

**CHILD PROTECTIVE SERVICES LAW AMENDMENTS
FREQUENTLY ASKED QUESTIONS FOR EMS AGENCIES AND EMS PROVIDERS
APRIL 15, 2015 - REVISED¹**

A. BACKGROUND & OVERVIEW

1. What is the background on the Child Protective Services Law Amendments?

In 2013 and 2014, Governor Corbett signed into law numerous changes to the Child Protective Services Law (CPSL). These amendments affect EMS agencies and EMS providers in a variety of ways.

2. What is the definition of “child abuse” under the CPSL?

“Child abuse” is defined under 23 Pa.C.S. § 6303(b.1) and can be found at the following link:

<http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=23&div=0&chpt=63&sctn=3&subsctn=0>

3. Under the CPSL, are there circumstances not considered “child abuse”?

Yes. Section 6304 of the CPSL addresses those circumstances and can be found at the following link. Those circumstances do not automatically relieve an EMS provider’s obligation to report a suspected case of child abuse and EMS providers should not determine that a case falls under one of those circumstances and thus fail to report the suspected case. Rather, those circumstances listed under section 6304 deal with levels of substantiation of child abuse under the CPSL.

<http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=23&div=0&chpt=63&sctn=4&subsctn=0>

B. REPORTING CASES OF SUSPECTED CHILD ABUSE

4. Are EMS providers mandated reporters of suspected child abuse under the CPSL?

Yes. EMS providers are specifically cited in the list of mandated reporters.

5. When must a mandated reporter make a report of suspected child abuse?

A mandated reporter must make a report of suspected child abuse if he or she has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

¹ This FAQ document replaces the previous FAQ document that was issued on April 9, 2015. After additional consultation with the Department of Human Services, the section regarding background checks was revised to clarify the requirements for EMS agencies and EMS providers.

- The mandated reporter comes into contact with the child in the course of employment, occupation and practice of a profession or through a regularly scheduled program, activity or service.
- The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.
- A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.
- An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

6. Does the CPSL differentiate between paid and volunteer employees for purposes of reporting?

No. It is irrelevant if an EMS provider is paid or a volunteer. All EMS providers are mandated reporters.

7. Must an EMS provider report suspected child abuse if he or she learns about it from somebody other than the child who was allegedly abused?

Yes. Nothing requires the mandated reporter have direct contact with the child in order to make a report.

8. How does an EMS provider report a suspected case of child abuse?

Under the updated law, it is no longer enough to report a suspected case of child abuse to your supervisor. EMS providers must:

1. File the report themselves; and
2. Notify their supervisor of the suspected child abuse.

EMS providers may report a case of suspected child abuse in one of two ways:

1. The preferred method is to electronically report the case of suspected child abuse to ChildLine at www.compass.state.pa.us/cwis. An EMS provider that submits a report electronically is not required to complete a CY-47 form.
2. EMS providers may also submit a report of suspected child abuse by contacting ChildLine at 1-800-932-0313. If an EMS provider submits a report using this method, he or she is also required to complete and submit a CY-47 form, within 48 hours, to the county agency assigned to the case.

It is not a valid excuse if an EMS provider is unable to submit a report electronically for any reason. If an EMS provider is unable to access the electronic reporting form, he or she must contact ChildLine and submit a CY-47 form.

Regardless of the method an EMS provider chooses to submit a suspected case of child abuse, an EMS provider is also required to report the suspected case of child abuse to his or her supervisor. A supervisor is not permitted to obstruct, or in any way prohibit, an EMS provider from making a report of suspected child abuse.

9. What if an EMS provider is unsure whether child abuse has occurred or whether an exception under section 6304 applies?

An EMS provider must report the suspected case to ChildLine. An EMS provider only needs to have a reasonable cause to suspect that a child is a victim of abuse. Once a report is received, specially trained child welfare professionals determine whether the child is a victim of abuse and what action is necessary to ensure a child's safety and well-being. The EMS provider should not make the determination whether an exception under section 6304 applies.

EMS providers must also follow all applicable EMS protocols concerning cases of suspected child abuse, including reporting the case to the receiving physician and to law enforcement, and documenting the case on the patient care report.

