

ACT 153 OF 2014

**BACKGROUND CHECK
REQUIREMENTS**

Information Guide

**Prepared by PSEA Legal Division
April 2015**



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TABLE OF CONTENTS

PSEA Flowchart of Background Check Renewal Deadlines	Section 1
PSEA Advisories to Members	Section 2
Department of Human Services (DHS) Guidelines	Section 3
Notification Requirements	Section 4
Higher Education Employees	Section 5
Provisional Employees	Section 6
Volunteers	Section 7
Employers Exceeding the Requirements of Act 153	Section 8

Examples:

Employers accelerating time periods by which individuals have to obtain background checks (e.g., school employers requiring individuals who have until December 31, 2015 to obtain background checks to, nonetheless, obtain their background checks by the beginning of the 2015-16 school year).

Employers requiring all school employees to obtain background checks, rather than just those having “direct contact with children.”

Information for the Completion of Background Check Applications	Section 9
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PSEA FLOWCHART OF BACKGROUND CHECK RENEWAL DEADLINES



IMPORTANT INFORMATION REGARDING NEW BACKGROUND CHECK REQUIREMENTS

A recent law change regarding child abuse clearances, and State Police and FBI criminal history reports will significantly impact PSEA members.

Please review the information in this Critical Alert to make sure you renew your child abuse clearances and criminal history reports in accordance with the new law.

What is the new law?

Act 153 of 2014 took effect on December 31, 2014. It sets forth new timelines for the renewal of school employees' child abuse clearance statements, and State Police and FBI criminal history reports. (The FBI report includes fingerprinting.) PSEA did not support all of these new requirements; however, they are now law. It is important that all PSEA members follow them.

When do I need to renew?

See the chart on the reverse side of this Critical Alert to determine when your clearances and criminal history reports should be renewed. **NOTE:** This chart pertains to the initial renewal. Subsequent renewals will need to occur every three years.

The new renewal deadlines will most immediately impact members with a clearance statement, State Police report, or FBI report issued in early 2012. Those documents will need to be renewed in early 2015.

Due to anticipated backlog, if your background check was issued December 31, 2011, or in January, February, or March 2012, you must apply for that background check IMMEDIATELY.

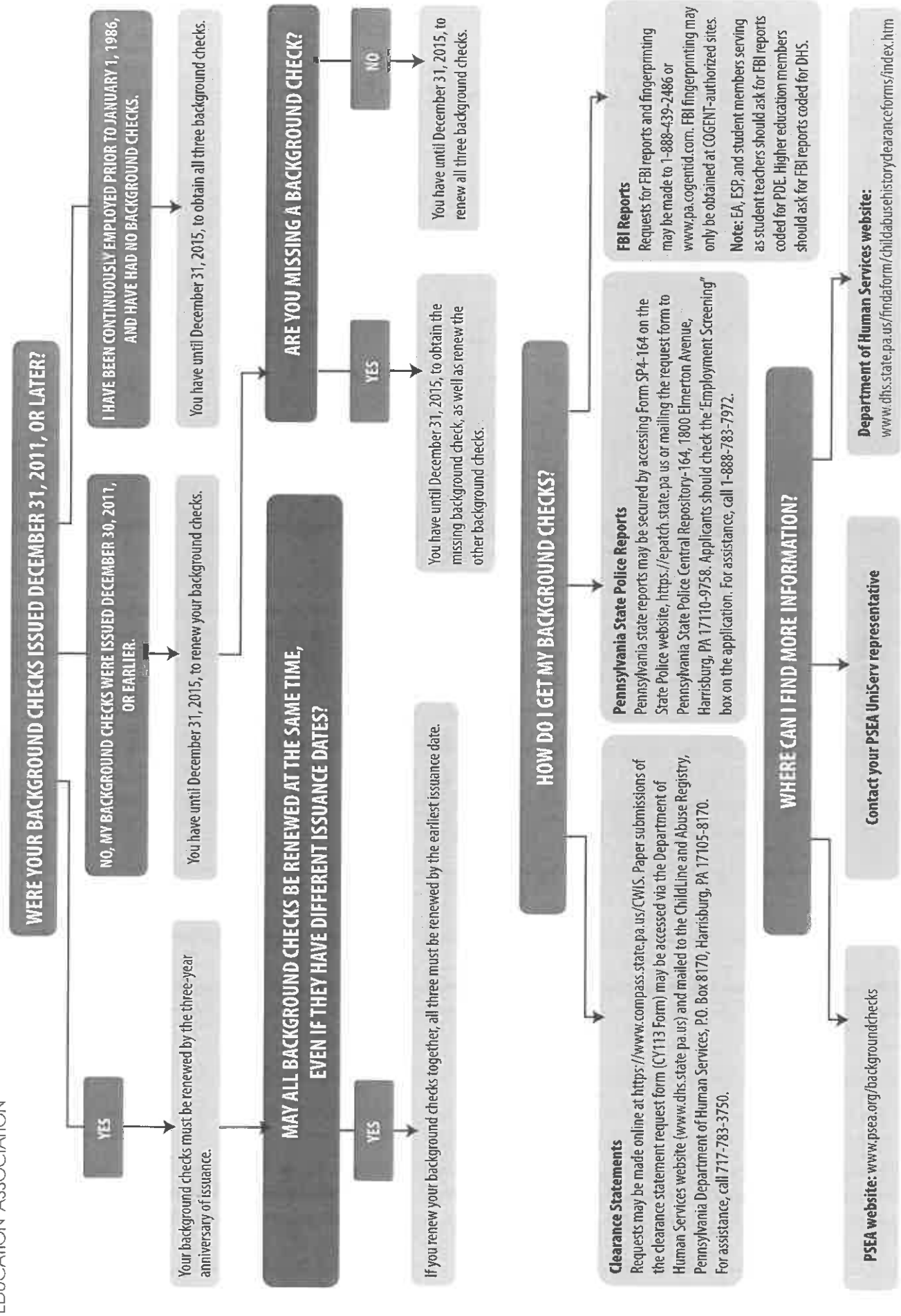
What should I do right away?

All members should:

- ✓ **Check your files** or check your school employer's files to find the dates of your current background checks, if any.
- ✓ **Review the chart** on the reverse side of this Critical Alert to determine when your clearances and criminal history reports should be renewed.
- ✓ **Check PSEA's website** for information regarding the new background check requirements at www.psea.org/backgroundchecks.

Act 153 – New Background Check Requirements

Includes clearance statement, State Police report, or FBI report



PSEA ADVISORIES TO MEMBERS

ALERT FOR PSEA MEMBERS
Act 153 – NEW BACKGROUND CHECK
REQUIREMENTS
URGENT - IMMEDIATE ACTION
MAY BE REQUIRED

Prepared by PSEA - December 19, 2014

On October 15, 2014, Gov. Tom Corbett signed into law Act 153 of 2014, which requires, among other things, the renewal of child abuse clearance statements and criminal history reports (from both the Pennsylvania State Police and FBI) for school employees. The effective date of this law is December 31, 2014.

The Department of Human Services issued guidance on December 19, 2014, regarding renewal requirements for these three background checks.

NEW RENEWAL DEADLINES

These renewal deadlines will most immediately affect those with a background check (clearance statement, State Police report, or FBI report) issued in early 2012. The required deadlines are as follows:

1. For any background check issued December 31, 2011, or later:

- **The background check must be renewed by the three-year anniversary date of its issuance.** For example, if a clearance statement was issued on January 10, 2012, it must be renewed by January 10, 2015. The same is true for a State Police or FBI report.
- **The Department advises that some school entities may require that all background checks must be renewed at the same time, by the earliest three-year anniversary date for any one of the three.** For example, if a clearance statement was issued January 10, 2012, but the State Police and FBI reports were issued February 6, 2012, the school entity might require the employee to obtain all three background checks by the earliest three-year anniversary date, which is January 10, 2015. The Department believes that school entities will aim for consistency in the future renewal dates of all three background checks.
- **The Department advises that if a background check is missing, the employee must obtain it by the earliest three-year anniversary date of the other background checks.** Assume a clearance statement and State Police report were issued on January 10, 2012, but the employee never obtained an FBI report. The employee must obtain all three background checks, including the missing FBI report, by January 10, 2015. The Department is aiming for consistency in the future renewal dates of all three background checks.

2. If all three background checks were issued more than three years ago (i.e., December 30, 2011 or earlier), employees have until December 31, 2015, to renew those background checks.

3. If individuals have no background checks because they have been continuously employed prior to January 1, 1986, (the first date when a background check was required), they have until December 31, 2015, to obtain all three background checks.

Information on how to obtain these background checks appears below.

It is anticipated that there may be a backlog as a result of these renewal requests, due to renewal requests made by school employees, and by school volunteers who will also be required to obtain renewed background checks by certain prescribed deadlines. For this reason, it is crucial that members apply for their background checks by the above-described deadlines, even if the administrative agencies cannot complete the process by the required deadline, so that members can demonstrate to their employers that they attempted to abide by the renewal requirements.

