

**Minor Consent, Confidentiality, and Child Abuse Reporting
In Title X Funded Family Planning Settings**

OHIO

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Exhibit A. When Mandated Reporters in Ohio Must Report Consensual Sexual Activity as Child Abuse

I. MINOR CONSENT

What is the age of majority/minority?

The age of majority in Ohio is eighteen years. ORC § 3109.01.

What is the age of consent for sexual activity?

While no statute specifically establishes an age at which a minor may legally consent to sexual activity, there can be criminal penalties for consensual sexual activity with a minor under 16 years of age. *See for example* ORC § 2907.04. There also can be criminal penalties for consensual sexual activity with a minor under 18 years old when certain circumstances exist. For example, it is considered criminal sexual battery for a teacher or school administrator to engage in sexual conduct with a student under 18 years old, irrespective of consent. ORC § 2907.03.

Who generally consents for health care for minors?

Generally, a parent, guardian or other person *in loco parentis* must consent for health care on behalf of a minor. *See* § ORC 3109.52.

What exceptions allow minors or others to consent for health care?

Emancipated Minors:

For the purposes of consenting to an abortion, a minor is emancipated if (1) married, (2) in the armed services, (3) employed and self-sustaining, or (4) otherwise independent from the care and control of a parent. ORC § 2919.121. For the purposes of abortion, emancipated minors are not required to satisfy Ohio's parental consent statute. *Id.*

In other health care contexts, Ohio courts have recognized that minors “free[]...from parental control” are emancipated. *Dudziak v. Dudziak*, 611 N.E.2d 337,341 (1990)(citing *Price v. Price*, 465 N.E.2d 922(Oh. App. 1983). However, no statute in Ohio specifically establishes when a minor can be deemed “free from parental control.”

Several courts have said emancipation “would necessarily include marriage, self-support and/or residence beyond the care and control of parents.” *Id.* However, most Ohio courts focus almost exclusively on the financial dependence of the minor when determining emancipation status. For example, in one case, a 16-year-old girl was living at least several days a week with her adult boyfriend and was enrolled in school near his house rather than near her mother's. She was unable to support herself financially though and turned to her mother for food and personal care items. The court determined she was not emancipated despite the fact that she no longer lived with her mom. *Siefker v. Siefker*, 1997 WL 658995 (Oh. App. 3 Dist.).

Please note: Even though Ohio courts have recognized that minors may be emancipated, no court has specifically acknowledged that emancipated minors may consent for their own health care.

For this reason, it is advisable to seek legal counsel for assistance in developing an ‘emancipated minor’ consent policy.

While Incarcerated:

“A minor whose case is transferred for criminal prosecution, who is prosecuted as an adult and is convicted of or pleads guilty to one or more offenses in that case, and who is sentenced to a prison term or term of imprisonment in a state correctional institution for one or more of those offenses shall be considered emancipated for the purpose of consenting to medical treatment while confined in the state correctional institution.” ORC § 5120.172.

Title X Family Planning, including Pregnancy Testing, Contraception:

Federal regulations establish special access rules for family planning services funded through Title X. Federal law requires that Title X funded services be available to all adolescents, regardless of their age, without the need for parental consent. 42 C.F.R. 59.5(a)(4); see *Does 1-4 v. Utah Dept. of Health*, 776 F.2d 253 (10th Cir. 1985).

Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations. Thus, minors of any age may consent to family planning services when those services are funded in full or in part by Title X monies.

Sexually Transmitted Diseases:

To the extent that STD services are funded in full or in part by Title X, minors of any age may consent. See “Title X Family Planning” above.

In other cases, state law applies. Ohio law states that “a minor may give consent for the diagnosis or treatment of any venereal disease by a licensed physician. The consent of the parent, parents, or guardian of a minor is not required for such diagnosis or treatment.” ORC § 3709.241.

HIV/AIDS Testing:

To the extent that HIV/AIDS services are funded in full or in part by Title X, minors of any age may consent. See Title X Family Planning above.

In other cases, state law applies. Ohio law states that an HIV test shall be performed only if, prior to the test, informed consent is obtained either by the person or agency of state or local government ordering the test or by the person or agency performing the test. Consent may be given orally or in writing. A minor may consent to be given an HIV test. ORC § 3701.242.

