



PA Court: lifetime employment bans “unconstitutional and unenforceable”

Commonwealth Court decision arrives as DHS/PDE/PCCD offer recommendations to General Assembly

December 30th – Today Pennsylvania’s Commonwealth Court issued a unanimous opinion which will expose Pennsylvania’s employment screening and prohibitive hire provisions within the Older Adult Protective Services Act (OAPSA), Child Protective Services Law (CPSL) and Public School Code (PSC) to further scrutiny.

In its *Peake v. the Commonwealth of PA* decision issued Wednesday, Commonwealth Court determined that the lifetime employment ban provision within OAPSA is “unconstitutional and unenforceable.” The opinion further stipulates that the Commonwealth is “hereby enjoined from enforcing the lifetime employment ban contained” in OAPSA.

Today’s decision comes 12 years, to the day, after another pivotal legal decision from the Supreme Court of Pennsylvania (*Nixon v. Commonwealth of PA, et al*, 2003). This 2003 decision found the prohibitive hire provisions of OAPSA unconstitutional.¹

Wednesday’s Commonwealth Court decision also arrives in the same week that the Pennsylvania Department of Human Services (DHS) joined with the Department of Education (PDE) and PA Commission on Crime and Delinquency (PCCD) to set forth a report and recommendations to the Pennsylvania General Assembly on employment (and volunteer) bans for those “having contact” with children.

Repeated court challenges of the prohibitive hire provisions in OAPSA, CPSL and PSC

[Section 503 of OAPSA](#) sets forth the “grounds for denying employment” requiring that community-based agencies (e.g., home health care) and facilities that serve older Pennsylvanians (over the age of 60) shall “in no case” hire an applicant that has been convicted of any number of enumerated serious criminal offenses.

¹ <http://caselaw.findlaw.com/pa-supreme-court/1239455.html>

Similar to the CPSL and PSC, OAPSA's lifetime ban on employment is linked to criminal convictions that include, but are not limited to, criminal homicide, aggravated assault, rape, kidnapping, involuntary deviate sexual intercourse, endangering the welfare of children, and indecent assault.²

OAPSA was enacted in 1987 with updates in 1996 and 1997 to address hiring practices, including establishing a ban for certain potential hires. The 1997 change to OAPSA impacted not only prospective employees, but also those who were already employed at an agency for less than one year. The retroactive (a 1 year look back) meant some current employees could be discharged, creating a differential approach to employees based on their length of employment with an agency. The Nixon court case was triggered by the 1997 change and petitioners arguing that the law "violated their due process rights by arbitrarily infringing on their right to pursue a lawful occupation."³

Before the Nixon case reached the state Supreme Court, it too was before Commonwealth Court. That court, as they did today, declared the criminal history provisions as unconstitutional but in Nixon the applicability was limited to the immediate petitioners. In deciding the case back in 2001, Commonwealth Court called the criminal history provisions "arbitrary and irrational."³

In 2003, the Supreme Court of PA established that the General Assembly "may enact laws that restrict who may work" with vulnerable populations and that "barring certain convicted criminals from working with these citizens may be an effective means of protecting such citizens from abuse and exploitation." The decision around constitutionality was influenced then based on the fact that the 1997 legal changes applied to existing employees (only those employed for less than one year), while those longer term employees were not subject to the background check provisions.

The applicability of the 2003 court decision was thus seen as limited to the specific five employees that had petitioned the court. In fact guidance from state agencies stipulates that the Nixon decision "granted specific relief to the individual plaintiffs and not to all persons affected by the criminal history background check provisions in OAPSA."⁴

Since the Nixon decision, background checks remain in place but OAPSA covered facilities are not subject to sanction if they hire a person with a criminal conviction. Each hiring decision is determined on a case-by-case basis with agencies and facilities are able to hire persons "who demonstrate rehabilitation by evidence of a minimum five-year aggregate work history in care-dependent services, without incident, from either the date of conviction or release from incarceration, whichever is later."⁵

Since the Nixon decision, the General Assembly has not altered OAPSA's criminal history provisions leaving intact the lifetime employment ban as well as the differential categories of employees impacted.

