

 <p>THE CENTER FOR Children's Justice</p>	<p style="text-align: right;">www.C4CJ.org</p> <h2 style="text-align: center;">Children's Justice & Advocacy Report</h2> <p style="text-align: center;">To promote community responsibility so every Pennsylvania child is protected from child abuse, including sexual abuse.</p>
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Requiring comprehensive criminal and child abuse background checks
Broader, regularly updated background checks for paid employees and volunteers

Beginning in 2014, Pennsylvania lawmakers took action to require consistent, comprehensive and regularly updated background checks on a wide range of employees and volunteers.

[Act 153 of 2014](#) was signed into law in October 2014 and then an update was enacted (Act 15 of 2015) by Governor Tom Wolf on July 1, 2015.

The initial law and the more recent update extend background check requirements beyond paid employees making this requirement applicable to those unpaid volunteers “responsible for the welfare of a child or having direct volunteer contact with children.”

Building upon existing practice in employment and volunteer settings

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, they often 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 the 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 faced criminal charges), but still have been determined to be a perpetrator of child abuse following a child abuse investigation completed by child welfare authorities either alone or jointly with law enforcement.

This confidential child abuse database maintained in Pennsylvania by the Department of Human Services (DHS) is not made available to the public. Instead, it is accessible to limited parties during the course of future investigations (e.g., law enforcement) or in the course of determining a person’s suitability as an employee of volunteer in a child-serving setting.

What does it mean to have “direct contact with children”?

Definitions drive everything in determining what Pennsylvania’s Child Protective Services Law (CPSL) says about which employees and volunteers need to obtain comprehensive background checks. Key definitions include:

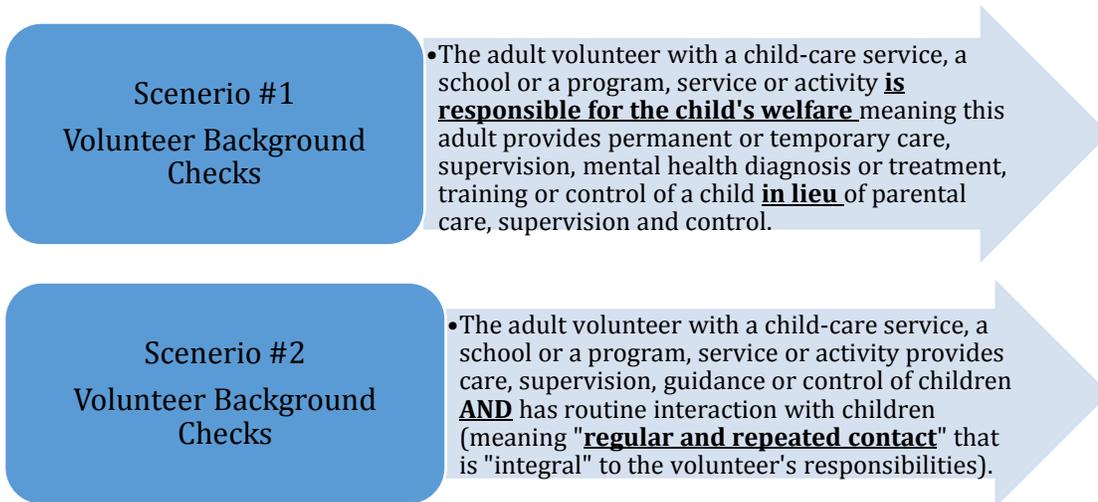
- **Direct contact with children:** The care, supervision, guidance or control of children **or** routine interaction with children. Routine interaction was defined in the CPSL effective 7/1/15 meaning

“regular and repeated contact that is integral to a person’s employment or volunteer responsibilities.”

- **Direct volunteer contact with children:** This definition was added to law effective July 1, 2015 to try and make it more clear which volunteers require background checks. Note that it differs from “direct contact with children” in that the OR has been replaced with AND. The definition then of direct volunteer contact with children is: “The care, supervision, guidance or control of children **AND** routine interaction with children.”
- **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.
- **Program, activity or service:** This definition is woven into the CPSL and is defined as: “Any of the following in which children participate and which is sponsored by a school or a public or a private organization:
 - ❖ A youth camp or program
 - ❖ A recreational camp or program
 - ❖ A sports or athletic program
 - ❖ A community or social outreach program
 - ❖ An enrichment or educational program
 - ❖ A troop, club or similar organization.”

Which volunteers need the checks and when?

Volunteers who fall into one of the two scenerios below will need to obtain a PA State Police criminal history certification and a Department of Human Services’ child abuse history certification every five years. Volunteers will have the fees waived for these state background certifications one time in a 57 month period of time.



Background checks will be required for new/propospective volunteers beginning August 25, 2015.

Existing volunteers with organizations, who either never had background checks or who have such comprehensive checks that are older than 60 months, will have until July 1, 2016 to comply with the law.

While many volunteers will only be required to obtain the two state background checks. Some volunteers, those who have not resided in Pennsylvania consecutively for ten years, will also have to obtain an FBI federal criminal history clearance, which requires the submission of the volunteer’s fingerprints.

What makes a person ineligible to work or volunteer with children?

Lawmakers have yet to rework the longstanding list of what types of criminal convictions bar a person from working or now volunteering with children.

Act 153 of 2014 and Act 15 of 2015 did not alter the CPSL with regard to “grounds for denying employment or participation in a program, activity or service.”¹ The CPSL outlines what constitutes grounds for denying employment or volunteer service:

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, at any point in time, 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**.

