

NEW BACKGROUND CLEARANCE LAW FOR SPORTS TEAM EMPLOYEES & VOLUNTEERS
SUMMARY OF PA ACT 15 of 2015 (Amending ACT 153 of 2014)
23 Pa.C.S. § 6344 and 6344.2 et. seq.

Act 15 of 2015 is a new Pennsylvania law that became effective on July 1, 2015 and amends Act 153 of 2014. The new law requires comprehensive criminal and child abuse background checks for employees and volunteers who have “direct contact with children”. Of special importance is Section 6344.2 of the Act which amends the Child Protective Services Law to expand the definition of persons who must submit to a detailed state background check to include any adult applying for an unpaid position responsible for the welfare of a child or having direct contact or routine interaction with children. This is a summary of the requirements of Act 15 and what our employees, volunteers and administrators must do to meet them.

Who does the Act Apply to?

- **Employees** - Section 6344 applies to any individual 14 years and older who “is applying for or holding a paid position as an employee with a *program, activity or service*” or is a “person responsible for a child’s welfare or having direct contact with children”. This includes “independent contractors”, such as referees and in-game officials (“Employees”). Act 15 has also amended Section 6344 to apply to “*minors*”, which are defined as “any individual between 14 and 17 years of age who applies for or holds a paid position as an Employee”.
- **Volunteers** - Section 6344.2 applies to any “adult applying for or holding an unpaid position as a volunteer “with a school or *program, activity or service* or a person responsible for a child’s welfare or having *direct volunteer contact* with children”. This includes all coaches, managers, locker room monitors and volunteers who work with children on our sports teams (“Volunteers”). Act 15 has added definitions of “*Program, activity or service*” which includes “any sports or athletic program” and “*Direct volunteer contact*” which means “the care, supervision, guidance or control of children and *routine interaction* with children” and “*Routine interaction*” which means “Regular, repeated and continual contact that is integral to a person’s employment or volunteer responsibilities.” The Act also applies to “Non-resident volunteers” who are out-of-state persons who can serve for up to 30 days per calendar before providing certifications.
- **Administrators** - The Act also applies to **persons who make decisions** about who will serve as an Employee or Volunteer, including, “employers, administrators, supervisors or other persons responsible for selection of volunteers” who are required to ensure that an applicant submits to all requirements set forth below under Section 6344(b) below (“Administrators”).

What do our Employees, Volunteers & Administrators have to do to comply with the Law? Act 15 changed the word “clearance” to “certification” and requires all Employees & Volunteers to obtain 3 state clearances consisting of: a Child Abuse certification; Criminal History Record certification and Federal Criminal History certification. Administrators are required to check that their employees & volunteers have complied with obtaining the certifications before allowing them to have contact with children.

How does a Volunteer or Employee obtain the Clearances? A Volunteer or Employee must submit an application for certification under Section 6344(b) either on-line or by written document to the following government agencies: the Pa Dept. of Human Services, the Pennsylvania State Police, and the Federal Bureau of Investigation as follows:

- **Child Abuse Certification (Pa. Dept of Human Services):**
Certifications may be requested online at <https://www.compass.state.pa.us/cwis/public/home> . They are free for volunteers and cost \$10 for employees. Paper submissions of the clearance statement request form (CY113 Form) may be accessed via the Department of Human Services (DHS) website and mailed to the ChildLine and Abuse Registry, Pennsylvania Department of Human Services, P.O. Box 8170, Harrisburg, PA 17105-8170.
- **Criminal History Record Certification (Pennsylvania State Police Reports):**
Pennsylvania state reports are now free for volunteers and cost approximately \$10.00 for employees. You may obtain the clearance on-line at <https://epatch.state.pa.us/Home.jsp> or by accessing Form SP4-164 on the state police website and mailing the request form to Pennsylvania State Police Central Repository-164, 1800 Elmerton Avenue, Harrisburg, PA 17110-9758. Questions about State Police checks may be directed to 1-888-QUERYP (1-888-783-7972).
- **Federal Criminal History Certification (FBI Reports):**
FBI reports cost approximately \$28.75. Applicant must submit a full set of fingerprints to the Pa. State Police or its authorized agent for submission to the FBI to verify the identity of the applicant. The Pa. Dept of Human Services uses Cogent Systems to process fingerprint-based FBI criminal background checks. To begin the registration process, go to www.pa.cogentid.com/index_dpw.htm. For questions about FBI Clearances, contact the FBI/Adam Walsh Unit at 717-783-6211 or 1-877-371-5422.
- *The Pa. Dept. of Education also utilizes Cogent Systems to process fingerprint-based FBI criminal background checks for prospective employees of public and private schools. Under Act 114 of 2006, ALL prospective school employees, school contractors Teachers, School Administrators, Substitute Teachers, Teaching Assistants, PIAA