PSEA MEMBERS SHOULD DO THE FOLLOWING

- Check PSEA's website for information regarding the new background check requirements at www.psea.org/backgroundchecks.
- Check their files or their school employer files to find the dates of their current background checks, if any.
- Submit renewal requests for any background check that was last issued between December 31, 2011, and December 31, 2014.

HOW TO OBTAIN BACKGROUND CHECKS

Clearance Statements:

As of December 31, 2014, requests for clearance statements (now called "certifications") may be made online at <https://www.compass.state.pa.us/CWIS> at a cost of \$10. Paper submissions of the clearance statement request form (CY113 Form) may be accessed via the Department of Human Services website (www.dhs.state.pa.us) and mailed to the ChildLine and Abuse Registry, Pennsylvania Department of Human Services, P.O. Box 8170, Harrisburg, PA 17105-8170.

Pennsylvania State Police Reports:

Pennsylvania state reports cost approximately \$10 and may be secured by accessing Form SP4-164 on the State Police website, <https://epatch.state.pa.us> or 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-QUERYPA (1-888-783-7972).

FBI Reports:

Requests for FBI reports, costing approximately \$28.75, may be made to 1-888-439-2486 or www.pa.cogentid.com, 24 hours a day, seven days a week, from 8 a.m. to 6 p.m.

For more information and access to the appropriate forms, visit the Department of Human Services website at <http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>.

PSEA members who have questions about the renewal requirements should contact their PSEA UniServ representatives.

December 22, 2014

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Dear Local Leader:

A recent law change regarding State Police and FBI criminal history reports and child abuse clearances will significantly impact PSEA members. I want to provide you with information about this law change immediately so that you can answer questions from your members.

Unfortunately, some of the deadlines in the new law appear to be inconsistent. However, be assured that these deadlines are law, and must be met.

Act 153 of 2014, which takes effect on December 31, 2014, sets forth new timelines for the renewal of school employees' child abuse clearance statements and State Police and FBI criminal history reports.

On December 19, 2014, the Department of Human Services issued guidance on the renewal requirements for these three background checks.

It is critical to note that the new renewal deadlines will most immediately impact members with a clearance statement, State Police report, or FBI report issued in early 2012 since those documents will need to be renewed in early 2015.

New Renewal Deadlines

1. For any background check issued December 31, 2011, or later:
 - ✓ The background check must be renewed by the three-year anniversary date of its issuance. For example, if a clearance statement was issued on January 10, 2012, it must be renewed by January 10, 2015. The same is true for a State Police or FBI report.
 - ✓ The Department advises that some school entities may require that all background checks must be renewed at the same time, by the earliest three-year anniversary date for any one of the three. For example, if a clearance statement was issued January 10, 2012, but the State Police and FBI reports were issued February 6, 2012, the school entity might require the employee to obtain all three background checks by the earliest three-year anniversary date, which is January 10, 2015. The Department believes that school entities will aim for consistency in the future renewal dates of all three background checks.
 - ✓ The Department advises that if a background check is missing, the employee must obtain it by the earliest three-year anniversary date of the other background checks. Assume a clearance statement and State Police report were issued on January 10, 2012, but the employee never obtained an FBI report. The employee must obtain all three background checks, including the missing FBI report, by January 10, 2015. The Department is aiming for consistency in the future renewal dates of all three background checks.

The PSEA Mission

To advocate for quality public education and our members through collective action. 

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2. If all three background checks were issued more than three years ago (i.e., December 30, 2011, or earlier), employees have until December 31, 2015, to renew those background checks.

3. If individuals have no background checks because they have been continuously employed prior to January 1, 1986 (the first date when a background check was required), they have until December 31, 2015, to obtain all three background checks.

PSEA informed all members of these new deadlines in an email sent December 22. This information can also be found at www.psea.org/backgroundchecks. Information on how to obtain these background checks is attached.

It is anticipated that there may be a backlog as a result of these renewal requests, due to both renewal requests made by school employees and by school volunteers who will also be required to obtain renewed background checks by certain prescribed deadlines. For this reason, it is crucial that members apply for their background checks by the above-described deadlines, even if the administrative agencies cannot complete the process by the required deadline, so that members can demonstrate to their employers that they attempted to abide by the renewal requirements.

Recommended Steps for Local Leaders:

PSEA recommends that you:

- ✓ Immediately contact employers to urge them to identify and notify those employees who will be subject to renewal deadlines in early 2015. These are likely individuals who were first hired as school employees for the second semester of the 2011-12 school year, or were student teaching during the second semester of 2011-12 and obtained background checks in advance of their student teaching.
- ✓ Notify members that they should check PSEA's website at www.psea.org/backgroundchecks for information regarding the new background check requirements.
- ✓ Notify members that they may have an immediate renewal deadline if any one of their background checks was issued between December 31, 2011, and December 31, 2014.
- ✓ Remind members to check their files or their school employer files to determine the dates of their current background checks, if any.

The Pennsylvania School Boards Association's (PSBA) recommendations may be useful in obtaining school employer assistance in identifying and notifying those most immediately affected by this new requirement. PSBA's recommendations can be found on its website at www.psba.org/2014/12/fast-facts-new-background-check-requirements-school-employees-contractors-volunteers.

Enclosed find an alert that can be shared with PSEA members, which contains details on how to obtain necessary background checks. If you have any questions, please contact your UniServ representative.

Thank you for your attention to this most important matter, and thank you for helping to inform our members about the importance of complying with these new deadlines.

Sincerely,



Mike Crossey
President

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To advocate for quality public education and our members through collective action. 

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DEPARTMENT OF HUMAN SERVICES (DHS) GUIDELINES

School Employees Governed by the Public School Code
Frequently Asked Questions

Who needs clearances?

Pursuant to the provision of Act 153 of 2014, those categories of school employees which are required to obtain background checks pursuant to Section 111 of the Public School Code will continue to be required to obtain background checks prior to employment in accordance with that section and on the periodic basis required by Act 153. This fact sheet pertains to periodic checks for those employees which are governed by the School Code. For guidance with respect to additional employees covered by Act 153 (such as pertaining to school employees in higher education) please consult the fact sheet entitled School Employees Not Governed by the Public School Code.

The Act defines school employee as 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.

The definition of school is as follows:

"School." A facility providing elementary, secondary or postsecondary educational services. The term includes the following:

- (1) Any school of a school district.
- (2) An area vocational-technical school.
- (3) A joint school.
- (4) An intermediate unit.
- (5) A charter school or regional charter school.
- (6) A cyber charter school.
- (7) A private school licensed under the act of January 28, 1988 (P.L.24, No.11), known as the Private Academic Schools Act.
- (8) A private school accredited by an accrediting association approved by the State Board of Education.
- (9) A nonpublic school.
- (10) A community college which is an institution now or hereafter created pursuant to Article XIX-A of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or the act of August 24, 1963 (P.L.1132, No.484), known as the Community College Act of 1963.
- (11) An independent institution of higher education which is an institution of higher education which is operated not for profit, located in and incorporated or chartered by the Commonwealth, entitled to confer degrees as set forth in 24 Pa.C.S. § 6505 (relating to power to confer degrees) and entitled to apply to itself the designation "college" or "university" as provided for by standards and qualifications prescribed by the State Board of Education pursuant to 24 Pa.C.S. Ch. 65 (relating to private colleges, universities and seminaries).
- (12) A State-owned university.
- (13) A State-related university.

- (14) A private school licensed under the act of December 15, 1986 (P.L.1585, No.174), known as the Private Licensed Schools Act.
- (15) The Hiram G. Andrews Center.
- (16) A private residential rehabilitative institution as defined in section 914.1-A(c) of the Public School Code of 1949.

What is the definition of child?

For purposes of clearances, a child is an individual under 18 years of age.

How is direct contact with children defined?

Direct contact with children is defined in § 6303 (relating to definitions) as the care, supervision, guidance or control of children or routine interaction with children.

How do I determine who in my agency needs clearances?

In order to determine who in your agency is required to obtain clearances as a condition of hire you should carefully consider who within your agency, organization or institution has direct contact with children. To make this determination, think about the employee's role within your agency and the contact they have with children. This determination has two avenues to consider.

These avenues for consideration are whether the employee has direct contact with children because they provide care, supervision, guidance or control of children or have routine interaction with children. As these terms are not defined in the statute we suggest that the common meaning of these terms be used, with child safety serving as the paramount consideration. If you determine that they do not provide care, supervision, guidance or control of children, you then move on to the second consideration; whether they have routine interaction with children.

With regard to routine interaction, consideration should be given to what the employee's role is within the agency and based on that role determine if their contact with children is regular, ongoing contact that is integral to their day to day job responsibilities.

If a determination is made that the employee does not have direct contact with children, clearances are not required.

Please be sure to consult your legal counsel when making these determinations. You should also consult with your insurer regarding possible insurance coverage implications.

Which clearances are needed?

