



Case Western Reserve Law Review

Volume 18 | Issue 4

1967

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Recommended Citation

Mario C. Ciano, *Recent Legislation: Ohio's Mandatory Reporting Statute for Cases of Child Abuse*, 18 W. Res. L. Rev. 1405 (1967)
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol18/iss4/22>

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Recent Legislation

OHIO'S MANDATORY REPORTING STATUTE FOR CASES OF CHILD ABUSE

OHIO REV. CODE § 2151.421 (Supp. 1966).

In 1963 Ohio became one of the first states to enact so-called "child-battering" legislation.¹ The main thrust of such legislation is to direct physicians and other medical personnel to report any case of child injury which they believe to have been caused by physical abuse. Although the Ohio statute, and those of many other pioneering states, was desirably responsive to a problem which had been receiving increasing attention, it was somewhat deficient due to its hasty conception and the fact that some important ramifications of the problem were not sufficiently clear at the time of enactment to be reflected in the legislation. With these shortcomings in mind, the Ohio statute was significantly amended in the 1965 session of the General Assembly.²

Section 2151.421 of the Ohio Revised Code requires any physician examining or treating a child less than eighteen years of age or any registered nurse, visiting nurse, school teacher, or social worker who has reason to believe that such child has suffered an injury or condition indicating abuse or neglect to report that information to a municipal or county peace officer. While the initial communication may be made in person or by telephone there must later be a written report containing the minimal pertinent information, such as the names of the parties, addresses, the nature and extent of the injuries, and any other information which might be helpful in establishing the cause of the injury or condition.³ The statute further provides that when a child is treated by a physician who is a staff member of a hospital or similar institution, the physician is to notify the person in charge of the institution, who will in turn make the report.

The purpose of this comment is to analyze the amended Ohio reporting law and to compare its provisions not only with the 1963 statute but also with similar statutes of other states. In the course of this analysis it is hoped that the statute can be evaluated in relation to the problem it attempts to remedy.

¹ Ohio Laws 1963, § 2151.421, at 625-26.

² OHIO REV. CODE § 2151.421 (Supp. 1966).

³ OHIO REV. CODE § 2151.421(C) (Supp. 1966).

The abuse of children by parents and guardians is a problem of ancient origin.⁴ As in other areas of family relations, interference by the state has always been restrained. However, the problem has recently received increased attention, and a survey of the literature on the subject discloses that the initial impetus was provided by the medical and social service professions.⁵

In 1962 several physicians defined the "Battered Child Syndrome" as a young child's clinical condition resulting from serious physical beatings and abuse.⁶ Additional case and survey studies pointed to the seriousness and extent of the problem.⁷ From these studies facts were brought to light which awakened the public and legislative bodies to the realization that a problem existed whose solution challenges social, medical, and legal resources alike.

For example, one survey pointed out that a majority of the victims of physical abuse by parents were infants under four years of age.⁸ It is also noteworthy that these incidents were not peculiar to any particular socioeconomic group but occurred in "country club districts" as well as slum areas.⁹ Finally, the most significant fact brought out — significant because it aptly indicates the wide scope of the problem — was that the majority of child abuse cases, while directly the result of parental cruelty, were symptomatic of deeper psychiatric and emotional problems. It was said:

Rarely is child abuse the product of wanton, willful or deliberate acts of cruelty. It is seen to result from parental inadequacy, from immaturity and from lack of capacity for coping with the pres-

⁴ For a comparison of the Roman and common law philosophies on the legitimate extent of parental authority over children, see, e.g., 1 BLACKSTONE, COMMENTARIES *452.

⁵ See generally DE FRANCIS, CHILDREN'S DIVISION, AM. HUMANE ASS'N, CHILD ABUSE — PREVIEW OF A NATIONWIDE SURVEY (1963); Adelson, *Homicide by Starvation*, 186 J.A.M.A. 458 (1963); Kempe, Silverman, Steel, Droegenmueller & Silver, *The Battered-Child Syndrome*, 181 J.A.M.A. 17 (1962); Reinhart & Elmer, *The Abused Child*, 188 J.A.M.A. 360 (1964).

