

Amendments to the Child Protective Service Law: Learn what the new law requires and how the change impacts schools

LANCASTER COUNTY CHILDREN AND YOUTH AGENCY



Legislative Package Overview

- ❑ Strengthens our ability to better protect children from abuse and neglect by amending the definitions of child abuse and perpetrator;
- ❑ Streamlines and clarifies mandatory child abuse reporting processes;
- ❑ Increases penalties for failure to report suspected child abuse and protect persons who report child abuse;
- ❑ Promotes the use of multi-disciplinary investigative teams (MDITS) to investigate child abuse related crimes; and
- ❑ Supports the use of information technology to increase efficiency and tracking of child abuse data.

Enacted Legislation 2013

Act	Bill	Focus	Effective Date
105	HB 321	Minors/sexual abuse	Jan 1, 2014
107	HB 414	Custody cases	Jan 1, 2014
108	HB 726	Definition of CA/N	Dec 31, 2014
109	HB 1201	Child victim witnesses	Feb 16, 2014
116	HB 1594	Luring a child	Feb 16, 2014

Enacted Legislation 2013

Act	Bill	Focus	Effective Date
117	SB 23	Expands Perpetrators	Dec 31, 2014
118	SB 28	Enhanced criminal penalties and new criminal offenses	Jan 1, 2014
119	SB 30	Expedited appeals	July 1, 2014
120	SB 34	Educator Discipline Act	Feb 16, 2014
123	SB 1116	MDT review/investigate	March 13, 2014

Enacted Legislation 2013

Act	Bill	Focus	Effective Date
4	SB 29	Mandatory Reporting of Infants	April 22, 2014
27	HB 89	Funding for CACs and MR Training - DARE Funds	June 6, 2014
28	HB 316	Funding for CACs	July 1, 2014
29	SB 24	Statewide Database of Protective Svcs	December 31, 2014

Enacted Legislation 2013

Act	Bill	Focus	Effective Date
31	HB 431	Education and Training – DOS Licensees	December 31, 2014
32	HB 436	Attorneys as MR and Failure to Report	December 31, 2014
33	SB 21	Mandated Reporters	December 31, 2014
34	SB 33	Whistleblower protection for reporting	December 31, 2014
44	SB 31	Reporting of Child Abuse by School Employees	December 31, 2014
45	HB 434	Background Checks	December 31, 2014

Most Significant Amendment

- ❑ Currently, Subchapter C.1 governs the standards and procedures of reporting, investigating, and establishing penalties for public and private school employees suspected of student abuse.
- ❑ Repealed by Act 44 of 2014 (Senate Bill 31) and Act 45 of 2014 (House Bill 434)

CPSL Definitions (§6303) Child Care Service

- ❑ Broadens the definition of child care service to include day care services or programs that are offered by a school.
- ❑ Previously these programs were excluded from the definition of child care services.
- ❑ The definition of child care services is primarily used as it relates to completion of clearances.

CPSL Definitions-Perpetrator

- ❑ Broadens the definition of perpetrator and clarifies acts of abuse versus failures to act:
- ❑ Acts of Abuse:
 - ❑ Maintains parents of any age;
 - ❑ Includes a spouse, paramour, or former spouse or former paramour of the child's parent;
 - ❑ Maintains a person 14 years of age or older who is responsible for the child's welfare;
 - ❑ Specifies that this term includes any person who has direct or regular contact with a child through any program, activity or service sponsored by a school, for-profit or religious or other not-for-profit organization such as:
 - ❑ Camps;
 - ❑ Athletic programs;
 - ❑ Enrichment programs; or
 - ❑ Troops, clubs or similar organizations.
 - ❑ School employees and independent contractors are now included as persons responsible for a child's welfare;
- ❑ Specifies that an individual residing in the same home as the child must be 14 years of age or older to be considered a perpetrator for consistency with persons responsible for a child; and
- ❑ Includes an individual 18 years of age or older who does not reside in the same home as the child and is related within the third degree of blood, marriage or adoption to the child.

