

# PROPOSED RULEMAKING

## DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 3490]

### Protective Services

#### *Statutory Authority*

The Department of Public Welfare (Department) proposes to amend Chapter 3490 (relating to protective services) to read as set forth in Annex A under the authority of Articles VII and IX of the Public Welfare Code (62 P.S. §§ 701–774 and 901–922); 42 Pa.C.S. §§ 6301–6365 (relating to the Juvenile Act); section 2168 of the County Code (16 P.S. § 2168); section 405 of the County Institution District Law (62 P.S. § 2305); and Chapter 63 of 23 Pa.C.S. §§ 6301–6385 (relating to the Child Protective Services Law (CPSL)).

#### *Purpose of the Proposed Amendments*

It is the purpose of Chapter 3490 to:

- Encourage more complete reporting of suspected child abuse; to involve law enforcement agencies, as permitted by this chapter, in responding to child abuse; and to establish protective services in each county for the purpose of investigating reports swiftly and competently.
- Protect children from further abuse and provide rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life whenever appropriate.
- Ensure that each county children and youth agency establishes a program of general protective services for children; to assess the risk of harm to a child and respond adequately to meet the needs of families and children who may be at risk; and to prioritize the response and services to children most at risk.
- Provide for investigation of reports of suspected abuse of students by school employees and to screen applicants for employment in schools to determine whether or not the applicant has a prior history of abusing children.
- Establish a training and certification program for all county children and youth agency staff who provide direct services to children who are in need of protective services and for persons who supervise direct service workers.

#### *Need for the Proposed Amendments*

These amendments are needed to implement the act of December 15, 1998 (P. L. 963, No. 127) (Act 127), and to clarify and amend existing regulations.

#### *Requirements*

a. Section 3490.2 (relating to purposes) adopts the statutory requirement of section 6302 of the CPSL (relating to findings and purpose of chapter) that when the unity of the family cannot be maintained as a result of abuse, neglect or the need for protective services that the county agency is required to find another alternative permanent family for the child. This is consistent with the language in the Juvenile Act which was amended as a result of the act of December 15, 1998 (P. L. 949, No. 126) (Act 126). The Juvenile Act and the CPSL were amended

to be consistent with the provisions of the Federal Adoption and Safe Families Act of 1997 (42 U.S.C.A. §§ 678, 673b and 679b), which focuses on safety, permanency and timeliness as paramount for all children.

b. Section 3490.4 (relating to definitions) was amended to include a definition of imminent risk. The Department originally trained county agency staff on imminent risk and defined "imminent risk" as substantial evidence that a child would be a victim of serious physical injury, sexual abuse or exploitation except for happenstance, intervention of a third party or actions by the alleged victim. In *E.D. v. Department of Public Welfare*, 719 A.2d 384 (Cmwlth. 1998), the Commonwealth Court held that the standard that the child would have suffered serious physical injury was too high a standard to maintain an indicated report and ordered the report expunged. This prompted the Office of Children, Youth and Families to review its definition of imminent risk. In 1998, the county agencies indicated only 314 reports of imminent risk. A report of imminent risk provides the county children and youth agencies (county agencies) with an opportunity to intervene in a family where there is an indication that a child may be abused in the future. The small number of reports of imminent risk demonstrates missed opportunities to protect children when there is a very high risk of physical injury, sexual abuse or exploitation. Therefore, the Department is proposing to define imminent risk as: "Imminent Risk—The exposure of a child to the substantial probability of serious physical injury or sexual abuse or exploitation which but for happenstance, intervention of a third party, or actions by the child does not occur."

c. Section 3490.34 (relating to pending complaint file and file of unfounded reports awaiting expunction) proposes to adopt the statutory requirement of section 6337 of the CPSL (relating to disposition of unfounded reports) that ChildLine maintain reports of suspected child abuse that were determined unfounded by the county agency for 1 year after the date the report was received by ChildLine. The report will be expunged from the pending complaint file, as soon as possible, but no later than 120-calendar days after the 1-year period following the date the report was received at ChildLine. Prior to Act 127, ChildLine was required to expunge unfounded reports within 120-calendar days of receiving the report. Reports that are ordered to be expunged as the result of the appeal process will be expunged immediately after the time limit for the next level in the appeal process has passed.

This section and § 3490.37(a) (relating to release of information: Statewide Central Register, pending complaint file and file of unfounded reports) are to be further amended to be consistent with the Act 127 amendment in section 6335(b) of the CPSL (relating to information in pending complaint and unfounded report files), which gives law enforcement officials (LEOs) access to these reports when investigating certain crimes. LEOs did not have access to unfounded reports previously. This will give LEOs access to information that could assist them in investigating identified crimes, missing child reports or child abuse. This will also assist county agencies in assessing the risk to a child when the county agency receives a subsequent report of suspected child abuse.

d. Sections 3490.58 and 3490.173 (relating to notifications; and notifications by the county agency) are to adopt the statutory requirement of section 6341(f) of the CPSL

(relating to amendment or expunction of information) that a county agency advise subjects of reports of suspected child abuse that unfounded reports of suspected child abuse will be expunged no later than 120-calendar days following the expiration of 1 year from the date the report was received at ChildLine.

