

OPINION NO. 92-073**Syllabus:**

A public children services agency is required, pursuant to R.C. 2151.421(F)(1), to investigate as alleged child abuse a report received by it of an incident in which a sixteen year old female has been assaulted by her husband.

To: Richard A. Yoss, Monroe County Prosecuting Attorney, Woodsfield, Ohio
By: Lee Fisher, Attorney General, December 30, 1992

You have requested an opinion as to whether a public children services agency ("PCSA") is required, pursuant to R.C. 2151.421, to investigate as alleged child abuse an incident in which a sixteen year old female has been assaulted by her husband. The term "public children services agency" refers to a children services board or a county department of human services that has assumed the administration of the children services function prescribed by R.C. Chapter 5153. *See* R.C. 2151.011(B)(26); 9 Ohio Admin. Code 5101:2-34-01(QQQQ); *see also* R.C. 5153.02.

I. R.C. 2151.421 Authorizes an Individual, Who Knows or Suspects that a Sixteen Year Old Female Has Been Assaulted by Her Husband, to Report or Cause Reports To Be Made of that Knowledge or Suspicion to a PCSA or a Municipal or County Peace Officer

A. Child Abuse and Child Neglect Investigation Reports

R.C. 2151.421, which sets forth a comprehensive scheme for the reporting of allegations of child abuse and child neglect and for the investigation of those reports, provides, in part, as follows:

(A)(1) No attorney, physician, including a hospital intern or resident, dentist, podiatrist, practitioner of a limited branch of

medicine or surgery as defined in section 4731.15 of the Revised Code, registered nurse, licensed practical nurse, visiting nurse, other health care professional, licensed psychologist, licensed school psychologist, speech pathologist or audiologist, coroner, administrator or employee of a child day-care center, administrator or employee of a certified child care agency or other public or private children services agency, school teacher, school employee, school authority, social worker, licensed professional counselor, or person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion, who is acting in his official or professional capacity and knows or suspects that *a child under eighteen years of age or a physically or mentally handicapped child under twenty-one 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*, shall fail to immediately report or cause reports to be made of that knowledge or suspicion to the children services board, the county department of human services exercising the children services function, 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.

....
 (B) Anyone, who knows or suspects that *a child under eighteen years of age or a physically or mentally handicapped child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child*, may report or cause reports to be made of that knowledge or suspicion to the children services board, the county department of human services exercising the children services function, or to a municipal or county peace officer.

....
 (D) Upon the receipt of a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, the municipal or county peace officer who receives the report shall refer the report to the appropriate county department of human services or children services board. (Emphasis added.)

See also 9 Ohio Admin. Code Chapter 5101:2-34 (setting forth rules to implement R.C. 2151.421 and related provisions).

R.C. 2151.421 thus requires that individuals holding certain professions or positions¹ report knowledge or suspicion that a child under age eighteen or a physically or mentally handicapped child under age twenty-one 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 to a PCSA or a municipal or county peace officer, and, in addition, permits other individuals to report such knowledge or suspicion. R.C. 2151.421(A)(1), (B). A "child" under the age of eighteen, therefore, may be the subject of a report of known or suspected child abuse or child neglect and of a known or suspected threat of child abuse or child neglect that is prepared pursuant to R.C. 2151.421.

¹ R.C. 2151.421(A)(2) and (A)(3) provide that, in certain instances, an attorney or physician is not required to make a report pursuant to R.C. 2151.421(A)(1).

B. The Term "Child," as used in R.C. 2151.421, Includes a Child Who Is Married

The term "child" is defined for purposes of R.C. 2151.421 as

a person who is under the age of eighteen years, except that any person who violates a federal or state law or municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of his age at the time the complaint is filed or hearing had on the complaint and except that a person whose case is transferred for criminal prosecution pursuant to section 2151.26 of the Revised Code and is subsequently convicted in that case shall after the transfer be deemed not to be a child in any case in which he is alleged to have committed an act that if committed by an adult would constitute murder or aggravated murder, an aggravated felony of the first or second degree, or a felony of the first or second degree.