⁶ Kempe, Silverman, Steel, Droegenmueller & Silver, *supra* note 5, at 17 suggested that the syndrome should be considered by physicians whenever a child injury case is brought to their attention which exhibited any indications of child-beating such as bone fractures, a failure to thrive, soft tissue swellings, or skin bruising. The syndrome was also prevalent where the child was found to have suffered a sudden unexplained death, or where there was little relation between the observed injuries and the parents' explanation. *Ibid.*

⁷ See, e.g., DE FRANCIS, *op. cit. supra* note 5; Adelson, *supra* note 5, at 458.

⁸ DE FRANCIS, *op. cit. supra* note 5, at 4. The abuse ranged from severe beatings and burnings to strangulations and suffocations. The resultant injuries from such cruelties varied from severe bruises and contusions to ruptured lungs and skull fractures. *Id.* at 5-6.

⁹ *Id.* at 8.

tures and tensions which beset the modern family. With rare exceptions these are parents with problems — problems which run the full range of human experience.¹⁰

The wide publicity received by such medical and sociological studies prompted state legislatures to re-evaluate laws on the subject. The result was a flurry of legislative enactments which became popularly known as "battered child laws." Presently, Ohio is one of forty-seven states which have such a law.¹¹ Mandatory reporting statutes are needed not only to define child abuse as a crime but also to develop the legal machinery to detect it,¹² since the violent maltreatment of children could be punishable on some premise of battery, aggravated assault, cruelty to children, or murder or manslaughter if death resulted.¹³ Section 2151.421 of the Revised Code is directed to this end.

The broader scope of the amended Ohio law is a distinguishing characteristic from the original statute¹⁴ and those of other states.¹⁵ While most statutes limit the reporting requirement to physicians, surgeons, or other medical personnel, Ohio imposes the duty not only on these individuals but also upon school teachers and social workers acting in their official capacities. The broad coverage of the Ohio statute seems to be supported by the fact that some studies have indicated that a great number of child abuse cases are referred to the authorities by persons other than physicians.¹⁶ More important, by imposing the duty to report upon more than one group, the legislature recognized the curtailment of child abuse as a truly

¹⁰ *Id.* at 2-3. See Adelson, *Slaughter of the Innocent*, 264 NEW ENG. J. MED. 1345 (1961).

¹¹ The exceptions are Alabama, Hawaii, Mississippi, and the District of Columbia.

¹² Interview With Dr. Lester Adelson, Assistant County Coroner for Cuyahoga County, in Cleveland, Ohio, Feb. 27, 1967.

¹³ See, e.g., OHIO REV. CODE § 2903.08: "No person having the control of or being the parent or guardian of a child under the age of sixteen years shall willfully abandon such child, or torture, torment, or cruelly or unlawfully punish him, or willfully or negligently fail to furnish him necessary and proper food, clothing, or shelter." See also OHIO REV. CODE §§ 2151.41 (prohibition against abuse, or abetting delinquency of a child) and 2151.42 (prohibition against neglecting or mistreating a child).

¹⁴ Compare OHIO REV. CODE § 2151.421, which applies to "any physician, including a hospital intern or resident physician . . . or any registered nurse, visiting nurse, school teacher, or social worker, acting in his official capacity, having reason to believe that a child . . . has suffered any wound," with the 1963 statute, Ohio Laws 1963, § 2151.421, at 625, which was directed merely to any physician, including a hospital intern or resident physician.

¹⁵ See, e.g., IND. ANN. STAT. § 52-1420 (Supp. 1966); ILL. ANN. STAT. ch. 23, § 2042 (Smith-Hurd Supp. 1966). But see WYO. STAT. ANN. § 14.28.1 (1957).

¹⁶ See, e.g., McCoid, *The Battered Child and Other Assaults Upon the Family: Part One*, 50 MINN. L. REV. 1, 13 (1966), where it is reported that in one such study, only nine percent of the referrals were by doctors or other medical personnel.

social problem. Statutes restricting their application merely to the medical profession have been criticized as shortsighted in regard to the primary goal that reporting legislation should have, namely, the efficient reduction of child abuse.¹⁷

It would seem that the solution requires the cooperation of not just one group but of all professional individuals who would be most likely to detect such cases. Under these circumstances the broad application of the Ohio statute seems both desirable and practical.¹⁸ Nevertheless, the heaviest burden rests with private physicians and hospital personnel, who not only are most likely to come in contact with cases of child abuse but also may be the most qualified to detect them.