Employees having contact with children must obtain the following three clearances:

- Report of criminal history from the Pennsylvania State Police (PSP);
- Child Abuse History Clearance from the Department of Human Services (Child Abuse); and
- Fingerprint based federal criminal history submitted through the Pennsylvania State Police or its authorized agent (FBI).

When are clearances needed?

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

What is the renewal requirement for clearances?

Beginning Dec. 31, 2014, clearances must be obtained every 36 months. Timelines 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.

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 State Police 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 December 31, 2015.

How do I obtain my clearances?

The Child Abuse, PSP and FBI clearances can all be applied and paid for electronically. The FBI clearance also requires a fingerprint submission. All necessary instructions and links to apply for these clearances can be found at <http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>.

Is the use of a third-party vendor to process clearances acceptable?

Third-party vendors may be used to process Child Abuse, PSP and FBI clearances using the steps established above. However, agencies are **not** permitted to conduct background checks or clearances through other databases in lieu of the steps outlined above. In addition, school administrators remain responsible for the employment decision based on the information obtained.

How much do the clearances cost?

- The Pennsylvania State Police Criminal Record Check costs \$10.
- The Pennsylvania Child Abuse History Clearance costs \$10.
- The Federal Bureau of Investigation (FBI) Criminal Background Check costs \$28.75 through the Department of Education.



Who pays for clearances?

The applicant or employee is responsible for paying the cost of the required clearances. However, some employers choose to pay for these clearances and are able to establish business accounts to pay for clearances. The only time an employer is required to bear the cost of the clearances is when there is reasonable belief that the employee was arrested or convicted of an offense that would deny employment or named as a perpetrator in an indicated or founded report. In these situations, the employer must immediately require the employee to obtain their clearances.

Can an agency or organization pay for clearances?

Child abuse clearances:

Yes, employers, agencies and organizations can pay for child abuse history clearances by registering for a Business Partner User account using the "Organization Account access" link on the Child Welfare portal, www.compass.state.pa.us/cwis, which goes live on Dec. 31, 2014. The business account will allow organizations to purchase child abuse history clearance payment codes to be distributed to applicants or employees. Individual applicants or employees will then go onto the child welfare portal to apply for the clearance using the code. The pre-purchased codes can only be used once and allows the organization to have access to the applicant's child abuse history clearance results once those results are processed.

FBI clearances:

An agency pay agreement/business account can also be created between an organization and the FBI, or its authorized agent, for payment of FBI clearances. Information on creating an agency pay agreement for FBI clearances through the Department of Education can be found at https://www.pa.cogentid.com/index_pdeNew.htm.

PSP Clearances:

An agency business account can be requested from the Pennsylvania State Police to pay for clearances in bulk by calling the Criminal Records Section Supervisor at 717-787-9092. Organizations are, also able to pay for an applicant's PSP clearance on an individual basis by using a credit card if applying online or submitting a paper check if applying by mail.

Are there any other requirements?

If an employee is arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or is named as a perpetrator in a founded or indicated report, the employee must provide the administrator or their 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.

An employee who willfully fails to disclose information as required above commits a misdemeanor of the third degree and shall be subject to discipline up to and including termination or denial of employment.

What is the provisional hiring period for employees?

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

- The applicant has applied for the three required clearances and they provide a copy of the completed forms to their employer.
- The employer has no knowledge of information pertaining to the applicant which would disqualify him from employment.
- The applicant swears or affirms in writing that he is not disqualified from employment pursuant to the grounds for denying employment in § 111 (e) or (f.1) or has not been convicted of an offense of a similar nature to those crimes 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 the Commonwealth.
- The applicant is not permitted to work alone with children and must work in the immediate vicinity of a permanent employee.

Is my employer required to keep a copy of my clearances?

Yes, pursuant to § 6344 (b.1), the employer, administrator, supervisor or other person responsible for employment decisions or acceptance of the individual to serve in any capacity requiring clearances, shall maintain copies of the required information and require the individual to produce the original documents prior to employment or acceptance to serve in any such capacity, except provisional employees for limited periods as described in § 111 (e) or (f.1) and outlined above. An employer, administrator, supervisor or other person responsible for employment decisions that intentionally fails to require an applicant to submit the required clearance before the applicant's hiring commits a misdemeanor of the third degree.

School administrators are reminded that pursuant to Department of Education regulation, the commissioned officer or administrative head of each school entity is responsible for maintaining the confidentiality of the criminal history background check may not be made available to anyone not directly involved in making hiring decisions.

Can an employer or organization institute additional standards?

Yes, nothing prohibits the employer, program, activity or service from making employment, discipline or termination decisions or establishing additional clearance standards, provided such additional standards are legal. Administrators are urged to consult with legal counsel prior to instituting any such additional standards.



Can my clearances be transferred?

Any person who obtained their clearances may transfer or provide services to another subsidiary or branch established and supervised by the same organization during the length of time the person's clearances are current.

NOTE: when an employee begins employment with a new agency, institution, organization or other entity that is responsible for the care, supervision, guidance or control of children new clearances must be obtained.

School Employees Not Governed by the Public School Code
Frequently Asked Questions

Who needs clearances?

School employees not governed Section 111 of the provisions of the act of March 10, 1949 (P.L. 30, No. 14), known as the Public School Code of 1949, but covered by Act 153 (such as pertaining to school employees in higher education).

The Act defines school employee as an individual who is employed by a school or who provides a program, activity or service sponsored by a school. This term excludes an individual who has direct contact with children.

The definition of school is as follows:

"School." A facility providing elementary, secondary or postsecondary educational services. The term includes the following:

- (1) Any school of a school district.
- (2) An area vocational-technical school.
- (3) A joint school.
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- (8) A private school accredited by an accrediting association approved by the State Board of Education.
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How is direct contact with children defined?

Direct contact with children is defined in § 6303 (relating to definitions) as the care, supervision, guidance or control of children or routine interaction with children.

How do I determine who in my institution needs clearances?

In order to determine who in your agency is required to obtain clearances as a condition of hire you should carefully consider who within your agency, organization or institution has direct contact with children. To make this determination, think about the employee's role within your agency and the contact they have with children. This determination has two avenues to consider.

These avenues for consideration are whether the employee has direct contact with children because they provide care, supervision, guidance or control of children or have routine interaction with children. As these terms are not defined in the statute we suggest that the common meaning of these terms be used, with child safety serving as the paramount consideration. If you determine that they do not provide care, supervision, guidance or control of children, you then move on to the second consideration; whether they have routine interaction with children.

With regard to routine interaction, consideration should be given to what the employee's role is within the agency and based on that role determine if their contact with children is regular, ongoing contact that is integral to their day to day job responsibilities.

If a determination is made that the employee does not have direct contact with children, clearances are not required.

Please be sure to consult your legal counsel when making these determinations. You should also consult with your insurer regarding possible insurance coverage implications.

Which clearances are needed?

Employees having contact with children must obtain the following three clearances:

- Report of criminal history from the Pennsylvania State Police (PSP);
- Child Abuse History Clearance from the Department of Human Services (Child Abuse); and
- Fingerprint based federal criminal history submitted through the Pennsylvania State Police or its authorized agent (FBI).

When are clearances needed?

Beginning Dec. 31, 2014, clearances must be submitted prior to the commencement of employment or service.



What is the renewal requirement for clearances?

Beginning Dec. 31, 2014, clearances must be obtained every 36 months. Timelines 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.

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 State Police 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.

How do I obtain my clearances?

The Child Abuse, PSP and FBI clearances can all be applied and paid for electronically. The FBI clearance also requires a fingerprint submission. All necessary instructions and links to apply for these clearances can be found at <http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>.

Is the use of a third-party vendor to process clearances acceptable?

Third-party vendors may be used to process Child Abuse, PSP and FBI clearances using the steps established above. They are **not** permitted to conduct background checks or clearances through other databases in lieu of the steps outlined above. In addition, institutions remain responsible for the employment decision based on the information obtained.

How much do the clearances cost?

- The Pennsylvania State Police Criminal Record Check costs \$10.
- The Pennsylvania Child Abuse History Clearance costs \$10.
- The Federal Bureau of Investigation (FBI) Criminal Background Check costs \$27.50 through the Department of Human Services.

Who pays for clearances?

The applicant or employee is responsible for paying the cost of the required clearances. However, some employers choose to pay for these clearances and are able to establish business accounts to pay for clearances. The only time an employer is required to bear the cost of the clearances is when there is reasonable

belief that the employee was arrested or convicted of an offense that would deny employment or named as a perpetrator in an indicated or founded report. In these situations, the employer must immediately require the employee to obtain their clearances.

Can an institution pay for clearances?

Child Abuse clearances:

Yes, institutions can pay for child abuse history clearances by registering for a Business Partner User account using the "Organization Account access" link on the Child Welfare portal, www.compass.state.pa.us/cwis, which goes live on Dec. 31, 2014. The business account will allow institutions to purchase child abuse history clearance payment codes to be distributed to applicants or employees. Individual applicants or employees will then go onto the child welfare portal to apply for the clearance using the code. The pre-purchased codes can only be used once and allows the organization to have access to the applicant's child abuse history clearance results once those results are processed.