² <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=616725&mode=2>

³ <http://www.pacourts.us/assets/opinions/Commonwealth/out/359md00.pdf>

⁴ http://www.portal.state.pa.us/portal/server.pt/community/self_study_course/18031/unit_4__criminal_background_checks/616720

⁵ http://www.portal.state.pa.us/portal/server.pt/community/self_study_course/18031/unit_4__criminal_background_checks/616720

The current case (Peake v. the Commonwealth) before the court was set in motion when Tyrone Peake, Resources for Human Development, Inc. and several other petitioners lodged a “constitutional challenge” to the OAPSA provision that “prohibits with even one conviction of a list of enumerated crimes to be employed in the care of older adults.” Resources for Human Development, Inc. filed with the individual employees. RHD, Inc. operates “facilities for those with mental illness, mental retardation and chemical dependency issues.” Based on the definition of “facilities” in OAPSA, a wide array of human service agencies are captured.

The court’s opinion provides a snapshot of the petitioners and the convictions that bar them from being employed at an OAPSA covered facility.

Tyrone Peake, who is 52 years old, “rode with friends in a stolen vehicle when he was 18 years old.” He was convicted of “attempted theft of an automobile and served three years of probation.” Under OAPSA prohibitive hire provisions, he is precluded from being hired at an OAPSA covered facility. Another petitioner who is 60 years old and is a licensed practical nurse was convicted in 1998 of “possession of drugs with intent to deliver.”

The Commonwealth, led by the Departments of Aging, Health and Human Services, “moved to dismiss the petition for review.” Today Commonwealth Court granted summary relief to the petitioners because the court found OAPSA’s “lifetime employment ban is unconstitutional on its face.”⁶

In today’s opinion, Commonwealth Court cited a 2004 decision (Warren County Human Services v. State Civil Service Commission) whereby an existing children and youth employee was fired after the CYS agency realized they had wrongly applied a 5-year ban versus a lifetime ban when the prospective employee disclosed his conviction for aggravated assault. The employee was discharged “notwithstanding his exemplary performance as a caseworker.” In that decision, Commonwealth Court advised that the CPSL “should be fine-tuned to provide for specific time limitations for each crime depending on its egregiousness.”

Then in 2012, the Court considered another lifetime employment ban case involving an employee at the Allegheny Intermediate Unit (IU) who had been hired with a “10-year old felony voluntary manslaughter conviction.”⁷ In 2011, the General Assembly amended the PSC converting such a conviction to a lifetime ban. The IU “discharged the employee in spite of an exemplary 20-year work record.” In response, the court “held that the lifetime employment ban was unreasonable unduly oppressive and patently beyond the necessities of the offense and imposed unusual and unnecessary restrictions upon lawful employment and, as such did not bear a real and substantial relationship to the Commonwealth’s interest in protecting children.”

Returning to the Peake case, today’s opinion notes that the petitioners did not “suggest that they should not be subject to a criminal history check” instead they “challenge the lifetime employment ban, which encompasses convictions for crimes ranging from murder and rape to

⁶ T. Peake, et al. v. PA DHS, et al. - 216 M.D. 2015 decided December 30, 2015 retrieved at http://www.pacourts.us/assets/opinions/Commonwealth/out/216MD15_12-30-15.pdf?cb=1

⁷ <http://caselaw.findlaw.com/pa-commonwealth-court/1618032.html>

misdemeanor theft convictions, and treats all these enumerated crimes the same.” The opinion addresses that “employers are stripped of discretion” because the law makes the employee’s criminal history “the single and overriding factor” to be considered.⁸

CPSL and Public School Code “are not uniform” in prohibitive hire provisions

Act 153 of 2014 (specifically Section 15) directed the Pennsylvania Department of Human Services (DHS) to work with the Pennsylvania Department of Education (PDE) and the Pennsylvania Commission on Crime and Delinquency (PCCD) to “conduct a study to analyze and make recommendations on employment bans for those having contact with children in this Commonwealth.” This study was to be provided to key standing committees of the General Assembly (e.g., Senate Aging and Youth and Public Health and Welfare and House Children and Youth and Health) no later than December 31, 2015. The General Assembly expected that the study would result in recommendations on the following:

1. “Changes in permanent and temporary employment bans, which realign and make uniform the provisions of section 111 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, and 23 Pa.C.S. Ch. 63 with regard to employment bans, including the offenses relating to the welfare of a child to be included in any ban.
2. An appeals process.”

