

What does House Bill 435 mean for our church?

When working with church volunteers, there are two main issues in House Bill 435 that we need to address.

1. The required screening of every volunteer who works with minors.
2. The new definition of a mandated reporter.

This document will attempt to answer the most basic questions and offer resources for more information. As with everything you do, it is wisdom to consult your church's legal counsel and insurance provider for further insight.

First let's look at the new requirements for screening volunteers.

Beginning July 1, 2015, an adult applying for an unpaid position as a volunteer **responsible for the welfare of a child** or having **direct contact** with children will need clearances.

When determining whether a volunteer is **responsible for the welfare of a child**, consider whether the volunteer is acting in lieu of or on behalf of a parent. If they are acting in lieu of or on behalf of a parent, they will need clearances. If a determination is made that the volunteer is not responsible for the welfare of a child, you then move on to the second avenue for consideration: whether they have **direct contact** with children.

Direct contact with children is defined in § 6303 (relating to definitions) as the care, supervision, guidance or control of children or routine interaction with children. As the terms are not defined in the statute we suggest that the common meaning of these terms be used, with child safety serving as the paramount consideration. If the answer to this question is that they provide care, guidance, supervision or control of children, they need clearances. If, however, you determine they do not provide care, guidance, supervision or control of children, you then must consider whether they have routine interaction with children.

With regard to routine interaction with children, consideration should be given to what the volunteer's role is within the agency. Is their contact with children regular, ongoing contact that is integral to their volunteer responsibilities?

If you determine they do have direct contact with children, they need clearances. If, however, you determine that they do not have direct contact with children, clearances are not required.

Please be sure to consult your legal counsel when making these determinations. You should also discuss with your insurers any possible insurance coverage implications.

“If you have doubts about which volunteers to screen, remember it is always better to be safe than sorry.”
- George Krebs

Now that we know volunteers are required to have clearances, let’s look at what clearances are required.

Required Criminal History and Clearance reports **Prior to Start of Volunteering**

- Report of criminal history from Pennsylvania State Police
- Child abuse history clearance from Pennsylvania Department of Human Services
- FBI Criminal History or possibly a written affirmation regarding residence and disqualifications (see below for more detail).

The organization (church) must keep a copy on file made from the original: Transferable.

Website for obtaining or information related to obtaining these reports:

<http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>

Cost: PA State Police: \$10 and PA Child Abuse \$10; FBI Criminal History \$27.50

When do you need FBI Criminal History?

1. If the volunteer has resided outside the commonwealth of Pennsylvania within the last 10 years.
2. If the volunteer does not swear or affirm in writing that the volunteer is not disqualified from service pursuant to section 6344© or has not been convicted of an offense similar in nature to those crimes listed in section 6344© 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 the Commonwealth.

If the volunteer is not able to fulfill 1 and 2 above they will need the FBI fingerprinting and Criminal History.

Included here is a sample affidavit you can tailor to your agency’s needs. You can download this sample as a PDF or Word document from our website at www.penndel.org. Again, please be sure to consult your legal counsel and your insurers for possible implications.

Affidavit Relating to Residence and Volunteer Qualification

I, (Name) _____, of
(City, State) _____ have applied as a
volunteer with (Organization) _____.
I understand this Affidavit for the purpose of determining whether I may serve as an unpaid
volunteer.

I, (Name) _____ swear and affirm I have
resided inside the Commonwealth of Pennsylvania within the entirety of the ten-year period
immediately preceding today's date.

I, (Name) _____ swear and affirm I am
not disqualified from service pursuant to section 6344 (c) or have not been convicted of an
offense similar in nature to those crimes listed in Section 6344 (c) (**see below**) 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 the
commonwealth.

I, (Name) _____ swear and affirm I
have not been convicted of a felony offense under the Pennsylvania Controlled Substance, Drug,
Device and Cosmetic Act, 35 P.S. Section 780-101 et seq., during the entirety of the five-year
period immediately preceding today's date.

