



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Chenwei Zhang

### **Am. Sub. H.B. 493** 131st General Assembly (As Passed by the General Assembly)

**Reps.** Sears and Ryan, Perales, Baker, Brown, LaTourette, Manning, McClain, Rezabek, Slaby

**Sens.** Bacon, Faber, Hite, Hottinger, Jones, Jordan, Uecker

**Effective date:** March 14, 2017; contains item vetoes

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## **ACT SUMMARY**

### **Child abuse and neglect reporting**

- Permits a single child abuse or neglect report to be made by a health care professional when 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 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, to determine 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.

- Specifies that medical examinations, tests, 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.
- Provides that if any provisions of the act are held invalid, the invalidity does not affect other provisions or applications of the section or related sections.

### **Abortion and adoption (VETOED)**

- Would have generally prohibited a person from knowingly and purposefully performing or inducing an abortion with the specific intent of causing or abetting the termination of the life of an unborn individual whose fetal heartbeat has been detected (VETOED).
- Would have generally prohibited a person from knowingly and purposefully performing or inducing an abortion before determining if there is a fetal heartbeat (VETOED).
- Would have provided that a person who violated either prohibition is guilty of a felony of the fifth degree, is subject to a wrongful death action by the pregnant woman, and is subject to disciplinary action by the State Medical Board (VETOED).

- Would have created the Joint Legislative Committee on Adoption Promotion and Support to further the General Assembly's goal of informing pregnant women of available options for adoption (VETOED).

### **Appropriation (VETOED)**

- Would have appropriated \$100,000 to the Department of Job and Family Services for adoption services (VETOED).

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## **CONTENT AND OPERATION**

### **Child abuse and neglect reporting**

#### **Overview**

The act 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. Under continuing 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 the 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 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 act defines a health care professional as an individual who provides health-related services and includes most of the health care providers listed under continuing law as mandatory reporters. Examples of such professionals include 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 (which the act retains as 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;

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

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

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

- Licensed school psychologist;
- Independent marriage and family therapist or marriage and family therapist;
- Coroner.<sup>4</sup>

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

The act 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. 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 act specifies additional information that a child abuse reporter must include in a written follow-up report that a PCSA or officer requests. That additional information includes the results and reports of any medical examinations, tests, or procedures regarding the child reported to be abused or neglected or the child's siblings or other children (see "**Medical examinations, tests, and procedures,**" next).<sup>6</sup>

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

#### **Reported child**

The act allows a mandatory reporter to perform or order radiological examinations and any other medical examinations of, and tests or procedures on, the child if it is necessary for diagnosing or treating injuries suspected to have occurred from abuse or neglect. The act also requires the test results to be included in the mandatory child abuse report, 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, on its request.<sup>7</sup>

The act's authority to perform or order radiological examinations expands the law, which previously authorized them only if they were medically indicated. The act

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

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

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

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

retains the authority of mandatory reporters to take or order color photographs of areas of visible trauma on the child.<sup>8</sup>

### **Siblings and other children**

The act 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, tests, or procedures 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 them. The results may be included in a mandatory report.<sup>9</sup>

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

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

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

The act 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

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

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

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

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

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 act 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 a discretionary report in good faith;
- 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 act, 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 act repeals the immunity provisions in current law in favor of the broader immunity provisions described above. Under former law, anyone or any hospital, institution, school, health department, or agency could count on the immunity described above only for participation in making a mandatory report and participation in good faith in making a discretionary report. In addition, under former law, anyone could count on the immunity for participation in good faith in a judicial proceeding resulting from the reports.<sup>15</sup>

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

<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).



## **Dissemination of information**

The act 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 the dissemination is otherwise lawful. This provision is an exception to the prohibition in continuing law against allowing or encouraging unauthorized disclosure of the content of a child abuse or neglect report.<sup>16</sup>

## **Report status**

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

## **Severability**

The act provides that if any of its provisions are held invalid, the invalidity does not affect other provisions or applications of the section or related sections. Therefore, any invalid provisions are severable.<sup>18</sup>

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

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

<sup>18</sup> Section 6.



## **Abortion and adoption**

### **Abortion prohibited when there is a fetal heartbeat**

The Governor vetoed a provision that would have generally prohibited a person from knowingly and purposefully performing or inducing an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn individual that the pregnant woman is carrying and whose fetal heartbeat has been detected.<sup>19</sup> Similarly, the act would have prohibited a person from knowingly and purposefully performing or inducing an abortion without determining whether a detectable fetal heartbeat exists.<sup>20</sup> The vetoed provisions would have made violation of either prohibition a fifth degree felony, would have permitted the woman to bring a wrongful death action, and would have provided for disciplinary action by the State Medical Board.<sup>21</sup>

### **Joint Legislative Committee on Adoption Promotion and Support**

The Governor vetoed a provision that would have created the Joint Legislative Committee on Adoption Promotion and Support to further the General Assembly's intent to inform women whose pregnancies are protected under the act of adoption options.<sup>22</sup>

### **Detailed description of vetoed abortion and adoption provisions**

A detailed description of the vetoed provisions regarding abortion and adoption promotion and support is available in LSC's analysis of H.B. 69, As Passed by the House. The analysis is available online at <https://www.legislature.ohio.gov/download?key=3121&format=pdf>. Please note that provisions of H.B. 69 regarding the following were not included in the act: (1) the General Assembly's intent that a court determination suspending enforcement of the abortion provisions is not tantamount to their repeal, and (2) restored, expanded, or clarified state authority to regulate or entirely prohibit abortion. Descriptions of these excluded provisions (R.C. 2919.91(B)(1) through (3)) are on pages 9, 10, and 11 of the As Passed by the House analysis.

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<sup>19</sup> R.C. 2919.195(A).

<sup>20</sup> R.C. 2919.193(A).

<sup>21</sup> R.C. 2919.193(A), 2919.195(B), 2919.199, and 4731.22(B)(47).

<sup>22</sup> R.C. 2919.1910.



## Appropriation

The Governor vetoed a \$100,000 appropriation from the General Revenue Fund to the Department of Job and Family Services for adoption services.<sup>23</sup>

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## HISTORY

| ACTION                                       | DATE     |
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| Introduced                                   | 03-21-16 |
| Reported, H. Community & Family Advancement  | 05-25-16 |
| Passed House (92-5)                          | 05-25-16 |
| Reported, S. Civil Justice                   | 12-01-16 |
| Passed Senate (21-10)                        | 12-06-16 |
| House concurred in Senate amendments (56-39) | 12-06-16 |

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<sup>23</sup> Sections 4 and 5.

