

PENNSYLVANIA CHILD PROTECTION LEGISLATION

Guidance for Local Pennsylvania Councils

**Boy Scouts of America
Legal Department**

WHAT THIS WILL OVERVIEW COVER

- ▶ Updated definitions of “abuse”.
- ▶ Updated requirements of “Mandated Reporters”.
- ▶ Who does the law apply to?
 - ▶ Volunteers
 - ▶ Registered
 - ▶ Unregistered
- ▶ Who is responsible for ensuring compliance?
- ▶ What clearances are required and associated cost?
- ▶ Where do volunteers get these things done?
- ▶ When are the compliance deadlines?



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Overview

DEFINITIONS

- ▶ Child - anyone under 18 year of age
- ▶ Adult - anyone 18 years of age or older
- ▶ Mandated Reporter
 - ▶ Paid or unpaid adults who
 - ▶ Serve in an integral role
 - ▶ In a regularly scheduled program, activity or service
 - ▶ Who accept responsibility for a child
 - ▶ *All Scouting volunteers (at all times).*
 - ▶ Persons supervised or managed by a mandated reporter
 - ▶ Independent contractors
- ▶ Direct contact – anyone responsible for care, supervision, guidance or control of children or routine interaction with children
- ▶ Perpetrator – A person who has committed child abuse, including (but not limited to) persons 14+ years of age and responsible for a child's welfare or resides in the same house as the child



DEFINITION OF CHILD ABUSE (NOT EXHAUSTIVE)

- ▶ **Child abuse definition – through act or failure to act**
 - ▶ **Causing bodily injury**
 - ▶ **Misrepresenting medical condition resulting in potentially harmful medical treatment**
 - ▶ **Causing or substantially contributing to serious mental injury**
 - ▶ **Causing sexual abuse or exploitation**
 - ▶ **Creating reasonable likelihood of bodily injury or sexual abuse or exploitation**
 - ▶ **Serious physical neglect**
 - ▶ **Causing the death of a child**



DEFINITION OF CHILD ABUSE

- ▶ Endangering by kicking, biting, throwing, burning, stabbing or cutting
- ▶ Unreasonable restraint
- ▶ Interference with breathing
- ▶ Allowing child to be present at meth lab
- ▶ Leaving child unsupervised with known (or reasonably should be known) sex offender, predator, sexually violent delinquent child
- ▶ Causing death by act or failure to act
- ▶ Requires actions to be intentional, knowing or reckless
- ▶ Excludes environmental, religious, reasonable force for parental discipline and supervision, participation in sports, etc.



YOUTH ON YOUTH ABUSE – DEFINITION

- ▶ Harm/Injury to a child by another is not abuse, unless child is a “perpetrator”.
- ▶ The following actions by one child against another must be reported:
 - ▶ Rape
 - ▶ Deviate intercourse
 - ▶ Sexual assault
 - ▶ Aggravated indecent assault
 - ▶ Indecent assault
 - ▶ Indecent exposure
- ▶ Abuse does NOT include fight or scuffle by mutual consent



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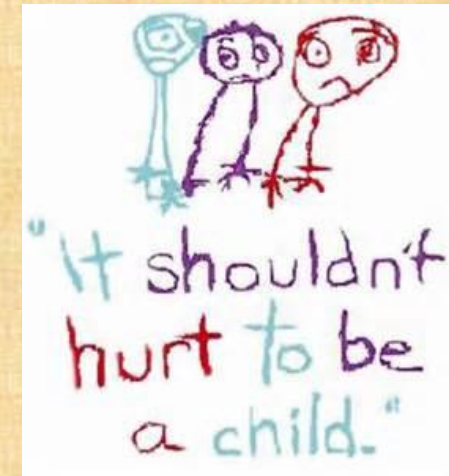
Mandated Reporters

REPORTING REQUIREMENTS - MANDATORY REPORTERS

- ▶ Immediate oral report to the department toll-free hotline or an immediate written report by department's electronic reporting system
 - ▶ 1-800-932-0313.
 - ▶ www.compass.state.pa.us/cwis
- ▶ Written report must be made within 48 hours in manner and format prescribed by the department
 - ▶ www.compass.state.pa.us/cwis



BASIS FOR REPORT



If reasonable cause to suspect child abuse under any of the following circumstances:

- ▶ Mandated reporter comes in contact with youth in course of employment or occupation
- ▶ Mandated reporter is directly responsible, or is affiliated with entity that is directly responsible, for child care & supervision
- ▶ A specific disclosure is made to a mandated reporter
- ▶ Self-reporting by person 14 years of age or older to the mandated reporter

Mandated reporters through capacity as staff of agency must notify person in charge and Scout executive. The person in charge must cooperate with any investigation.