Sports Officials, School Bus Drivers, and student teachers must use the Pa. Dept. of Education system. Applicants may register online at: www.pa.cogentid.com/index_pde.htm

Exemption from FBI Certification Requirements (for Volunteers & minor Employees): Section 6344.2 (B.1) of Act 15 permits a Volunteer to be exempted from the federal background check if prior to taking the position, the Volunteer certifies in a notarized affidavit that his position is unpaid and that he has been a resident of Pennsylvania “during the entirety of the previous 10-year period” – or “produces a certification at any time since establishing residency in PA” and “swears or affirms in writing” that he is not disqualified due to any child abuse offense or been convicted of any crime in another state or foreign nation, similar to the convictions disqualifying a person in Pennsylvania. A paid minor can have his parent or natural guardian sign a similar affidavit to be exempted from the FBI certificate. Employees are **not** exempt for the FBI certification. (See; Form Affidavit attached)

When must an Employee or Volunteer Obtain the Certifications? Act 15 has extended the time for obtaining certifications and for renewing them. The rules are a little complicated and the Act should be consulted, but the following general rules apply:

- **Volunteers** – A current Volunteer who was approved for service before August 25, 2015 but who doesn't have certifications because they were not previously required, has until **July 1, 2016** to obtain the certifications. A NEW volunteer (not approved for service before August 25, 2015) must obtain the certifications before beginning service as of **August 25, 2015**.
- **Employees** – A current Employee must obtain certifications by **December 31, 2015** if: (1) he was not previously required to obtain certifications or if (2) his current certifications are more than 5 years old; or (3) if current his certifications did not include Child Abuse & FBI certifications. A new Employee must obtain all certifications prior to employment.
- **Recertification** – All Employees and Volunteers must be recertified every 5 years.

What results disqualify an Employee or Volunteer? An Employee or Volunteer will be disqualified from serving if:

1. The applicant is “named in the statewide database maintained by the Department of Human Services as the perpetrator of a founded child abuse report committed within the five-year period immediately preceding verification”.

2. The applicant 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”:

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| - Chapter 25 (criminal homicide) | - Section 3124.1 (sexual assault) | - Section 4305 (dealing in infant children) |
| - Section 2702 (aggravated assault) | - Section 3124.2 (institutional sexual assault) | - Section 5902(b) (prostitution and related offenses) |
| - Section 2709.1 (stalking) | - Section 3125 (aggravated indecent assault) | - Section 5903(c) or (d) (obscene and other sexual materials and performances) |
| - Section 2901 (kidnapping) | - Section 3126 (indecent assault) | - Section 6301 (corruption of minors) |
| - Section 2902 (unlawful restraint) | - Section 3127 (indecent exposure) | - Section 6312 (sexual abuse of children) |
| - Section 2910 (luring a child into a motor vehicle or structure) | - Section 3129 (sexual intercourse with animal) | - Section 6318 (unlawful contact with minor) |
| - Section 3121 (rape) | - Section 4302 (incest) | - Section 6319 (solicitation of minors to traffic drugs) |
| - Section 3122.1 (statutory sexual assault) | - Section 4303 (concealing death of child) | - Section 6320 (sexual exploitation of children) |
| | - Section 4304 (endangering welfare of children) | |
| | - Section 3123 (involuntary deviate sexual intercourse) | |

- 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 drug 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.

What are the duties of a Volunteer who is charged with a new disqualifying offense? If an Employee under 6344 or a Volunteer under to 6344.2 is arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service under the Act, or is named as a perpetrator in a founded or indicated report, the Employee or Volunteer shall provide the Administrator or designee with written notice not later than 72 hours after the arrest, conviction or notification that the person has been listed as a perpetrator in the Statewide database.

What are the Duties of an Administrator who selects an Employee or Volunteer? Administrators responsible for hiring Employees or accepting Volunteer services in a *program, activity or service* must: (1) obtain the original clearances prior to the individual beginning employment or volunteer service; (2) maintain copies of the required information; and (3) immediately require the Employee or Volunteer to submit current information if it is reasonably suspected that the Employee or Volunteer has committed an offense during employment or service. The cost of the re-certifications shall be paid by the entity or program, activity or service.