10. Is an EMS provider protected from criminal and civil liability for making a report of suspected child abuse?

Yes. Any person making a report of suspected child abuse is immune from civil and criminal liability as long as the report was made in good faith.

11. Is an EMS provider's identity kept confidential when making a report?

The identity of the person making the report is kept confidential with the exception of being released to law enforcement officials or the district attorney's office.

12. What can happen if an EMS provider fails to report a case of suspected child abuse?

Any mandated reporter can be subject to criminal penalties for failing to report a case of suspected child abuse. Criminal penalties range from a misdemeanor of the second degree to a felony of the second degree.

13. What is the role of an EMT in a situation where a paramedic refuses or fails to report a case of suspected child abuse?

Both EMS providers are required to make a report. The law does not differentiate between levels of EMS providers as both paramedics and EMTs are mandated reporters. Therefore, an EMT is not relieved of a duty to report a suspected case of child abuse because the paramedic was in charge at the scene of the emergency.

14. Is an EMS provider required to report a case of suspected child abuse if the provider learns of the case while off duty?

Yes. A mandated reporter must report suspected child abuse in certain situations outside of work when a person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse or when a person 14 years of age or older discloses to the EMS provider that he or she has committed child abuse. The child victim does not have to be under the care, supervision, or guidance of the mandated reporter for the mandated reporter to be required to report suspected abuse.

15. Do you have to be a mandated reporter to make a report of suspected child abuse?

No. Anyone who is concerned about the safety of a child is encouraged to make a report. Individuals who are encouraged, although not required, by law to make a report of suspected child abuse can make a report to ChildLine by calling 1-800-932-0313.

16. Should EMS agencies or EMS providers report suspected cases of child abuse to the Bureau of EMS or to their regional EMS council?

No. Reporting cases of suspected child abuse to the Bureau of EMS or a regional EMS council does not relieve an EMS agency or an EMS provider of its responsibilities under the CPSL, as neither the Bureau of EMS nor a regional EMS council is the proper entity to report suspected cases of child abuse. Reports should be filed as required under question 8.

C. TRAINING

17. Are EMS providers required to undergo training as mandated reporters?

Under the CPSL, certain persons licensed by the Department of State and employees with direct contact with children of entities regulated by the Department of Human Services (DHS) (formerly the Department of Public Welfare) that serve children are required to undergo CPSL training. As EMS providers are certified by the Department of Health, they do not fall under this requirement. However, the Department of Health is contemplating making CPSL training a requirement for all EMS providers as part of their continuing education requirements.

In the interim, all EMS agencies and EMS providers are encouraged to take training courses to fully understand their responsibilities as mandated reporters. It is not a valid excuse for an EMS agency or an EMS provider to fail to follow the requirements of the CPSL due to a failure to take training courses, regardless of whether the training is mandatory. EMS agencies and EMS providers can review and take approved training courses at the Department of Human Services' CPSL website at <http://keepkidssafe.pa.gov/training/index.htm>.

D. BACKGROUND CHECKS

18. Are EMS providers subject to background checks?

Yes. To obtain or maintain employment as EMS providers, EMS providers are required to obtain certain background checks that may include:

1. Pennsylvania Child Abuse History Clearance;
2. Pennsylvania State Police Criminal Record Check; and
3. Federal Bureau of Investigation Criminal Background Check.

19. How much do the background checks cost?

As of April 1, 2015, the costs are as follows, though other fees may apply:

1. Pennsylvania Child Abuse History Clearance - \$10.00
2. Pennsylvania State Police Criminal Record Check - \$10.00
3. Federal Bureau of Investigation Criminal Background Check through DHS - \$27.50

20. Who must pay for these background checks – the employer or employee?

The CPSL does not specify who bears the cost for background checks but it does place an obligation on the employee to obtain them.

21. When are background checks needed for employees?

Background checks must be submitted prior to the commencement of employment or service.

22. What is the renewal requirement for background checks for employees?

Beginning Dec. 31, 2014, clearances must be obtained every 36 months. Timeframes for renewed clearances are based upon the date of each individual clearance. If an EMS provider elected to renew all clearances at the same time, the date of the oldest clearance rather than the most recent would be used.

