

**OPINION NO. 78-038****Syllabus:**

1. The phrase "having reason to believe" as used in R.C. 2151.421 is equivalent to "known or suspected" as used in 45 C.F.R. 1340.3-3(d).
2. The term "child neglect" as used in R.C. 2151.421 applies to children without proper parental care or guardianship as defined by R.C. 2151.05.

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**To: Kenneth B. Creasy, Director, Dept. of Public Welfare, Columbus, Ohio**  
**By: William J. Brown, Attorney General, June 14, 1978**

I have before me your request for my opinion addressing the following questions:

1. Is the language "having reason to believe" in section 2151.421 of the Ohio Revised Code equivalent to the language "known or suspected" as used in 45 CFR, 1340.3-3(d)?
2. Does the term "child neglect" as used in R.C. 2151.421,

apply to children referred to as "without proper parental care or guardianship" in R.C. 2151.05?

From further information supplied by you I understand that your request stems from efforts by your office to qualify Ohio for federal funds under the Child Abuse Prevention and Treatment Act, P.L. 93-247 (1974). Section 4 of that act provides for grants of funds to states to aid them in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

In order for a state to qualify for such assistance, P.L. 93-247 Sec. 4(b)(2), 42 U.S.C.A. § 5103(b)(2), establishes certain criteria which must be met and states, in pertinent part, as follows:

(2) In order for a State to qualify for assistance under this subsection, such State shall -

(A) have in effect a State child abuse and neglect law which shall include provisions for immunity for persons reporting instances of child abuse and neglect from prosecution, under any State or local law, arising out of such reporting;

(B) provide for the reporting of known and suspected instances of child abuse and neglect;

The provisions of 45 C.F.R., 1340.3-3(d), to which you refer, were promulgated by the Department of Health, Education and Welfare to implement 42 U.S.C.A. § 5103(b)(2) and to provide guidelines for compliance with that statute. The C.F.R. qualifications match those of the statute.

R.C. 2151.421, which provides for the reporting of child abuse or neglect, reads in pertinent part as follows:

Anyone having reason to believe that a child less than eighteen years of age or any crippled or otherwise physically or mentally handicapped child under twenty-one years of age has suffered any wound, injury, disability, or other condition of such nature as to reasonably indicate abuse or neglect of such child may report or cause reports to be made of such information to the children services board or the county department of welfare exercising the children services function, or to a municipal or county peace officer.

Your first question is whether the language "having reason to believe" in R.C. 2151.421 is equivalent to "known and suspected" as used in 43 U.S.C.A. § 5103(b)(2). R.C. 1.42 prescribes that words and phrases used in a statute shall be read in context and construed according to the rules of grammar and common usage. As a matter of common usage, the terms are synonymous in that both phrases connote having some information upon which to form a belief.

As early as 1880, the United State Supreme Court recognized these terms as synonymous, stating in Shaw v. Merchants' National Bank of St. Louis, 101 U.S. (11 Otto) 557 (1880) at 566:

It may fairly be assumed that one who has reason to believe a fact exists, knows it exists. Certainly, if he is a reasonable being.

Therefore, in answer to your first question, it is my conclusion that the phrase "having reason to believe" in R.C. 2151.421 is equivalent to "known or suspected" as used in U.S.C.A. § 5103(b)(2) and the provisions of 45 C.F.R., 1340.3-3(d) promulgated thereunder.

In respect to your second question, I must point out to you that the definitions used in R.C. Chapter 2151 appear in the first few sections of such Chapter. R.C. 2151.03 defines "neglected child" in pertinent part as follows:

As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code, "neglected child" includes any child:

- (A) Who is abandoned by his parents, guardian, or custodian;
- (B) Who lacks proper parental care because of the faults or habits of his parents, guardian, or custodian;

R.C. 2151.05 defines a child without proper parental care as follows:

Under sections 2151.01 to 2151.54 of the Revised Code, a child whose home is filthy and unsanitary; whose parents, stepparents, guardian, or custodian permit him to become dependent, neglected, abused, or delinquent; whose parents, stepparents, guardian, or custodian, when able, refuse or neglect to provide him with necessary care, support, medical attention, and educational facilities; or whose parents, stepparents, guardian, or custodian fail to subject such child to necessary discipline is without proper parental care or guardianship.

It should be noted that these definitions set forth above apply throughout R.C. Chapter 2151 and should be used in cases where they relate to other sections within that Chapter.

R.C. 2151.421 requires or permits, as the particular case may be, the reporting of child abuse and/or neglect. R.C. 2151.03 establishes criteria for determining when a child is neglected. Included in the definition of neglect set forth under R.C. 2151.03 is a child without proper parental care as defined under the terms of R.C. 2151.05. It is apparent that anyone who is required or authorized to report cases of child abuse or neglect pursuant to R.C. 2151.421 should include those children who meet the standards in R.C. 2151.05, as the definition set forth therein is one criterion for determining that a child is neglected under the terms of R.C. 2151.03.

Therefore, in specific answer to your questions, it is my opinion, and you are so advised:

1. The phrase "having reason to believe" as used in R.C. 2151.421 is equivalent to "known or suspected" as used in 45 C.F.R. 1340.3-3(d).
2. The term "child neglect" as used in R.C. 2151.421 applies to children without proper parental care or guardianship as defined by R.C. 2151.05.