In Act 153, lawmakers directed the Pennsylvania 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 report is due to no later than December 31, 2015.

¹ 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.”

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

CPSL Applicability	Required Checks
<p>Employees having contact with children; adoptive and foster parents with 6344 (A) applicable to the following individuals:</p> <ol style="list-style-type: none"> 1. An employee of child-care services.² 2. A foster parent. 3. A prospective adoptive parent. 4. A self-employed provider of child care services in a family child-care home. 5. (i) Except as provided under subparagraph (ii), an individual 14 years of age or older who is applying for or holding a paid position as an employee with a program, activity or service³, as a person responsible for the child’s welfare or having direct contact with children. (ii) If the program, activity or service is an internship, externship, work-study or co-op or similar program, an adult apply for or holding a paid position with an employer that participates in the internship, externship, work-study, co-op or similar program with a school and whom the employer and the school identify as the child’s supervisor and the person responsible for the child’s welfare while the child participates in the program with the employer. The adult identified under this subparagraph as the person responsible for the child’s welfare is required to be in the immediate vicinity at regular intervals with the child during the program. 6. Any individual seeking to provide child care services under contract with a child care facility or program 7. An 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. 8. An individual 18 years of age or older who resides for at least 30 days in a calendar year in the following homes which are subject to supervision or licensure by the department under Articles IX and X of the act of June 13, 1967 (P.L. 31, No. 21), known as the Public Welfare Code: <ol style="list-style-type: none"> (i) A Family Living Home. (ii) A community home for individuals with an intellectual disability. (iii) A host home for children. 	<ol style="list-style-type: none"> 1. Criminal History Record Information obtained from the PA State Police (\$8 fee effective 7/25/15) 2. Child Abuse Clearance obtained through 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. (\$8 fee effective 7/25/15) 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.” (maximum \$28.75 fee) <p>Effective Date: These individuals will be required to obtain required background checks beginning December 31, 2014 with updated checks required every 60 months.</p> <p>There is some phase in so that current employees with older or less comprehensive checks have until 12/31/15 to become compliant.</p>

² Child-care services is defined as Includes any of the following: Child day-care centers, Group day-care homes, Family child-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 or a county social services agency or that are provided pursuant to a contract with the department or a county social services agency. The term does not apply to services provided by administrative or other support personnel unless the administrative or other support personnel has direct contact with children.

CPSL Applicability	Required Checks
<p>This paragraph does not include an individual with an intellectual disability or chronic psychiatric disability receiving services in a home.</p> <p>School employees are also enumerated in the CPSL (those governed by the Public School Code and those outside of that Code which captures those in a college/university setting). There is some exception related to employees at institutions of higher education.</p> <p>(II) This paragraph shall not apply to an employee of an institution of higher education whose direct contact with children, in the course of employment, is limited to either:</p> <ul style="list-style-type: none"> (A) Prospective students visiting a campus operated by the institution of higher education; or (B) Matriculated students who are enrolled with the institution. <p>(III) Subparagraph (II) (B) shall not apply to students who are enrolled in a secondary school.</p> <p>(A.2) Minors – An individual between 14 and 17 years of age who applies for or holds a paid position as an employee who is a person responsible for the child’s welfare or a person with direct contact with children through a program, activity or service prior to the commencement of reemployment or under section 6344.4 (relating to certification) shall be required to submit only the information under subsection (b)(1) and (2) to an employer, administrator, supervisor or other person responsible for employment decisions, if the following apply:</p> <ol style="list-style-type: none"> 1. The individual has been a resident of the Commonwealth during the entirety of the previous 10-year period or, if not a resident of the Commonwealth during the entirety of the previous 10-year period, has received certification under subsection (b) (3) at any time since establishing residency in this Commonwealth and provides a copy of the certification to the employer. 2. The individual and the individual’s parent or legal guardian swears or affirms in writing that the individual is not disqualified from service under subsection (c) or has not been convicted of an offense similar in nature to those crimes listed in subsection (c) under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this Commonwealth.” <p>(A.3) Exchange visitor – An individual in possession of a nonimmigrant Visa issued pursuant to 8. U.S.C. § 1101 (A) (15) (J) (relating to definitions) to an exchange visitor, commonly referred to as a J-1 Visa, shall not be required to submit information under subsection (B) if any of the following apply:</p>	

CPSL Applicability	Required Checks
<ol style="list-style-type: none"> 1. The individual is applying for or holds a paid position with a program, activity or service for a period not to exceed a total of 90 days in a calendar year. 2. The individual has not been employed previously in this Commonwealth or another state, the District of Columbia or the Commonwealth of Puerto Rico. 3. The individual swears or affirms in writing that the individual is not disqualified from service under subsection (c) or has not been convicted of an offense similar in nature to the crimes listed under subsection (c) under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of this Commonwealth. 	
<p>Section 6344.2 -- Volunteers having contact with children. This section applies to an adult applying for an unpaid position as a volunteer 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.</p>	<ol style="list-style-type: none"> 1. Criminal History Record Information obtained from the PA State Police 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. 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) <p>Exception on #3: The FBI check is waived for all volunteers that have been a resident of Pennsylvania for 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>Effective Date: Existing volunteers have until July 1, 2016 to obtain the background checks. New volunteers require checks beginning August 25, 2015.</p> <p>All volunteers must have #1 & #2 updated every 60 months. Fees for the PSP and DHS background checks will be waived for volunteers beginning 7/25/2015.</p>