The background check provisions within the Child Protective Services Law (CPSL) are applicable to:

- **An employee of a child care service** which includes any of the following (outside of administrative or support personnel that do not have direct contact with children):
 - Includes any of the following:
 - Child day-care centers.
 - Group day-care homes.
 - Family child-care homes.
 - Foster homes.
 - Adoptive parents.
 - Boarding homes for children.
 - Juvenile detention center services or programs for delinquent or dependent children.
 - Mental health services for children.
 - Services for children with intellectual disabilities.
 - Early intervention services for children.
 - Drug and alcohol services for children.
 - Day-care services or programs that are offered by a school.

⁸ http://www.pacourts.us/assets/opinions/Commonwealth/out/216MD15_12-30-15.pdf?cb=1

- Other child-care services that are provided by or subject to approval, licensure, registration or certification by the department or a county social services agency or that are provided pursuant to a contract with the department or a county social services agency.
- **Foster and adoptive parents,**
- **Self-employed family child-care providers,**
- **A person 14 years of age or older that will be paid as an employee of a program, activity or service, as a person responsible for the child's welfare or having direct contact with children,**
- **A family living home, a host home for children or a community home for individuals with an intellectual disability**
- **Individuals 18 years of age or older living (for more than 30 days) in the home of a foster parent or pre-adoptive parent**
- **School employees not governed by the Public School Code** (e.g., employees of institutions of higher learning)
- **Volunteers with a child-care service, a school or a program, activity or service as a person responsible for the child's welfare or having direct volunteer contact with children**

The public school code then includes the background check provisions applicable to employees or contractors (or employees of a contractor) within a public or private school, intermediate unit or area vocational-technical school.

Both those employees governed by the CPSL and the PSC are impacted by the statutory definition of direct contact with children. As noted below there is some variation in the definition of this key term. As an additional caveat, volunteers required to obtain background checks under the CPSL find a unique definition of “direct volunteer contact with children.”

Child Protective Services Law	Public School Code
The care, supervision, guidance or control of children or routine interaction with children. ⁹	Section 8.1 defines "direct contact with children" as follows: "Possibility of care, supervision, guidance or control of children by a paid employee or contractor of, or an employee of a person under contract with, a school entity, and routine interaction with children by a paid employee of a school entity or a person under contract with a school entity." ¹⁰

In its December 28th report to the General Assembly, DHS/PCCD/PDE underscored, “The provisions of the CPSL and Section 111 of the PSC related to employment bans for those having contact with children are not uniform.” The report continues, “In addition, the enumerated offenses for which one or more convictions result in a denial of employment or participation in a program, activity or service or a denial of employment or continued employment in a public school or private school, intermediate unit or area vocational-technical school vary by

⁹ Title 23 § 6303. Definitions retrieved at <http://www.legis.state.pa.us/WU01/LI/LI/CT/PDF/23/23.PDF>

¹⁰ <http://www.pacode.com/secure/data/022/chapter8/chap8toc.html>

statute.” Also in conflict is the “length of time that an individual with a conviction of an enumerated offense is banned from employment involving contact with children.”

DHS/PCCD and PDE also recognize that “several court decisions that have found lifetime employment bans unconstitutional in certain circumstances” has complicated the overall issue.

DHS, PCCD, PDE submit recommendations on employment bans to General Assembly

This week, the report required by Act 153 of 2014 was submitted to key standing committees of the General Assembly (e.g., Senate Aging and Youth, House Children and Youth, and the Senate and House Education Committees).

In its Executive Summary, DHS/PDE/PCCD write that they agencies, informed by “diverse” stakeholders, “focused on child safety, the seriousness of the offense, federal funding requirements, and constitutional concerns related to the right to employment or due process.”

The report and recommendations released this week take into consideration the requirements of federal statutes (e.g., Child Care Development Block Grant and Title IV-E child welfare provisions) so that any next steps Pennsylvania takes does not jeopardize federal funding.