Abortion - Judicial Bypass:

Usually, a provider cannot perform an abortion on an unemancipated minor without first notifying a parent, guardian or, in certain circumstances, another relative. ORC § 2919.12.

However, the minor may petition the juvenile court for a waiver of the parental notification requirement. The judge may grant the petition if she finds one of the following: (1) the minor is sufficiently mature and well enough informed to intelligently decide whether to have an abortion without the notification of her parents, (2) one or both of her parents or guardian was engaged in a pattern of physical, sexual or emotional abuse against her, or (3) notification of her parents or guardian otherwise is not in her best interests. ORC §§ 2151.85; 2919.12.

Drug and Alcohol Abuse Treatment:

A minor may give consent for the “diagnosis or treatment by a physician licensed to practice in this state of any condition which it is reasonable to believe is caused by a drug of abuse, beer, or intoxicating liquor.”

“A physician licensed to practice in this state, or any person acting at his direction, who in good faith renders medical or surgical services to a minor giving consent under this section, shall not be subject to any civil or criminal liability for assault, battery, or assault and battery.” ORC § 3719.012.

Inpatient Mental Health Care:

“A parent, a guardian of the person, or the person with custody of the minor may make written application for voluntary admission of a minor to the chief medical officer of a hospital.”

“Any minor whose admission is applied for under this section may be admitted for observation, diagnosis, care, or treatment, in any hospital unless the chief clinical officer finds that hospitalization is inappropriate, and except that, in the case of a public hospital, no person shall be admitted without the authorization of the board of the person's county of residence.”

“If a minor is admitted, the court shall determine, upon petition by the legal rights service, private or otherwise appointed counsel, a relative, or one acting as next friend, whether the admission or continued hospitalization is in the best interest of the minor or incompetent.”

“The chief clinical officer shall discharge any voluntary patient who has recovered or whose hospitalization the officer determines to be no longer advisable and may discharge any voluntary patient who refuses to accept treatment consistent with the written treatment plan required by section 5122.27 of the Revised Code.” ORC § 5122.02.

Outpatient Mental Health Care:

“Upon the request of a minor fourteen years of age or older, a mental health professional may provide outpatient mental health services, excluding the use of medication, without the consent or knowledge of the minor's parent or guardian.”

“Services provided to a minor pursuant to this section shall be limited to not more than six sessions or thirty days of services whichever occurs sooner. After the sixth session or thirty days of services the mental health professional shall terminate the services or, with

the consent of the minor, notify the parent, or guardian, to obtain consent to provide further outpatient services.” ORC § 5122.04.

Photographs/X-Rays of Suspected Abuse/Violence:

“Any person who is required to report known or suspected child abuse or child neglect, may take or cause to be taken color photographs of areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child.” ORC § 2151.421.

Diagnosis and Treatment of Sexual Assault:

“Every hospital of this state that offers organized emergency services shall provide that a physician, a physician assistant, a clinical nurse specialist, a certified nurse practitioner, or a certified nurse-midwife is available on call twenty-four hours each day for the examination of persons reported to any law enforcement agency to be victims of sexual offenses cognizable as violations of any provision of sections 2907.02 to 2907.06 of the Revised Code [which includes unlawful sexual conduct, sexual battery, rape, and sexual imposition]. The physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife, upon the request of any peace officer or prosecuting attorney and with the consent of the reported victim or upon the request of the reported victim, shall examine the person for the purposes of gathering physical evidence and shall complete any written documentation of the physical examination. The public health council shall establish procedures for gathering evidence under this section.”

“Each reported victim shall be informed of available venereal disease, pregnancy, medical, and psychiatric services.”

“A minor may consent to examination under this section. The consent of the parent, parents, or guardian of the minor is not required for an examination under this section.” ORC § 2907.29.

II. CONFIDENTIALITY

Who controls access to medical information?

