



**Summary of New Amendments to the
Child Protective Services Law**
Enacted in [Act 15](#) of 2015 (House Bill 1276)

Caveats:

Solicitors may not all reach the same conclusions about issues discussed in this summary; therefore, it is critical to consult with your solicitor or other qualified counsel on specific situations.

Regardless of the statutory construction arguments that could be made in an attempt to reconcile discrepancies, until legislation resolves the inconsistencies, a conservative approach that satisfies the highest level of compliance may be advisable.

Definitions:

Act 15 adds definitions of “adult family member,” “direct volunteer contact,” “education enterprise,” “family child-care home,” “immediate vicinity,” “institution of higher education,” “routine interaction,” and “matriculated student.” The Act amends the definitions of “school,” “school employee,” “independent contractor,” “child-care services,” “perpetrator,” “person responsible for the child’s welfare,” and “program, activity or service.”

- “Direct volunteer contact” is defined as “The care, supervision, guidance or control of children and routine interaction with children.”
- “Immediate vicinity” is defined as “An area in which an individual is physically present with a child and can see, hear, direct and assess the activities of the child.”
- “Routine interaction” is defined as “Regular and repeated contact that is integral to a person’s employment or volunteer responsibilities.”
- For the definitions of “child-care services,” “independent contractor,” and “school employee,” the terms do not “apply to administrative or other support personnel unless the administrative or other support personnel has direct contact with children.”

Mandated Reporters:

The Act amends § 6311(a)(7), which now reads: “(7) 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, is a person responsible for the child’s welfare or has direct contact with children.” *(NOTE: This language is broader than the language applicable to certifications; therefore, a volunteer may be a mandated reporter, but may not be required to obtain certifications.)*

The Act also amends § 6311(a)(12) to include as a mandated reporter: “An individual supervised or managed by” an “Independent Contractor” “who has direct contact with children in the course of employment.” *(NOTE: This change to capture employees of an independent contractor in the list of mandated reporters is important because “independent contractor” does not necessarily include employees of the independent contractor who have direct contact with children.)*

Certifications (previously called, “clearances”):

With regard to employees:

- Federal Criminal History (FBI) Check Exemption for Minors: A minor between the ages of 14 and 17 who is employed as a person responsible for the child’s welfare or a person with direct contact with children through a program, activity or service is required to get only the state criminal history check and the child abuse history clearance if: (1) the minor has lived in the Commonwealth for 10 years and (2) the minor and his/her parent/guardian affirms that s/he has not been convicted of a disqualifying crime. *(NOTE: Under Section 111 of the Public School Code, a minor who is employed by a school entity and has direct contact with children is currently required to get the state and federal criminal history checks.)*
- Exemption for Exchange Visitors: If an individual with a J-1 Visa is applying for a paid position with a program, activity or service, which will not exceed 90 days in a calendar year, the individual is not required to obtain certifications as long as the individual swears or affirms in writing that s/he has not been convicted of a disqualifying crime and the individual has not previously been employed in Pennsylvania, another state, D.C., or Puerto Rico.
- Exemption for Institutions of Higher Education: Employees of institutions of higher education do not need to get the required certifications (State, Federal, and Child Abuse) if: direct contact is limited to (1) prospective students visiting campus; or (2) matriculated students enrolled in the institution who are not enrolled in a secondary school.
- The changes narrow the category of individuals 14 years of age or older who need certifications. Section 6344(a)(5) now reads: (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 service, as a person responsible for the child’s welfare or having direct contact with children.
 - If the program, activity or service is an internship, externship, work-study, co-op or similar program, the adult identified by the school and employer as the child’s supervisor and person responsible for the child’s welfare must obtain all three certifications. The identified adult is required to be in the immediate vicinity at regular time intervals with the child during the program. *(NOTE: Although this expresses the intent of the amendment, the actual new statutory language is somewhat garbled and cannot be given a strict literal interpretation without a result that would be absurd given the context.)*
- ***An employer is prohibited from accepting for employment purposes certifications that were obtained free of charge for volunteering purposes.*** *(NOTE: PSBA contacted DHS to ask for clarification on how an employer will know what purpose the certifications were issued for. Beginning in October, the certifications will specify whether they were obtained for employment or volunteer purposes.)*