MANDATORY REPORTS OF ABUSE OR CHANGE IN STATUS

- ▶ Immediate and direct report of actual or suspected abuse to *Childline* either electronically at www.compass.state.pa.us/cwis or by calling 1-800-932-0313.
- ▶ Written report (Form CY-47*) to the county children and youth agency within 48 hours.
- ▶ After making the report to *Childline*, notify Scout Executive of report.
- ▶ All must act on any report of arrest or abuse charge while employed or volunteering.

* - Form CY-47 can be obtained at www.KeepKidsSafe.pa.gov or from the children and youth agency. If a report is made electronically, no CY-47 is required to be completed.

CONSEQUENCES FOR FAILURE TO REPORT



- ▶ Willful failure is a third degree felony if abuse is a felony and direct knowledge of abuse
- ▶ Otherwise second degree misdemeanor
- ▶ If ongoing abuse violations are higher degrees
- ▶ Failure is not an offense if abuse is reported to local law enforcement in good faith effort to comply

IMMUNITY AND ANTI-RETALIATION

- ▶ Immunity from liability for good-faith reporting
- ▶ Law prohibits retaliation against reporters
- ▶ Protection for employers against discrimination claims due to compliance with law
- ▶ Second degree misdemeanor for intentional false reporting



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Volunteers

WHO DOES THE LAW APPLY TO?

Clearance and Reporting	Compliance
Volunteers - responsible for child's welfare or direct contact (18 years old or over) including those who reside in West Virginia and Maryland	Attorney General - audits

YOUTH PROTECTION of the Boy Scouts of America

Youth protection requires sustained vigilance. That is why the BSA has continued to develop and enhance its youth protection efforts as everyone continues to learn more about the dangers and challenges facing youth. The BSA has established a multi-tiered youth protection approach focused on volunteer screening, education and training for everyone in the program, and clear policies to protect youth.



This is how it works:

ADULT VOLUNTEERS

STEP 1 Chartered Organizations Reference Check

Chartered organizations provide background and ongoing supervision. The involvement of chartered organizations, whether in schools or other organizations, is critical to the success of the BSA's youth protection efforts.

STEP 2 Application

All adults who have direct or potential contact with youth must complete the BSA's Youth Protection Application, which includes a statement of understanding and a commitment to the BSA's youth protection policies.

STEP 3 Criminal Background Check

The BSA requires criminal background checks on all adult volunteers. The background checks are administered by a third-party vendor and are conducted at the discretion of the BSA's Youth Protection Department.

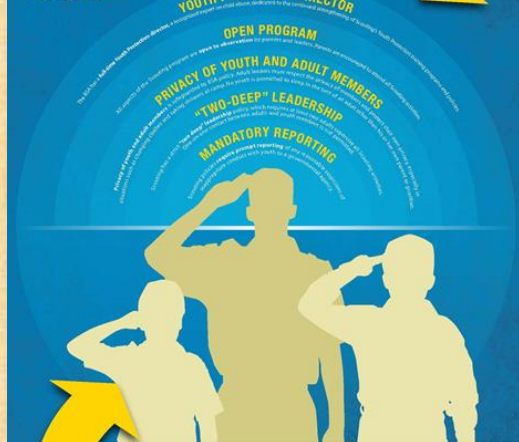
STEP 4 Ineligible Volunteer File Check

The BSA maintains a file of individuals who are ineligible to be volunteers. This file is updated regularly and includes individuals who have been convicted of certain crimes, individuals who have been removed from the BSA's membership, and individuals who have been removed from the BSA's youth protection program.

STEP 5 Adult Leader Youth Protection Training

All registered adult volunteers are required to complete the BSA's Youth Protection Training every two years. This training is available online or in a classroom setting.

THE BSA LAYERS OF PROTECTION



PARENTS AND SCOUTS

STEP 1 Parental and Scout Youth Protection Education

Parents and youth are required to complete the BSA's Youth Protection Education, which includes a statement of understanding and a commitment to the BSA's youth protection policies.

STEP 2 Parental Policy Notification

Every parent registering a youth must sign a parental policy notification, which includes a statement of understanding and a commitment to the BSA's youth protection policies.

STEP 3 Empowerment of Scouts

Scouts are required to complete Youth Protection training before joining the program and to receive training for all BSA programs. The BSA's Youth Protection Department provides ongoing support and resources for youth protection.

• Recognize situations that place youth at risk from child sexual abuse and that anyone could be a predator.

• Report suspected or actual child sexual abuse to the proper authorities and to the BSA's Youth Protection Department.

Review the complete Boy Scouts of America Youth Protection policy at www.scouting.org/bsayouthprotection.