These sections and § 3490.70 (relating to expunction and amendment of report by the county agency) further adopt the statutory requirement of the CPSL that the information regarding subjects of unfounded reports of suspected child abuse, including those determined unfounded through an appeal proceeding, who receive services will be expunged no later than 120-calendar days following the expiration of 1 year after the termination or completion of services provided or arranged by the county agency. The information related to the provision of services other than the unfounded report will be maintained under Chapter 3130 (relating to administration of county children and youth social service programs). When reports are determined to be unfounded as a result of an appeal proceeding, and the family has not been accepted for services, the report will be expunged upon notification from ChildLine. Prior to Act 127 there was no statutory requirement regarding the expunction of unfounded reports of suspected child abuse when the family was accepted for services.

e. Section 3490.60 (relating to services available through the county agency) will adopt the statutory requirement of section 6365(b) of the CPSL (relating to services for prevention, investigation and treatment of child abuse). The county agency is required to make available a multidisciplinary team (MDT) for the prevention, investigation and treatment of child abuse. The county agency shall convene the multidisciplinary team at any time, but not less than annually, to review substantiated cases of child abuse, including responses by the county agency and other agencies providing services to the child. This is to be a systemic review to determine how the county agency is meeting its mandate to investigate reports of suspected abuse and the need for general protective services and provide services to protect children from further abuse and neglect.

The MDT is also required, where appropriate, to assist on a case-by-case basis in the development of a family service plan for the child.

Prior to Act 127, the CPSL required the county agency to have an MDT but it did not define the role of the MDT. The amendments establish two roles for the MDT and that the county agency may convene the MDT at any time, but not less than annually. This amendment will involve other community agencies and professionals in the important role of assisting the county agency in protecting children. Child abuse is a community problem and services should be coordinated to prevent further abuse to a child.

f. Section 3490.60 further proposes to adopt the statutory requirement in section 6365(c) of the CPSL that the county agency and the district attorney establish a team to investigate any case of child abuse involving crimes against children, which are set forth in § 3490.91(a)(9) and (10) (relating to persons to whom child abuse information shall be made available). The county agency administrator and district attorney are required to develop a protocol to be used in receiving and investigating these reports. The district attorney will convene an investigative team in accordance with the protocol. The investigative team will consist of those individuals and agencies responsible for investigating the abuse or for

providing services to the child and will at a minimum include a health care provider, county caseworker and LEO. This amendment will reduce the trauma to a child by having to participate in numerous interviews. Coordination with the LEO will improve prosecution efforts and fortify efforts to assure the safety of the child.

g. Section 3490.91(a)(5) will adopt the statutory requirement of section 6340(a)(5) of the CPSL (relating to release of information in confidential reports) that county agency staff may testify at hearings before a district justice, a judge of the Philadelphia Municipal Court or a judge of the Pittsburgh Magistrates Court when there is a criminal matter involving a charge of child abuse. Prior to Act 127, the confidentiality provisions of the CPSL prohibited county agency staff from testifying at the district justice level without a court order from a court of common pleas. The agency often has information that will aid LEOs in prosecuting alleged perpetrators. The testimony may afford children the protection of the criminal justice system.

h. Section 3490.91(a)(9) will adopt the statutory requirement of section 6340(a)(9) of the CPSL that LEOs have access to information in the county agency files when investigating serious physical injury or one or more of the criminal offenses set forth in section 6344(c) of the CPSL (relating to information relating to prospective child-care personnel). LEOs also have access to child abuse information and general protective services information when investigating any crime involving a child regardless of the relationship of the perpetrator/caretaker to the child.

Under section 6340(a)(15) of the CPSL, LEOs also have access to child abuse information and general protective services when a family moves from one residence or location to another.

The county agency must release any information in any records that may assist the LEO in the investigation. LEOs have access to general protective services information, as § 3490.39 (relating to expunction from the Statewide Central Register) references "reports made under this chapter" and general protective services reports are now handled under the CPSL.

i. Section 3490.91(a)(10) adopts the statutory requirement of section 6340(a)(10) of the CPSL that county agencies must report suspected child abuse to the district attorney, the district attorney's designee or other LEO, as set forth in the county protocols for investigative teams. Except for endangering the welfare of children, all reports of suspected child abuse that might be a criminal offense, or the attempt, solicitation or conspiracy to commit any of the offenses found in section 6344(c) of the CPSL, must be reported to the district attorney, the district attorney's designee or other LEO designated in the county protocol.

The proposed amendment also requires the county agency to report to the district attorney or designee, or other LEO, serious physical injury involving extensive and severe bruising, burns, broken bones, lacerations, internal bleeding, shaken baby syndrome or choking or an injury that significantly impairs a child's physical functioning, either temporarily or permanently, regardless of the relationship of the alleged perpetrator to the child.

j. Section 3490.94 (relating to release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation) will be amended by the addition of subsection (c) which states that the Department will not release the name of a person who made a report of suspected child abuse or cooperated in the

investigation when the person does not respond to the Secretary's written notification asking whether or not the person believes that the release would be detrimental to the person's safety. When the Secretary receives a request to release the name of the person who made a report of suspected child abuse or cooperated in the investigation, the Secretary will write to the person who made the report and ask whether or not that person thinks that the release of the name would be detrimental to the person's safety. This aids the Secretary in making a decision on whether or not to release the name. The Department's policy is not to release the person's name when the person does not respond to the Secretary's written notification. This policy acknowledges that either the Secretary's letter or the person's response was not received. This amendment would regulate current practice of the Department.

k. Sections 3490.105a and 3490.191 (relating to request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995; and request by a school employee to amend or expunge an indicated report of student abuse) will adopt the statutory language in section 6341 (b) of the CPSL which requires the Secretary to notify all subjects when the Secretary grants a perpetrator's request to amend or expunge an indicated report of child abuse. The sections will be amended further to require the Secretary to notify not only the perpetrator but also the county agency when the Secretary denies a perpetrator's request to amend or expunge an indicated report of child abuse. Since the county agency provides information to the Secretary to help make the decision, it is appropriate to notify the county agency of the decision.