While Ohio does not have a statute that generally protects the confidentiality of medical records, Ohio courts recognize a common law right to confidentiality and will find providers liable for unauthorized breaches of confidentiality. *See Biddle v. Warren Gen. Hosp.*, 715 N.E.2d 518 (1999). In addition, Ohio does have statutes that protect the confidentiality of specific records. For example, HIV/AIDS information, mental health records, and substance abuse treatment records are specially protected. *See* ORC §§ 3701.243; 5122.31; 3793.13. As well, records held or obtained by the Department of Health, a city Board of Health or a general health district are confidential. ORC § 3701.17.

In terms of access, Ohio law grants patients a right to examine or obtain their medical records, including oral and written information. ORC § 3701.74. When a parent or guardian consents for a minor's care, the parent or guardian generally has a right to obtain records of the minor's treatment. ORC § 3701.74.

Federal regulations also address the confidentiality of and access to Ohio medical records. Federal HIPAA regulations generally reiterate Ohio law -- that medical information is protected; however, when a parent consents for an unemancipated minor's health care, that parent generally has a right to control access to the minor's medical information. 45 C.F.R. §§ 164.502(g)(3), (g)(1), (a)(2).

There are exceptions to both the federal and state rules, though:

What exceptions limit parent access to medical information about minors?

Adverse effect on patient:

A physician or chiropractor may refuse to provide parents access to a minor's medical records if "the physician or chiropractor who has treated the patient determines for clearly stated treatment reasons that disclosure of the requested record is likely to have an adverse effect on the patient." In such cases, the health care provider shall provide the record to a physician or chiropractor designated by the parents. ORC § 3701.74.

Risk of domestic violence/abuse/neglect:

Under federal HIPAA regulations, providers may refuse to provide parents access to a minor's medical records if:

1. The providers have a "reasonable belief" that:
 - a) The minor has been or may be subjected to domestic violence, abuse or neglect by the parent, guardian or other giving consent; or
 - b) Treating such person as the personal representative could endanger the minor;

And:

2. The provider, in the exercise of professional judgment, decides that it is not in the best interest of the minor to give the parent, guardian or other such access.

45 C.F.R. § 164.502(g)(5).

Emancipation:

Under federal HIPAA regulations, emancipated minors have a right to control access to their medical information. See 45 C.F.R. § 502(g).

Title X funded “Family Planning,” including Pregnancy Testing/Contraception:

Federal regulations establish special protections for family planning information and records. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations.

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual’s documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.” 42 C.F.R. § 59.11.

Sexually Transmitted Disease:

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual’s documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.” 42 C.F.R. § 59.11.

HIV/AIDS Test Results:

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual’s documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.” 42 C.F.R. § 59.11.

For services not funded by Title X, “the results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS-related condition may be disclosed to the individual who was tested or the individual's legal guardian, and the individual's spouse or any sexual partner.” ORC § 3701.243.

Drug and Alcohol Abuse Treatment:

Federal regulations establish special protections for substance abuse treatment records. Providers that meet certain criteria must follow the federal rule.

Federal confidentiality law applies to any individual, program, or facility that meets the following two criteria:

1. The individual, program, or facility is authorized, certified, licensed or funded in whole or in part by any department of the federal government. Examples include programs that are: tax exempt; receiving tax-deductible donations; receiving any federal operating funds; or registered with Medicare. 42 C.F.R. §2.12;

And:

2. The individual or program:
 - 1) Is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; OR
 - 2) Is a staff member at a general medical facility whose primary function is, and who is identified as, a provider of alcohol or drug abuse diagnosis, treatment or referral; OR
 - 3) Is a unit at a general medical facility that holds itself out as providing alcohol or drug abuse diagnosis, treatment or referral. 42 C.F.R. §2.11; 42 C.F.R. §2.12.

For individuals or programs meeting these criteria, federal law prohibits disclosing any information to parents without a minor’s written consent if the minor acting alone under applicable state law has the legal capacity to apply for and obtain alcohol or drug abuse treatment. 42 C.F.R. § 2.14.

For programs that don’t meet the above criteria, state law applies. Ohio state law says that records can only be released with the signed consent of the patient. ORC § 3793.13.