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VOLUNTEERS WHO REQUIRE CLEARANCE

- ▶ If responsible for the a child acting in place of the parent (supervision, guidance, control, etc.)
- ▶ If they have “direct contact” (specific references to “troop”)
- ▶ Regular, ongoing contact integral to their volunteer responsibilities

Registered Volunteers	Unregistered Volunteers
Unit leaders	Drivers
CORs	Summer or day camp
Commissioners	Two-deep leadership
District and council	“Tag-alongs”
Training and advancement	Unit “committee”
Program staff	Program staff
Merit badge counselors	“Helping out”

WHICH CLEARANCES ARE NEEDED?

All prospective volunteers must obtain the following clearances:

- ▶ **Report of criminal history from the Pennsylvania State Police (PSP); and**
- ▶ **Child Abuse History Clearance from the Department of Human Services (Child Abuse).**

Additionally, a fingerprint based federal criminal history (FBI) submitted through the Pennsylvania State Police or its authorized agent is not required if:

- ▶ **The position the volunteer is applying for is unpaid; and**
- ▶ **The volunteer has been a Pennsylvania resident continuously for the past 10 years.**

Volunteers who are not required to obtain the FBI Clearance because they are applying for an unpaid position and have been a continuous resident of Pennsylvania for the past 10 years must swear or affirm in writing that they are not disqualified from service based upon a conviction of an offense.

WHAT IS REQUIRED - “CLEARANCE” LAW HIGHLIGHTS

Who	What	When	Where	Cost
<u>Volunteers</u> responsible for welfare or having direct contact with youth.	PA State Police criminal history	<u>New volunteers</u> - Effective 7/1/2015. District committees/Commissioners/Merit badge counselors by June 30, 2015. <u>Current unit volunteers</u> must be cleared by 12/31/2015.	On-line	PA State Police \$10.00* (Paid for by Volunteer -Must be renewed every three years)
<u>Volunteers</u> responsible for welfare or having direct contact with youth.	PA Department of Human Services – Child Abuse Clearance	<u>New volunteers</u> - Effective 7/1/2015. District committees/Commissioners/Merit badge counselors by June 30, 2015. <u>Current unit volunteers</u> must be cleared by 12/31/2015.	On-line	\$10.00 (30 day) (Paid for by Volunteer -Must be renewed every three years)
<u>Volunteers</u> who have not been a PA resident continuously for the past ten years.	FBI fingerprint based federal criminal history	<u>New volunteers</u> - Effective 7/1/2015. District committees/Commissioners/Merit badge counselors by June 30, 2015. <u>Current unit volunteers</u> must be cleared by 12/31/2015.	On line pre-registration required; followed by a visit to a 3M Cogent site	FBI/Cogent Report \$27.50* (Paid for by Volunteer - Must be renewed every three years)

*Through Department of Human Services

WHEN MUST VOLUNTEERS COMPLY?

Timelines

New volunteers - Effective 7/1/2015.

District committees/Commissioners/Merit badge counselors by June 30, 2015.

Current unit volunteers must be cleared by 12/31/2015.

This timeline applies to leaders in Maryland and West Virginia who are members of the Laurel Highlands Council.

New clearance required every 3 years for each background filing, i.e. each individual clearance may have a separate renewal date. (If cleared prior to effective date new clearance required at end of 3 years)

WHERE DO VOLUNTEERS GET THESE THINGS DONE?

What	Where
1. PA State Police criminal history (\$10.00)	On line https://epatch.state.pa.us/Home.jsp
2. PA Department of Human Services clearance (\$10.00)	On line http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm
3. Finger print FBI criminal history - volunteers not living in Pennsylvania for the entire 10 prior years) (\$27.50)	Pre-registration required and go to 3M Cogent site https://www.pa.cogentid.com/index_dpwNew.htm

COPIES MUST BE KEPT ON FILE!

- ▶ **Compliance subject to annual random audit by Attorney General**
- ▶ **Employee/Volunteer must present original report; Organization must keep a copy on file**
- ▶ **Update every three years**
- ▶ **Working on tracking options with the IDG group at the National Service Center, but council is responsible**



COPY

DISQUALIFICATION FOR VOLUNTEER SERVICE UNDER PA LAW

- ▶ Abuse record within prior five-years
- ▶ Criminal history one or more offenses
 - Homicide, aggravated assault, kidnapping, stalking, unlawful restraint, rape, sexual assault (including statutory), involuntary deviate intercourse, indecent exposure, incest, concealing death of a child, endangering welfare of child, prostitution and related offenses, obscene material and performances, corruption of minors, sexual abuse of child
- ▶ Felony controlled substance offense
- ▶ Employer has information of pre-employment offense
- ▶ Arrest for or convicted of abuse while currently serving (mandatory self-reporting) in a paid or volunteer position.
- ▶ Note – in some of these areas BSA's requirements are more stringent



<http://lhcb-sa.org/about%20us/risk%20management>

Questions???