Consanguinity

First Degree	Second Degree	Third Degree
<p data-bbox="206 234 476 265">Father or Mother</p> <p data-bbox="214 436 468 515">Son or Daughter (& Spouse)</p>	<p data-bbox="825 244 1044 275">Grandparents</p> <p data-bbox="825 394 1044 472">Grandchildren (& Spouse)</p> <p data-bbox="825 622 1044 701">Uncle or Aunt (& Spouse)</p> <p data-bbox="843 822 1026 901">First Cousin (& Spouse)</p> <p data-bbox="800 979 1070 1058">Nephew or Niece (& Spouse)</p> <p data-bbox="805 1208 1065 1286">Brother or Sister (& Spouse)</p>	<p data-bbox="1663 244 1972 275">Great Grandparents</p> <p data-bbox="1663 394 1972 472">Great Grandchildren (& Spouse)</p> <p data-bbox="1663 622 1972 701">Great Uncle or Aunt (& Spouse)</p> <p data-bbox="1574 779 2061 858">Children of Great Uncle or Aunt (& Spouse)</p> <p data-bbox="1702 979 1933 1058">Second Cousin (& Spouse)</p> <p data-bbox="1510 1136 2125 1258">Children of First Cousin (& Spouse) and Grand Nephew or Niece (& Spouse)</p>

CPSL Definitions-Perpetrator

Failure to Act:

- Maintains parents of any age;
- Includes a spouse, paramour, or former spouse or former paramour of the child's parent;
- Raises the age from 14 to 18 as it relates to:
 - Persons responsible for the child's welfare; and
 - Persons residing in the same home as the child.
- This ensures that siblings and other minors who could be perpetrators of abuse by commission are not considered perpetrators for failure to act so that they are not held responsible for the actions of adults.

CPSL Definition- Person Responsible for the Child's Welfare

“Person responsible for the child’s welfare”. 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.

CPSL Definitions-Child Abuse

The definition of child abuse has been amended to require that acts or failures to act be committed **intentionally, knowingly** or **recklessly**.

- A person acts **intentionally** when they consciously engage in conduct of that nature or cause such a result and are aware of such circumstances or believe or hope that they exist.
- A person acts **knowingly** when they are aware that their conduct is of that nature or that such circumstances exist and they are aware that it is practically certain that their conduct will cause such a result.

CPSL Definitions-Child Abuse

- A person acts ***recklessly*** when they consciously disregard a substantial and justifiable risk that the material element exists or will result from their conduct. The risk must be of such a nature and degree that, considering the nature and intent of the conduct and the circumstances known to them, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

CPSL Definitions-Child Abuse

- ❑ Serious physical neglect was expanded to include egregious behavior which would include situations when the behavior might have only occurred one time. Previously there had to be prolonged or repeated behavior.
- ❑ Lowers the threshold from serious physical injury to bodily injury which requires impairment of a physical condition or substantial pain rather than severe pain.

CPSL Definitions-Child Abuse

Sexual Abuse

Consensual activities between 14+ and another 14+ who is within 4 years excluded as sexual abuse

Adds to enumerated list of crimes:

- Institutional Sexual Assault
- Indecent Assault
- Unlawful Contact
- Statutory Sexual Assault

CPSL Definitions-Child Abuse

- ❑ Include behaviors that result in exposing children to potentially harmful medical evaluations or treatment such as fabricating, feigning or inducing a medical symptom or disease (Munchausen Syndrome by Proxy).
- ❑ Lower the threshold for serious mental injury to include causing or substantially contributing to the injury through any act or failure to act or series of such acts or failures to act.