FBI clearances:

An agency pay agreement/business account can also be created between an institution and the FBI, or its authorized agent, for payment of FBI clearances. Information on creating an agency pay agreement for FBI clearances through the Department of Human Services can be found at https://www.pa.cogentid.com/index_dpwNew.htm.

PSP Clearances:

A business account can be requested from the Pennsylvania State Police to pay for clearances in bulk by calling the Criminal Records Section Supervisor at 717-787-9092. Institutions are also able to pay for an applicant's PSP clearance on an individual basis by using a credit card if applying online or submitting a paper check if applying by mail.

Are there any other requirements?

If an employee is arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or is named as a perpetrator in a founded or indicated report, the employee must provide the administrator or their 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.

An employee who willfully fails to disclose information as required above commits a misdemeanor of the third degree and shall be subject to discipline up to and including termination or denial of employment.

What is the provisional hiring period for employees?

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

- The applicant has applied for the three required clearances and they provide a copy of the completed forms to their employer.
- The employer has no knowledge of information pertaining to the applicant which would disqualify him from employment.
- The applicant swears or affirms in writing that he is not disqualified from employment pursuant to the grounds for denying employment in § 6344 (c) or has not been convicted of an offense of a similar nature to those crimes 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 the Commonwealth.
- The applicant is not permitted to work alone with children and must work in the immediate vicinity of a permanent employee.

Is my employer required to keep a copy of my clearances?

Yes, pursuant to § 6344 (b.1), the employer, administrator, supervisor or other person responsible for employment decisions or acceptance of the individual to serve in any capacity requiring clearances, shall maintain copies of the required information and require the individual to produce the original documents prior to employment or acceptance to serve in any such capacity, except provisional employees for limited periods as described in § 6344 (m) and outlined above. An employer, administrator, supervisor or other person responsible for employment decisions that intentionally fails to require an applicant to submit the required clearance before the applicant's hiring commits a misdemeanor of the third degree. Institutions are reminded that the child abuse history clearance information is confidential and may not be release to other individuals.

Can an employer or organization institute additional standards?

Yes, nothing prohibits the employer, program, activity or service from making employment, discipline or termination decisions or establishing additional clearance standards.

Can my clearances be transferred?

Any person who obtained their clearances may transfer or provide services to another subsidiary or branch established and supervised by the same organization during the length of time the person's clearances are current.

NOTE: when an employee begins employment with a new agency, institution, organization or other entity that is responsible for the care, supervision, guidance or control of children new clearances must be obtained.

Employees Having Contact with Children
Frequently Asked Questions

Who needs clearances?

- An employee of child-care services.
- A self-employed family day-care provider.
- 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.
- Any individual seeking to provide child-care services under contract with a child-care facility or program.

An individual who applies to the department for a certificate of compliance or a registration certificate to provide child day care in a residence shall include criminal history record and child abuse record information required under section 6344(b) for every individual 18 years of age or older who resides in the home for at least 30 days in a calendar year.

What is the definition of child?

For purposes of clearances, a child is an individual under 18 years of age.

How is direct contact with children defined?

Direct contact with children is defined in § 6303 (relating to definitions) as the care, supervision, guidance or control of children or routine interaction with children.

How do I determine who in my agency needs clearances?

In order to determine who in your agency is required to obtain clearances as a condition of hire you should carefully consider who within your agency, organization or institution has direct contact with children. To make this determination, think about the employee's role within your agency and the contact they have with children. This determination has two avenues to consider.

These avenues for consideration are whether the employee has direct contact with children because they provide care, supervision, guidance or control of children or have routine interaction with children. As these terms are not defined in the statute we suggest that the common meaning of these terms be used, with child safety serving as the paramount consideration. If you determine that they do not provide care, supervision, guidance or control of children, you then move on to the second consideration; whether they have routine interaction with children.

With regard to routine interaction, consideration should be given to what the employee's role is within the agency and based on that role determine if their contact with children is regular, ongoing contact that is integral to their day to day job responsibilities.

If a determination is made that the employee does not have direct contact with children, clearances are not required.

Please be sure to consult your legal counsel when making these determinations. You should also consult with your insurer regarding possible insurance coverage implications.

Which clearances are needed?

Employees having contact with children must obtain the following three clearances:

- Report of criminal history from the Pennsylvania State Police (PSP);
- Child Abuse History Clearance from the Department of Human Services (Child Abuse); and
- Fingerprint based federal criminal history submitted through the Pennsylvania State Police or its authorized agent (FBI).

When are clearances needed?

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

What is the renewal requirement for clearances?

Beginning Dec. 31, 2014, clearances must be obtained every 36 months. Timelines 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.

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 State Police 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.

How do I obtain my clearances?

The Child Abuse, PSP and FBI clearances can all be applied and paid for electronically. The FBI clearance also requires a fingerprint submission. All necessary instructions and links to apply for these clearances can be found at <http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>.

Is the use of a third-party vendor to process clearances acceptable?

Third-party vendors may be used to process Child Abuse, PSP and FBI clearances using the steps established above. They are **not** permitted to conduct background checks or clearances through other databases in lieu of the steps outlined above. In addition, employers remain responsible for the employment decision based on the information obtained.

How much do the clearances cost?

- The Pennsylvania State Police Criminal Record Check costs \$10.
- The Pennsylvania Child Abuse History Clearance costs \$10.
- The Federal Bureau of Investigation (FBI) Criminal Background Check costs \$27.50 through the Department of Human Services.

Who pays for clearances?

The applicant or employee is responsible for paying the cost of the required clearances. However, some employers choose to pay for these clearances and are able to establish business accounts to pay for clearances. The only time an employer is required to bear the cost of the clearances is when there is reasonable belief that the employee was arrested or convicted of an offense that would deny employment or named as a perpetrator in an indicated or founded report. In these situations, the employer must immediately require the employee to obtain their clearances.

Can an agency or organization pay for clearances?**Child Abuse clearances:**

Yes, agencies and organizations can pay for Child Abuse clearances by registering for a Business Partner User account using the "Organization Account access" link on the Child Welfare portal, www.compass.state.pa.us/cwis, which goes live on Dec. 31, 2014. The business account will allow organizations to purchase child abuse history clearance payment codes to be distributed to applicants or employees. Individual applicants or employees will then go onto the child welfare portal to apply for the clearance using the code. The pre-purchased codes can only be used once and allows the organization to have access to the applicant's child abuse history clearance results once those results are processed.

FBI clearances:

An agency pay agreement/business account can also be created between an organization and the FBI, or its authorized agent, for payment of FBI clearances. Information on creating an agency pay agreement for FBI clearances through the Department of Human Services can be found at https://www.pa.cogentid.com/index_dpwNew.htm.

PSP Clearances:

An agency business account can be requested from the Pennsylvania State Police to pay for clearances in bulk by calling the Criminal Records Section Supervisor at 717-787-9092. Organizations are, also able to pay for applicant's PSP clearances on



an individual basis by using a credit card if applying online or submitting a paper check if applying by mail.

Are there any other requirements?

If an employee is arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or is named as a perpetrator in a founded or indicated report, the employee must provide the administrator or their 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.

An employee who willfully fails to disclose information as required above commits a misdemeanor of the third degree and shall be subject to discipline up to and including termination or denial of employment.

What is the provisional hiring period for employees?

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

- The applicant has applied for the three required clearances and they provide a copy of the completed forms to their employer.
- The employer has no knowledge of information pertaining to the applicant which would disqualify him from employment.
- The applicant swears or affirms in writing that he is not disqualified from employment pursuant to the grounds for denying employment in § 6344 (c) or has not been convicted of an offense of a similar nature to those crimes 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 the Commonwealth.
- The applicant is not permitted to work alone with children and must work in the immediate vicinity of a permanent employee.

Is my employer required to keep a copy of my clearances?

Yes, pursuant to § 6344 (b.1), the employer, administrator, supervisor or other person responsible for employment decisions or acceptance of the individual to serve in any capacity requiring clearances, shall maintain copies of the required information and require the individual to produce the original documents prior to employment or acceptance to serve in any such capacity, except provisional employees for limited periods as described in § 6344 (m) and outlined above. An employer, administrator, supervisor or other person responsible for employment decisions that intentionally fails to require an applicant to submit the required clearances before the applicant's hiring commits a misdemeanor of the third degree.

Agencies are reminded that the child abuse history clearance information is confidential and may not be release to other individuals.



Can an employer or organization institute additional standards?

Yes, nothing prohibits the employer, program, activity or service from making employment, discipline or termination decisions or establishing additional clearance standards.

Can my clearances be transferred?

Any person who obtained their clearances may transfer or provide services to another subsidiary or branch established and supervised by the same organization during the length of time the person's clearances are current.