Outpatient Mental Health Care:

“A minor's parent or guardian shall not be informed of minor consent outpatient services without the minor's consent unless the mental health professional treating the minor determines that there is a compelling need for disclosure based on a substantial probability of harm to the minor or to other persons, and if the minor is notified of the mental health professional's intent to inform the minor's parent or guardian.” ORC § 5122.04.

Diagnosis and Treatment of Sexual Assault:

When a minor consents to sexual assault services, “the hospital shall give written notice to the parent, parents, or guardian of a minor that an examination under this section has taken place.” ORC § 2907.29.

What other situations allow or require you to give others access to a minor’s medical information without requiring you to seek parent or minor consent?

Examples include:

Reporting HIV/AIDS to Health Department:

“Persons designated by rule adopted by the public health council under section 3701.241

of the Revised Code shall report promptly every case of AIDS, every AIDS-related condition, and every confirmed positive HIV test to the department of health on forms and in a manner prescribed by the director.” ORC § 3701.24.

Partner Notification:

“The results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS-related condition may be disclosed to the individual's spouse or any sexual partner.” ORC § 3701.243.

Reporting Gunshot, Stab Wounds or Serious Physical Harm:

“No physician, limited practitioner, nurse, or other person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by the physician, limited practitioner, nurse or person, or any serious physical harm to persons that the physician, limited practitioner, nurse, or person knows or has reasonable cause to believe resulted from an offense of violence.” ORC § 2921.22.

Reporting Child Abuse:

Mandated reporters must report child abuse. Physician-client, counselor-client and other privilege does not apply to protect records from release. ORC § 2151.421; *see* ORC § 2317.02.

Can individuals be held liable for revealing confidential information outside the exceptions listed in federal or state law?

Providers can only share information without client authorization if an exception in state or federal law specifically allows the release. If no exception applies that would allow a provider to share information, providers who reveal confidential information may be held liable. For example, Ohio law makes the sharing of drug abuse treatment records without consent a felony. ORC 3793.99. And the HIPAA regulations give the Department of Health and Human Services the authority to enforce HIPAA confidentiality regulations and to impose sanctions on providers who breach those rules. *See* 45 C.F.R. § 160.

Beyond criminal sanction, professionals who violate confidentiality also may put their medical license at risk. For example, physician’s assistants, physicians and psychologists can have their licenses limited, revoked, or suspended for “willfully betraying a professional confidence.” ORC §§ 4730.25; 4732.22; 4731.17.

For purposes of a physician’s license, “willfully betraying a professional confidence” does not include providing any information, documents, or reports to a child fatality review board under sections 307.621 to 307.629 of the Revised Code and does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code. Nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section.” ORC § 4731.22.

III. CHILD ABUSE REPORTING REQUIREMENTS

A. Am I a Mandated Reporter?

Who is a mandated reporter?

Mandated reporters include:

- An attorney;
- Physician, including a hospital intern or resident;
- Dentist;
- Podiatrist;
- Practitioner of a limited branch of medicine as specified ORC 4731.15;
- Registered nurse;
- Licensed practical nurse;
- Visiting nurse;
- Other health care professional;
- Licensed psychologist;
- Licensed school psychologist;
- Independent marriage and family therapist or marriage and family therapist;
- Speech pathologist or audiologist;
- Coroner;
- Administrator or employee of a child day-care center;
- Administrator or employee of a residential camp or child day camp;
- Administrator or employee of a certified child care agency or other public or private children services agency;
- School teacher; school employee; school authority;
- Person engaged in social work or the practice of professional counseling;
- Agent of a county humane society;
- Person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion;
- Superintendent, board member, or employee of a county board of mental retardation; And
- Investigative agent contracted with by a county board of mental retardation; or employee of the department of mental retardation and developmental disabilities.

ORC § 2151.421.

When information otherwise would be privileged under the attorney-client or physician-client privilege, Attorneys and Physicians only must make a report if all of the following apply:

“(a) The client or patient, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(b) The attorney or physician knows or suspects, as a result of the communication or any observations made during that communication, 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.

(c) 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 section 2151.85 of the Revised Code.”

ORC § 2151.421.

May I report child abuse even if I am not a mandated reporter?

“Anyone who knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person 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 entity or persons specified in this division.” ORC § 2151.421.

