



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Author: Amy L. Archer, Research Analyst
Reviewers: Chenwei Zhang, Attorney
Ralph D. Clark, Division Chief

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Liability for Child Abuse and Neglect Reporting and Investigation Failures

Ohio law establishes criminal and civil liabilities for mandatory reporters who fail to report child abuse or neglect, as well as criminal penalties for making a false permissive report and unauthorized report dissemination. Ohio law also provides for immunities, and exceptions to immunities, for certain criminal and civil actions.

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Introduction

Under Ohio law, a person designated as a mandatory reporter who is acting in an official or professional capacity must immediately report any knowledge or reasonable suspicion of child abuse or neglect. Anyone else who knows of or suspects child abuse or neglect may report or cause reports to be made. A mandatory reporter must immediately, and a permissive reporter may, make the report to the public children services agency (PCSA) or a peace officer in the county where the child resides or where the abuse or neglect is occurring or has occurred.¹ A PCSA is a county agency that administers child welfare services. In some counties, the PCSA is a

¹ R.C. 2151.421(A)(1)(a) and (B).

children services board. In others, the county department of job and family services serves that role. A county also may designate another government agency or a private entity. A peace officer is a sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, or a state highway patrol trooper. For a child who is an inmate in the custody of a state correctional institution, reports are to be made to the State Highway Patrol if the child is an inmate in the custody of a state correctional institution.²

For more details about reporting known or suspected child abuse or neglect, including whom the law designates as mandatory reporters, see the LSC [Child Abuse or Neglect Reporting \(PDF\) Members Brief](#), which is available on LSC's website: lsc.ohio.gov.

Criminal liability

For mandatory reporters

A mandatory reporter who fails to immediately report known or suspected child abuse or neglect is guilty of a fourth degree misdemeanor.

The reporter is guilty of a first degree misdemeanor if the known or suspected child abuse or neglect occurs while the child is under the direct care or supervision of:

- The reporter, who is acting in their official or professional capacity; or
- Another person over whom the reporter, while acting in the reporter's official or professional capacity, has supervisory control.³

For example, a school principal, as a mandatory reporter, is guilty of a fourth degree misdemeanor for failure to report if a student told the principal of being abused at the student's home, but the principal did not immediately make a report. However, the principal's penalty increases to a first degree misdemeanor if the student was abused at school and reported the abuse to the principal, but the principal failed to immediately make a report.

A fourth degree misdemeanor is punishable by up to 30 days in jail and a fine of up to \$250. A first degree misdemeanor is punishable by up to 180 days in jail and a fine of up to \$1,000.⁴

For clerics

Clerics and other leaders and officials (except volunteers) designated by a church, religious society, or faith are mandatory reporters in certain circumstances (see pages 3 to 4 of the LSC [Child Abuse or Neglect Reporting \(PDF\) Members Brief](#), which is available on LSC's website: lsc.ohio.gov). In those circumstances, clerics and other leaders and officials (except volunteers) who fail to immediately report known or suspected child abuse or neglect are guilty of a fourth degree misdemeanor. But if a cleric or other leader or official (except a volunteer) knows that the alleged abuser is or was another cleric or other leader or official (other than a

² R.C. 2151.421(O)(4), 5120.173, 5153.01(A), and 5153.02.

³ R.C. 2151.99(C).

⁴ R.C. 2929.24(A) and 2929.28(A)(2)(a).

volunteer) of the same church, religious society, or faith, the failure to immediately report is enhanced to a first degree misdemeanor.⁵

For making a false permissive report

A person who knowingly makes or causes another person to make a false permissive report, alleging that any person has committed an act or omission that resulted in a child being an abused or neglected child, is guilty of making or causing to be made a false report of child abuse or child neglect, a first degree misdemeanor.⁶

For unauthorized report dissemination

A person who permits or encourages the unauthorized dissemination of the contents of a report of child abuse or neglect is guilty of a fourth degree misdemeanor (except when a health care professional obtains the same information from a different source and the information may be legally disseminated).⁷

Civil liability

A mandatory reporter who fails to report known or suspected child abuse or neglect is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made.⁸

Immunity

Any person, health care professional, hospital, institution, school, health department, or agency is immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of any of the following:⁹

- Participating in making mandatory child abuse and neglect reports;
- Making permissive reports in good faith;
- Participating in medical examinations, tests, or procedures (unless the health care provider deviates from the applicable professional standard of care);
- Participating in a judicial proceeding resulting from a mandatory report;
- Participating in good faith in a proceeding resulting from a permissive report;
- Providing information used in a mandatory report;
- Providing information in good faith used in a permissive report.

⁵ R.C. 2151.99(A).

⁶ R.C. 2151.421(I)(3) and 2921.14.

⁷ R.C. 2151.421(I)(2)(a) and (b) and 2151.99(A)(1).

⁸ R.C. 2151.421(M).

⁹ R.C. 2151.421(H)(1).

Further, mandatory reporters have immunity from any civil liability arising from making a child abuse or neglect report, regardless of the reporter's good faith.¹⁰

Exception to immunity

For permissive reporters

In any civil or criminal action or proceeding in which it is alleged and proved that participation in making a permissive report or participation in a judicial proceeding resulting from a permissive report was not in good faith, the court must award the prevailing party reasonable attorney's fees and costs. Additionally, if the civil action or proceeding is voluntarily dismissed, the court may award reasonable attorney's fees and costs to the party against whom the civil action or proceeding is brought.¹¹

For failure to investigate

The Revised Code imposes on PCSAs a duty to investigate, within 24 hours, each child abuse or neglect report they receive and a duty to report their findings.¹² (See pages 2 to 3 of the LSC [Investigating Child Abuse and Neglect Reports \(PDF\) Members Brief](#), which is available on LSC's website: lsc.ohio.gov.) However, the Revised Code does not expressly impose liability nor provide immunity for a PCSA and its employees who fail to investigate a report in accordance with the law.

The Ohio Supreme Court has held that a PCSA's or PCSA employee's refusal or negligent failure to investigate a report is not covered by the two types of immunity defenses that may be asserted by public officers: absolute immunity or good faith qualified immunity. The defense of absolute immunity may be used only where a public official's duties are of a highly discretionary nature (e.g., a judge when acting within the judge's authority), and therefore does not apply to a PCSA or its employees. The doctrine of good faith qualified immunity as applied in Ohio, is based on a three-part test: (1) whether the official's action was taken within the scope of his or her authority, (2) whether the actions consisted of duties involving the exercise of discretion and judgment, and (3) whether the individual actions were made in good faith. The Ohio Supreme Court holds that a public officer is not acting in good faith if it can be shown that the official acted in willful, reckless, or wanton disregard of rights established under law. Specifically, a PCSA's or PCSA employee's failure to investigate a report of child abuse or neglect within 24 hours is not covered by qualified immunity.¹³

¹⁰ *Workman v. Cleveland Clinic Found.*, 2010-Ohio-1756, *P23 (8th Dist., Cuyahoga Cnty., April 22, 2010).

¹¹ R.C. 2151.421(H)(2).

¹² R.C. 2151.421(G)(1).

¹³ *Brodie v. Summit Cty.*, 51 Ohio St.3d 112, 115-118, and 120 (1990).