The section also proposes to adopt the statutory language that requires the Secretary to notify the appropriate LEOs when the Secretary grants the request to expunge the report. Sections 3490.106a and 3490.192 (relating to hearings and appeals proceedings for indicated reports received by ChildLine after June 30, 1995; and request for a hearing by a school employee for indicated reports of student abuse) was amended to adopt the statutory requirement of section 6341(c) of the CPSL requiring the Secretary to notify the appropriate LEO of a request for a hearing.

l. Section 3490.122 (relating to responsibilities of an applicant, prospective operator or legal entity of a child care service) will adopt the statutory requirement of section 6344(h) of the CPSL that volunteers for the Big Brothers and Big Sisters programs are exempt from paying the processing fee to the Department for a ChildLine clearance to verify whether or not the person's name is on file as a perpetrator of child abuse. The *Pennsylvania Child Abuse History Clearance* form may be downloaded from the Department's website at <http://www.dpw.state.pa.us>.

m. Section 3490.122 will adopt the statutory requirement of section 6344(c)(3) of the CPSL that a child-care administrator may not hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted of a felony offense under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), committed within the 5-year period immediately preceding the request for verification. This will protect children from persons convicted of a felony drug related offense within the preceding 5-year period.

This section was also amended to prohibit an administrator from hiring a person who was convicted of a

Federal crime or crime of another state that is equivalent to one of the Commonwealth crimes listed in section 6344(c) of the CPSL. This section was amended to include the requirements for submission of fingerprints to the Federal Bureau of Investigation when the applicant is not a resident of this Commonwealth.

This section will also be amended by adding subsection (h) to require the administrator of a child care service to make and keep a copy of the original verification certificate. The *Pennsylvania Child Abuse History Clearance* form has instructions to the administrator to keep a copy of the certificate on file. A section requiring an administrator to make and keep a copy is needed for monitoring and enforcement purposes.

n. Section 3490.123 (relating to responsibilities of prospective adoptive parents, prospective foster parents, foster family care agencies and adoption investigators) prohibits adoption agencies, foster care agencies and persons designated by the court under 23 Pa.C.S. § 2535(a) (relating to investigation) from approving an applicant when the applicant has been convicted of a felony offense under the Controlled Substance, Drug, Device and Cosmetic Act, committed within the 5-year period immediately preceding the request for verification. This will protect children from being placed in foster care with or adopted by persons who have been convicted of a felony drug related offense within the preceding 5-year period.

#### *Affected Individuals and Organizations*

The proposed amendments will affect children and youth and their families, as well as public and private children and youth agencies, LEOs, persons seeking employment in a child-care service, prospective foster and adoptive applicants and volunteers for the Big Brothers and Big Sisters program.

#### *Accomplishments/Benefits*

Children deserve to grow up in safe, nurturing homes. Sadly, many are victims of child abuse and neglect. It is a problem that has devastating effects on children and families in this Commonwealth. While substantial progress has been made in addressing this problem, the Department continues to look for ways to protect children. These proposed amendments address amendments to the CPSL as a result of Act 127. Children will be afforded the protection of the law enforcement community by: maintaining unfounded reports for 1 year and giving law enforcement officials access to these reports; joint investigations of reports of suspected child abuse by the members of the investigative team; and reporting all reports of suspected serious physical injury to LEOs. Changing the standard for when children are at imminent risk of serious physical injury or sexual abuse or exploitation from "would have occurred" to "is likely to occur" will allow the county agencies to intervene and deliver needed services to families before the child is actually abused.

In 1998, 75% of the reports of suspected child abuse were determined unfounded and expunged within 120-calendar days of the receipt of the report at ChildLine. In 80% of unfounded reports, the child is injured but the seriousness of the injury does not rise to the level of serious physical injury as defined by the statute and Departmental regulations. Access to this information was limited to county agency staff, employees of the Department, subjects of the reports and the Office of Attorney General when conducting an audit to insure that the expunction requirements of the CPSL and Departmental regulations are being fully and properly conducted. Act

127 and this proposal extend the time that these unfounded reports are maintained by 1 year. ChildLine will keep unfounded reports for 1 year after the date of the oral report to ChildLine under the provisions of the CPSL and this proposal. The county agencies will maintain unfounded reports that are accepted for services for a year after the case is closed for service. Act 127 and these regulations also give LEOs access to information in unfounded reports on file at ChildLine. This information could be very helpful to LEOs when investigating a crime or missing child report, especially when a family moves from one county to another and injures the child again. It alters information available to the LEO and allows the LEO to conduct a more thorough investigation.

The professional community that treats abused children and their families has come to realize that child abuse is a community problem. A solution is located in the total resources of the community, not solely the responsibility of the children and youth agency. After reaching this conclusion, the need for members of different professions to come together periodically to review reports of suspected child abuse and develop a coordinated treatment approach was the next logical step. County MDTs will develop policies and procedures on its role in the community, identify which cases it will review, who will be a member of the MDT and the frequency of meetings. This will be another tool for the community to use in preventing and treating child abuse.