NOTE: when an employee begins employment with a new agency, institution, organization or other entity that is responsible for the care, supervision, guidance or control of children new clearances must be obtained.

Volunteer
Frequently Asked Questions

Who needs clearances?

Beginning July 1, 2015, an **adult** applying for an unpaid position as a volunteer responsible for the welfare of a child or having direct contact with children.

What is the definition of child?

For purposes of clearances, a child is an individual under 18 years of age.

How is direct contact with children defined?

Direct contact with children is defined in § 6303 (relating to definitions) as the care, supervision, guidance or control of children or routine interaction with children.

How do I determine who in my agency or organization needs clearances?

In order to determine who in your agency or organization is required to obtain clearances as a condition of volunteering with children, you must first confirm that the applicant is an adult, as only adult volunteers are required to obtain clearances.

You should then carefully consider whether the volunteer is responsible for the welfare of a child or has direct contact with children.

Determining whether a volunteer is responsible for the welfare of a child means that the volunteer is acting in lieu of or on behalf of a parent. If a determination is made that the volunteer is not responsible for the welfare of a child, you then move on to the second avenue for consideration; whether they have direct contact with children.

The second avenue for consideration is whether the volunteer has direct contact with children because they provide care, supervision, guidance or control of children or have routine interaction with children. As the terms are not defined in the statute we suggest that the common meaning of these terms be used, with child safety serving as the paramount consideration. If the answer to this question is that they do not provide care, guidance, supervision or control of children, you consider whether they have routine interaction with children.

With regard to routine interaction with children, consideration should be given to what the volunteer's role is within the agency and based on that role, is their contact with children regular, ongoing contact that is integral to their volunteer responsibilities?

If a determination is made that the volunteer is not responsible for the welfare of a child and does not have direct contact with children, clearances are not required. Please be sure to consult your legal counsel when making these determinations. You should also discuss with your insurers possible insurance coverage implications.

Which clearances are needed?

All prospective volunteers must obtain the following clearances:

- Report of criminal history from the Pennsylvania State Police (PSP); and
- Child Abuse History Clearance from the Department of Human Services (Child Abuse).

Additionally, a fingerprint based federal criminal history (FBI) submitted through the Pennsylvania State Police or its authorized agent is required if:

- The position the volunteer is applying for is a paid position; and
- The volunteer has lived outside the Commonwealth of Pennsylvania in the last 10 years.

Volunteers who are not required to obtain the FBI Clearance because they are applying for an unpaid position and have been a continuous resident of Pennsylvania for the past 10 years must swear or affirm in writing that they are not disqualified from service based upon a conviction of an offense under §6344.

When are clearances needed?

Beginning July 1, 2015, prospective volunteers must submit clearances prior to the commencement of service.

What is the renewal requirement for clearances?

Beginning July 1, 2015, all volunteers will be required to obtain clearances every 36 months. Timelines 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.

How do I obtain my clearances?

The Child Abuse, PSP and FBI clearances can all be applied and paid for electronically. The FBI clearance also requires a fingerprint submission. All necessary instructions and links to apply for these clearances can be found at <http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>

Is the use of a third-party vendor to process clearances acceptable?

Third-party vendors may be used to process Child Abuse, PSP and FBI clearances using the steps established above. They are **not** permitted to conduct background checks or clearances through other databases in lieu of the steps outlined above. In addition, persons responsible for the selection of volunteers remain responsible for selection decision based upon the information obtained.

How much do the clearances cost?

- The Pennsylvania State Police Criminal Record Check costs \$10.
- The Pennsylvania Child Abuse History Clearance costs \$10.
- The Federal Bureau of Investigation (FBI) Criminal Background Check costs \$27.50 through the Department of Human Services.
- The Federal Bureau of Investigation (FBI) Criminal Background Check costs \$28.75 through the Department of Education.

Who pays for clearances?

The volunteer is responsible for paying the cost of the required clearances. However, some agencies choose to pay for clearances for their volunteers and are able to establish business accounts to pay for clearances. The only time an agency is required to bear the cost of the clearance is when there is reasonable belief that the volunteer was arrested or convicted of an offense that would deny participation or named as a perpetrator in an indicated or founded report. In these situations, the agency must immediately require the volunteer to obtain their clearances.

Can an agency or organization pay for clearances?**Child abuse clearances:**

Yes, agencies and businesses can pay for child abuse history clearances by registering for a Business Partner User account using the "Organization Account access" link on the Child Welfare portal, www.compass.state.pa.us/cwis, which goes live on December 31, 2014. The business account will allow organizations to purchase child abuse history clearance payment codes to be distributed to applicants or employees. Individual applicants or employees will then go onto the child welfare portal to apply for the clearance using the code. The pre-purchased codes can only be used once and allows the organization to have access to the applicant's child abuse history clearance results once those results are processed.

FBI clearances:

An agency pay agreement/business account can also be created between an organization and the FBI, or its authorized agent, for payment of FBI clearances. Information on creating an agency pay agreement for FBI clearances through the Department of Human Services can be found at https://www.pa.cogentid.com/index_dpwNew.htm.

PSP Clearances:

An agency business account can be requested from the Pennsylvania State Police to pay for clearances in bulk by calling the Criminal Records Section Supervisor at 717-787-9092. Organizations are, also able to pay an for applicant's PSP clearance on an individual basis by using a credit card if applying online or submitting a paper check if applying by mail.

Do I still need to submit a copy of my PSP or FBI clearance results when applying for my child abuse clearance?

Beginning December 31, 2014, volunteers are no longer required to submit a copy of their PSP or FBI clearances with their child abuse application. If the department receives copies attached to the child abuse application we will not return those

copies and they will be shredded due to the confidential nature of the information contained on the clearances.

Are there any other requirements?

If a volunteer is arrested for or convicted of an offense that would constitute grounds for denying participation in a program, activity or service, or is named as a perpetrator in a founded or indicated report, the volunteer must provide the administrator or their 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.

A volunteer who willfully fails to disclose information as required above commits a misdemeanor of the third degree and shall be subject to discipline up to and including termination or denial of a volunteer position.

What is the provisional clearance requirement for volunteers?

Volunteers may serve on a provisional basis for a single period not to exceed 30 days if the volunteer is in compliance with the clearance standards under the law of the jurisdiction where the volunteer is domiciled.

Is the person responsible for acceptance of volunteers required to keep a copy of my clearances?

Yes, pursuant to § 6344 (b.1), the employer, administrator, supervisor or other person responsible for employment decisions or acceptance of the individual to serve in any capacity requiring clearances, shall maintain copies of the required information and require the individual to produce the original documents prior to employment or acceptance to serve in any such capacity, except provisional employees for limited periods as described in § 6344.2 (f) and outlined above. An employer, administrator, supervisor or other person responsible for selection of volunteers that intentionally fails to require an applicant to submit the required clearance before the applicant's hiring commits a misdemeanor of the third degree. Agencies are reminded that the child abuse history clearance information is confidential and may not be release to other individuals.

Can an agency or organization institute additional standards?

Yes, nothing prohibits an organization from requiring additional information as part of the clearance process.

Can my clearances be transferred?

Yes, any person who obtained their clearances within the previous 36 months may serve in a volunteer capacity for any program, activity or service.

As a volunteer, do I obtain my Federal Bureau of Investigation Criminal History check through the Department of Education or the Department of Human Services?

The agency under which an applicant should submit their FBI clearance application is based on the agency or organization for which they intend to volunteer. If the



applicant intends to volunteer in a school or at a school related function, they would apply for their FBI clearance through the Department of Education. If the applicant intends to volunteer with children in any other capacity outside of a school setting or function, such as a group home for children, in a church, as a Little League or soccer coach, etc., they would apply for their FBI clearance through the Department of Human Services.

NOTIFICATION REQUIREMENTS

Notification Requirements Under Act 153 of 2014
PSEA Legal Division
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In addition to the Section 111 requirements that school employees have to report to their school administration within 72 hours when they have been arrested or convicted of one of the crimes enumerated in Section 111, Act 153 now requires school employees who are named as perpetrators in a founded or indicated report to notify their school employers within 72 hours of that fact. Employees who willfully fail to do so commit a misdemeanor of the third degree “and shall be subject to discipline, up to and including termination.” 23 Pa.C.S. § 6344.3(H).

PSEA construes this notification requirement to apply to circumstances after December 31, 2014 (the effective date of Act 153). The reason is that there is no provision within Act 153 that requires retroactive reporting, as there was in Section 111.

Note further that it is PSEA’s position that, while those with indicated reports will now be disclosed to employers through the renewal of clearance statements, the indicated report, alone, is not grounds for dismissal. PSEA would argue that an indicated report, alone, does not constitute immorality under the School Code and is not just cause for dismissal.

