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Bill to make background checks less “onerous” for volunteers alters mandatory reporting landscape

June 8th - On Monday, the Pennsylvania House of Representatives' Children and Youth (C&Y) Committee is scheduled to consider [House Bill 1276 \(PN 1686\)](#).¹

As envisioned, House Bill 1276 was drafted to “clarify and make more explicit provisions” about which employees and adult volunteers, who work or volunteer with children, must “obtain criminal background check clearances and child abuse clearances.”² The bill is intended to “clear up ambiguous aspects of the statute and to address concerns expressed by numerous volunteer-based organizations and other entities from across the Commonwealth that are affected by the new law.”³

According to the co-sponsorship memo for House Bill 1276, those crafting the legislation were seeking to make the background check requirements “less onerous for adult volunteers who work with children” so that an appropriate “balance” is struck “between protecting children and not making the requirements for volunteers so onerous that the result is losing both volunteers and consequently programs that are beneficial to children.”⁴

While the intent behind House Bill 1276 is to address the background check provisions, the use of “direct contact” elsewhere in the CPSL ensures implications on another key element of Pennsylvania’s child protection strategies – who is a mandated reporter in Pennsylvania.

Background on “direct contact with children” in the CPSL and the proposed HB 1276

A definition of “direct contact with children” was added to Pennsylvania’s Child Protective Services Law (CPSL) in the 2013-2014 legislative session. Direct contact was defined as “the care, supervision, guidance or control of children or routine interaction with children.” No definition of “routine interaction” was included in the CPSL.

Direct contact is found in the following sections of the CPSL (see the chart included below): § 6311. Persons required to report suspected child abuse, § 6344. Employees having contact with children;

¹ Retrieve at

<http://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2015&sInd=0&body=H&type=B&bn=1276>

² Memo from Representative Katherine Watson to members of the Pennsylvania House of Representatives regarding Co-Sponsorship of Legislation - Clarification of 2013 - 2014 Changes to the Child Protective Services Law (CPSL) dated May 20, 2015. Retrieved at

<http://www.legis.state.pa.us//cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20150&cosponId=183>

87

³ Ibid.

⁴ Ibid.

adoptive and foster parents, § 6344.2. Volunteers having contact with children; and § 6383. Education and training.

House Bill 1276 (PN 1686), as proposed in the 2015-2016 legislative session, would amend the definition of “direct contact” changing one word so that it would then be defined as “the care, supervision, guidance or control of children [or] **AND** routine interaction with children.”

The bill defines “routine interaction” as “Regular, repeated and continual contact that is integral to a person’s employment or volunteer responsibilities.”

House Bill 1276 also will extract direct contact with children from the current definition of persons responsible for the child’s welfare, which currently is defined as: "A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. [The term includes any such person who has direct or regular contact with a child through any program, activity or service sponsored by a school, for-profit organization or religious or other not-for-profit organization.] HB 1276 would remove everything within the brackets from the existing definition.

CPSL Section	Subject area	Current language in the CPSL
§ 6311. Persons required to report suspected child abuse.	Independent contractor	Independent contractor. " An individual who provides a program, activity or service to an agency, institution, organization or other entity, including a school or regularly established religious organization, that is responsible for the care, supervision, guidance or control of children. The term does not include an individual who has no direct contact with children .
§ 6311. Persons required to report suspected child abuse.	School employee	An individual who is employed by a school or who provides a program, activity or service sponsored by a school. The term excludes an individual who has no direct contact with children .
§ 6311. Persons required to report suspected child abuse.	Child care services	An employee of a child-care service who has direct contact with children in the course of employment.
§ 6311. Persons required to report suspected child abuse.	Social services	An employee of a social services agency who has direct contact with children in the course of employment.
§ 6311. Persons required to report suspected child abuse.	Public library employee	An employee of a public library who has direct contact with children in the course of employment.
§ 6311. Persons required to report suspected child abuse.	Supervised or managed by	An individual supervised or managed by a person listed under paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11), who has direct contact with children in the course of employment.
§ 6344. Employees having contact with children; adoptive and foster parents.	Background check applicability	An individual 14 years of age or older applying for a paid position as an employee responsible for the welfare of a child or having direct contact with children .
§ 6344.2. Volunteers having contact with children.	Background check applicability	This section applies to an adult applying for an unpaid position as a volunteer responsible for the welfare of a child or having direct contact with children .
§ 6344.2. Volunteers having contact with children.	Background check application	Construction.-- Nothing in this section shall be