The report reflects extensive conversations held during the meetings of the stakeholders and DHS/PDE/PCCD about the unintended consequences that might accompany an expansion of the list of enumerated offenses when current PSC provisions are applied to/made uniform with the CPSL. Of particular discussion and concern was how any attempt at uniformity across all child-serving systems would then impact volunteers and/or parents who wanted to be involved in their child’s educational experiences.

Today’s Commonwealth Court will add interest to the DHS/PDE/PCCD report and further inform any action taken by the General Assembly.

Included below is a **preliminary** chart that attempts to track this week’s recommendations put forth by DHS/PDE/PCCD (the **yellow** column) alongside the current employment ban requirements in the CPSL and PSC. Unless otherwise stipulated existing bans in the CPSL and PSC are lifetime bans. There are many nuances to the crimes (e.g., only certain sections or subsections being applied in current law or being recommended going forward) so this chart may require further fleshing out in the days ahead.

Offense (as defined in Title 18)	Description, grading of offense	Current CPSL	Current PSC	RECOMMENDED Length of Ban (12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)
Founded reports of child abuse or neglect	A report of child abuse or neglect that has been substantiated with the person named as a perpetrator of a founded report.	YES 5 years	YES 5 years	10 YEARS
Indicated reports of child abuse or neglect	A report of child abuse or neglect that has been substantiated with the person named as a perpetrator in an indicated report.	NO	NO	5 YEARS
Criminal homicide (Chapter 25)	Murder and voluntary manslaughter are felony offenses. Also, involuntary manslaughter where the victim is “under 12 years of age and is in the care, custody or control of the person who caused the death” is a felony offense.	YES	YES	LIFETIME
Criminal homicide (Chapter 25)	Involuntary manslaughter involving a victim who is 12 years of age or older is a misdemeanor of the 1 st degree.	YES	YES	25 YEARS
Aggravated assault (Chapter 27)	Felony of 1 st or 2 nd degree	YES	YES	LIFETIME
Simple assault (Chapter 27)	Becomes a misdemeanor of the first degree when it is “against a child under 12 years of age by a person 18 years of age or older.”	NO	YES 5 years	25 YEARS
Recklessly endangering another person (Chapter 27)	If a person “recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury” it is a misdemeanor of the 2 nd degree.	NO	NO	25 YEARS (“when the offender is an adult and the victim is a child”)
Stalking (Chapter 27)	Initially graded as a misdemeanor of the 1 st degree, but “a second or subsequent offense” where the person “has been previously convicted of a crime of violence involving the same victim, family or household member....” then is graded as a felony of the 3 rd degree.	YES	YES	LIFETIME
Kidnapping (Chapter 29)	Felony offense	YES	YES	LIFETIME
Unlawful restraint (Chapter 29)	Misdemeanor of 1 st degree when a person “knowingly restrains another unlawfully in	YES	YES	LIFETIME

Offense (as defined in Title 18)	<u>Description, grading of offense</u>	Current CPSL	Current PSC	RECOMMENDED Length of Ban (12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)
	circumstances exposing him to risk of serious bodily injury; or holds another in a condition of involuntary servitude.” The offense is a felony of the 2 nd degree if the victim is under 18 years of age.			
False imprisonment (Chapter 29)	Misdemeanor of the 2 nd degree if a person “knowingly restrains another unlawfully so as to interfere substantially with his liberty.”	NO	NO	25 YEARS
False imprisonment (Chapter 29)	False imprisonment where the victim is under 18 years of age is a felony offense	NO	YES 10 years	LIFETIME
Interference with custody of children (Chapter 29) - felony	It is a felony offense when a person “knowingly or recklessly takes or entices any child under the age of 18 years from the custody of its parents, guardian or other lawful custodian, when he has not privilege to do so.” There are some permitted “defenses” (e.g., “the actor believed that his action was necessary to preserve the child from danger to its welfare....”)	NO	YES 10 years	LIFETIME
Interference with custody of children (Chapter 29) - misdemeanor	The offense is a misdemeanor of the 2 nd degree if the actor “acted with good cause for a period of time not in excess of 24 hours” and the victim child was the subject of a “valid order of custody” and the actor has been given “either partial custody or visitation rights” and the child was not removed from the Commonwealth of PA.	NO	NO	25 YEARS
Concealment of whereabouts of a child Section 2909)	Felony offense when a person removes a “child from the child’s known place of residence with the intent to conceal the child’s whereabouts from the child’s parent or guardian, unless concealment is authorized by court order or is a reasonable response to domestic violence or child abuse.”	NO	YES 10 years	LIFETIME