CPSL Definitions-Child Abuse

- ❑ Clarifies the former category of imminent risk to include:
 - ❑ Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child;
 - ❑ Unreasonably restraining or confining a child based on the method, location or duration;
 - ❑ Forcefully shaking, slapping or otherwise striking a child under one year of age;
 - ❑ Interfering with the breathing of a child;

CPSL Definitions-Child Abuse

- ❑ Causing the child to be present at a methamphetamine lab, provided there is a law enforcement investigation occurring;
- ❑ Knowingly leaving a child unsupervised with an individual, other than the child's parent, who is required to register as a sexual offender, sexually violent predator or sexually violent delinquent. This also includes individuals whom the parent reasonably should have known was required to register in one of the categories above.
- ❑ Causing the death of a child through any act or failure to act regardless of when it occurred.

CPSL Definitions-Indicated Reports

Allows for a report of suspected child abuse to be indicated:

- ❑ regardless of the number of perpetrators; or
- ❑ in situations when the perpetrator is cannot be identified and substantial evidence of abuse exists.

Child Abuse Exclusions

- ❑ Exclusion for environmental factors while clarifying that this exclusion does not pertain to any person or entity defined under child care service except an adoptive parent. Prior statutory language contained person responsible for the child's welfare which could have been interpreted to allow for this exclusion to apply to foster parents or staff in residential programs.
- ❑ Exclusion for the practice of religious beliefs for parents with the addition of caregivers within the third degree of consanguinity and with whom the child resides.
 - ❑ Adds that this exclusion shall not apply if the failure to provide the needed medical or surgical care causes the child's death.
 - ❑ Specifies that this exclusion does not apply to child care services, with the exception of adoptive parents consistent with the previously noted reasons.

Child Abuse Exclusions

- ❑ Exclusion for the use of force for supervision, control and safety purposes applies to parents or person's responsible for the child welfare (including child care service staff). This exclusion applies as long as:
 - ❑ The use of force is reasonable and constitutes incidental or minor contact with the child to maintain order and control.
 - ❑ The use of force is necessary to:
 - ❑ Quell a disturbance;
 - ❑ To remove a child from a disturbance that threatened physical injury to person or damage to property;
 - ❑ To prevent the child from self-inflicted physical harm;
 - ❑ For self-defense or the defense of another person or
 - ❑ To obtain possession of weapons, dangerous objects, controlled substances or paraphernalia on the child or within their control.

Child Abuse Exclusions

- ❑ Exclusion for physical contact that occurs during participation in sports or extracurricular activities.
- ❑ Reiterates that parents have the right to physically discipline their children in accordance with existing law.
- ❑ Harm or injury to a child that results from the act of another child is not considered child abuse and need not be reported to ChildLine unless;
 - ❑ The child who caused the injury is a perpetrator; or
 - ❑ The following sexual offenses were committed: rape, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent assault and indecent exposure.

Child Abuse Exclusions

- ❑ No child shall be considered a perpetrator as a result of physical or mental injuries caused during the course of a dispute, fight or scuffle entered into by mutual consent.
- ❑ Excludes the use of reasonable force for self-defense or defense of another individual.

Child Abuse Exclusions

These exclusions apply to
Substantiation of child abuse, not the
Requirement to report.

CPSL Definitions-

Adult, Mandated Reporter, Person Affiliated with

“Adult” An individual 18 years or older

“Mandated Reporter” A person who is required by this chapter to make a report of suspected child abuse.

“Person affiliated with” A person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a specified person.

CPSL Definition- Direct Contact with Children

“Direct Contact with children.” The care, supervision, guidance or control of children or routine interaction with children.

Routine interaction?

Note: This definition differs slightly from the definition in the School Code, 24 P.S. 1205.6, and the definition in the State Board of Education regulations, 22 Pa. Code 8.1

Reporting by School Employees

Amended 6311 (c) (relating to staff members of institutions, etc.) to require persons required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency to **report immediately in accordance with 6313 and immediately thereafter** notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

Reporting by School Employees

Upon notification, the person in charge or the designated agent, if any, shall facilitate the cooperation of the institution, school, facility or agency with the investigation of the report.