B. When is a Mandated Reporter Required to Submit a Report?

When must I report abuse?

“A mandated reporter who is acting in an official or professional capacity and knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired 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 immediately report that knowledge or suspicion.” ORC § 2151.421.

What if I am not sure that abuse has occurred?

Confirmation of abuse is not required. Reporters must report whenever they “suspect” that abuse has occurred.

C. Is This a Type of Activity That Must be Reported?

What constitutes abuse or neglect?

Ohio law defines an "abused child" to include any child who:

“(A) Is the victim of "sexual activity" as defined under Chapter 2907 of the Revised Code, where such activity would constitute an offense under that chapter;

(B) Is endangered;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal

punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

(E) Is subjected to out-of-home care child abuse.”

ORC § 2151.031.

Ohio defines a "neglected child" as any child:

“(1) Who is abandoned by the child's parents, guardian, or custodian;

(2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;

(3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;

(4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;

(5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;

(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

(7) Who is subjected to out-of-home care child neglect.”

ORC § 2151.03.

D. What Sexual Activity Must Be Reported?

What sexual activity am I mandated to report?

Sexual activity that must be reported includes any sexual activity that would constitute any of the following offenses:

- Rape (defined at 2907.02)
- Sexual Battery (defined at 2907.03)
- Unlawful Sexual Conduct with a Minor (defined at 2907.04)
- Sexual Imposition (defined at 2907.06)
- Gross Sexual Imposition (defined at 2907.05)

ORC § 2151.421.

Am I ever required to report a minor's *consensual* sexual activity as child abuse?

Consensual acts that must be reported as child abuse include:

- Sexual conduct with a minor under 13 years old, irrespective of partner's age. (2907.02)

- Sexual contact with a minor under 13 years old, irrespective of partner's age. (2907.05)
- Sexual conduct with a minor 13 years old or older but under 16, if the partner is 18 or older and knew or was reckless about the minor's age. (2907.04)
- Causing sexual contact between others, if one of the parties is under 13 years old. (2907.05)
- Sexual contact with a minor 13 or older but under 16 if the partner is 18 or older and at least 4 years older than the minor (sexual contact between a 13 or 14 year old and someone 18 or older, or a 15 year old and someone 19 or older).(2907.06)
- Causing sexual contact between others if one of the parties is a minor 13 or older but under 16, if the instigator is 18 or older and at least 4 years older than the minor (13 year old/18 or older, 14 year old/at least 18, 15 year old/at least 19).(2907.06)
- Sexual conduct with a minor under 18 years old who is a primary, secondary, or higher education school student if the partner is a teacher, administrator, coach, or other person in authority employed by the school. (2907.03)
- Sexual conduct with a minor under 18 years old if the partner is a coach, instructor, leader of a scouting troop or a person with temporary or occasional disciplinary control over the minor. (2907.03)

“Sexual conduct’ means vaginal intercourse between a male and female; anal intercourse, fellatio and cunnilingus between persons regardless of sex; and without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.” ORC § 2907.01

“Sexual contact’ means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.” ORC § 2907.01.

See Exhibit “A” for Ohio Reporting Chart.

Do I have to report if my minor client reveals she was abused by her spouse?

A mandated reporter must make a child abuse report if a minor reveals she has been abused or assaulted by her spouse. Oh. Atty Gen. 92-073.

Do I have to report every criminal act of my client?

Both state and federal law protect the confidentiality of information received in the course of providing medical care. This information cannot be shared with the authorities unless a specific statute allows that sharing. The Ohio Child Abuse Reporting Law requires mandated reporters to share information about child abuse and neglect. It does not require mandated reporters to report information about any other crimes. Indeed, no state or federal law requires medical practitioners to report every criminal act of their patients. *By contrast, see ORC § 2921.22.*

What sexual activity by a minor does not require reporting?

In general, the following consensual acts do not require reporting:

- Sexual conduct or contact when both partners are 13 years old or older and under 18 years old.
- Sexual contact with a minor 15 or older if the partner is under 19 years old.
- Sexual contact or conduct with a minor 16 or older, irrespective of partner age, (unless partner is a teacher, coach or other specially identified category as described above).

