

PENNSYLVANIA CHILD PROTECTION LEGISLATION

Guidance for Local Pennsylvania Councils

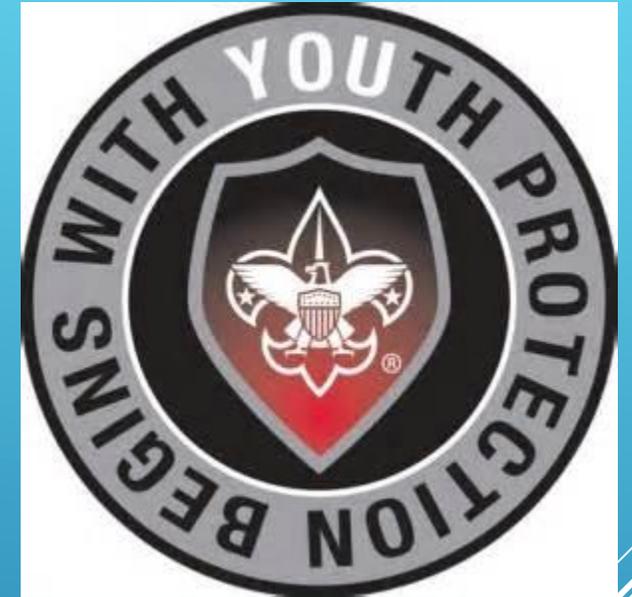
Boy Scouts of America

Legal Department

March 5, 2015

WHAT THIS WILL OVERVIEW COVER

- ▶ Who does the law apply to?
 - ▶ Volunteers
 - ▶ Registered
 - ▶ Unregistered
 - ▶ Employees
- ▶ Who is responsible for ensuring compliance
- ▶ What is required and who pays
- ▶ Where do people get these things done
- ▶ When are the compliance deadlines
- ▶ How will it be enforced
- ▶ Why can't this simply be changed



HOW DID THIS COME ABOUT?

- ▶ Jerry Sandusky – Penn State
- ▶ Pennsylvania Task Force
- ▶ Legislative process
- ▶ Our voice was never heard
- ▶ The tsunami
- ▶ The result - reporting and background clearances changes



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
 - ▶ 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



DISQUALIFICATION 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 serving (mandatory self-reporting)
- ▶ Note – in some of these areas BSA's requirements are more stringent



EMPLOYEE AND VOLUNTEER 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

Employees	Registered Volunteers	Unregistered Volunteers
District executives	Unit leaders	Drivers
Summer camp staff	CORs	Summer or day camp
Camp rangers	Commissioners	Two-deep leadership
Office staff	District and council	“Tag-alongs”
Trading post staff	Training and advancement	Unit “committee”
Maintenance	Program staff	Program staff
Other professionals	Merit badge counselors	“Helping out”

WHO DOES THE LAW APPLY TO?

Clearance and Reporting	Compliance
Employees – responsible for child’s welfare or direct contact (14 years old or over)	Employer and organizations
Volunteers - responsible for child’s welfare or direct contact (18 years old or over)	Attorney General - audits
Employers and organizations (reporting)	Law enforcement and local agencies - investigations
Persons working under a mandatory reporter (reporting only)	

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 a copy of all ongoing registrations. The involvement of local law enforcement, state police, and other agencies may be required to ensure that all volunteers are screened to the necessary level.

STEP 2 Application
All adult volunteers must complete an application, including a copy of their driver's license, and provide references, past addresses, and their community affiliations, and allow for a background check to be conducted.

STEP 3 Criminal Background Check
The BSA requires all adult volunteers to complete a criminal background check on a national level, and an enhanced check on a state level. The background check is administered by a third-party vendor that provides the results to the BSA. The BSA does not have access to the results of the background check.

STEP 4 Ineligible Volunteer File Check
The BSA requires all adult volunteers to complete an Ineligible Volunteer File Check. This check is used to determine if the individual has been involved in a criminal offense that would disqualify them from participating in the program. The BSA does not have access to the results of the Ineligible Volunteer File Check.