Persons employed prior to Dec. 31, 2014 are required to obtain updated clearances as follows:

- Within 36 months of the date of the most recent clearance;
- By Dec. 31, 2015, if the clearance is older than 36 months; or
- By Dec. 31, 2015, if they have not received a clearance because they were employed in the same position and were not required to obtain a clearance under prior law (grandfathered).

For individuals that received clearances prior to 2008 and were not required to obtain the FBI clearance, the three required clearances would be obtained consistent with the timeframes above. Therefore, if either of the individual's Child Abuse and PSP clearances were obtained within the past 36 months, all three clearances must be obtained within 36 months of the date of the most recent clearance. If all clearances were obtained more than 36 months ago, all three clearances must be obtained by Dec. 31, 2015.

23. When are background checks needed for volunteers?

Background checks are required for volunteers 18 years of age or older. Beginning July 1, 2015, prospective volunteers must submit background checks prior to the commencement of service.

24. What is the renewal requirement for background checks for volunteers?

Beginning July 1, 2015, all volunteers will be required to obtain clearances every 36 months. Timeframes for renewed clearances are based upon the date of each individual clearance. If an individual or agency elected to renew all clearances at the same time, the date of the oldest clearance rather than the most recent would be used.

Volunteers are required to obtain updated clearances as follows:

- Within 36 months of the date of the most recent clearance;
- By July 1, 2016, if the clearance is older than 36 months; or
- By July 1, 2016, if they were approved as a volunteer before July 1, 2015, and had not received a clearance because they previously were not required to obtain clearances.

Volunteers are not required to obtain FBI criminal background checks (the other 2 background checks are still required) if the following circumstances are met:

- (i) The position the prospective volunteer is applying for is unpaid.
- (ii) The prospective volunteer has been a resident of this Commonwealth during the entirety of the previous ten-year period.
- (iii) The prospective volunteer swears or affirms in writing that the prospective volunteer is not disqualified from service pursuant to section 6344(c) or has not been convicted of an offense similar in nature to those crimes listed in section 6344(c) 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.

25. What is section 6344(c)?

Section 6344(c), 23 Pa.C.S. § 6344(c), relates to grounds that employers must follow in determining whether a person can be hired as an EMS provider. If an applicant or current employee falls under one of the prohibitions of section 6344(c), then the employer is required to deny the applicant employment or terminate the current person's employment with the EMS agency. Section 6344(c) applies to both paid employees and volunteers. Section 6344(c) prohibits persons from obtaining employment if their background checks reveal one or more of the following:

1. The applicant is named in the Statewide database as the perpetrator of a founded report committed within the five-year period immediately preceding verification.
2. The applicant's criminal history record information indicates 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:
 - Chapter 25 (relating to criminal homicide).
 - Section 2702 (relating to aggravated assault).
 - Section 2709.1 (relating to stalking).
 - Section 2901 (relating to kidnapping).
 - Section 2902 (relating to unlawful restraint).
 - Section 3121 (relating to rape).
 - Section 3122.1 (relating to statutory sexual assault).
 - Section 3123 (relating to involuntary deviate sexual intercourse).
 - Section 3124.1 (relating to sexual assault).
 - Section 3125 (relating to aggravated indecent assault).
 - Section 3126 (relating to indecent assault).
 - Section 3127 (relating to indecent exposure).
 - Section 4302 (relating to incest).
 - Section 4303 (relating to concealing death of child).
 - Section 4304 (relating to endangering welfare of children).
 - Section 4305 (relating to dealing in infant children).
 - A felony offense under section 5902(b) (relating to prostitution and related offenses).
 - Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).
 - Section 6301 (relating to corruption of minors).
 - Section 6312 (relating to sexual abuse of children).
 - The attempt, solicitation or conspiracy to commit any of the offenses listed above.

3. The applicant's criminal history record information indicates the applicant has been convicted of a felony 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 under this section.

26. What should an EMS provider do once he or she obtains the required background checks?

The EMS provider must submit those documents to each EMS agency that he or she works for and keep copies for his or her own records.

27. What is the EMS agency's responsibility relating to background checks?

An EMS agency must ensure that its employees, including volunteers, get the required background checks under the CPSL and that the EMS agency maintains proper documentation that its employees, including volunteers, have the requisite background checks at all times. An employer that fails to do so commits a misdemeanor of the third degree.