HIGHER EDUCATION EMPLOYEES

Higher Education Employees
PSEA Legal Division
© April 2015

Act 153 of 2014, which took effect on December 31, 2014, now requires any employee of state-owned or state-related universities, community colleges, or any other independent institution of higher education to obtain background checks if they have direct contact with children under the age of 18. The background checks required of higher education employees are the same required of basic education school employees, namely, a clearance statement from the Department of Human Services (DHS), a criminal history report from the Pennsylvania State Police, and a criminal history report (including fingerprinting) from the FBI. Higher education employees must then renew their background checks every three years.

As with basic education employees, only those higher education employees who have direct contact with children are required by Act 153 to obtain background checks. Direct contact with children includes the “care, supervision, guidance, or control of children” or having “routine interaction with children.”

Many higher education employees who have been continuously employed in the same position have never before obtained background checks. Such employees have until **December 31, 2015** to obtain all three of the above background checks.

For those who have previously obtained background checks, the deadlines for renewing their background checks are as follows:

- If the background checks were issued December 30, 2011 or earlier, then they must be renewed by **December 31, 2015**.
- If the background checks were issued December 31, 2011 or later, then the background checks must be renewed by the three-year anniversary date of its issuance. For example, if a clearance statement was issued on March 20, 2012, then the clearance statement must be renewed by March 20, 2015. The same is true for a state police or FBI criminal history report.

Of course, any individual assuming a new position of higher education employment that involves direct contact with children since December 31, 2014 has been required to obtain background checks prior to providing service in the new employment capacity.

Q: Are higher education students over the age of 18 required to obtain background checks if attending classes with students under the age of 18?

It is PSEA’s position that Act 153 only requires background checks of those having direct contact with children, which means that an individual, on behalf of the higher education institution, is assuming the “care, supervision, or guidance” of students under the age of 18 or having “routine interaction” with students under the age of 18. To have “routine interaction”

under the DHS guidelines, one must be having that routine interaction based upon “regular, ongoing contact that is integral to their day-to-day responsibilities.” Students who are merely attending classes at a higher education institution—and have no responsibilities for the higher education institution such as graduate assistant or student assistant responsibilities regarding that class—are not engaging in “routine interaction” with students under the age of 18 and thus, do not need background checks.

In sum, Act 153 may require higher education students who are over the age of 18 to obtain background checks if they are serving in a capacity such as a graduate or student assistant or in a work-study position in the library, cafeteria, etc. Similarly, students who are assisting with summer sports camps offered by a higher education institution will likely require background checks. Otherwise, it is PSEA’s position that students over the age of 18 who are merely attending classes with students under the age of 18 do not need background checks.

Q: *What if higher education members believe that their positions do not have “direct contact with children,” but they are still being required to obtain background checks by their employer?*

Depending upon the factual circumstances, it may be possible for a local association to file a grievance and/or file an unfair practice on the basis that the higher education employer is imposing a term and condition that exceeds the dictates of Act 153, since that law only requires background checks of those having “direct contact with children.” The remedy to be sought could be employer payment for the background checks. (*See also* “Employers Exceeding the Requirements of Act 153.”)

PROVISIONAL EMPLOYEES

Provisional Employees Under Act 153 of 2014
PSEA Legal Division
© April 2015

Act 153 of 2014 has modified the terms for background checks of provisional employees. Under Act 153, employers, administrators, supervisors, or other persons responsible for employment decisions may employ applicants 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 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 under the Child Protective Services Law (i.e., arrest or conviction of Section 111 crimes or a founded report of child abuse);
- (3) The applicant swears or affirms in writing that he/she is not disqualified from employment by virtue of a conviction or arrest for similar Section 111 crimes in federal jurisdictions or other state jurisdictions, the District of Columbia, the Commonwealth of Puerto Rico, a foreign nation, or a former law of this Commonwealth; and
- (4) 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.

23 Pa.C.S. § 6344(m).

If, ultimately, when the background checks are received, they reveal that an arrest or conviction of a Section 111 crime or a founded report exists, then, the applicant shall be immediately dismissed. *Id.*

Note: Prior to Act 153, school employees who were under 21 years of age or participating in a job development or job training program or employed for not more than 90 days would be exempted from obtaining clearance statements. These exemptions no longer apply under Act 153.

VOLUNTEERS

Requirements of Volunteers Working in Public Schools Under Act 153 of 2014
PSEA Legal Division
© April 2015

Act 153 of 2014 now requires that any unpaid, adult volunteer having direct contact, routine interaction, or responsibility for the welfare of children in public school entities must provide to school entities the following background checks:

- a clearance statement from the Department of Human Services (“DHS,” formerly known as the Department of Public Welfare);
- a state police criminal history report; and
- a written statement that they have been a resident of Pennsylvania for the past 10 years and that they are not disqualified from service based upon certain criminal convictions (i.e., the same criminal convictions that would disqualify school employees from school employment).

Volunteers applying for a paid position or volunteers who have lived outside of the Commonwealth of Pennsylvania in the last 10 years will also have to obtain a FBI criminal history report. (The FBI criminal history report does include fingerprinting.)

The requirement for the above three background checks may be brand new or an expanded requirement for parents, school employee retirees, and other individuals who have previously volunteered in the public schools.

“Direct contact with children” means providing “care, supervision, guidance, or control” of children. Thus, this may include serving as volunteers in the classroom for academic work or special events such as class parties. It also may include serving as a volunteer for a school field trip or other school-related function.

“Routine interaction” means that a volunteer has “regular, ongoing contact” with children that is integral to their volunteer responsibilities. Thus, a volunteer who is assisting the school with discrete tasks and in such capacity, has the potential to have regular, ongoing contact with students as a significant part of their volunteer tasks may be deemed by a public school entity as needing background checks.

“Being responsible for the welfare of children” means that a volunteer is “acting in lieu of or on behalf of a parent.” Thus, for example, a volunteer who operates an after-school club for the school and has responsibility for children during that club could be required to obtain background checks since, during the time children are participating in the club, the volunteer is responsible for the child’s care in lieu of the parent.

The requirements for volunteers obtaining background checks begin **July 1, 2015**. Specifically, any new volunteer will have to submit these three background checks before rendering any volunteer service, starting July 1, 2015. These volunteers will then have to renew these background checks every three years.

For those parents, retirees, or other individuals who have volunteered in the past and have been required to obtain background checks, they will have to seek renewals of their background checks within 36 months of the issuance of the date of the background check. If the background checks have various issuance dates, and volunteers wish to renew their checks at the same time, the deadline for renewal is the oldest issuance date of the background check. For example, if a volunteer has a DHS clearance statement that was issued in September 2012, but her state police background check was not issued until October 2012, if she wishes to renew both at the same time, she will need to renew both by September 2015.

The only exceptions to the above timeframes are for the following:

- For those who were approved by school entities to be a school volunteer without submitting any background checks prior to July 1, 2015, they have until July 1, 2016 to obtain these background checks.
- For those who have been approved by school entities to be a school volunteer with background checks that are older than 36 months, they have until July 1, 2016 to obtain a renewal of these background checks.

Once original or renewed background checks are obtained, they may be used throughout the school entity for any program, activity, or service.

All necessary information, instructions, and links to apply for these background checks may be found at <http://www.dhs.state.pa.us/findaform/childabusehistoryclearanceforms/index.htm>. Costs for the background checks are approximately \$10 for the DHS clearance statement; \$10 for the state police criminal history report; and \$28.75 for the FBI criminal history report (for those who may need it). (For volunteers working in public schools or school-sponsored functions of public schools and requiring an FBI criminal history report, they may be obtained by the Pennsylvania Department of Education. Information about this is found on the DHS link, cited above.) The cost of the background checks rests with the volunteers, although school entities may, if they wish, pay for the costs of volunteers' background checks.

Volunteers will need to submit copies of their background checks to the school entity for which they are volunteering. The school entity will maintain copies of these background checks, while the volunteer retains the original documents.

Volunteers who are arrested or convicted of an offense that would constitute grounds for denying employment to school employees or who have been named as a perpetrator in an indicated or founded report of child abuse must notify the school entity in which they volunteer of such facts. Failure to do so is a misdemeanor of the third degree.

EMPLOYERS EXCEEDING THE REQUIREMENTS OF ACT 153

Employers Exceeding the Requirements of Act 153
PSEA Legal Division
© April 2015

All of the Department of Human Services (DHS) various guidance statements indicate that “[t]he applicant or employee is responsible for paying the cost of the required clearances.” DHS proceeds to state that some employers may choose to pay for background checks, but “[t]he only time an employer is required to bear the cost of the clearances is when there is reasonable belief that the employee was arrested or convicted of an offense that would deny employment or named as a perpetrator in an indicated or founded report.” In such circumstances, employers must require the employee to obtain background checks immediately.

Given this language within the DHS guidelines, it may be difficult to argue that payment of Act 153 background checks is an Item 701 mandatory subject of bargaining. Please note, though, that it is a permissive subject of bargaining.