(For a definition of sexual contact and sexual conduct, see “Am I Ever Required to Report a Minor’s Consensual Activity?” above)

For the purposes of child abuse reporting, does a mandated reporter have a duty to try to ascertain the ages of the minor's partners?

No statute or case obligates providers to ask their minor patients about the age of the minors’ sexual partners.

E. How Does Reporting Work?

To whom should reports be made?

“A person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer.” ORC § 2151.421.

How do I make a report?

“Any report shall be made forthwith either by telephone or in person and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain:

- (1) The names and addresses of the child and the child's parents or the person or persons having custody of the child, if known;
- (2) The child's age and the nature and extent of the child's known or suspected injuries, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect, including any evidence of previous injuries, abuse, or neglect;
- (3) Any other information that might be helpful in establishing the cause of the known or suspected injury, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect.”

ORC § 2151.421.

F. What are the Consequences of My Reporting Decision?

What will the Children’s Services Agency do after I make my report?

“The public children services agency 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 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. The investigation shall be made in cooperation with the law enforcement agency. The public children services agency shall report each case to a central registry which the department of job and family services shall maintain in order to determine whether prior reports have been made in other counties concerning the child or other principals in the case. The public children services agency shall submit a report of its investigation, in writing, to the law enforcement agency.”

After completing its investigation, “the public children services agency shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention.”

By law each public children services agency must have a memorandum of understanding with other local agencies that details:

“(a) The roles and responsibilities of local agencies in handling emergency and nonemergency cases of abuse and neglect;” and as well

“(b) the standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected.” ORC § 2151.421.

Thus, for more information about the process in a particular county, providers can ask to see the local MOU.

Will I receive any further information about my report and client?

“A mandated reporter may make a reasonable number of requests of the public children services agency that receives or is referred the report to be provided with the following information:

- (a) Whether the agency has initiated an investigation of the report;
- (b) Whether the agency is continuing to investigate the report;
- (c) Whether the agency is otherwise involved with the child who is the subject of the report;
- (d) The general status of the health and safety of the child who is the subject of the report;
- (e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

A mandated reporter may request this information only if, at the time the report is made, the person's name, address, and telephone number are provided to the person who receives the report.” ORC § 2151.421.

Will my report be confidential?

Except in rare circumstance, a report is confidential. “The information provided in a report and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.” ORC § 2151.421.

Can individuals be held liable for making reports?

There are two kinds of liability mandated reporters worry about: liability for filing a false report and liability for breaching medical confidentiality.

While there is no guarantee that a mandated reporter will never be sued for making a false report, mandated reporters are protected from civil and criminal liability if a report is made in good faith. ORC § 2151.421. If it can be proved that the reporter knowingly made a false report, the reporter can be held criminally and civilly liable. ORC § 2151.421.

Reporters also are protected from liability in breach of confidentiality suits if a report is made in good faith. However, reporters may be found liable for breach if it can be proved the reporter knew the report was not required and not appropriate.

Can individuals be held liable for not making reports?

Ohio law requires a child abuse report whenever a reporter suspects or knows child abuse has occurred. There are various consequences for a knowing failure to report. Mandated reporters who fail to report can be found civilly and criminally liable. ORC §§ 2151.281, 2151.99.

In addition, mandated reporters who fail to report suspected child abuse or neglect may be subject to license suspension or revocation. *See* ORC 4731.22.

G. Do Medical Records Remain Confidential in Cases of Alleged Abuse?

Is information in the medical chart and provider notes confidential?

While generally confidential, providers making child abuse reports are required to provide all medical information necessary that might establish the cause of the abuse or

neglect or the manner in which the abuse or neglect occurred. “The physician-patient privilege shall not be a ground for excluding evidence regarding a child's injuries, abuse, or neglect, or the cause of the injuries, abuse, or neglect in any judicial proceeding resulting from a report submitted pursuant to this section.” ORC § 2151.421.

How should a subpoena or other legal request for confidential information be handled?

While both federal and state law allow providers to release information when subpoenaed, there are procedural and substantive standards that must be met before a subpoena is valid. Many subpoenas will not withstand legal challenge. For this reason, when presented with a subpoena, it is always advisable to seek legal counsel before releasing any information.

