



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 493\*

131st General Assembly

(As Reported by H. Community and Family Advancement)

**Reps.** Sears and Ryan, Perales

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## BILL SUMMARY

- Permits a single child abuse or neglect report to be made by a health care professional in cases in which more than one professional has provided health care services to a child and the professionals determine or suspect the child to be abused or neglected.
- Provides that any written, follow-up report requested by a public children services agency ("PCSA") or municipal or county peace officer may include any medical examinations, tests, or procedures regarding the child reported to be abused or neglected or the child's siblings or other children.
- Makes the following changes regarding medical tests, examinations, and procedures:
  - Specifies that medically necessary radiological examinations and other medical examinations, tests, or procedures can be performed.
  - Allows a health care professional to provide services and examine a child's siblings or other children residing in the same household, for purposes of determining abuse or neglect of any of the children.
- Permits a health care professional to take any steps reasonably necessary to release or discharge the child to whom the professional provides services in a health care setting to an appropriate environment.

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\* This analysis was prepared before the report of the House Community and Family Advancement Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Specifies that medical examinations, test, and procedures and decisions regarding the release or discharge of a child do not constitute a law enforcement investigation or activity.
- Provides that, for purposes of testimonial privilege, an attorney or physician's knowledge or suspicion of child abuse does not have to result from communications or observations made during communications with the client or patient.
- Specifies circumstances under which health care professionals are immune from civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the reports or participation in the judicial proceeding.
- Allows a health care professional that obtains the same information contained in a child abuse or neglect report from a source other than the report to disseminate the information, if such dissemination is otherwise lawful.
- Allows a health care professional who makes a mandatory report or on whose behalf such report was made to authorize a person to obtain information on the status of the report investigation and the child, if the person is associated with or acting on behalf of the health care professional.
- Creates and uses a definition of "health care professional" that includes most of the mandatory reporters under continuing law who provide health care services.

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## CONTENT AND OPERATION

### Overview

The bill makes changes to Ohio's child abuse and neglect reporting law. These changes focus primarily on reporting and other related actions by health care professionals. Currently under Ohio law, certain professional individuals, acting in an official or professional capacity, must report known or suspected child abuse or neglect ("mandatory reporters"). A mandatory reporter must make such mandatory child abuse or neglect report to the public children services agency ("PCSA") or the municipal or county peace officer ("officer") in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.<sup>1</sup> All other individuals may, but are not

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<sup>1</sup> R.C. 2151.421(A)(1)(a).



required, to make a report in such instances ("discretionary report").<sup>2</sup> A PCSA must investigate each report of child abuse or neglect that it receives within 24 hours.<sup>3</sup>

## **Health care professionals**

The bill defines a health care professional as an individual who provides health-related services and includes most of the health care providers listed under current law as mandatory reporters. Those professionals listed include, for example, physicians, dentists, registered nurses, licensed psychologists, employees of a health agency, and other health care professionals. The definition, however, specifies that the following health care providers (who remain under continuing law to be mandatory reporters of child abuse and neglect) are not included in the definition of health care professionals:

- Practitioner of a limited branch of medicine, including massage therapy and cosmetic therapy;
- Licensed school psychologist;
- Independent marriage and family therapist or marriage and family therapist;
- Coroner.<sup>4</sup>

## **Single reporting by health care professionals**

The bill provides that if two or more health care professionals, after providing health care services to a child, determine or suspect the child has been or is being abused or neglected, the professionals may designate one of them to report the abuse or neglect. The bill provides that this single report meets the mandatory reporting requirement imposed on each of the professionals under continuing law.<sup>5</sup>

## **Information in follow-up written reports**

The bill provides, in situations in which the PCSA or officer requires the child abuse or neglect reporter to provide a written, follow-up report, that the report must include any other information, including the results and reports of any medical examinations, tests, or procedures regarding the child reported to be abused or

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<sup>2</sup> R.C. 2151.421(B).

<sup>3</sup> R.C. 2151.421(F)(1).

<sup>4</sup> 2151.421(P)(2).

<sup>5</sup> R.C. 2151.421(A)(1)(c).

neglected or the child's siblings or other children. Under current law, the written report must include the names and addresses of the child and child's parents or the person having custody of the child, if known; the child's age and nature of the child's injuries, abuse, or neglect; and any other information that would be helpful in establishing the cause of the injury, abuse, or neglect (see "**Medical examinations, tests, and procedures**," below).<sup>6</sup>

## **Medical examinations, tests, and procedures**

### **Reported child**

The bill provides that a mandatory reporter, after making a report, if medically necessary for diagnosing or treating injuries that are suspected to have occurred as a result of abuse or neglect, may perform or cause to be performed radiological examinations and any other medical examinations of, and tests or procedures on, the child. The bill also requires the results of such tests to be included in the child abuse report required by the professional, and that any additional reports of medical examinations, tests, or procedures by a mandatory reporter that become available after initial reports must be provided to the PCSA, upon its request.<sup>7</sup> Under current law, a mandatory reporter may only do the following: (1) take or order color photographs of areas of visible trauma on the child and (2) if medically indicated, cause to be performed radiological examinations on the child.<sup>8</sup>

