

PROTECTING YOUR ORGANIZATION IN AN INCREASINGLY LITIGIOUS SOCIETY

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Enhancing Communities Lunch Series
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MANDATORY REPORTING OF CHILD ABUSE

Pennsylvania's Child Protective Services Law requires certain people to report suspected abuse of children. I will discuss:

- the statutory definition of “child abuse”
- the persons that are required to report suspected child abuse
- the procedures to report suspected child abuse
- the penalties for the failure to report or refer suspected child abuse
- child abuse clearances

CHILD ABUSE

Child Abuse – The term “child abuse” is defined by the Child Protective Services Law. See 23 Pa. C.S. §6303.

Includes:

- Serious Physical Injury
- Serious Mental Injury to or Sexual Abuse or Sexual Exploitation
- Creating Imminent Risk of Serious Physical Injury to or Sexual Abuse or Sexual Exploitation
- Serious Physical Neglect
- Exceptions to Child Abuse

CHILD ABUSE CONT.

- **Serious Physical Injury.** Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

“Serious physical injury” means an injury that: (1) causes a child severe pain; or (2) significantly impairs a child's physical functioning, either temporarily or permanently.

CHILD ABUSE CONT.

- **Serious Mental Injury to or Sexual Abuse or Sexual Exploitation.** An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

“Serious mental injury” means a psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that: (1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or (2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

CHILD ABUSE CONT.

“Sexual abuse or exploitation” means any of the following:

- (1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct.
- (2) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in simulation of sexually explicit conduct for the purpose of producing visual depiction, including photographing, videotaping, computer depicting and filming.
- (3) Any of the following offenses committed against a child: (i) Rape. (ii) Sexual assault. (iii) Involuntary deviate sexual intercourse. (iv) Aggravated indecent assault. (v) Molestation. (vi) Incest. (vii) Indecent exposure. (viii) Prostitution. (ix) Sexual abuse. (x) Sexual exploitation.

CHILD ABUSE CONT.

- **Creating Imminent Risk of Serious Physical Injury to or Sexual Abuse or Sexual Exploitation.** Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- **Serious Physical Neglect.** Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.
- **Exceptions to Child Abuse.** There are exceptions for environmental factors (ie. poverty) and for religious beliefs (ie. deprivation of medical care for religious reasons).

PERSONS REQUIRED TO REPORT SUSPECTED ABUSE

General rule.--A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made ... when the person has reasonable cause to suspect, on the basis of medical, professional or other training and experience, that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a perpetrator.

There are limited exceptions for communications to clergy and to attorneys, but not for communications to medical professionals.

PERSONS REQUIRED TO REPORT SUSPECTED ABUSE CONT.

Persons required to report. (Note this list is not EXCLUSIVE)--Persons required to report under subsection (a) include, but are not limited to, any licensed physician, osteopath, medical examiner, coroner, funeral director, dentist, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, Christian Science practitioner, member of the clergy, school administrator, school teacher, school nurse, social services worker, day-care center worker or any other child-care or foster-care worker, mental health professional, peace officer or law enforcement official.



PERSONS REQUIRED TO REPORT SUSPECTED ABUSE CONT.

Staff members of institutions, etc. (Required to tell person in charge of institution)--Whenever a person is required to report ... in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not require more than one report from any such institution, school, facility or agency.

It is unlawful to discriminate against persons who report and persons who are discriminated against for reporting can file civil actions for damages including back pay.

PERSONS REQUIRED TO REPORT SUSPECTED ABUSE CONT.

Reporting Procedures - See 23 Pa.C.S. 6313. Call Child-Line immediately if you suspect child abuse.

Child-Line - 1-800-932-0313 - They will walk you through the appropriate steps on the phone.

Penalties for Failure to Report or to Refer - See 23 Pa.C.S. §6319. A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities who willfully fails to do so commits a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for a second or subsequent violation.

PERSONS REQUIRED TO REPORT SUSPECTED ABUSE CONT.

Child Abuse Clearances. See 23 Pa C.S. § 6344. The Child Protective Services Law sets out information that is required of all prospective employees of child-care services, prospective foster parents, prospective adoptive parents, prospective self-employed family day care providers, and other persons seeking to provide child-care services under contract with a child-care facility or program. For copies of the forms and more information see:

<http://www.dpw.state.pa.us/provider/childwelfareservices/childabusehistoryclearanceforms/index.htm>



PUBLIC ACCESS TO ORGANIZATION'S RECORDS

Pennsylvania's Right-to-Know Law was amended in 2009 to broaden the scope of the public's access to public records. The Right-to-Know Law is not generally applicable to the records of private nonprofit corporations but is rather applicable to records in the possession of Commonwealth agencies, local agencies, judicial agencies and legislative agencies. Private nonprofit corporations have no obligation to respond to requests for information pursuant to the Right-to-Know Law. Private nonprofit corporations must be aware, however, that their records may become public records if the records are in the possession of government agencies, or if the private nonprofit corporation is performing a governmental function pursuant to a contract with a government agency.



PUBLIC ACCESS TO ORGANIZATION'S RECORDS CONT.

For example:

Records generated by foundation in carrying out fundraising on behalf of state university and minutes of foundation's board of directors relating to management of endowment funds for university were public records because records were created by a third party pursuant to a contract with university and were related to government function of university's fundraising activities. *East Stroudsburg University Foundation v. Office of Open Records*, 995 A.2d 496 (Pa.Cmwlth. 2010).

But, the Commonwealth Court has held the minutes of the Board of Directors of a private non-profit corporation are not public records solely because the Governor appoints one of the members who serves on the Board of Directors. *Office of Governor v. Bari*, 20 A.3d 634 (Pa. Commw. Ct. 2011).

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