28. What is the provisional hiring period for employees?

Individuals may be employed on a provisional basis for a single period not to exceed 90 days, if all of the following conditions are met:

- (1) The applicant has applied for the required background checks and the applicant provides a copy of the appropriate completed request forms to the employer, administrator, supervisor or other person responsible for employment decisions.
- (2) The employer, administrator, supervisor or other person responsible for employment decisions has no knowledge of information pertaining to the applicant which would disqualify him from employment pursuant to section 6344(c).
- (3) The applicant swears or affirms in writing that he is not disqualified from employment pursuant to 6344(c) or has not been convicted of an offense similar in nature to those crimes listed in section 6344(c) 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.
- (4) If the information obtained pursuant to the background checks reveals that the applicant is disqualified from employment pursuant to section 6344(c), the applicant shall be immediately dismissed by the employer, administrator, supervisor or other person responsible for employment decisions.
- (5) The employer, administrator, supervisor or other person responsible for employment decisions requires that the applicant not be permitted to work alone with children and that the applicant work in the immediate vicinity of a permanent employee.

29. Are there provisional requirements regarding background checks for volunteers?

Yes. Individuals who reside in another state or country may serve as a volunteer for no more than 30 days as long as they provide clearances from their state or country of residence. If the individual will be volunteering for more than 30 days, they must obtain clearances as outlined above. Volunteers who reside in Pennsylvania do not have a provisional period and must obtain clearances as outlined above.

30. What happens if an EMS provider is charged or convicted of a crime or named in a report?

If an EMS provider, whether as an employee or volunteer, 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 CPSL, or is named as a perpetrator in a founded or indicated report (see question 25), the EMS provider is required to 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.

31. What is the EMS agency's responsibility when an EMS provider is charged or convicted of a crime or named in a report?

If the person responsible for employment decisions or the administrator of the EMS agency has a reasonable belief that an EMS provider was arrested or convicted for an offense that would constitute grounds for denying employment as an EMS provider under the CPSL, or was named as a perpetrator in a founded or indicated report, or the employee or volunteer has provided notice as required under the CPSL, the person responsible for employment decisions for the EMS agency shall immediately require the EMS provider to submit the required current background checks. The cost of obtaining the background checks shall be borne by the EMS agency.

32. What happens if an EMS provider fails to provide notice of a criminal charge or conviction as required under the CPSL?

An EMS provider, whether as an employee or volunteer of the EMS agency, who willfully fails to disclose information required under the CPSL commits a misdemeanor of the third degree and is subject to discipline up to and including termination or denial of employment or volunteer position. In addition, the EMS provider may be subject to certification sanctions for the criminal conviction or failing to report the criminal conviction to the Bureau as required under the EMS System Act.

E. ADDITIONAL INFORMATION

33. What is the Bureau of EMS' role regarding CPSL compliance?

While the Department of Health does not administer the CPSL, the Bureau of EMS is the licensing and certification agency for EMS agencies and EMS providers. The Bureau of EMS will review any violations of the CPSL and other laws and take appropriate action as authorized under the EMS System Act and Department regulations. The Bureau of EMS will begin to monitor compliance with CPSL requirements as part of the licensure process and assist EMS agencies, where feasible, with meeting the requirements of the CPSL.

34. I have more questions. To whom should I direct them?

- Legal questions should be directed to the EMS agency's attorney. The Bureau of EMS cannot answer questions or provide legal advice to EMS agencies or EMS providers regarding their obligations under the CPSL, as this law is administered by DHS. This FAQ page is for informational purposes only and does not constitute legal advice by the Department of Health.
- Questions related to child protection can be sent to the Department of Human Services' Office of Children, Youth and Families at RA-PWCPSLQuestions@pa.gov.
- For questions regarding Child Abuse Referrals, contact ChildLine at 1-800-932-0313.
- For questions regarding your Pennsylvania Child Abuse History Clearance Application, contact ChildLine at 1-877-371-5422.
- For assistance with your ChildLine account log-in or other technical issues, contact 1-877-343-0494.
- It is also recommended that any interested or effected person review the Department of Human Services' website relating to the CPSL at <http://keepkidssafe.pa.gov/index.htm>.