Another interesting feature of the amended statute is the mandatory nature of the reporting clause.¹⁹ In this respect, Ohio is in accord with a majority of states which have enacted such statutes. However, statutes containing permissive rather than mandatory language are in effect in Alaska,²⁰ Missouri,²¹ New Mexico,²² North Carolina,²³ Texas,²⁴ and Washington.²⁵ Although this difference may seem to be of minor importance if the statute is to serve some purpose other than to educate the professions affected by the problem, a mandatory statute is the desirable choice.

It has been asserted that a penalty should not be imposed for the failure to make a report which depends on a subjective deter-

¹⁷ Office of the General Counsel, AMA, *Editorial*, 188 J.A.M.A. 386 (1964): "Child abuse is insidious. Only the more flagrant cases come to public attention. Many instances do not come to the attention of the physicians, and in those that do, it is often discovered that the child had suffered previously from maltreatment or injury by his parents or guardian." *Ibid.*

¹⁸ It is possible that the statute will be used in bad faith (reporting unoffending parents) by such people as relatives and neighbors. However, this danger is clearly outweighed by the need for a solution to the problem.

¹⁹ OHIO REV. CODE § 2151.421 (Supp. 1966).

Any physician . . . or any registered nurse, visiting nurse, school teacher, or social worker . . . having reason to believe that a child . . . has suffered any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect . . . shall immediately report . . . such information to a municipal or county peace officer. *Ibid.*

OHIO REV. CODE § 2151.99(C) (Supp. 1966) imposes either a fine of five to one hundred dollars, imprisonment for one to ten days, or both, for failure to make a report.

²⁰ ALASKA STAT. § 11.67.010 (1965).

²¹ MO. ANN. STAT. § 210.105 (Supp. 1966).

²² N.M. STAT. ANN. § 13-9-13 (Supp. 1965).

²³ N.C. GEN. STAT. § 14-318.2 (Supp. 1965).

²⁴ TEX. REV. CODE ANN. art. 695c-2 (Supp. 1966).

²⁵ WASH. REV. CODE § 26.44.030 (Supp. 1966).

mination of a condition.²⁶ The Ohio statute requires a report from one "who has reason to believe" that the child's injury is of such nature as to "reasonably indicate" abuse or neglect.²⁷ The assertion is reasonable because of the great difficulty involved in determining that an injury was intentionally inflicted, and because such beatings usually take place in the secrecy of the home with the child either too young or too afraid to speak and the unoffending spouse reluctant to accuse the other. In addition, at times the cover-up explanations offered by the parents may sufficiently account for the injury suffered by the child.²⁸ Thus, states with permissive reporting statutes leave the matter in the discretion of the attending physician or other medical personnel.

In these circumstances a compulsory reporting statute is preferable because it impresses upon a vacillating physician the fact that child abuse is a social-medical-legal problem and that interests are involved other than his diagnosis and treatment of the child. Thus, it is essential that social service and legal authorities be notified, since it is only through them that the ultimate solution to the problem can be achieved. Furthermore, it has been pointed out that the psychological reluctance of some individuals to believe that any parent would ever abuse his child is one reason why there are not more reports.²⁹ In view of this problem, a mandatory rather than a permissive statute would seem better suited to alerting such individuals to reality. Finally, where the well-being of the community has demanded it, physicians and others have traditionally been required to make reports,³⁰ and in the case of child abuse the welfare of the community is no less endangered.

Perhaps the major deficiency of the original Ohio statute was the absence of any provision for post-report procedure. The statutory mandate ended with the making of the report to a local law enforcement official.³¹ The natural inference to be drawn from the statute was that eventual prosecution of the guilty parties was to follow. But what about the child? The real purpose of a reporting statute should not be to prosecute guilty parents but to pro-

²⁶ See 44 TEXAS L. REV. 584, 585 n.9 (1966).

²⁷ OHIO REV. CODE § 2151.421 (Supp. 1966).

²⁸ Interview With Head Resident of Babies and Childrens' Hospital, in Cleveland, Ohio, Mar. 3, 1967.

