



Sub. S.B. 137

126th General Assembly
(As Passed by the General Assembly)

Sens. Goodman, Padgett, Clancy, Cates, Gardner, Jacobson, Dann, Stivers,
Zurz, Kearney, Hottinger, Fedor, Spada

Reps. Latta, Gilb, D. Evans, Hughes, Blessing, Bulp, Chandler, Combs,
DeBose, Domenick, Driehaus, C. Evans, Flowers, Harwood, Luckie,
Mason, Mitchell, Otterman, T. Patton, Reidelbach, Schaffer, Schneider,
Setzer, D. White, Williams, Yates, Yuko

Effective date: *

ACT 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.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

CONTENT AND OPERATION

Failure to make a mandatory report of child abuse or neglect

Continuing and prior law

Continuing law lists certain categories of professions (see "*Mandatory reporting under the Child Abuse and Neglect Reporting Law*," 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, 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. 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 act.)

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

Operation of the act

The act 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 "*Continuing and prior law*." Under the act, 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 act retains the fourth degree misdemeanor penalty for a violation. (R.C. 2151.99(C).)

Mandatory reporting under the Child Abuse and Neglect Reporting Law

As stated above, continuing 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 former law, modified by the act as described above, a violation of the prohibition against failing to make the mandatory report was 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 act, and 2151.99(A).)

Under continuing 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 act), 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 act.)

HISTORY

ACTION	DATE
Introduced	04-28-05
Reported, S. Judiciary – Criminal Justice	03-28-06
Passed Senate (33-0)	03-28-06
Reported, H. Criminal Justice	12-13-06
Passed House (90-1)	12-14-06

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