



Sub. S.B. 137*

126th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

Sens. Goodman, Padgett, Clancy, Cates, Gardner, Jacobson, Dann

BILL SUMMARY

- Increases, from a misdemeanor of the fourth degree to a misdemeanor of the first degree, the penalty for a failure of a "mandatory reporter" to report known or suspected abuse or neglect of a child, or a known or suspected threat of abuse or neglect of a child if the child who is the subject of the required report that the offender fails to make suffers or faces the threat of suffering the physical or mental wound, injury, disability, or condition that would be the basis of the required report when the child is under the direct care or supervision of the offender who then is acting in the offender's official or professional capacity or when the child is under the direct care or supervision of another person over whom the offender while acting in the offender's official or professional capacity has supervisory control.

CONTENT AND OPERATION

Failure to make a mandatory report of child abuse or neglect

Existing law

Existing law lists certain categories of professions (see "**Child Abuse and Neglect Reporting Law in detail**," below), and prohibits a person in any of the specified professions who is acting in an official or professional capacity and knows or suspects that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury,

* *This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

disability, or condition of a nature that reasonably indicates abuse or neglect of the child, from failing to immediately report that knowledge or suspicion to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred, or, if the child is an inmate in the custody of a state correctional institution, to the State Highway Patrol (existing law also contains a separate provision for the discretionary reporting, by any person, of known or suspected abuse; see "*Child Abuse and Neglect Reporting Law in detail*," below). Attorneys and physicians are among the specified professions included within the list of "mandatory reporters," and they are provided an exception from the mandatory reporting provision in certain circumstances, concerning communications received from a client or patient in an attorney-client or physician-patient relationship. (R.C. 2151.421(A), not in the bill.)

Currently, a violation of the prohibition against failing to make the mandatory report described in the preceding paragraph is a misdemeanor of the fourth degree (R.C. 2151.99(A)).

Operation of the bill

The bill increases, in specified circumstances, the penalty for a failure of a person who is in any of the categories of specified professions that are "mandatory reporters" to report known or suspected abuse or neglect of a child, or a known or suspected threat of abuse or neglect of a child, under the mandatory reporting provision described above in "*Existing law*." Under the bill, the penalty for the violation is a misdemeanor of the first degree, if the child who is the subject of the required report that the offender fails to make suffers or faces the threat of suffering the physical or mental wound, injury, disability, or condition that would be the basis of the required report when the child is under the direct care or supervision of the offender who then is acting in the offender's official or professional capacity or when the child is under the direct care or supervision of another person over whom the offender while acting in the offender's official or professional capacity has supervisory control. In all other circumstances, the bill retains the existing fourth degree misdemeanor penalty for a violation. (R.C. 2151.99(A) and (C).)

Child Abuse and Neglect Reporting Law in detail

Mandatory reporting

As stated above, existing law lists certain categories of professions, and prohibits a person in any of the specified professions who is acting in an official or professional capacity and knows or suspects that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under

21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, from failing to immediately report that knowledge or suspicion to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred, or, if the child is an inmate in the custody of a state correctional institution, to the State Highway Patrol. Under existing law, modified by the bill as described above, a violation of the prohibition against failing to make the mandatory report is a misdemeanor of the fourth degree.

The specified professions to which the mandatory reporting provision applies are attorneys; physicians, including hospital interns and residents; dentists; podiatrists; practitioners of a limited branch of medicine as specified in R.C. 4731.15; registered, licensed practical, and visiting nurses; other health care professionals; licensed psychologists; licensed school psychologists; independent marriage and family therapists and marriage and family therapists; speech pathologists and audiologists; coroners; administrators and employees of a child day-care center, residential camp, child day camp, certified child care agency, or other public or private children services agency; school teachers, employees, and authorities; persons engaged in social work or the practice of professional counseling; agents of a county humane society; persons rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; superintendents, board members, and employees of a county board of mental retardation; investigative agents contracted with by a county board of mental retardation; and employees of the Department of Mental Retardation and Developmental Disabilities. (R.C. 2151.421(A)(1), not in the bill, and 2151.99(A).)

Exception to mandatory reporting for attorneys and physicians; exception to the exception

Under existing law, attorneys and physicians are provided an exception from the mandatory reporting provision, concerning communications received from a client or patient in an attorney-client or physician-patient relationship, if, under specified provisions of the Privileged Communications Law (R.C. 2317.02(A) or (B), not in the bill), the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding. However, the client or patient is deemed to have waived any testimonial privilege under the specified provisions of that Law with respect to any communication the attorney or physician receives from the client or patient in the attorney-client or physician-patient relationship, and the attorney or physician must make a report under the mandatory reporting provisions described above with respect to that communication, if all of the following apply: (1) the client or patient, at the time

of the communication, is either a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age, (2) the attorney or physician knows or suspects, as a result of the communication or any observations made during it, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient, and (3) the attorney-client or physician-patient relationship does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with the notification requirements of R.C. 2151.85. (R.C. 2151.421(A)(2), not in the bill.)

Discretionary reporting

Independent of the mandatory reporting provision described above, existing law permits anyone who knows or suspects that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child, to report or cause reports to be made of that knowledge or suspicion to the public children services agency or to a municipal or county peace officer or, if the child is an inmate in the custody of a state correctional institution, to the State Highway Patrol (R.C. 2151.421(B), not in the bill).

Procedures, rules, immunities regarding reporting

Existing law provides that any report made under the mandatory or discretionary reporting provisions described above must be made forthwith either by telephone or in person and must be followed by a written report, if requested by the receiving agency or officer. The report must contain specified information, and a person making a mandatory report may take or cause to be taken color photographs of areas of trauma visible on the child and, if medically indicated, x-rays. Existing law provides rules and procedures for peace officers and public children service agencies in making follow-ups and investigations of a report and regarding removal of a child who is the subject of a report from the child's parents, stepparents, guardian, or custodian.

Under existing law, except as described below, any person, hospital, institution, school, health department, or agency that participates in the making of a report under the mandatory reporting provisions or participates in good faith in the making of a report under the discretionary reporting provisions, and any person that participates in good faith in a judicial proceeding resulting from such a report is immune from any civil or criminal liability for injury, death, or loss to person or property that might be incurred or imposed as a result of the making of

the reports of the participation in the judicial proceeding. However, if it is proved in a civil or criminal proceeding that participation in the making of a report under either reporting provision, or in a resulting judicial proceeding, was not in good faith, the court must award the prevailing party attorney's fees and costs. Also, a person who knowingly makes or causes another person to make a false report under the discretionary reporting provisions that alleges that a person has committed an act or omission that resulted in a child being an abused or neglected child is guilty of the offense of "making or causing a false report of child abuse or neglect," under R.C. 2921.14.

Existing law provides that: (1) in general, a report made under the mandatory or discretionary reporting provisions is confidential, (2) the information provided in a report and the name of the person who made it cannot be released for use, and cannot be used, as evidence in any civil action or proceeding against the person who made it, and (3) in a criminal proceeding the report is admissible in accordance with the Rules of Evidence and is subject to discovery in accordance with the Criminal Rules. Limited exceptions are provided if the subject child dies, or if the alleged conduct allegedly occurred in or involved an out-of-home care entity. Existing law provides rules and procedures regarding protective services based on a report. (R.C. 2151.421(C) to (I) and (K) to (M), not in the bill.)

HISTORY

ACTION	DATE
Introduced	04-28-05
Reported, S. Judiciary on Criminal Justice	---

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