THE NEW PA CHILD PROTECTIVE SERVICES LAW - UNDERSTANDING ITS IMPACT AND CONTROLLING ITS RISK

Presented by:
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The PA Child Protective Services Law (CPSL) has undergone sweeping changes in the wake of the Sandusky scandal. While this worthwhile legislation strengthens the ability to prosecute abuse cases, it has also changed your liability risk.
• Discuss how the new law significantly expands what is considered physical & mental abuse

• Share tips on how to mitigate your library’s abuse liability exposure

• Why the new law will likely increase lawsuits

• Discuss why you should have an abuse liability policy
STRICTER CHILD ABUSE LAW
• Significantly expands the state’s definitions of child abuse, especially in the physical injury and mental abuse categories

• Clarifies who is a mandatory reporter
WHY PUBLIC LIBRARIES NOW FALL UNDER THE NEW LAW
The new law includes this provision:

“Program, activity or service.” Any of the following in which children participate and which is sponsored by a school or any public or private organization:

1. A youth camp or program
2. A recreational camp or program
3. A sports or athletic program
4. A community or social outreach program
5. An enrichment or education program
6. A troop, club or similar organization
WHO ARE MANDATED REPORTERS AT YOUR LIBRARY
• Employees of a public library who have direct contact with children in the course of employment.

• In general, any individual paid or unpaid, who, on the basis of the individual’s role as an integral part of a regularly scheduled program, activity or service, is responsible for the child’s welfare or has direct contact with children, is now considered a mandatory reporter. (PAFSA, 2014)
TWO CATEGORIES OF ABUSE AND HOW THEY CHANGED
“Bodily injury” is the impairment of physical condition or substantial pain.
Key issues and changes

- The new law lowers the threshold for physical injuries that trigger the causal conduct to be considered abuse – replacing “serious physical injury” with “bodily injury”

- The law defines “serious physical injury” as severe pain or significant impairment of physical functioning

- The new law’s definition of “bodily injury” uses *substantial* rather than *severe* with respect to pain

- “Bodily injury” as defined by the new law is now *any* impairment of physical condition regardless of the significance
“Serious mental injury” is defined as a psychological condition, as diagnosed by a physician or licensed psychologist, which:

a. Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child’s life or safety is threatened.

b. Seriously interferes with a child’s ability to accomplish age-appropriate developmental and social tasks.
Key issues and changes

- The prior law limits this category to *direct causes* of serious mental injury.

- The new law expands this category to include an act or a series of acts over a course of time that *substantially contribute* to – though do not necessarily directly cause – a child being fearful, agitated, depressed, anxious, etc.
WHY YOUR GENERAL LIABILITY POLICY IS UNLIKELY TO COVER MOST ABUSE CLAIMS
• Commercial General Liability policies cover accidents. “Accidents” are defined as something that are neither “expected or intended.”

• Commercial General Liability policies exclude “intentional acts.”

• Commercial General Liability policies cover “bodily injury”. Emotional or verbal abuses like causing a child to be fearful, agitated, or depressed are outside the definition of bodily injury.
What you should know about Abuse and/or Molestation Liability

- Policies vary greatly in scope. There is no standardized language.

- Pay particular attention to the acts that are covered, and the exclusions.

- If you’re starting an abuse liability policy for the first time, choose an “occurrence” policy over a “claims-made” version.

- “Occurrence” policies cover you for abuse events that happened during the policy period and “claims-made” policies cover you for claims filed during the policy period.

- Do not replace a “claims-made” policy with an “occurrence” policy.
WHAT TO LOOK FOR IN YOUR ABUSE LIABILITY POLICY
• Defense and expense costs should be outside your liability limits

• Policy should have a “laundry list” of covered abuses that include:
  - Alleged abuses
  - Threatened abuses
  - Verbal or emotional abuses
  - Physical abuses
  - Sexual abuses
• Flexibility of either occurrence or claims-made coverage

• Defense coverage for alleged perpetrator until convicted

• Broad definition of who is insured: Trustees, employees, volunteers, etc.
RISK MANAGEMENT TECHNIQUES TO MITIGATE ABUSE INCIDENTS/CLAIMS
• Adopt abuse administration policies and have any individual who has regular or repeated contact with children read and sign

• Require two or more adults to be with a single child at any time

• Install video cameras at facility
Background

• Existing statute was changed in the Summer of 2015 (although the civil statutes of limitation was still left at 12 years past age 18, until age 30). Expect more changes in the future.

• Changes included expansion of the definition of what constitutes child above; expanded the definition of who is to report child abuse; expanded the requirements for child abuse clearances/certifications from a non-profit’s personnel (including volunteers); and expanded the criminal penalties for failure to report child abuse. Ambiguities in the statute still remain.
Background (cont)

• The net effect is to increase the number of claims, and litigation exposure for claims of child abuse and/or violations of the statute, against any non-profit (school or libraries included) that utilizes employees or volunteers who:
  
a) have “direct contact with children”, defined as providing care, supervision, guidance or control of children” and who have “regular and repeated contact with children”, OR
  
b) have responsibility for the child’s welfare (i.e., the person is acting in lieu of or on behalf of a parent) – even if only in an isolated or singular occasion.

• What can you do?
INSURANCE AND POSSIBLE RISK CONTROL
• Read the fine print
• You get what you pay for
• It is too late after the claim has been made and especially after a suit has been filed
OTHER POSSIBLE RISK CONTROL MEANS (WHETHER PREVENTIVE LAW OR OTHERWISE)
A. Add other agreements to your membership or borrower application form, such as:

1. mandatory binding arbitration agreements regarding all claims against the library (in lieu of litigation)

2. all disputes (whether in court or in arbitration) shall be resolved only in the county where the library is located (and not in some foreign county or state)

3. library shall be awarded its reasonable counsel fees and costs incurred in any arbitration or litigation in which it is the substantially-prevailing party

4. none of the above are perfect solutions; each has its pros/cons.
B. Training, and documentation of that training, regarding your employees and volunteers

1. PSP criminal background checks and PA DHS child abuse checks are free

2. FBI/fingerprint/nationwide checks are about $26.00, and needed if employee/applicant has been/is a PA resident for less than 10 years. Make your own certifications if the employee/volunteer has been a PA resident for more than 10 years;
B. Training, and documentation of that training, regarding your employees and volunteers (continued)

3. recognize that there will be some delicate conversations with longer serving/older volunteers;

4. over-compliance ought to be the (optical) goal, rather than bare compliance;

5. internal written policies are helpful, so long as you thereafter comply with your own standards. (See also, employee handbooks, below).
C. Employee Handbooks

1. outline child abuse reporting policies

2. codify and/or clarify to your employees your policies about such issues as who supervises children’s reading groups, unattended children, illegal or threatening or just plain disruptive behavior – and when to ask someone to leave or when to call the police

D. Lobby/write/contact your state representative.
Questions and Answers
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