Pennsylvania Crimes Code, 18 Pa.C.S.A. Section 101 et seq.:

- | | |
|--|--|
| i. Chapter 25 (relating to criminal homicide); | ii. Section 2702 (relating to aggravated assault); |
| iii. Section 2709.1 (relating to stalking); | iv. Section 2901 (relating to kidnapping); |
| v. Section 2902 (relating to unlawful restraint); | vi. Section 3121 (relating to rape); |
| vii. Section 3122.1 (relating to statutory sexual assault); | viii. Section 3123 (relating to involuntary deviate sexual intercourse); |
| ix. Section 3124.1 (relating to sexual assault); | x. Section 3125 (relating to aggravated indecent assault); |
| xi. Section 3126 (relating to indecent assault); | xii. Section 3127 (relating to indecent exposure); |
| xiii. Section 4302 (relating to incest); | xiv. Section 4303 (relating to concealing death of child); |
| xv. Section 4304 (relating to endangering welfare of children); | |
| xvi. Section 4305 (relating to dealing in infant children); | |
| xvii. A felony offense under section 5902(b) (relating to prostitution and related offenses); | |
| xviii. Section 5903(c) or (d) (relating to obscene and other sexual materials and performances); | |
| xix. Section 6301 (relating to corruption of minors); | |
| xx. Section 6312 (relating to sexual abuse of children); or | |
| xxi. the attempt, solicitation or conspiracy to commit any of the foregoing criminal offenses. | |

Signature: _____ Date: _____

State of _____ County of _____

Sworn to and subscribed before me this ___ day of _____, (year) _____

Notary Public _____

My Commission Expires: _____

When are clearances needed?

Beginning July 1, 2015, prospective volunteers must submit clearances prior to the commencement of service.

How often are these clearances to be renewed?

Beginning July 1, 2015, all volunteers will be required to obtain clearances every 36 months. Timeframes for renewed clearances are based upon the date of each individual clearance. If an individual or agency elected to renew all clearances at the same time, the date of the oldest clearance rather than the most recent would be used.

Volunteers are required to obtain updated clearances as follows:

- Within 36 months of the date of the most recent clearance;
- By July 1, 2016, if the clearance is older than 36 months; or
- By July 1, 2016, if they were approved as a volunteer before July 1, 2015, and had not received a clearance because they previously were not required to obtain clearances.

Is the use of a third-party vendor to process clearances acceptable?

Third-party vendors may be used to process Child Abuse, PSP and FBI clearances using the steps established above. They are not permitted to conduct background checks or clearances through other databases in lieu of the steps outlined above. In addition, persons responsible for the selection of volunteers remain responsible for selection decision based upon the information obtained.

If you do use a third party vendor for background screening, then you, the organization, must have a copy of the report of criminal history from Pennsylvania State Police, a copy of the report of the child abuse history clearance from Pennsylvania Department of Human Services and the FBI Criminal History or possibly a written affirmation regarding residence and disqualifications in your files.

There are many churches located along Pennsylvania state borders. When using volunteers who live in another state, but volunteer in a Pennsylvania church or ministry what is needed?

What is the provisional clearance requirement for volunteers?

Individuals who reside in another state or country may serve as a volunteer for no more than 30 days as long as they provide clearances from their state or country of residence. If the individual will be volunteering for more than 30 days, they must obtain clearances as outlined in the Frequently Asked Questions (separate document). Volunteers who reside in Pennsylvania do not have a provisional period and must obtain clearances as outlined in the Frequently Asked Questions (separate document).

Next we will look at Bill 435 regarding mandated reporters.

Are You a Mandated Reporter?

When it concerns volunteers, here is what Bill 435 states. You are a mandated reporter if you are:

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, accepts responsibility for a child.

When must a mandated reporter make a report?

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

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.

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.

A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

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

How does a mandated reporter make a report if they suspect child abuse?

Mandated reporters must make an immediate and direct report of suspected child abuse to ChildLine either electronically at www.compass.state.pa.us/cwis or by calling 1-800-932-0313.

We have attempted to highlight the two most impacting issues (New clearance requirements and mandated reporting) in House Bill 435. To answer more of your questions we have included the “Frequently Asked Questions” section from the Pennsylvania state website below.