H. What are the Potential Criminal Charges Arising Out of Abuse Reports?

Will the police be informed of any child abuse reports I make?

“The public children services agency must submit a written report of every investigation to law enforcement. The agency also must make any recommendations to the county attorney it considers necessary to protect children.” ORC § 2151.421.

In addition to being used as indicators of abuse or neglect for child welfare purposes, will evidence of sexual activity uncovered during an abuse/neglect investigation be prosecuted?

It might. The police and prosecutor will decide how best to investigate and possibly prosecute criminal incidents.

In a case involving consensual sexual activity between minors uncovered during an abuse/neglect investigation, who if anyone might be prosecuted?

The minor's partner may be prosecuted for a criminal sexual offense. In some cases, both minors may be prosecuted if they each can be charged with a sexual crime against the other. In addition, depending on the situation, a parent or other person responsible for the child may be prosecuted for failing to take steps to prevent the sexual abuse of a child.

The police and prosecutor's office will decide who to charge and with what. Because the prosecutor has some discretion, if you have questions about how such charges are handled in your jurisdiction, it is best to speak to your local welfare, police and prosecutor's office.

In a criminal case involving sexual acts, will the offender be required to register as a sex offender?

Persons convicted of certain offenses against minors must register as sex offenders under the Ohio Sex Offenders Act. Qualifying offenses include, but are not limited to: sexual battery, gross sexual imposition, sexual imposition, and importuning. (Violations of ORC §§ 2907.02, 2907.03, 2907.05, 2907.06, 2907.07). ORC § 2950.04.

Minors adjudicated delinquent and classified as juvenile offenders for committing these crimes also must register as sex offenders. ORC § 2950.041.

EXHIBIT “A”



When Mandated Reporters in Ohio Must Report Consensual Sexual Activity as Child Abuse

(1) If a minor engages in consensual sexual conduct* with an older (or younger) partner, is a report mandated?***

Age of Partner →	12	13	14	15	16	17	18	19	20	21	22 →
Age of Patient ↓											
11	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
12	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
13	Y	N	N	N	N	N	Y	Y	Y	Y	Y
14	Y	N	N	N	N	N	Y	Y	Y	Y	Y
15	Y	N	N	N	N	N	Y	Y	Y	Y	Y
16	Y	N	N	N	N	N	N	N	N	N	N
17	Y	N	N	N	N	N	N	N	N	N	N
18	Y	Y	Y	Y	N	N	N	N	N	N	N

(2) If a minor engages in sexual contact,* is a report required?***

Age of Partner →	12	13	14	15	16	17	18	19	20	21	22 →
Age of Patient ↓											
11	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
12	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
13	Y	N	N	N	N	N	Y	Y	Y	Y	Y
14	Y	N	N	N	N	N	Y	Y	Y	Y	Y
15	Y	N	N	N	N	N	N	Y	Y	Y	Y
16	Y	N	N	N	N	N	N	N	N	N	N
17	Y	N	N	N	N	N	N	N	N	N	N
18	Y	Y	Y	N	N	N	N	N	N	N	N

(3) Is sexual activity when both partners are 16 or older ever reportable?

Mandated reporters must report sexual conduct with a minor under 18 years old who is a primary, secondary, or higher education school student if the partner is a teacher, administrator, coach, or other person in authority employed by the school.

They also must report sexual conduct with a minor under 18 years old if the partner is a coach, instructor, leader of a scouting troop or a person with temporary or occasional disciplinary control over the minor.

In addition, mandated reporters must report any sexual activity that appears coerced, exploitative, based on intimidation, or in any other way resembles abuse -- regardless of claimed consent by the minor and regardless of partner age.

* “Sexual conduct” means vaginal intercourse between a male and female; anal intercourse, fellatio and cunnilingus between persons regardless of sex; and without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. ORC § 2907.01.

“Sexual contact” means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person. ORC § 2907.01.

** No law requires providers to ask about a partner’s age for the purposes of child abuse reporting. This chart assumes the elder partner knows or has reason to know the minor’s age.