Offense (as defined in Title 18)	<u>Description, grading of offense</u>	Current CPSL	Current PSC	RECOMMENDED Length of Ban (12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)
Luring a child into a motor vehicle or structure (Section 2910)	When the offense involves a child under the age of 13 it is a felony of the 2 nd degree, otherwise it is a misdemeanor of the 1 st degree.	NO	YES Felony = lifetime M1 = 5 years	LIFETIME
Trafficking in individuals - Chapter 3011(b)	Involves the trafficking of minors with trafficking being where the person “(1) recruits, entices, solicits, harbors, transports, provides, obtains or maintains an individual if the person knows or recklessly disregards that the individual will be subject to involuntary servitude; or (2) knowingly benefits financially or receives anything of value from any act that facilitates any activity described in paragraph (1).”	NO	YES 10 years	LIFETIME
Rape (Section 3121)	“When the person engages in sexual intercourse with a complainant: (1) By forcible compulsion. (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution. (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring. (4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance. (5) Who suffers from a mental disability”	YES	YES	LIFETIME
Statutory sexual assault (Section 3122.1)	2 nd degree felony when a person “engages in sexual intercourse with a complainant to whom	YES	YES	LIFETIME

Offense (as defined in Title 18)	Description, grading of offense	Current CPSL	Current PSC	RECOMMENDED Length of Ban <i>(12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)</i>
	<p>the person is not married who is under the age of 16 years and that person is either: (1) four years older but less than eight years older than the complainant; or (2) eight years older but less than 11 years older than the complainant.”</p> <p>Felony of the 1st degree when the person “engages in sexual intercourse with a complainant under the age of 16 years and that person is 11 or more years older than the complainant and the complainant and the person are not married to each other.”</p>			
Involuntary deviate sexual intercourse (section 3123)	<p>A felony offense resulting from when a person “engages in deviate sexual intercourse with a complainant: (1) by forcible compulsion; (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring; (4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance; (5) who suffers from a mental disability which renders him or her incapable of consent; or (6) (Deleted by amendment).</p>	YES	YES	LIFETIME

Offense (as defined in Title 18)	Description, grading of offense	Current CPSL	Current PSC	RECOMMENDED Length of Ban <i>(12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)</i>
	(7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other."			
Sexual assault (Section 3124.1)	"Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent."	YES	YES	LIFETIME
Institutional sexual assault (Section 3124.2)	"A person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient or resident." This is applicable to adults and minors. Also, "a person who is a volunteer or an employee or any other person who has direct contact" with a child/student at a school or child-care (broadly defined) "commits a felony of the third degree when he engages in sexual	NO	YES	LIFETIME

Offense (as defined in Title 18)	Description, grading of offense	Current CPSL	Current PSC	RECOMMENDED Length of Ban <i>(12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)</i>
	intercourse, deviate sexual intercourse or indecent contact” with the student or child.			
Sexual assault by sports official/volunteer or employee of nonprofit organization (Section 3124.3)	Applies to “a person who serves as a sports official in a sports program of a nonprofit association or a for-profit association” or “a volunteer or an employee of a nonprofit association having direct contact with a child under 18 years of age who participates in a program or activity of the nonprofit association” where such persons then “engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child.”	NO	YES 10 years	LIFETIME
Aggravated indecent assault (Section 3125)	When a person “engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person’s body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if: (1) the person does so without the complainant’s consent; (2) the person does so by forcible compulsion; (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; (4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring; (5) the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;	YES	YES	LIFETIME