What are the Penalties for an Employee, Volunteer or Administrator who Willfully fails to Comply with the Act? An Employee, Volunteer or Administrator who willfully fails to disclose information required by the Act commits a misdemeanor of the third degree and shall be subject to discipline up to and including termination or denial of employment or volunteer position. This Summary is not intended as an exhaustive discussion of the Act. Any questions or comments concerning this Summary should be directed to its author, David A. Baun, Esquire at dbaun@baunlittlaw.com. Rev. 9/17/15

Affidavit – Volunteer Exemption from FBI Certification

Commonwealth of Pennsylvania :
: ss
County of :

I, _____, swear or affirm that I am applying for an unpaid volunteer position with _____ (organization) and as part of my duties I will be responsible for the welfare of children or will have direct contact with children.

I understand that the Child Protective Services Law requires all volunteers to complete three (3) background clearances: (1) (Department of Human Services Child Abuse Clearance; (2) Pennsylvania State Police criminal background clearance; and (FBI criminal background clearance).

I further understand that the law may exempt a prospective volunteer from the federal clearance if I: (1) **have been a Pennsylvania resident during the entirety of the previous 10-year period or, if not a resident of Pennsylvania during the entirety of the previous 10-year period, have received certification under section 6344(b)(3) (volunteer certification) at any time since establishing residency in Pennsylvania and I provide a copy of the certification to the person responsible for selecting volunteers** and (2) **swear or affirm in writing that I am not disqualified from service by reason of criminal history** and I hereby Swear or Affirm that:

(a) I have not been named in the statewide database maintained by the Dept. of Human Services as the perpetrator of a founded child abuse report committed within the five-year period immediately preceding verification. I have requested a child abuse background clearance from the Dept. of Human Services and a criminal background clearance from the Pennsylvania State Police. I am attaching copies of my clearances here. I understand that I will be required to produce original clearance reports before beginning service; and

(b) I have been a resident of Pennsylvania during the entire previous ten-year period and have not been arrested for or convicted of any of the offenses below or crimes similar in nature, or the attempt, solicitation, or conspiracy thereof, or a similar offense 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:

- Chapter 25 (criminal homicide)
- Section 2702 (aggravated assault)
- Section 2709.1 (stalking)
- Section 2901 (kidnapping)
- Section 2902 (unlawful restraint)
- Section 2910 (luring a child into a motor vehicle or structure)
- Section 3121 (rape)
- Section 3122.1 (statutory sexual assault)
- Section 3124.1 (sexual assault)
- Section 3124.2 (institutional sexual assault)
- Section 3125 (aggravated indecent assault)
- Section 3126 (indecent assault)
- Section 3127 (indecent exposure)
- Section 3129 (sexual intercourse with animal)
- Section 4302 (incest)
- Section 4303 (concealing death of child)
- Section 4304 (endangering welfare of children)
- Section 3123 (involuntary deviate sexual intercourse)
- Section 4305 (dealing in infant children)
- Section 5902(b) (prostitution and related offenses)
- Section 5903(c) or (d) (obscene and other sexual materials and performances)
- Section 6301 (corruption of minors)
- Section 6312 (sexual abuse of children)
- Section 6318 (unlawful contact with minor)
- Section 6319 (solicitation of minors to traffic drugs)
- Section 6320 (sexual exploitation of children)

(c) I further swear that I have not been arrested for or convicted of a felony drug offense under the Controlled Substance, Drug, Device and Cosmetic Act.

(d) I understand that I may be accepted to serve on a provisional basis for a single period not to exceed thirty (30) days at the discretion of the organization. I swear or affirm that I am in compliance with the clearance standards under the law of the jurisdiction where I am domiciled. I further understand that, during any provisional period, I may not work alone with children and that I must work in the immediate vicinity of a permanent employee of the school.

I hereby swear or affirm that the information set forth above is true and correct to the best of my knowledge and belief. I understand that if information is obtained that I am disqualified from service, I will be dismissed immediately. I also understand that I am signing this document subject to penalty under Sections 4903 of the Pennsylvania Criminal Code (false swearing).

Date: _____ (Please Sign Name) _____ (Please Print Name)

- (Please Check)
- Copy of Dept. of Human Service Certification Attached.** _____ (Address)
- Copy of Dept. of Pa. State Police Criminal Background Certification Attached.** _____ (Address)

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20_____.