R.C. 2151.011(B)(1); *see also* rule 5101:2-34-01(W) (as used in 9 Ohio Admin. Code Chapter 5101:2-34, "child" means "any person under eighteen years of age or a mentally or physically handicapped person, as defined by rule of the department of human services, under twenty-one years of age"). The term "child," as used in R.C. 2151.421, thus, does not distinguish between a married and an unmarried child. Moreover, no provision in R.C. 2151.421 or 9 Ohio Admin. Code Chapter 5101:2-34 recognizes such a distinction.

Since the General Assembly has not excepted a child who is married from the provisions of R.C. 2151.421, such an exception may not be read into R.C. 2151.421. *Cf., e.g., State v. Wilcox*, 26 Ohio N.P. (n.s.) 343, 346 (Juv. Ct. Tuscarawas County 1926) ("[t]he fact that a female is married, does not make her immune to the Juvenile laws, if she is under eighteen years of age. The statute includes any child under eighteen years, whether married or not"); 1977 Op. Att'y Gen. No. 77-001 (syllabus) ("[a]ll children of compulsory school age, whether married or single, are subject to the compulsory attendance provisions of R.C. Chapter 3321 unless exempted or excused from attendance for one or more of the statutory reasons set forth therein"). *See generally Wachendorf v. Shaver*, 149 Ohio St. 231, 237, 78 N.E.2d 370, 374 (1948) ("nothing may be read into a statute which is not within the manifest intention of the Legislature as gathered from the act itself"). Accordingly, the term "child," as used in R.C. 2151.421, includes a child who is married.

C. Responsibility under R.C. 2151.421 to Report Known or Suspected Child Abuse by a Child's Spouse

It should be noted that R.C. 2151.421 is not limited to reports of child abuse inflicted by a child's parents, guardian, custodian, person having custody or control, or person in loco parentis. The primary purpose of R.C. 2151.421 "is to protect children from abuse and/or neglect and to eliminate the source of any such abuse." *Haag v. Cuyahoga County*, 619 F. Supp. 262, 270 (N.D. Ohio 1985), *aff'd mem.*, 798 F.2d 1414 (6th Cir. 1986); *see* R.C. 2151.421(l); *see also* 1989 Op. Att'y Gen. No. 89-108 at 2-530. R.C. 2151.01 provides, that the sections in R.C. Chapter 2151, "with the exception of those sections providing for the criminal prosecution of adults, shall be liberally interpreted and construed so as to ... provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code." Accordingly, R.C. 2151.421 requires individuals in certain professions or positions, and permits all other individuals, who know or suspect that a sixteen year old female has been assaulted by her husband, to report or cause reports to be made of that knowledge or suspicion to a PCSA or a municipal or county peace officer.

II. Duty of PCSA to Investigate an Incident in which a Sixteen Year Old Female Has Been Assaulted by Her Husband

As noted above, R.C. 2151.421 provides for reports of child abuse and child neglect to be made either to a PCSA or to a municipal or county peace officer, and provides that if a report is made to a peace officer it must be referred to the appropriate PCSA. R.C. 2151.421(A), (B), (D). When a PCSA receives reports of child abuse or child neglect, it

shall investigate, within twenty-four hours, each report of known or suspected child abuse or child neglect and of a known or suspected threat of child abuse or child neglect that is referred to it under [R.C. 2151.421] to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. (Emphasis added.)

R.C. 2151.421(F)(1); *see also* R.C. 5153.16(B)(1) (a PCSA shall "[m]ake an investigation concerning any child reported to be in need of care, protection, or service"). R.C. 2151.421 thus requires that each report of alleged child abuse or threats of child abuse be investigated by a PCSA in accordance with and subject to the provisions of R.C. 2151.421 and the rules adopted thereunder. *See* 9 Ohio Admin. Code Chapter 5101:2-34. Therefore, a PCSA is required, pursuant to R.C. 2151.421(F)(1), to investigate a report which indicates that a sixteen year old female has been assaulted by her husband.

III. Conclusion

It is therefore my opinion, and you are hereby advised, that a public children services agency is required, pursuant to R.C. 2151.421(F)(1), to investigate as alleged child abuse a report received by it of an incident in which a sixteen year old female has been assaulted by her husband.