However, there may be circumstances where the employer exceeds the mandates of Act 153 such that it could be argued that the employer is, in fact, creating a new term and condition of employment beyond that which Act 153 requires. Two important examples of this come to mind:

- (1) Employers who accelerate the time period by which individuals have to obtain background checks (e.g., a school employer requiring employees who would otherwise have until December 31, 2015 to obtain background checks now requires them to have them by the beginning of the 2015-16 school year); and
- (2) Employers who require all school employees to obtain background checks, when, arguably, there are some (e.g., nighttime custodial staff; administrative office employees) who may not have “direct contact with children,” as that term is defined.

In the above situations, local associations may be successful in bargaining that the employer is obligated to pay the cost of the background checks given its imposition of an accelerated deadline for the background checks (as in the first example) or filing a grievance arguing that the employee is not required to obtain background checks under Act 153 since he/she does not have “direct contact with children” and that, as a remedy, the employer must pay for these individuals’ background checks (as in the second example).

INFORMATION FOR THE COMPLETION OF BACKGROUND CHECK APPLICATIONS

Information for Completion of Background Check Applications Under Act 153
PSEA Legal Division
© April 2015

State Police Criminal History Background Check Application

The Pennsylvania State Police Criminal History Background Check application includes various boxes to check documenting the reason for the request for a background check. There is a box for “Education” and a box for “Employment/Screening.” The Pennsylvania State Police have advised that, because our members are seeking these background checks as a condition of their employment, they should check the “Employment/Screening” box.

FBI Criminal History Background Check Application

The federal Adam Walsh Child Protection and Safety Act of 2006 authorizes basic education public and private schools access to the online FBI system to review FBI rap sheets to determine if any employee or potential employee has committed a federal crime that would preclude them from employment.

Higher education facilities, child care facilities, health care institutions, for example, do not have such access.

Thus, when individuals are applying for FBI background checks, the FBI criminal history report will be coded as either “PDE” or “DHS.” The “PDE” check designates that school employers can access the online system. (Because school employers themselves can access the FBI system, the Department of Education cannot.) Conversely, the “DHS” designation indicates that DHS can access the online system for higher education facilities, child care facilities, health care institutions and other institutions not authorized to receive such access under the Adam Walsh Child Protection and Safety Act.

In sum, then, here is a breakdown of what our members should know:

- (1) **Basic Education Employees/Student Teachers**—should ensure that the FBI background check that they receive is coded as “PDE”
- (2) **Higher Education Employees**—should ensure that the FBI background check that they receive is coded as “DHS”

Note: Additionally, it is important to note that FBI fingerprinting for our members may only be done at authorized COGENT sites. (Most UPS stores, and many intermediate units and other school entities are authorized COGENT sites.) While local municipal police offices can, obviously, perform fingerprinting services, they will not be able to provide fingerprinting services for school employees, as the funds authorized for fingerprinting for background checks are state and federal funds and not municipal funds.

Note further: The COGENT site has a map providing information on various COGENT-authorized fingerprinting locations. www.pa.cogentid.com. The COGENT site indicates that most of these sites accept walk-in applicants, except that pre-registration must have been done on the COGENT website within the prior 90 days for any fingerprinting to be completed.

<https://epatch.state.pa.us>

NAME/ REQUESTER	
ADDRESS	
CITY/STATE/ ZIP CODE	

[illegible]

NAME/SUBJECT OF RECORD CHECK (FIRST)		(MIDDLE)	(LAST)		
MAIDEN NAME AND/OR ALIASES		SOCIAL SECURITY NUMBER	DATE OF BIRTH (MM/DD/YYYY)	SEX	RACE

◀◀◀◀◀◀CHECK BOX THAT MOST APPLIES TO THE PURPOSE OF THIS REQUEST▶▶▶▶▶▶

☐ ADOPTION (DOMESTIC)	☐ EMPLOYMENT/SCREENING	☐ PASSPORT
☐ ATTORNEY	☐ FOSTER CARE	☐ PRIVATE INVESTIGATIONS
☐ BANKING	☐ HEALTHCARE	☐ SOCIAL SERVICES
☐ BAR ASSOCIATION	☐ HOUSING	☐ TENANT CHECK
☐ CHURCH	☐ INSURANCE LICENSE	☐ VISA
☐ CHILD CARE	☐ MENTAL HEALTH	☐ VOLUNTEER AMBULANCE/FIREFIGHTER
☐ EDUCATION	☐ NURSE AID TRAINING	☐ VOLUNTEER
☐ ELDER CARE	☐ OTHER _____	
☐ EMERGENCY MANAGEMENT		

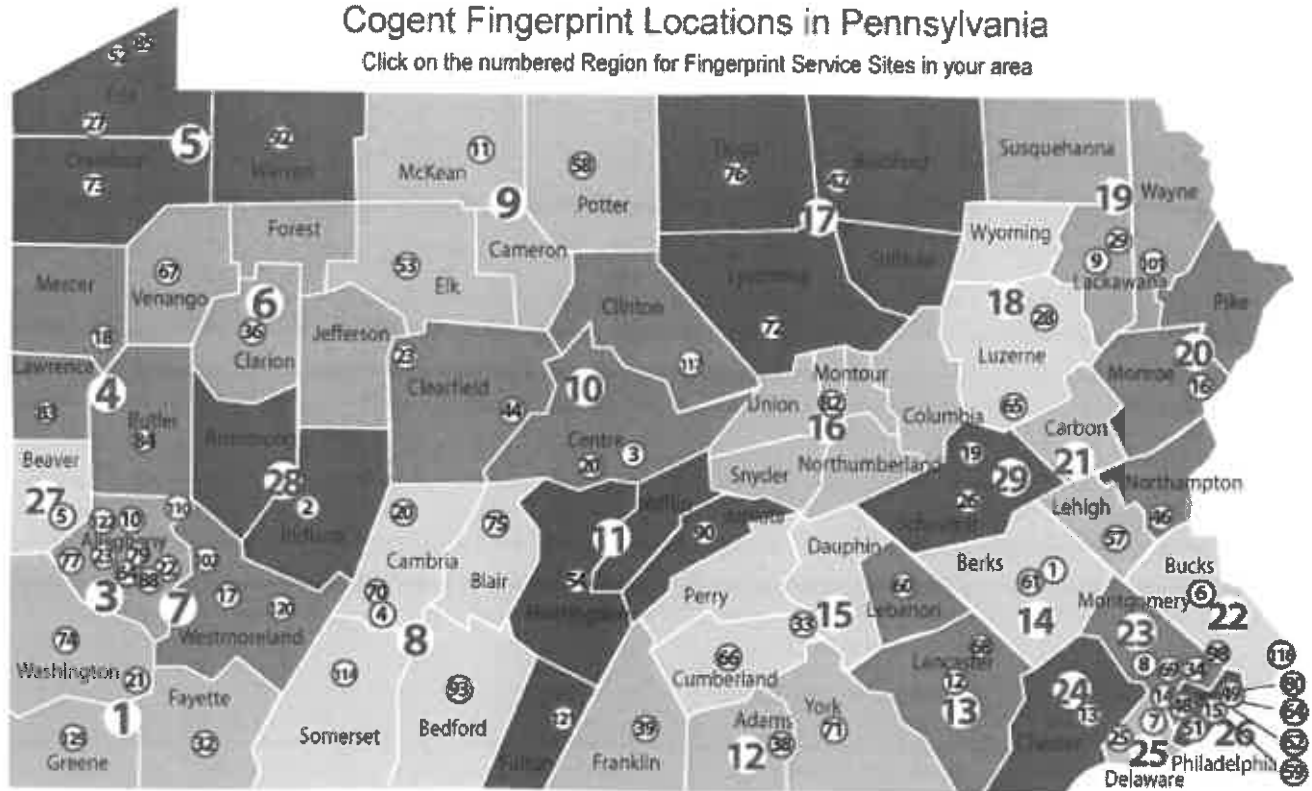
AVAILABLE ONLY TO SUBJECT OF RECORD OR LEGAL REPRESENTATIVE WITH LEGAL AFFIDAVIT AND REQUIRED COPY OF GOVERNMENT PHOTO ID ATTACHED FOR THE PURPOSE OF REVIEWING YOUR CRIMINAL HISTORY.

☐ FEE EXEMPT-NONCRIMINAL JUSTICE AGENCY - NO FEE

Homeland Security is Everyone's Responsibility - Pennsylvania Terrorism Tip Line 1-888-292-1919

Cogent Fingerprint Locations in Pennsylvania

Click on the numbered Region for Fingerprint Service Sites in your area



PENNSYLVANIA CHILD ABUSE HISTORY CLEARANCE

COMPLETE SECTION 1 ONLY. Print clearly in ink. Enclose \$10.00 money order ONLY, payable to DEPARTMENT OF PUBLIC WELFARE. **DO NOT send cash or personal check.**

Send to CHILDLINE AND ABUSE REGISTRY, DEPARTMENT OF PUBLIC WELFARE, P.O. BOX 8170 HARRISBURG, PA 17105-8170

APPLICATIONS THAT ARE INCOMPLETE, ILLEGIBLE OR RECEIVED WITHOUT FEE WILL BE RETURNED UNPROCESSED. IF YOU HAVE QUESTIONS CALL 717-783-6211, OR (TOLL FREE) 1-877-371-5422.