- Timeline:
 - Current employees with clearances older than five years as of Dec. 31, 2014, must get new ones within one year of Dec. 31, 2014 (i.e., no later than Dec. 31, 2015). Current clearances that are less than five years old will expire at the five-year anniversary of the employee's oldest certification, and those employees will need to get them before that anniversary, even if that means earlier than Dec. 31, 2015.

With regard to volunteers:

- A volunteer subject to the requirements of the CPSL is now defined as “an adult applying for or holding 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.”
- All volunteers subject to the requirements must obtain a state criminal history check and a child abuse history clearance and swear or affirm in writing that s/he has not been convicted of a disqualifying crime. Volunteers who have not lived in the Commonwealth for the entirety of the previous 10-year period and who have not obtained a federal criminal history check since establishing residency are also required to submit a federal criminal history check.
- No certifications are required for a student volunteering for an event sponsored by the school in which the student is enrolled and occurring on the school’s grounds, except when the event is for children in the care of a child-care service or the student will otherwise be responsible for the welfare of a child.
- Fees:
 - For volunteers required to obtain certifications under the CPSL, the fee has been waived for the state criminal history check and the child abuse clearance so long as the certifications are not used for other purposes. Such certifications are provided at no charge only once every 57 months.
 - In identifying such volunteers required to get certifications pursuant to the law, the employer is presumed to act in good faith. *(NOTE: Employers must be careful when crafting policies and establishing standards, as the fee waiver only applies to those volunteers required to obtain certifications.)*
- Timeline – With respect to volunteers required to get certifications pursuant to the law, the phase in works as follows:
 - Beginning August 25, 2015, all new volunteers must submit certifications prior to the commencement of service.
 - Volunteers who obtained certifications prior to August 25, 2015, must obtain new certifications 60 months from the date of the person’s oldest certification. If current certification is older than 60 months as of August 25, 2015, new certifications must be obtained by July 1, 2016.
 - Volunteers approved before August 25, 2015, without certifications must obtain the required certifications by July 1, 2016.

With regard to portability:

- Certifications are portable as long as they are current. *(NOTE: Reminder - volunteer certifications obtained for free pursuant to the law cannot be used for employment purposes. Additionally, the School Code has not been amended, so prospective school employees must have state and federal criminal history checks issued in the preceding year.)*

With regard to recertification for volunteers and employees:

- New certifications must be obtained every 60 months from the date of the oldest certification.

With regard to submission of child abuse history clearance (employees and volunteers) and state and federal criminal history checks (volunteers):

- Eliminates language referring to submission of original document (This is important, since it is no longer possible to distinguish between an original and a copy.)

These Issues Remain:

Since school employees and independent contractors and their employees are covered by both the Child Protective Services Law and the School Code, some issues still remain. *(Note: [Senate Bill 862](#), currently in the House Education Committee, does address a few of these issues.)*

- Who is a school employee? Act 15 amended the definition of school employee (to exclude administrative or other support personnel who do not have direct contact with children); thereby narrowing the universe of school employees subject to the mandatory reporting requirements and to the requirement to submit a child abuse history certification. Section 111 of the School Code still requires school employees and independent contractors and their employees who have direct contact with children to obtain state and federal criminal history reports.
- How current must a prospective school employees certifications be? Despite the new portability and five-year renewal provisions in Act 15, Section 111 of the School Code requires that state and federal criminal history reports submitted by prospective employees be no more than one (1) year old.

Additional information/guidance on Act 15 and the other amendments to the Child Protective Services Law and School Code will be provided as it becomes available.