The CPSL does not require more than one report from any such institution, school, facility or agency.

Electronic Reporting

- ❑ Mandated reporters will be able to file one report electronically.
- ❑ Adds medical examiner to a person to whom a report of child death will be reported to.
- ❑ Establishes database of false CPS and False GPS reports.
- ❑ Increases information sharing between CYS and LEO
- ❑ Child care and school employers receive notice of pending allegation and final status.
- ❑ Department of Education also receives notice of final status.
- ❑ Pending investigations added to information on clearance.
- ❑ Increases penalty for willful failure to cooperate from summary to M3 and M2.
- ❑ Adds GPS report to Annual Child Abuse Report.

Signed April 15, 2014

SB 21

Adds colleges and universities to definition of school

Adds those who provide a program activity or service sponsored by a school to school employee

Adds to mandated reporter

- licensed or certified in a health related field
- Individual paid or unpaid who accepts responsibility for a child in a program, activity or service
- EMS
- Public library employee with direct contact
- Independent contractor

SB 21, cont.

Mandated reporter required to report:

- Comes into contact with children as part of work or through a regularly scheduled program activity or service
- Is directly responsible for the child or works for an agency that is directly responsible for the child
- Someone makes a specific disclosure to the mandated reporter and the child is identifiable.
- A person 14 yo or older makes a disclosure that he/she has committed child abuse

SB 21, cont.

- Child does not need to come before mandated report

Reporting Process:

- Mandated reporter reports directly to ChildLine
- Electronic reports
- After reporting to ChildLine, reporter tells person in charge or designee
- Person in charge or designee facilitates the cooperation
- Mandated Reporters makes written report
- Any person may report to ChildLine, CYD or LEO

Senate Bill 33, Signed April 15, 2014

- Provides for protection from employment discrimination when making a report of suspected child abuse, applies to mandated and permissive reporters
- Excludes perpetrators who make a report and person who fail to report
- Action filed in court of common pleas where person was fired or discriminated against
- Court may grant reinstatement with back pay
- DPW may intervene in any action under this section

Notification to School Administrators

Added 6340 (13) (relating to release of information in confidential reports) to include school administrators and child-care service employers as individuals who can have access to such information as follows:

- If the alleged perpetrator is a school employee or child-care service employee, school administrators and child-care service employers shall receive notice of a pending allegation and the final status of the report following the investigation as to whether the report is indicated, founded or unfounded.

Notification to School Administrators

Additionally,

- ❑ The information disclosed shall be provided to the school administrator or child-care service employer within 10 days of the completion of the investigation
- ❑ If the perpetrator is a school employee, the notice of the final status of the report shall be sent to the Department of Education within 10 days of the completion of the investigation.

Response

Added 6386 (e) (relating to investigation concerning a school or child-care service employee) in order to ensure the safety of the child and other children who are in the care of the school.

Subsection (e) requires the following:

- ❑ Upon notification that an investigation involves suspected child abuse by a school or child-care service employee, the school shall immediately implement a plan of supervision or alternative arrangement for the individual under investigation.
- ❑ The plan of supervision or alternative arrangement shall be approved by the county agency and kept on file with the agency until the investigation is completed.

House Bill 436, signed April 15, 2014

Penalties for failure to report

- ❑ Generally a misdemeanor of the second degree
- ❑ Felony if the child abuse committed is a felony and the reporter had direct knowledge
- ❑ If the person willfully fails to report and the child abuse continues the grading is misdemeanor of the first degree
- ❑ 2nd and subsequent third degree felony
- ❑ Reporting to Law Enforcement or CYS instead of ChildLine does not constitute an offense if report was made in good faith to comply
- ❑ Statute of limitation- same as offense or five years whichever is greater

Approved Mandated Reporting Training

Go to:

www.reportabusepa.pitt.edu

After December 31, 2014 Mandated
Reporter's will go to:

www.compass.state.pa.us/cwis