Two noticeable shifts have occurred in the field of protective services over the past 4 decades. First, the extent and severity of child abuse has increased. The number of reports of suspected child abuse has increased from 568 in 1968, the first year following the enactment of the act of August 14, 1967 (P. L. 239, No. 91) (11 P. S. §§ 2101—2110) (Repealed), known as the Child Abuse Law, to 22,589 in 1998. The number of deaths, annually, from child abuse has increased from 19 in 1968, to 52 in 1998.

The sexual abuse of children has always been a sensitive subject. In 1967, the Child Abuse Law did not specifically identify sexual abuse as a type of abuse. The 1999 Annual Report on Child Abuse reflects that sexual abuse was involved in 42% of all substantiated reports.

When the Child Abuse Law was replaced by the CPSL in 1975, the prevailing belief was that child abuse was a family problem and best served by the social services agencies in the community. It was the prevailing view that prosecuting parents for anything less than homicide, sexual abuse or exploitation, or serious bodily injury was counterproductive to preserving the family unity and for getting the alleged perpetrator to cooperate in rehabilitative programs. Criminal prosecution was difficult due to the evidentiary problems of child witnesses.

However, with the passage of time, things have changed. Children are being severely abused and almost half of the reports that are substantiated are sexual abuse. Also, over time, the need for law enforcement involvement and closer working relationships between the county agencies and LEOs has become apparent. Act 127 established the requirement that the county administrator and district attorney establish an investigative team and protocols on the roles and responsibilities of each agency in investigating reports of suspected child abuse that are referred to LEOs. This will streamline the investigative process, allow the two agencies to share information and reduce the trauma to the child in having to repeat information to numerous people during the course of the investigation.

The General Assembly has shown a great deal of interest in assuring the health and safety of children not only when children are in their own homes but also when children are entrusted to the care of a person other than the child's parents. The CPSL was amended to prohibit child care workers and foster and adoptive parent applicants from being approved when they have been convicted of a felony drug offense within the 5-year period preceding clearance.

#### *Fiscal Impact*

- **Public Sector**

The fiscal impact of these proposed amendments will be minimal except for the requirement that the district attorney and county administrator establish an investigative team as required by § 3490.60.

The costs to establish an investigative team in each county are based on the assumption that for every 750 reports of suspected child abuse that were made in 1998, a county would have to hire one additional caseworker. Based on this assumption, it was determined that 29 full-time equivalent caseworkers would be hired State-wide and one full-time supervisor would be hired by Philadelphia because of the number of reports they receive. A cost of living increase of 3.5% per year was used for FY 2000-01 to 2003-04.

Year	2000-01	2001-02	2002-03	2003-04	2004-05
Federal	\$205	\$212	\$220	\$227	\$235
State	\$666	\$690	\$714	\$739	\$765
Counties	\$167	\$175	\$181	\$187	\$194
Total	\$1,038	\$1,077	\$1,115	\$1,153	\$1,194

(The figures are in thousands)

- **Private Sector**

There will be no increase in costs to the private sector.

- **General Public**

Section 3490.122 will adopt the statutory requirement of section 6344(h) of the CPSL that volunteers for the Big Brothers and Big Sisters programs are exempt from paying the processing fee to the Department for a ChildLine clearance to verify whether or not the person's name is on file as a perpetrator of child abuse. In the 4 months between March 1, 1999, when the exemption became effective, and June 30, 1999, ChildLine received and screened 1,100 requests from persons wanting to become a Big Brother or a Big Sister. This means that ChildLine may receive approximately 3,300 requests a year. This will result in annual savings to Big Brothers and Big Sisters volunteers of \$33,000.

#### *Paperwork Requirements*

LEOs may now receive a copy of unfounded reports awaiting expunction from ChildLine. ChildLine will have to make and send a copy to the LEO; thus, resulting in a minimal increase in paperwork for ChildLine.

County agencies are now required to report certain suspected serious physical injuries to an LEO when a parent is the alleged perpetrator. This will result in a minimal increase in paperwork for the county agencies.

#### *Effective Dates*

These amendments will take effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

#### *Sunset Date*

No sunset date has been established for these regulations. The Secretary is required by the law, and these

regulations, to submit an annual report to the Governor and the General Assembly on the implementation of the law. The report must include recommendations to amend the law; thus, the Department is continuously evaluating the effectiveness of the law and the need for amendments.

*Public Comment Period*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Department of Public Welfare, Cathy Utz, P. O. Box 2675, Harrisburg, PA 17105-2675, or fax to (717) 705-0364 within 30-calendar days after the date of publication in the *Pennsylvania Bulletin*. All comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments received after the 30-calendar day comment period will be considered for any subsequent revisions of these proposed amendments.

*Regulatory Review Act*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 21, 2001, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Aging and Youth and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10-calendar days of the close of the Committees' review. The notification shall specify the regulatory review criteria, which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication, of the amendments of objections raised by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTOUN,  
*Secretary*

**Fiscal Note:** 14-469. (1) General Fund; (2) Implementing Year 2000-01 is \$666,000; (3) 1st Succeeding Year 2001-02 is \$690,000; 2nd Succeeding Year 2002-03 is \$714,000; 3rd Succeeding Year 2003-04 is \$739,000; 4th Succeeding Year 2004-05 is \$765,000; 5th Succeeding Year 2005-06 is \$792,000; (4) 1999-00 Program—\$431,245,000; 1998-99 Program—\$403,619,000; 1997-98 Program—\$398,740,000; (7) County Child Welfare; (8) recommends adoption. Funds are included in the budget for this purpose.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART V. CHILDREN, YOUTH AND FAMILIES  
MANUAL**

**CHAPTER 3490. PROTECTIVE SERVICES**

**Subchapter A. CHILD PROTECTIVE SERVICES**

**INTRODUCTION**

**§ 3490.2. Purposes.**

The purposes of this subchapter are to:

\* \* \* \* \*

**(7) Provide another alternative permanent family when the unity of the family cannot be maintained.**

**§ 3490.4 Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

***Imminent risk***—The exposure of a child to the substantial probability of serious physical injury or sexual abuse or exploitation which but for happenstance, intervention of a third party or actions by the child does not occur.