CPSL Section	Subject area	Current language in the CPSL
		<p>construed to prohibit an organization from requiring additional information as part of the clearance process for volunteers who are responsible for the welfare of a child or have direct contact with children.</p>
<p>§ 6383. Education and training</p>	<p>Act 31 training – those required to be trained re: mandatory reporting requirements</p>	<p>(1) The following persons shall be required to meet the child abuse recognition and reporting training requirements of this subsection:</p> <p>(i) Operators of institutions, facilities or agencies which care for children and are subject to supervision by the department under Article IX of the Public Welfare Code, and their employees who have direct contact with children.</p> <p>(iv) Caregivers in family day care homes which are subject to registration by the department under Subarticle (c) of Article X of the Public Welfare Code and their employees who have direct contact with children.</p> <p>Employees who have direct contact with children and foster parents shall receive three hours of training within six months of the issuance of a license, approval or registration certificate and three hours of training every five years thereafter. New employees and new foster parents shall receive three hours of training within 90 days of hire or approval as a foster parent and three hours of training every five years thereafter.</p> <p>As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:</p> <p>"Direct contact with children." The care, supervision, guidance or control of children or routine interaction with children.</p> <p>"Operator." An executive or facility director. The term does not include a person who is not involved in managerial decisions related to the provision of services for or care of children with regard to any of the following:</p> <ol style="list-style-type: none"> (1) Personnel. (2) Policy and procedures. (3) Regulatory compliance. (4) Services related to the general or medical care of children. (5) Supervision of children. (6) Safety of children.

One word's big impact on who is responsible to report suspected child abuse

Changing one word in the current definition of direct contact (going from or to **and**) reduces the number of paid employees, including within the broadly defined "child care services" as well as employees of public libraries, that would be considered mandated reporters.

For example, under current law employees of child care programs (line staff or those in supervisory or leadership positions) are mandated reporters because they are involved in the care, supervision, guidance or control of children regardless of how often (if ever) this employee has direct contact with children. The obligation to report suspected child abuse relates to their supervision of others who have that direct contact with children.

If House Bill 1276 becomes law, certain employees like those supervising an employee or leading a volunteer-driven agency, who do not meet the "regular, repeated and continual" direct contact with children test would not then be mandated reporters. This would result, because the proposed bill would require that this employee or leader of the volunteer-driven organization be both a person who satisfies the required "supervision, guidance or control of children" **and** now also must have "regular, repeated and continual contact" with children "that is integral to a person's employment or volunteer responsibilities."

Shrinking those persons needing background checks and required to report suspected child abuse

As noted earlier, the General Assembly never defined "routine Interaction" in the 2013-2014 legislative session. House Bill 1276 will remedy that putting forth the following definition "Regular, repeated and continual contact that is integral to a person's employment or volunteer responsibilities."

These terms of regular, repeated and continual are defined by Merriam Webster in this way:

- **Regular:** "happening over and over again at the same time or in the same way: occurring every day, week, month, etc."⁵
- **Repeated:** "renewed or recurring again and again"⁶
- **Continual:** "continuing indefinitely in time without interruption."⁷

The inclusion of continual in House Bill 1276 is troubling, especially considering it has implications both on the pool of those needing background checks and those mandated to report suspected child abuse.

Current law has invited confusion and angst in that it invites interpretation that comprehensive background checks are required of any adult volunteer, including the adult working (sporadically) in a concession stand or the greeter at Sunday church services.

While intended to fine tune the CPSL, House Bill 1276 invites unintended consequences for mandatory reporting of child abuse. The legislation also may well swing the pendulum too far with the inclusion of "regular, repeated and continual" contact with children to trigger screening the background of prospective adult volunteers.

⁵ <http://www.merriam-webster.com/dictionary/regular>

⁶ <http://www.merriam-webster.com/dictionary/repeated>

⁷ <http://www.merriam-webster.com/dictionary/continual>