### **Siblings and other children**

The bill adds that a health care professional may conduct medical examinations, tests, or procedures on the siblings of, or other children who reside in the same home as, a child who is the subject of a mandatory report. These examinations may be conducted if the professional determines that they are medically necessary to diagnose or treat the siblings or other children in order to determine whether mandatory reports are required for the siblings or other children. The results of these examinations, tests, or procedures may be included in a report about the child who is the subject of the mandatory report.<sup>9</sup>

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<sup>6</sup> R.C. 2151.421(C)(1) to (3) and (D)(2).

<sup>7</sup> R.C. 2151.421(D)(1) and (2).

<sup>8</sup> R.C. 2151.421(C).

<sup>9</sup> R.C. 2151.421(D)(4).



## **Taking actions to discharge a child**

The bill adds that a health care professional that provides health care services in a hospital, children's advocacy center, or emergency medical facility to a child who is the subject of a mandatory report may take any steps reasonably necessary to release or discharge the child to an appropriate environment. Before the child is released or discharged, the health care professional may obtain information or consider information obtained from other entities or individuals that have knowledge about the child. The bill also clarifies that these discharge provisions regarding a child who is the subject of a mandatory report do not alter the responsibility of any person under Ohio's laws for filing a complaint involving the child in juvenile court or taking the child into custody.<sup>10</sup>

## **Law enforcement investigation exception**

The bill specifies that the medical examinations, tests, and procedures and decisions regarding the release or discharge of a child provided under the bill do not constitute a law enforcement investigation or activity.<sup>11</sup>

## **Waiver of attorney-client or physician-patient testimonial privilege**

The bill eliminates, for purposes of the waiver of the attorney-client or physician-patient testimonial privilege, the requirement that an attorney's or physician's knowledge or reasonable suspicion of child abuse or neglect of the client or patient be based on (1) a communication with the client or patient, or (2) any observations made during such communication.<sup>12</sup>

## **Immunity from civil or criminal liability**

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

- Participating in the making of a mandatory report or in the making of an optional report in good faith;

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<sup>10</sup> R.C. 2151.421(D)(3).

<sup>11</sup> R.C. 2151.421(D)(5).

<sup>12</sup> R.C. 2151.421(A)(3)(c).



- Participating in medical examinations, tests, or procedures for purposes of making a mandatory report;
- Providing information used in a mandatory report or providing information in good faith used in an discretionary report; or
- Participating in a judicial proceeding resulting from a mandatory report or participating in good faith in a proceeding resulting from a discretionary report.<sup>13</sup>

The bill, however, states that immunity provided for participating in medical examinations, tests, or procedures for purposes of making a mandatory report is not available to a health care provider who deviates from the standard of care applicable to the provider's profession.<sup>14</sup>

The bill repeals the immunity provisions in current law in favor of the immunity provisions described above. Under current law, anyone or any hospital, institution, school, health department, or agency that participates in the making of a mandatory report, participates in good faith in the making of a discretionary report, and anyone participating in good faith in a judicial proceeding resulting from the reports, must be 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 the reports or participation in the judicial proceeding.<sup>15</sup>

### **Dissemination of information**

The bill carves out an exception to the existing law prohibition against a person allowing or encouraging unauthorized dissemination of the content of a child abuse or neglect report. The exception allows a health care professional that obtains the same information contained in a child abuse or neglect report from a source other than the report, to disseminate the information, if such dissemination is otherwise lawful.<sup>16</sup>

### **Report status**

The bill permits a health care professional who makes a mandatory report or on whose behalf such report was made, to authorize a person to obtain the following

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<sup>13</sup> R.C. 2151.421(H)(1)(a).

<sup>14</sup> R.C. 2151.421(H)(1)(b).

<sup>15</sup> R.C. 2151.421(G)(1)(a).

<sup>16</sup> R.C. 2151.421(I)(2).



information, if the person requesting the information is associated with or acting on behalf of the health care professional who provided services to the child who is the subject of the report:

- Whether the PCSA, or children's advocacy center in appropriate situations, has initiated an investigation of the report;
- Whether the PCSA or center is continuing to investigate the report;
- Whether the PCSA or center is otherwise involved with the child who is the subject of the report;
- The general status of the health and safety of the child who is the subject of the report;
- Whether the report has resulted in the filing of a complaint in juvenile court or criminal charges in another court.<sup>17</sup>

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## HISTORY

ACTION	DATE
Introduced Reported, H. Community & Family Advancement	03-21-16 ---

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<sup>17</sup> R.C. 2151.421(L)(5) and 2151.421(L)(1)(a) to (e).