\* \* \* \* \*

**DEPARTMENTAL RESPONSIBILITIES**

**§ 3490.34. Pending complaint file and file of unfounded reports awaiting expunction.**

\* \* \* \* \*

(d) [ **Unfounded reports** ] Reports determined unfounded by the county agency shall be [ **expunged at ChildLine within 120-calendar days after the date of the initial report to ChildLine** ] maintained at ChildLine for 1 year after the date the report was received by ChildLine. ChildLine shall expunge the report, as soon as possible, but no later than 120-calendar days after the 1-year period following the date the report was received at ChildLine.

(e) Reports determined unfounded through the appeal process will be expunged immediately after the expiration of the appeal period for the next level of appeal.

(f) Reports which are unfounded awaiting expunction may not be released from the [ **pending complaint** ] file of unfounded reports awaiting expunction except to a subject of a report upon written request, law enforcement officials, employees of the Department under this subchapter and employees of the Office of Attorney General under section 6345 of the CPSL (relating to audits by Attorney General).

**§ 3490.37. Release of information: Statewide Central Register, pending complaint file and file of unfounded reports.**

(a) A request for information from the Statewide Central Register, pending complaint file or file of unfounded reports by persons permitted access to this information, other than the county agency, or a law enforcement official shall be in writing and signed by the person requesting the information.

\* \* \* \* \*

**COUNTY RESPONSIBILITIES**

**§ 3490.58. Notifications.**

\* \* \* \* \*

(b) Within 72 hours of interviewing the subject, the county agency shall notify the subject in writing of:

\* \* \* \* \*

(5) The fact that the report, if determined unfounded, will be expunged from the pending complaint file [ **within** ] no later than 120-calendar days following the expiration of 1 year from the date the report was received at ChildLine.

\* \* \* \* \*

(d) Except for the subject child, the county agency shall notify all subjects in writing of one of the following when the county agency determines that the report is unfounded:

(1) The information will be kept on file at the county agency and clearly identified as an unfounded report of suspected child abuse when the family has been accepted for services. **The information regarding the unfounded report of suspected child abuse will be expunged no later than 120-calendar days following the expiration of 1 year after the termination or completion of services provided or arranged by the county agency. The information related to the provision of services other than the unfounded report shall be retained under § 3130.43 (relating to family case records).**

(2) The report is unfounded and because the family has not been accepted for services that all information will be expunged at the county agency upon notification from ChildLine and that the report will be expunged from the pending complaint file within 120-calendar days **following expiration of 1 year** of receipt of the report at ChildLine.

\* \* \* \* \*

**§ 3490.60. Services available through the county agency.**

(a) **Additional services.** In addition to those services required in Chapter 3130 (relating to administration of county children and youth social service programs), the county agency shall provide, arrange or otherwise make available the following services for the prevention and treatment of child abuse:

\* \* \* \* \*

(3) Multidisciplinary teams composed of professionals from a variety of disciplines who are consultants to the county agency in its case management responsibilities as required by Chapter 3130 who perform one of the following functions:

\* \* \* \* \*

(iv) Participate in the State or local child fatality review team authorized under section 6340(a)(4) and **section 6343(b)** of the CPSL (relating to release of information in confidential reports; and performance audit) convened by a professional, an organization and the county agency for the purpose of investigating a child fatality or the development and promotion of strategies to prevent child fatality.

(b) **Multidisciplinary team.** The county agency shall make available a multidisciplinary team for the prevention, investigation and treatment of child abuse and shall convene the multidisciplinary team at any time, but not less than annually:

(1) **To review founded and indicated cases of child abuse, including responses by the county agency and other agencies providing services to the child.**

(2) **To assist in the development of a family service plan for the child, when appropriate.**

(c) **Investigative team.** The county agency and the district attorney shall develop a protocol for the convening of investigative teams for any case of child abuse involving crimes against children, which are set forth in § 3490.91(a)(9) and (10) (relating to release of information in confidential reports).

(1) **The county protocol shall include standards and procedures to be used in receiving and referring reports and coordinating investigations of reported cases of child abuse and a system for sharing the information obtained as a result of any interview.**

(2) **The protocol shall include other standards and procedures to avoid duplication of fact-finding reports and interviews to minimize the trauma to the child.**

(3) **The district attorney shall convene an investigative team in accordance with the protocol. The investigative team shall consist of those individuals and agencies responsible for investigating the abuse or for providing services to the child and shall at a minimum include a health care provider, county caseworker and law enforcement official.**

**§ 3490.70. Expunction and amendment of report by the county agency.**

(a) The county agency shall amend or expunge a record of child abuse upon notification from ChildLine. The county agency shall expunge all information in its possession in unfounded, founded and indicated reports of child abuse upon notification from ChildLine. The county agency shall notify those to whom it gave information to take similar action.

