance since establishing residency and provides it to the volunteer administrator, and the volunteer swears in

⁵ For comprehensive information and instructions on how to complete these background checks please visit <https://www.dhs.pa.gov/KeepKidsSafe/Clearances/Pages/default.aspx>.

writing that they are not disqualified from service.⁶ *Id.* at § 6344.2(b.1)(1)(i-iii).

Disqualification from service is discussed in Section II.D.

3. *Renewal of Clearances/Certifications and Penalties*

Certifications for employees and volunteers must be obtained every 60 months. *Id.* at § 6344.4. Employers and organizations that select volunteers must maintain records of the certifications. Failing to require an employee or volunteer to obtain the required certifications before hiring the employee or selecting the volunteer is a criminal offense for the employer. *Id.* at § 6344(b.2); § 6344.2(b). The employer will also be subject to a civil penalty for failing to comply with any provision of § 6344.

Note that a presumption of good faith applies to an employer or volunteer administration regarding determining whether individuals are required to submit certifications and regarding the maintenance of records. *Id.* at § 6344.2(h).

C. *My ministerial profile includes a background check obtained through Oxford Document Management Company, Inc. Additionally, our church uses the United Church of Christ Insurance Board background check provider, Praesidium, to do background checks on potential employees and volunteers. Do we really need to do more?*

Yes. The Oxford background check in a clergy person's ministerial profile does not include a Pennsylvania Child Abuse History Certification or a Federal Bureau of Investigation clearance. It does include a Pennsylvania State Police criminal history report. Clergy persons should be aware that they may still have to obtain the Pennsylvania State Police criminal history report if the Oxford background check attached to the ministerial profile becomes outdated in accordance with the law requiring certifications to be performed every 60 months.

Praesidium, the background check service provided through the United Church of Christ Insurance Board, offers the Praesidium Pennsylvania Background Check Package, which

⁶ For an example of a statement that a volunteer can sign that meets the requirements of § 6344.2(b.1)(1)(iii), see <https://www.dhs.pa.gov/KeepKidsSafe/Resources/Documents/Disclosure%20Statement%20for%20Volunteers.pdf>.

includes the Pennsylvania State Police criminal history report, but does not include a Pennsylvania Child Abuse History Certification or a Federal Bureau of Investigation clearance.

Individuals using Oxford or Praesidium must still obtain the Pennsylvania Child Abuse Certification and the Federal Bureau of Investigation clearance on their own. See footnote 5 for a link to complete instructions on how to obtain all of the necessary certifications.

D. What if the certifications reveal a criminal history or other negative information?

If the certifications reveal that an individual has committed child abuse within the five years immediately preceding, the individual cannot be hired or selected as a volunteer, regardless of whether the individual's certifications show a conviction related to the report or any other criminal history. *Id.* at § 6344(c)(1); § 6344.2(c).

The individual is also disqualified from employment or from being selected as a volunteer if the certifications reveal that the individual has committed certain crimes under Pennsylvania law, federal law, or the law of another state. These crimes include, but are not limited to: criminal homicide, aggravated assault, stalking, kidnapping, rape and other sexual assault offenses, statutory sexual assault, indecent exposure, incest, child trafficking, prostitution, obscenity, corruption of minors, sexual abuse of children, and certain felonies under Pennsylvania's Controlled Substance, Drug, Device and Cosmetic Act. *Id.* at § 6344(c). Employers and volunteer supervisors should carefully review the list of disqualifying offenses in the statute.

If the individual is already serving as an employee or volunteer and the certifications reveal information that disqualifies a person from serving in their position, the individual must immediately be terminated. *Id.* at § 6344(c.1).

E. But we are a church and we believe in redemption and second chances! Besides, this felony conviction for drugs was three years ago and didn't have anything to do with children. Can we hire the individual as an employee or volunteer to work with children?

No. It is a violation of Pennsylvania law to hire an individual or select an individual as a volunteer to be responsible for the welfare of a child or to have direct contact with children if that individual is disqualified under § 6344(c). Churches and religious organizations are required to comply with this law. The individual can serve the church in another way, but not in a capacity in which they are responsible for the welfare of a child or have direct contact with children.

F. What if the individual abuses a child or is convicted of a crime in the 60-month period between obtaining certifications?

Employees and volunteers who have contact with children are required to notify their employer or administrator within 72 hours of being arrested or convicted of a disqualifying offense or being named as a perpetrator in a report of child abuse. *Id.* at § 6344.3(g)(2). Failing to do so is a separate criminal offense. *Id.* at § 6344.3(h). And employers or administrators who have reason to believe that that an employee or volunteer was arrested or convicted of a crime, or named as a perpetrator in a report of child abuse, must immediately require the individual to provide updated certifications. *Id.* at § 6344.3(g)(2).