STEP 5 Adult Leader Youth Protection Training
All registered adult volunteers are required to complete the BSA Youth Protection Training every two years. This training is available online or in a classroom setting.



PARENTS AND SCOUTS

STEP 1 Parental and Scout Youth Protection Education
Parents and youth are required to receive the BSA Youth Protection materials, available at the level of every Scout, as a part of their enrollment.

STEP 2 Parental Policy Notification
Every registered adult volunteer must receive a copy of the BSA Youth Protection Policy, which is available at the level of every Scout.

STEP 3 Empowerment of Scouts
Scouts are required to complete Youth Protection training before entering the program and are empowered to speak up if they see something that is not right. The BSA's youth protection program is based on the principle of empowerment, which means that all youth protection policies and procedures are designed to empower our youth.

- Recognize situations that pose risks to youth from adult volunteers, leaders, and that anyone could be involved.
- Report concerns and issues to the appropriate authority with the most appropriate level of notification.
- Report concerns and issues to the appropriate authority with the most appropriate level of notification.
- Report concerns and issues to the appropriate authority with the most appropriate level of notification.

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

WHAT IS REQUIRED - “CLEARANCE” LAW HIGHLIGHTS

Who	What	Where	Cost
<u>Employees</u> (14 and older) and <u>volunteers</u> responsible for welfare or having direct contact with youth	1. PA State Police criminal history	On line	PA State Police \$10.00*
Paid for by job applicant or volunteer unless otherwise agreed (you can set up agency accounts)	2. PA Department of Human Services clearance	On line	\$10.00 30 day processing time \$15.00 14 day processing time
Can require employees to pay for renewal, but....	3. FBI criminal history (a. all employees; and b. volunteers not living in state for the entire 10 prior years)	Pre-registration required and go to 3M Cogent site	FBI/Cogent Report \$27.50* *Through Department of Human Services

WHERE DO YOU GET THESE THINGS DONE?

What	Where
1. PA State Police criminal history	On line https://epatch.state.pa.us/Home.jsp
2. PA Department of Human Services clearance	On line http://www.dhs.state.pa.us/findaform/childabus/ehistoryclearanceforms/index.htm
3. FBI criminal history (a. all employees; and b. volunteers not living in state for the entire 10 prior years)	Pre-registration required and go to 3M Cogent site https://www.pa.cogentid.com/index_dpwNew.htm

WHEN MUST YOU COMPLY?

Moraine Trails Council Timeline

Effective 7/1/2015

30 day volunteer provisional if evidence of submission furnished and no one-on-one until clearance.
(Affidavit and copies of applications must be furnished)

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)

Employee Provisional Period

- If employee provides proof all clearances were applied for, swears and affirms in writing not disqualified, and employer has no knowledge of disqualification, then
- New employee can work for a single period not to exceed 90 days, not alone and in the immediate vicinity of a cleared employee

VOLUNTEER EXCEPTION - OUT-OF-STATE DOMICILE

- ▶ If clearance standards of state where domiciled are met, then
- ▶ Can individual can serve for a single period not to exceed 30 days, without PA clearance



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 IDG but council is responsible



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



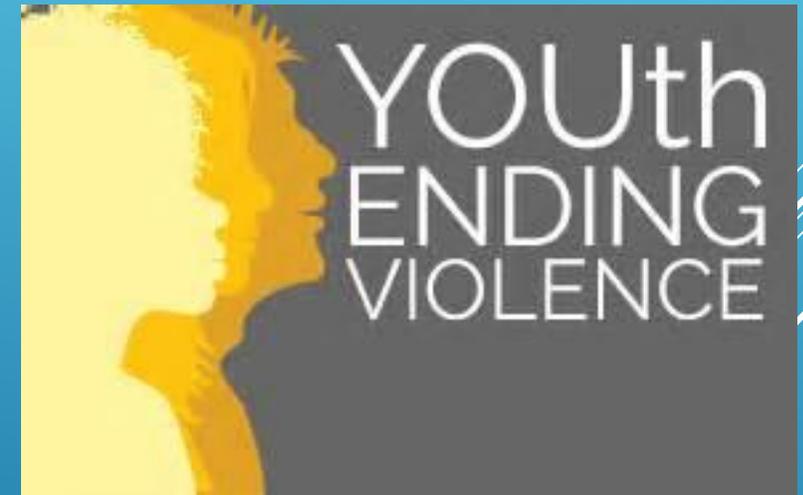
DEFINITION OF CHILD ABUSE

- ▶ 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.