(b) **When the report has been unfounded and the family has been accepted for services, the information shall be kept on file at the county agency and clearly identified as an unfounded report of suspected child abuse. The information regarding the unfounded report will be expunged no later than 120-calendar days following the expiration of 1 year after the termination or completion of services provided or arranged by the county agency. The information related to the provision of services other than the unfounded report shall be retained under § 3130.43 (relating to family case records).**

**CONFIDENTIALITY**

**§ 3490.91. Persons to whom child abuse information shall be made available.**

(a) Reports, report summaries and other accompanying information obtained under the CPSL and this chapter in the possession of the Department and a county agency are confidential. Except for the subject of a report, persons who receive information under this section shall be advised that they are subject to the confidentiality provisions of the CPSL and this chapter, that they are required to insure the confidentiality and security of the information and that they are liable for civil and criminal penalties for releasing information to persons who are not permitted access to this information. This material shall only be released under the CPSL and this chapter and be made available only to the following:

\* \* \* \* \*

(5) A court of competent jurisdiction [ **under a court order** ], including a district justice, a judge of the Philadelphia Municipal Court and a judge of the Pittsburgh Magistrates Court, pursuant to court order or subpoena in a criminal matter involving a charge of child abuse under § 3490.4 (relating to definitions) or a court of common pleas upon written request from a judge in connection with any matter involving custody of a child. **Disclosure through testimony shall be subject to the restriction of**

§ 3490.94(a) (relating to release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation).

\* \* \* \* \*

(9) Law enforcement officials of any jurisdiction inside or outside of this Commonwealth, if the information is relevant in the course of investigating cases of:

(i) Homicide, or other criminal offenses set forth in section 6344(c) of the CPSL (relating to information relating to prospective child care personnel), sexual abuse or exploitation, [or] serious bodily injury or serious physical injury perpetrated by persons whether or not related to the victim.

\* \* \* \* \*

(iii) Repeated physical injury to a child under circumstances which indicate that the child's health, safety or welfare is harmed or threatened.

\* \* \* \* \*

(10) [Law enforcement officials who] The district attorney or a designee or other law enforcement official, as set forth in the county protocols for investigative teams required in § 3490.60 (relating to services available through the county agency), shall immediately receive reports of suspected child abuse from the county agency, when the initial report or initial review by the county agency gives evidence that the alleged child abuse is one of the following:

(i) [Homicide,] A criminal offense set forth in section 6344(c) of the CPSL (relating to information relating to prospective child-care personnel) not including an offense under section 4304 of the CPSL (relating to endangering welfare of children) or an equivalent crime under Federal law or the law of another state, sexual abuse or exploitation, or serious bodily injury perpetrated by persons whether or not related to the child.

\* \* \* \* \*

(iii) Serious physical injury involving extensive and severe bruising, burns, broken bones, lacerations, internal bleeding, shaken baby syndrome, or choking, or an injury that significantly impairs a child's physical functioning, either temporarily or permanently.

\* \* \* \* \*

(18) Appropriate officials of another county or state regarding an investigation related to child abuse or protective services when a family has moved to that county or state. Reports under this paragraph shall include general protective service reports and related information. Reports and information under this paragraph shall be provided under § 3490.401 (relating to intercounty transfer of cases).

§ 3490.94. Release of the identity of a person who made a report of suspected child abuse or cooperated in a subsequent investigation.

\* \* \* \* \*

(c) If the person does not respond to the Secretary's written notification, the Department will not release the person's name.

GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES

§ 3490.105a. Request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995.

\* \* \* \* \*

(b) The Secretary will decide within 30-calendar days whether or not to grant the request. The Secretary will notify the perpetrator, the county agency and other subjects in writing as follows:

(1) [Except the subject child,] The perpetrator, the county agency, all other subjects of the report and the appropriate law enforcement officials when the decision is to grant the request.

(2) [Only the] The perpetrator and county agency when the decision is to deny the request.

\* \* \* \* \*

§ 3490.106. Hearings and appeals proceedings for reports received by ChildLine prior to July 1, 1995.

\* \* \* \* \*

(h) Parties to a hearing held under this section have [30] 15-calendar days from the date of the final order of the Bureau of Hearings and Appeals to request the Secretary to reconsider the decision or 30-calendar days to appeal the final order to the Commonwealth Court.

§ 3490.106a. Hearings and appeals proceedings for indicated reports received by ChildLine after June 30, 1995.

\* \* \* \* \*

(f) Hearings will be scheduled and final administrative action taken in accordance with the time limits specified in § 275.4(b) and (e)(1), (3) and (5) (relating to procedures). In addition to any other notifications required by these sections, the appropriate law enforcement officials will be given notice of the hearing.

\* \* \* \* \*

§ 3490.108. Cooperation of county agencies and law enforcement agencies.

Consistent with this chapter, the county agencies and law enforcement agencies shall cooperate and coordinate, to the fullest extent possible, their efforts to respond to and investigate reports of suspected child abuse.

VERIFICATION OF THE EXISTENCE OF CHILD ABUSE AND STUDENT ABUSE RECORDS FOR CHILD CARE SERVICES

§ 3490.122. Responsibilities of an applicant, prospective operator or legal entity of a child care service.

(a) An applicant or prospective operator of a child care service shall submit a request for verification on forms provided by the Department. The request for verification shall include a check or money order for the fee charged by the Department, payable to the Department of Public Welfare, which will not exceed \$10. A fee will not be charged to an individual who makes the request to apply to become a volunteer with an affiliate of Big Brothers of America or Big Sisters of America. Prospective [workfare] Workfare program participants are exempt from payment of the fee. To obtain a form for the clearance statement, an applicant may call

the ChildLine verification unit at (717) 783-6211 and request a *Pennsylvania Child Abuse History Clearance Form* or it can be downloaded from the Department of Public Welfare Website at <http://www.dpw.state.pa.us>.