If the information provided by the employee or volunteer, or indicated in the updated certifications, disqualifies an individual under § 6344(c), the individual must be terminated immediately. If the information provided does not clearly disqualify an individual under § 6344(c), such as if the individual has been arrested but not yet convicted, the employer or administrator should contact a qualified attorney to discuss the best course of action. ***In no event should the employee or volunteer be permitted to have contact with children until the employer or supervisor consults with an attorney.***

G. We need to hire someone who can start now—we can't wait for certifications! What can we do?

Under the law, an employer can employ an individual on a provisional basis for up to 45 days if the individual has applied for the certifications, provides proof of such application to the

employer, *and* provides the results of when they receive them. *Id.* at § 6344(m).⁷ This may not be appropriate for every position, as the provisional employee is not permitted to work alone with children and must be in the immediate vicinity of a permanent employee at all times while working. *Id.* at § 6344(m)(5). Additionally, the employer must not be aware of any information that would disqualify the individual from employment and the individual must swear in writing that they are not disqualified from employment under § 6344(c) and has not been convicted of any similar offenses in any other foreign or domestic jurisdiction.⁸ If the certifications subsequently reveal information that disqualifies the individual from service, they must be terminated immediately. *Id.* at § 6344(m)(4).

Note that no provisional status exists for volunteers—volunteers must have the proper certifications completed prior to starting service.

H. We want to sponsor a service project here in Pennsylvania but want to invite volunteers from other states to participate. Must those volunteers obtain Pennsylvania certifications?

Consider first whether the service project must involve out-of-state volunteers having direct contact with children. Under the law, an individual who lives in a jurisdiction other than Pennsylvania may volunteer in a capacity in which they have direct contact with children in Pennsylvania for up to 30 days without obtaining Pennsylvania certifications, so long as the individual has the proper certifications under their home state. *Id.* at § 6344.2(f). Note, however, that the Pennsylvania organization sponsoring the project is tasked with ensuring that the out-of-state volunteers are in compliance with their home states' laws. *Id.*

I. We normally require these certifications for our volunteers who work with children, but also require much more information, such as references and a criminal background check from every state in which the prospective

⁷ This section of the law was amended in early 2022 to allow for certain provisional employment; it appears that the resources on the PA DHS website may not yet reflect this update.

⁸ For an example of a statement that a provisional employee can sign that meets the requirements of § 6344(m)(3), see <https://www.dhs.pa.gov/KeepKidsSafe/Resources/Documents/Disclosure%20Statement%20for%20Volunteers.pdf>.

volunteer has lived. Can we continue to require this extra information for our volunteers?

Absolutely. Nothing in the law prohibits requiring additional information as part of the process of selecting volunteers.

III. Training

The new Pennsylvania child abuse prevention laws also require that certain mandated reporters undergo training. While not all mandated reporters are required to undergo training, inexpensive training options such as virtual training make mandated reporter training an achievable and desirable goal.⁹

A. Are clergypersons required to take mandated reporter training?

It depends. Clergypersons are not required to take mandated reporter training simply because they are clergypersons. Training requirements apply if an individual is an operator of an institution, facility, or agency that cares for children and is also subject to supervision by the Department of Human Services under Article IX of the Public Welfare Code or an employee of such an institution, facility, or agency who has direct contact with children. 23 Pa. C.S. § 6383(c)(1)(i). Training requirements also apply if an individual is an operator of a facility or agency that cares for children and is also subject to licensure by the Department of Human Services under Article X of the Public Welfare Code or an employee of such a facility or agency who has direct contact with children. *Id.* at § 6383(c)(1)(iii). Foster parents and certain caregivers in family day care homes also must take the training. *Id.* at § 6383(c)(1)(ii) and (iv). If a clergyperson falls into one of these categories, they must take the mandated reporter training. Even if a clergyperson is not required to take mandated reporter training, they should strongly consider taking the training.

⁹ Mandated Reporter training is available through a number of providers. For information on mandated reporter training see <https://www.dhs.pa.gov/KeepKidsSafe/Pages/Trainings.aspx>.

Institutions, facilities, and agencies that are subject to supervision or licensure by the Department of Human Services will typically be familiar with their obligations under the Public Welfare Code as these organizations receive approvals, licenses, or registrations from the Department. Examples may include a church-run day-care center or nursery school that requires licensing or registration with the state. Operators and certain employees of these organizations are required to take mandated reporter training. Questions as to whether a particular institution, agency, or facility is subject to supervision or licensing requirements under Pennsylvania's Public Welfare Code should be directed to an attorney or to the Department of Human Services.

B. Are volunteers required to take mandated reporter training?

No. The statute is limited to operators or employees of certain institutions, facilities, and agencies, and does not include volunteers. Volunteers, however, should strongly consider taking the mandated reporter training even though it is not required.

IV. Additional Questions

This memorandum is not intended to cover all possible circumstances that may arise under the Pennsylvania child abuse prevention laws. This memorandum is also not a substitute for seeking legal advice. Contact an attorney if you have specific questions or particular circumstances for which you require guidance.