CHILDLINE USE ONLY

DATE RECEIVED BY CHILDLINE

SECTION I

APPLICANT IDENTIFICATION

IN THIS SPACE PRINT APPLICANT'S FULL NAME AND ADDRESS (DO NOT USE INITIALS)

NAME

STREET

CITY, STATE
ZIP CODE

SOCIAL SECURITY NUMBER

AGE

DATE OF BIRTH

DAYTIME PHONE NO.

SEX

☐ M

☐ F

COUNTY YOU LIVE IN

Disclosure of your Social Security number is voluntary. It is sought under 23 Pa.C.S. §§ 6336(a)(1) (relating to information in statewide central register), 6344 (relating to information relating to prospective child care personnel), 6344.1 (relating to information relating to family day-care home residents), and 6344.2 (relating to information relating to other persons having contact with children). The department will use your Social Security number to search the statewide central register to determine whether you are listed as the perpetrator in an indicated or founded report of child abuse.

PURPOSE OF CLEARANCE (Check ONE block ONLY)

- ☐ Child Care Services Employee
- ☐ Foster Care ☐ Adoption ☐ School Employee
- ☐ Employment with a significant likelihood of regular contact with children
- ☐ Volunteers - A copy of your **PROCESSED** "Request for Criminal Record" (Form SP4-164) must be attached. Out-of-state residents must also attach a copy of their **PROCESSED** FBI clearance (Form FD-258).
- ☐ DPW Employment & Training Program Participant
(signature required below)

SIGNATURE OF OIM/CAO REPRESENTATIVE

OIM/CAO PHONE NUMBER

PREVIOUS NAMES USED SINCE 1975 (Include Maiden Name, Nicknames, Aliases)

1. (LAST, FIRST, MIDDLE)

2. (LAST, FIRST, MIDDLE)

3. (LAST, FIRST, MIDDLE)

4. (LAST, FIRST, MIDDLE)

5. (LAST, FIRST, MIDDLE)

PREVIOUS ADDRESSES SINCE 1975 (Attach additional pages if necessary)

1.

2.

3.

4.

HOUSEHOLD MEMBERS (List everyone who lived with you at any time since 1975 to the present)

NAME (Last, First, Middle) Do not use initials.	RELATIONSHIP	PRESENT AGE	SEX
1.			
2.			
3.			
4.			
5.			
6.			

I certify that the above information is accurate and complete to the best of my knowledge and belief and submitted as true and correct under penalty of law (Section 4904 of the Pennsylvania Crimes Code).

Applicants are required to show the administrator the original document. Administrators are required to keep a copy of this child abuse history record on file. Any person altering the contents of this document may be subject to civil, criminal or administrative action.

APPLICANT'S SIGNATURE

DATE

DO NOT WRITE IN THIS SECTION - CHILDLINE USE ONLY

SECTION II		RESULTS OF HISTORY CHECK	
☐ APPLICANT IS NOT LISTED IN A REPORT OF CHILD ABUSE OR A REPORT FOR SCHOOL EMPLOYEE.		☐ APPLICANT IS LISTED IN A REPORT OF CHILD ABUSE OR A REPORT FOR SCHOOL EMPLOYEE (SEE BELOW).	
STATUS OF REPORT	DATE OF INCIDENT	STATUS OF REPORT	DATE OF INCIDENT
1.	-	3.	-
2.	-	4.	-
_____ VERIFIER		_____ VERIFIER'S SUPERVISOR	
_____ DATE		_____ DATE	

SECTION III		VOLUNTARY CERTIFICATION FOR CHILD CARE SERVICES	
_____ has requested a certification which includes a clearance of his/her name against the child abuse, school employee, and criminal history reports. The results of the child abuse and school employee report clearances are listed in Section II on the reverse side. The results of the criminal history reports are listed below. Out-of-state residents must have criminal history clearance from both the Pennsylvania State Police and the FBI. The voluntary certification may be obtained every two years. It is the responsibility of parents and guardians to review this information to determine the suitability of the applicant as a substitute caregiver.			
PENNSYLVANIA CHILD ABUSE HISTORY CLEARANCE			
☐ Applicant is named as the perpetrator of a founded child abuse or school employee report which occurred in the last five years. ☐ Applicant is named as the perpetrator of a founded child abuse or school employee report which occurred over five years ago. ☐ Applicant is named as the perpetrator of an indicated child abuse or school employee report. ☐ Applicant is not named as the perpetrator of any child abuse or school employee report contained in the Statewide Central Register.			
PENNSYLVANIA STATE POLICE CLEARANCE			
☐ Record exists and contains convictions which prohibit hire in a child care position. Report attached. ☐ Record exists, but convictions do not prohibit hire in a child care position. Report attached. ☐ Record exists, but no convictions are shown. This does not prohibit hire in a child care position. Report attached. ☐ No record exists. Report attached.			
FBI CLEARANCE			
☐ Record exists and contains convictions which prohibit hire in a child care position. Report attached. ☐ Record exists, but convictions do not prohibit hire in a child care position. Report attached. ☐ Record exists, but no convictions are shown. This may not prohibit hire in a child care position. Report attached. ☐ No record exists. Report attached. ☐ No FBI clearance required.			
_____ VERIFIER		_____ VERIFIER'S SUPERVISOR	
_____ DATE		_____ DATE	

**DIRECTIONS TO COMPLETE THE
PENNSYLVANIA CHILD ABUSE HISTORY CLEARANCE APPLICATION:**

1. Applicants are to complete Section I only.
2. Type or print clearly and neatly in ink only.
3. The space for the applicant's name must be the applicant's full legal name. An initial is not acceptable for a first name. The address listed must be applicant's current home address. This is also where the results of the clearance will be mailed.
4. The applicant's Social Security number is voluntary. If filling in the Social Security number please fill in the entire Social Security number.
5. Age – Fill in the applicant's current age.
6. Date of Birth – Fill in the applicant's date of birth (Example: 01/22/1990).
7. Daytime Phone Number – Fill in the number for where the applicant can be reached in the event that there are questions about the information on the application.
8. Sex – Check the appropriate box for male or female.
9. County You Live In – Fill in the name of the county where you reside (this should be the county for the address that the applicant filled in the space on the left of this section).
10. **Purpose of Clearance** – Do not check more than one block:
 - a. Check the Child Care box if planning to work in a day care or child care setting.
 - b. Check the Foster Care box if applying as a prospective foster parent.
 - c. Check the School Employee box if seeking to have involvement within a school (public, private, vocational, or technical) for employment or volunteer purposes OR check this box if a child abuse clearance is needed due to enrollment in an educational program such as a nursing school or technical program.
 - d. Check the Adoption Block if in the process or planning to adopt a child.
 - e. Check Employment With A Significant Likelihood of Regular Contact With Children if NONE of the other options relate to why a child abuse clearance is needed.
 - f. Check the Volunteers box if performing a service (paid or unpaid) for organizations such as Big Brothers/Big Sisters, Boy Scouts, Little League, or churches. As noted on the form, if the Volunteer box is checked, the applicant must also attached A COPY of the RESULTS from their PA State Police Criminal History Record Check. Do not send original criminal record results because the original cannot be returned. If the applicant is not a current Pennsylvania resident, the applicant must also attach a copy of their FBI Criminal History results obtained within the past year.
 - g. Check the DPW Employment & Training Program Participant box if the applicant is participating in a Department of Public Welfare employment and training program through a county assistance office, or CAO, or the Office of Income Maintenance, OIM. The signature **AND** phone number of the CAO or OIM representative is required.
11. Previous Names Used Since 1975 - The applicant must list any and all full legal names that they have ever had since 1975. This includes maiden names, aliases and also known as (aka) names.
12. Previous Addresses Since 1975 - List all addresses where the applicant has resided since 1975. The applicant can attach an additional sheet of paper with all of the addresses listed if necessary. If the applicant cannot remember the exact mailing addresses since 1975, filling in as much information as possible about the location will be acceptable.
13. Household Members - Include anyone that the applicant lived with since 1975 (parents, guardians, siblings, children, spouse (ex), paramour, friends, etc.). If the applicant was under the age of 18 in 1975 this section must include other household members who lived with the applicant or with whom the applicant lived. Please note the household member's relationship to the applicant, their age (to the best of your knowledge) and their sex. Applications where this section is left blank will be rejected and returned to the applicant.
14. Applications must be signed and dated. Applications that are not signed and dated will be rejected and returned to the applicant.
15. Enclose a \$10.00 money order for each application. No cash or personal checks will be accepted. Agency or business checks are acceptable.
16. Do not send any postage paid return envelopes for us to return your results. Results are issued through an automated system generated mailing process.

Note: Clearance results will be mailed to you within 14 days from the date that the clearance is received in our office. Failure to comply with the above instructions will cause considerable delay in processing the results of an applicant's child abuse clearance.