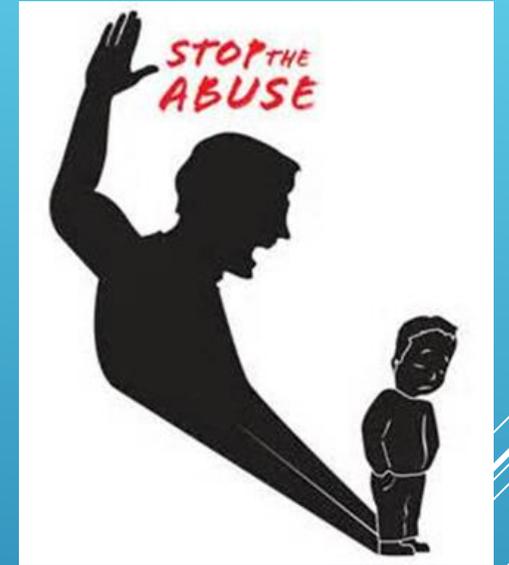
YOUTH ON YOUTH ABUSE – DEFINITION

- ▶ 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



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

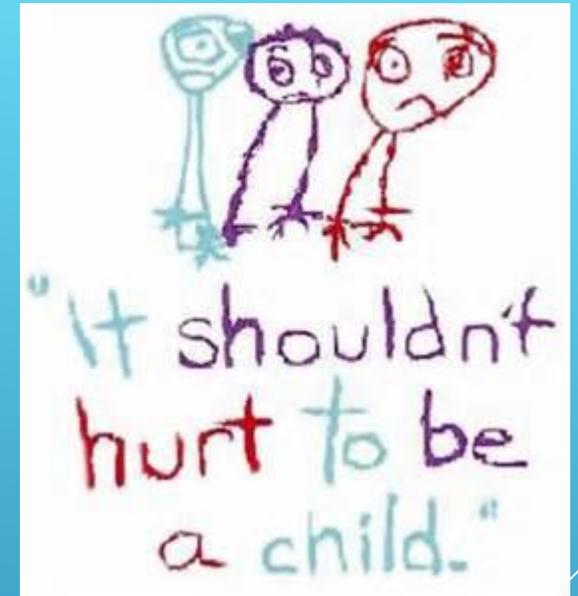


BASIS FOR REPORT

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 immediately notify person in charge and the person in charge must cooperate with any investigation



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 to report 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



RECAP – NEW EMPLOYEES AND VOLUNTEERS

- ▶ New employees – age 14 or over in direct contact with youth
 - ▶ State Police records check
 - ▶ Department of Human Services records check
 - ▶ Fingerprint check with FBI
 - ▶ 90 day provisional with affidavit and copies of applications
 - ▶ Keep copies on file
 - ▶ Must be redone every three years
 - ▶ Prior clearances do not count

Volunteers – age 18 or over in direct contact with youth (effective 7/1/15)

- ▶ State Police records check
- ▶ Department of Human Services records check
- ▶ Fingerprint check with FBI (only if not state resident entirety of last 10 years)
- ▶ 30 day provisional if domiciled out of state and met clearance laws of that state
- ▶ Keep copies on file
- ▶ Must be redone every three years
- ▶ Prior clearances may be used if meets PA requirements and evidence furnished



MANDATORY REPORTS OF ABUSE OR CHANGE IN STATUS

- ▶ Immediate notification to PA DHS of actual or suspected abuse
- ▶ Written report within 48 hours
- ▶ Notify Scout Executive of report
- ▶ All must act on any report of arrest or abuse charge while employed or volunteering

Mandatory Reporting

QUESTIONS AND RESOURCES ?

Scout Executive

Ray Tennent

(724) 287-6791 – office

(724) 679-4698 – mobile

raymond.tennent@scouting.org