Offense (as defined in Title 18)	Description, grading of offense	Current CPSL	Current PSC	RECOMMENDED Length of Ban <i>(12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)</i>
	(6) the complainant suffers from a mental disability which renders him or her incapable of consent; (7) the complainant is less than 13 years of age; or (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other." Graded as a felony offense.			
Indecent assault (Section 3126)	Can be graded as a misdemeanor or felony offense. The offense involves a person having "indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and: (1) the person does so without the complainant's consent; (2) the person does so by forcible compulsion; (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; (4) the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring; (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant,	YES	YES	LIFETIME

Offense (as defined in Title 18)	<u>Description, grading of offense</u>	Current CPSL	Current PSC	RECOMMENDED Length of Ban (12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)
	drugs, intoxicants or other means for the purpose of preventing resistance; (6) the complainant suffers from a mental disability which renders the complainant incapable of consent; (7) the complainant is less than 13 years of age; or (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.”			
Indecent Exposure (Section 3127)	“A person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.” Graded as a misdemeanor of the 1 st or 2 nd degree with the higher grading linked to the exposure occurring where children under 16 years of age are present.	YES	YES	25 YEARS
Sexual intercourse with animal (Section 3129)	“A person who engages in any form of sexual intercourse with an animal commits a misdemeanor of the second degree.”	NO	YES	25 YEARS
Unlawful dissemination of intimate image (Section 3131)	When the offense is graded as a misdemeanor of the 1 st degree, because the offense involved a minor. “A person commits the offense of unlawful dissemination of intimate image if, with intent to harass, annoy or alarm a current or former sexual or intimate partner, the person disseminates a visual depiction of the current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct.”	NO	YES 5 years	LIFETIME

Offense (as defined in Title 18)	<u>Description, grading of offense</u>	Current CPSL	Current PSC	RECOMMENDED Length of Ban (12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)
Arson (Section 3301)	Arson involves a person “intentionally” starting a fire or causing “an explosion, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, whether on his own property or on that of another.” The ban applies to where the crime of arson is graded as a felony offense.	NO	YES Felony offense = 10 years	LIFETIME
Burglary (Section 3502)		NO	YES 10 years	25 YEARS
Robbery (Section 3701)	“A person is guilty of robbery if, in the course of committing a theft, he: (i) inflicts serious bodily injury upon another; (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury; (iii) commits or threatens immediately to commit any felony of the first or second degree; (iv) inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury; (v) physically takes or removes property from the person of another by force however slight; or (vi) takes or removes the money of a financial institution without the permission of the financial institution by making a demand of an employee of the financial institution orally or in writing with the intent to deprive the financial institution thereof.” Robbery is a felony offense.	NO	YES Felony offense = 10 years	LIFETIME
Incest (Section 4302)	This offense is defined as when a “person knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood.” The offense is a felony with the grading higher if the offense involves a minor.	YES	YES	LIFETIME

Offense (as defined in Title 18)	Description, grading of offense	Current CPSL	Current PSC	RECOMMENDED Length of Ban (12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)
Concealing death of a child (Section 4303)	This is a misdemeanor of the 1 st degree involving a person endeavoring “privately, either alone or by the procurement of others, to conceal the death of his or her child, so that it may not come to light, whether it was born dead or alive or whether it was murdered or not.”	YES	YES	LIFETIME
Endangering the welfare of children (section 4304)	“A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.” This also is an offense related to when a person acting in his/her “official capacity, prevents or interferes with the making of a report of suspected child abuse.” The offense is graded as a misdemeanor but can be upgraded to a felony when it involves a “course of conduct.”	YES	YES	LIFETIME
Dealing in infant children (Section 4305)	“A person is guilty of a misdemeanor of the first degree if he deals in humanity, by trading, bartering, buying, selling, or dealing in infant children.”	YES	YES	LIFETIME
Prostitution (Section 5902 b.1)	Applies to “promoting prostitution of minor” whereby a person “knowingly promotes prostitution of a minor,” which is a felony offense.	NO	YES 10 years	LIFETIME
Prostitution (Section 5902(a), (b), (d) and (e))				25 YEARS
Obscene and other sexual materials and performances (Section 5903)		YES	YES	LIFETIME