\* \* \* \* \*

(d) An administrator, or other person responsible for hiring decisions, may not hire or contract with an applicant, nor may a prospective operator be issued a certificate of compliance or registration if the applicant's criminal history record information dictates that the applicant or prospective operator has been convicted of a crime as specified in section 6344 of the CPSL (relating to information relating to prospective child-care personnel), **an equivalent crime under Federal law** or an equivalent out-of-State crime as determined by the Department.

\* \* \* \* \*

(f) An applicant or prospective operator of a child care service located in this Commonwealth who is not a resident of this Commonwealth **[is required]** shall submit a full set of fingerprints to ChildLine on Federal Bureau of Investigation forms provided by ChildLine. ChildLine shall submit the fingerprints to the Federal Bureau of Investigation to obtain a report of criminal history record from the Federal Bureau of Investigation **[according to procedures established by the Department and on forms provided by ChildLine]**. ChildLine shall serve as the intermediary for the purposes of this subsection.

(g) An administrator may not hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted of a felony offense under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), committed within the 5-year period immediately preceding the request for verification.

(h) The administrator shall make and maintain a copy of the original *Pennsylvania Child Abuse History Clearance* verifying whether or not the name of the applicant is on file at ChildLine. If the applicant is hired, the copy shall be placed in the employee's personnel record.

**§ 3490.123. Responsibilities of prospective adoptive parents, prospective foster parents, foster family care agencies and adoption investigators.**

\* \* \* \* \*

(d) A prospective adoptive parent or prospective foster parent may not be approved by a foster family care agency, an adoption agency, or a person designated by the court under 23 Pa.C.S. § 2535(a) **(relating to investigation)** when any of the following circumstances exist:

\* \* \* \* \*

(4) The parent has been convicted of a felony offense under the Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), committed within the 5-year period immediately preceding the request for verification.

\* \* \* \* \*

**Subchapter B. ABUSE OF STUDENTS IN SCHOOL COUNTY RESPONSIBILITIES**

**§ 3490.173. Notification by the county agency.**

\* \* \* \* \*

(b) Within 72 hours of the initial interview, the county agency shall notify the subject in writing of the following:

\* \* \* \* \*

(5) The fact that unfounded reports are expunged within 120-calendar days **after the expiration of 1 year** of the receipt of the report by ChildLine.

\* \* \* \* \*

**GENERAL REQUIREMENTS FOR STUDENT ABUSE**

**§ 3490.191. Request from a school employe to amend or expunge an indicated report of student abuse.**

(a) The school employee responsible for the student abuse may request the Secretary to amend or expunge an indicated report for a school employee on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter. The written request shall be postmarked within 45-calendar days of the mailing date of the letter from **[the Statewide Central Register notifying the employe of the indicated status]** ChildLine under §§ 3490.40 and 3490.40a (relating to notifications regarding indicated reports; and notifications regarding founded reports).

(b) The Secretary will decide whether to grant or deny a request made under subsection (a) within 30-calendar days from the date the request is received. The Secretary will notify **the school employee responsible for the student abuse**, all subjects of the report and the appropriate county agency **[of the decision by first-class mail.]** in writing as follows:

(1) **The school employee responsible for the student abuse, the county agency, all other subjects of the report, and the appropriate law enforcement officials when the decision is to grant the request.**

(2) **The school employee responsible for the student abuse and the county agency when the decision is to deny the request.**

(c) **The notification from the Secretary will be sent by first-class mail.**

**§ 3490.192. Request for a hearing from a school employe for indicated reports of student abuse.**

\* \* \* \* \*

(f) Hearings will be scheduled and final administrative action taken in accordance with the time limits specified in § 275.4(b) and (e)(1), (3) and (5) (relating to procedures). **In addition to any other notifications required by these sections, the appropriate law enforcement officials will be given notice of the hearing.**

[Pa.B. Doc. No. 01-941. Filed for public inspection June 1, 2001, 9:00 a.m.]

**GAME COMMISSION**

[58 PA. CODE CHS. 139 AND 147]

**Deer Damage Areas; Deer Control**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its April 10, 2001, meeting, proposed the following amendments:



Rescind § 139.16 (relating to deer damage areas). Since the antlered and antlerless deer seasons will run concurrently, this program is no longer needed.

Amend §§ 147.552—147.554 (relating to application; permit; and subpermit), by removing reference to the Deer Damage Area Program.

These amendments will have no adverse impact on the wildlife resources of the Commonwealth.

The authority for these proposals is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

These proposals were made public at the April 10, 2001, meeting of the Commission, and comments on these proposals can be sent to the Director of Information and Education of the Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until June 8, 2001.

§§ 139.16 and 147.552—147.554

1. *Introduction*

To deal with damage being done by deer on farmland in this Commonwealth, the Commission promulgated regulations providing for the designation of “deer damage areas” and allowing antlerless deer to be taken with the appropriate antlerless license on those areas during the antlered deer season. The primary provisions providing for these areas are contained in § 139.16 (relating to deer damage areas). At its meeting on April 10, 2001 (See 31 Pa.B. 2793 (June 2, 2001).), the Commission finally adopted seasons and bag limits which provide for concurrent antlered and antlerless deer seasons. As a result, the deer damage area designation becomes meaningless. The Commission therefore proposed eliminating and reserving all provisions relating to deer damage areas. These changes are proposed under section 2102 of the code (relating to regulations).