²⁹ Kempe, Silverman, Steel, Droegenmueller & Silver, *supra* note 5, at 19.

³⁰ See, e.g., OHIO REV. CODE § 2917.44 (Supp. 1966) (duty of a physician to report gunshot wounds); OHIO REV. CODE § 3701.25 (duty of a physician to report cases of occupational diseases).

³¹ Ohio Laws 1963, § 2151.421, at 625.

tect the child against further abuse. In this regard, the statute has been greatly improved by the amendment. Peace officers are now directed to refer the report to the appropriate county department of welfare or child welfare board in charge of children's services, the welfare agency and the law enforcement agency are then to cooperate in the investigation of the case.³² The agency is to "provide such social services as are necessary to protect the child and preserve the family"³³ and must submit to the county or city prosecutor a report containing recommendations it deems necessary for the future protection of the child.³⁴

The above provisions indicate that the present law's spirit is protective rather than punitive. This conclusion is reinforced by the fact that the reporting statute is in the chapter of the Revised Code dealing with juvenile courts where the maximum age of the children affected by the reporting law is set at eighteen.³⁵ Thus it seems that prosecution, especially in the less flagrant cases, is not likely to follow a report of child abuse. It is more likely that any proceedings instituted would be in the nature of an injunction or custody proceeding, if that is necessary.³⁶ Moreover, by providing that the legal investigation of the case be conducted in conjunction with the child welfare agency, the psychological and sociological aspects of the case may also be taken into consideration to determine what is in the best interest of the child. This is especially desirable because the fundamental cause of child abuse seems to be a poor family environment caused by a myriad of psychiatric and emotional problems. In this respect, a thorough investigation, always conducted with due regard to parental rights and inadequacies,

³² OHIO REV. CODE § 2151.421 (Supp. 1966).

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ OHIO REV. CODE § 2151.01. In the case of a crippled or physically handicapped child, the jurisdiction of the juvenile court continues until the child reaches twenty-one years of age.

Like Ohio, the policy followed in most states is that the maximum age of children affected by the reporting statute corresponds to the juvenile court's jurisdiction. *But see, e.g.,* GA. CODE ANN. § 74-111 (Supp. 1966) and MO. REV. STAT. § 210.105 (Supp. 1966), where the maximum age is twelve.

³⁶ *Accord,* OHIO REV. CODE §§ 2151.27-.28. The reporting statute does provide that the child may be taken from the parents by the reporting physician and the peace officer to whom the report is made, but only where immediate removal is considered essential to protect the child from further injury or abuse. Otherwise, parental custody is not to be terminated without consultation with the county department of welfare. The delegation of such power to the reporting physician and peace officer has been justifiably questioned. *McCoid, supra* note 16, at 50.

should also take into consideration possible dangers to other children in the family.³⁷

Perhaps the most legally significant provisions of the Ohio reporting statute are: (1) the grant of civil and criminal immunity to anyone participating in the filing of child abuse reports; and (2) the suspension of the physician-patient privilege.³⁸ Of the states that have enacted mandatory reporting legislation, only Wisconsin fails expressly to grant immunity from suit by the parents.³⁹ Undoubtedly, a false report of child abuse could do great damage to the parents' reputation where the injury to the child is severe enough to impute the commission of a crime. In Ohio it seems quite clear that under the proper circumstances such a report would constitute libel per se or slander.⁴⁰ Where false statements are made under the child abuse reporting statute, however, it is doubtful that a parent or other guardian would have a cause of action against the person who is responsible.⁴¹ Further, it was observed that many physicians had been reluctant to report because of the possible damage to their professional reputation which could result from having to fight a lawsuit.⁴² With the immunity granted to physicians by the amended statute, that basis for their reluctance is no longer justified.⁴³

Another provision of the recent Ohio statute is designed not only to encourage the reporting of child abuse cases but also to effectuate legal proceedings following such a report. This provision suspends the physician-patient privilege in any judicial proceeding which may result from a report.⁴⁴ It may be said that the privilege is that of the *patient* alone and that the parent, not being the pa-

³⁷ Reinhart & Elmer, *supra* note 5, at 360.

³⁸ OHIO REV. CODE § 2151.421 (Supp. 1966).

³⁹ WIS. STAT. ANN. § 48.981 (Supp. 1967).