Offense (as defined in Title 18)	<u>Description, grading of offense</u>	Current CPSL	Current PSC	RECOMMENDED Length of Ban (12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)
Corruption of minors [Section 6301(a)(1)(ii)]	A felony of the 3 rd degree when a person over the age of 18 "by any course of conduct in violation of Chapter 31 (relating to sexual offenses) corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31."	YES	YES	LIFETIME
Sexual abuse of children (Section 6312)	When a person "causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act commits an offense if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed." Also when a person "knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act." Also provisions related to dissemination as well as viewing child pornography.	YES	YES	LIFETIME
Unlawful contact with a minor (Section 6318)	"A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth: (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses). (2) Open lewdness as defined in section 5901 (relating to open lewdness).	NO	YES	LIFETIME

Offense (as defined in Title 18)	Description, grading of offense	Current CPSL	Current PSC	RECOMMENDED Length of Ban (12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)
	(3) Prostitution as defined in section 5902 (relating to prostitution and related offenses). (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances). (5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children). (6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children)."			
Solicitation of minors to traffic drugs (Section 6319)	An adult commits a felony of the second degree if he solicits a person who is less than 18 years of age to engage in a violation of PA's Controlled Substance, Drug, Device and Cosmetic Act, or "delivers or conspires to deliver a controlled substance to such a person, intending, knowing or having reason to know that the person intends to engage in such a violation with the controlled substance."	NO	YES	LIFETIME
Sexual exploitation of children (Section 6320)	"A person commits the offense of sexual exploitation of children if he procures for another person a child under 18 years of age for the purpose of sexual exploitation."	NO	YES	LIFETIME
Felony offense under the Act of April 14, 1972 (P.L. 233, NO 64), known as the Controlled Substance, Drug, Device and Comestic Act.		YES 5 years	YES	5 YEARS
Controlled Substance, Drug, Device and Cosmetic Act	The provision is related to the "unlawful manufacture of methamphetamine or phencyclidine or their salts, isomers and salts of	NO	YES	LIFETIME

Offense (as defined in Title 18)	Description, grading of offense	Current CPSL	Current PSC	RECOMMENDED Length of Ban <i>(12/28/15 report submitted to the General Assembly as required by Act 153 of 2014)</i>
	isomers, whenever the existence of such salts, isomers or salts of isomers is possible within the specific chemical designation: (i) in a structure where any child under 18 years of age is present; or (ii) where the manufacturing of methamphetamine or phencyclidine causes any child under 18 years of age to suffer bodily injury."			
Catch all felonies of 1st, 2nd, 3rd degree	Those felonies not otherwise enumerated that are "intended to or likely to cause bodily injury, or the victim is a child."	NO	YES 10 years	10 YEARS
Catch all misdemeanors of the 1st degree	Misdemeanors of the 1 st degree not previously enumerated that are crimes that "involve children or offenses involving injury or violence."	NO	YES 5 years	5 YEARS

Waiver, appeals process recommended

The DHS/PDE/PCCD report includes findings from "in-depth" research undertaken to examine how "12 peer states" operate a waiver or appeals process. This waiver/appeals process is distinct from the appeals process related to appealing a criminal conviction. Instead this would be a process by which an applicant (or his/her employer) could obtain a waiver to gain employment/become a volunteer with direct contact with a child despite the prohibitions in state law.

This review found that states most benefit (and prefer) a "locally-driven appeals and waiver process that is informed and enforced by clear state guidance and compliance monitoring procedures from relevant agencies." Among the advantages cities to a locally-driven process:

- "Creates an accessible, efficient, and responsive appeals/waiver process for eligible applicants;
- Provides opportunities for employer-sponsored decisions to support candidates who can demonstrate suitability;
- Supports decision-making that is informed by the specific needs of the employer as well as the positions(s) sought by the individual; and
- Reduces overhead, costs, and risks to the state by employing a locally supported process that is informed by clear guidance, technical assistance, and compliance monitoring."

Some disadvantages to a local model were cited by DHS/PDE/PCCD including that the costs may be incurred by local entities and there is greater “potential for inconsistent application of relevant criteria.”

DHS/PDE/PCCD recommend that any resulting waiver/appeal process be open to persons subject to bans that fall outside of the lifetime ban (e.g., 25, 10 or 5 years). They also recommend that any fees that are attached to this process be waived for volunteers and those individuals that are low-income.