2. *Purpose and Authority*

As was indicated in the Introduction, the Commission has established concurrent antlered and antlerless deer seasons throughout this Commonwealth for 2001. As a result, the provision contained in § 139.16 for the killing of antlerless deer during the antlered deer season has become meaningless. This Commission has therefore proposed changing all sections referring to deer damage areas to eliminate those references.

Section 2102 of the code, authorizes the Commission to promulgate regulations relating to seasons and bag limits and game and wildlife. This section provides the authority for the proposed changes.

3. *Regulatory Requirements*

The proposed changes would eliminate a program that has become obsolete so there would be no additional requirements.

4. *Persons Affected*

Since deer hunters will be able to take antlerless deer during the antlered seasons throughout this Commonwealth, the proposed changes should have no impact.

5. *Cost and Paperwork Requirements*

The proposed changes would not result in any additional cost, either to the Commission or to hunters.

6. *Effective Date*

These changes would be effective on final publication in the *Pennsylvania Bulletin* and would remain in effect until changed by the Commission.

7. *Contact Person*

For further information on the proposed changes the contact person is David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-132. No fiscal impact; (8) recommends adoption.

*(Editor's Note:* For a corrective amendment concerning § 147.553, see 31 Pa.B. 2798 (June 2, 2001).)

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 139. SEASONS AND BAG LIMITS**

§ 139.16. [ **Deer damage areas** ] (Reserved).

[ (a) **This section provides for the hunting and taking of antlerless deer during the antlered deer season on certain lands designated by the Executive Director as “Deer Damage Areas.”**

(1) **To qualify as a designated deer damage area, the landowner or lessee of the eligible farmland shall be enrolled as a participant in the Commission's cooperative farm game program or safety zone program. All contiguous land owned or leased must be enrolled in the program and remain open to public hunting throughout the hunting license year.**

(2) **Interested landowners shall contact their respective Commission regional office in writing or by phone between July 1 and August 31 of each year. If contacting the office by mail, correspondence shall be postmarked by August 31.**

(3) **Commission officers will contact interested landowners by October 10 and provide them with the program details and assist them with the sign-up procedures.**

(4) **Deer damage area signs provided by the Commission shall be conspicuously posted on the boundary of and along all public roadways traversing the property by the landowner/cooperator on all contiguous acres of the farm under agreement. Posting should be completed prior to the opening of the fall archery deer season, but no later than October 31.**

(5) **Failure to meet any conditions in paragraph (1), (2), (3) or (4), will cause the farm to be removed from the deer damage area program.**

(b) **Hunters shall have the appropriate antlerless license for the county in which the deer damage area is found before hunting or taking an antlerless deer. ]**

**CHAPTER 147. SPECIAL PERMITS**

**Subchapter R. DEER CONTROL**

**AGRICULTURE**

§ 147.552. **Application.**

\* \* \* \* \*

(b) Applications will only be accepted from persons who have been enrolled in [ **the Deer Damage Area Program (Program) for at least 2 hunting seasons**

immediately preceding their applications; or from persons who have been enrolled in ] one of the Commission public access programs (Farm Game Project or Safety Zone—P.1-2-3) for a minimum of 2 years and are currently enrolled in the Program.

\* \* \* \* \*

§ 147.553. Permit.

The deer control permit authorizes the permittee to enlist the aid of a limited number of subpermits. The maximum number of subpermits issued will be no more than one for every 5 acres of land that is under cultivation [and enrolled in the Deer Damage Area Program] unless the wildlife conservation officer recommends an increase in the number due to warranted circumstances.

(1) Validity. The permit is valid from February 1 to September [30] 28 each calendar year, excluding Sundays, during the hours of dawn to dusk only.

\* \* \* \* \*

§ 147.554. Subpermit.

The permittee may acquire from the Commission subpermits, not to exceed the number provided for in § 147.553 (relating to permit), to be issued to qualified individuals of the permittee's choosing for the purpose of removing deer from the permittee's property by shooting. There is no fee charged for the subpermit. Qualifications are as follows:

\* \* \* \* \*

(3) A permittee may not issue more than one subpermit to a person to take deer on the permittee's land enrolled in the [Deer Damage Area Program] Agricultural Deer Control Program.

\* \* \* \* \*

[Pa.B. Doc. No. 01-942. Filed for public inspection June 1, 2001, 9:00 a.m.]

\_\_\_\_\_

STATE BOARD OF BARBER EXAMINERS

[49 PA. CODE CH. 3]

[Correction]

Standards for Disinfection and Sanitation

An error appeared in a proposed amendment to 49 Pa. Code Chapter 3, published at 31 Pa.B. 2686, 2687 (May 26, 2001). The fiscal note information should read as follows:

Fiscal Note: 16A-424. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 01-902. Filed for public inspection May 25, 2001, 9:00 a.m.]

\_\_\_\_\_

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

[Correction]

General Revisions

An error appeared in a proposed amendment to 49 Pa. Code Chapter 19, published at 31 Pa.B. 2691, 2693 (May 26, 2001). The correct title of the proposal is "General Revisions" and the fiscal note information should read as follows:

Fiscal Note: 16A-602. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 01-903. Filed for public inspection May 25, 2001, 9:00 a.m.]

\_\_\_\_\_