⁴⁰ 34 OHIO JUR. 2D *Libel & Slander* § 10, at 183 (1958).

⁴¹ First, the traditional requisite of intent to defame would, at best, be difficult to prove. Further, where a physician, teacher, or social worker reports a case of supposed child abuse, the presumption is strongly in favor of the fact that it was made in the best interest of the child rather than with an intent to defame the parents.

⁴² McCoid, *supra* note 16, at 39; Interview With Dr. Lester Adelson, *supra* note 12.

⁴³ A communication in reference to which the maker has a legal, moral, or social obligation has long been held in Ohio to grant the maker a qualified privilege. *Accord*, *Popke v. Hoffman*, 21 Ohio App. 454, 153 N.E. 248 (1926). Similarly, in the case of the reporting statute, the informant would be acting under a statutory duty to report.

⁴⁴ OHIO REV. CODE § 2151.421. Ohio grants the statutory privilege that a physician may not testify concerning a communication made to him by the patient during a physician-patient relationship. OHIO REV. CODE § 2317.02(A). Furthermore, a physician may have his license suspended or revoked for the violation of that confidence. OHIO REV. CODE § 4731.22.

tient, may make no such claim.⁴⁵ But the Ohio statutory privilege is quite absolute in its terms and, unlike many states' statutory provisions, the privilege remains unless expressly waived.⁴⁶ The child who is often of tender years and most likely an infant is not able to waive the privilege.⁴⁷

Thus, where the testimony of the examining physician is the only real evidence against the abusive parents, judicial proceedings could well be ineffectual. The suspension of the privilege in the reporting statute will prevent this result, and all evidence can come before the tribunal for an adjudication most beneficial to the child. If the physician wishes to testify, there is no statutory bar to his doing so. But as one commentator has pointed out, the ethical principle behind the rule against disclosing privileged communications may be more important than the evidentiary technicality as far as the doctor is concerned.⁴⁸ Such an individual may still be reluctant to report the abusive parents who have sought his medical assistance. Such conflicting values cannot be resolved by legislation. However, the issue should be resolved in favor of the child, who may be released only to return to more maltreatment which may ultimately cause him permanent injury or death. Parental emotional and psychological inadequacies invariably surmount their expressed good intentions towards the child at the time of treatment.

A discussion of the physician-patient privilege raises the question of privileged communications between husband and wife. In the case of an accusation of child abuse arising in Ohio, the offending spouse would seem to be precluded from invoking the privilege where the innocent spouse wishes to testify. Although the reporting statute does not mention that privilege, section 2945.42 of the Ohio Revised Code suspends the husband-wife privilege in all cases brought for the neglect of or cruelty to their children.

In conclusion, it may be said that section 2151.421 represents a legal response to a call originally made by the medical profession. The new law will not prevent isolated instances of child abuse, but it should check the physical and mental damage which may result from repeated maltreatment. The ultimate success of

⁴⁵ 8 WIGMORE, EVIDENCE § 2386, at 851 n.2 (McNaughton rev. ed. 1961).

⁴⁶ OHIO REV. CODE § 2317.02(A).

⁴⁷ It would certainly not be in the best interest of the guilty parents to waive the privilege for the child. Even if they wished to do so, the Ohio rule, unlike the rules of a majority of other states, would not allow it. Cf. *Parisky v. Pierstorff*, 63 Ohio App. 503, 27 N.E.2d 254 (1939).

⁴⁸ McCoid, *supra* note 16, at 33.

the statute depends entirely upon the efforts of those it requires to act. The subjective determination of child abuse within the meaning of the statute leaves great latitude for passivity and avoidance in order to escape its mandate. But such things cannot be legislated against. Furthermore, the effectiveness of the law will rest on interprofessional effort and education in respect to the problem.

Unlike most laws, the reporting statute's effectiveness will decrease as the public awareness of its existence increases. If parents become aware of the fact that, by taking their "battered child" to a physician, they are likely to be reported to local government officials or agencies, they might refrain from seeking treatment of the child. Thus, the child whom the law seeks to protect would be in a worse position than he would have been without the statute. The answer to the apparent dilemma lies in the desire of doctors, nurses, teachers, and social workers to inform themselves about the problem and to assume the corresponding responsibility.

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