

August 24, 2001

OPINION NO. 2001-035

Chester Partyka, Chairman  
Counselor and Social Worker Board  
77 S. High Street, 16th Floor  
Columbus, Ohio 43266-0340

Dear Chairman Partyka:

We have received your request for an opinion concerning the duty of a professional counselor or social worker to report known or suspected child abuse. Your question is whether a professional counselor or social worker licensed under R.C. Chapter 4757<sup>1</sup> is required by R.C. 2151.421 to report child abuse of an individual if, when the professional counselor or social worker learns of the abuse, the victim of the abuse is no longer a child under the age of eighteen years or a mentally retarded, developmentally disabled, or physically impaired child under the age of twenty-one years.<sup>2</sup>

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<sup>1</sup> R.C. Chapter 4757 creates the Counselor and Social Worker Board and provides for the licensing, *inter alia*, of professional clinical counselors, professional counselors, independent social workers, and social workers. *See* R.C. 4757.03; R.C. 4757.22; R.C. 4757.23; R.C. 4757.27; R.C. 4757.28.

<sup>2</sup> For purposes of this opinion and in accordance with the language of R.C. 2151.421, the word “child” is used generally to refer to a person under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age. The word “adult” is used generally to refer to a mentally retarded, developmentally disabled, or physically impaired person who is at least twenty-one years of age or a person without mental retardation, developmental disabilities, or physical impairments who is at least eighteen years of age. R.C. 2151.421; *see also* R.C. 2151.011(B)(2) (adult is individual who is eighteen or older). The terms “child” and “adult” may be used differently in other provisions of the Revised Code. *See, e.g.*, R.C. 3323.01(A) (“[h]andicapped child’ means a person under twenty-two years of age”); 1992 Op. Att’y Gen. No. 92-073. *See generally* R.C. 2919.22; R.C. 5123.93.

Your letter indicates that the issue arises in particular in connection with licensed counselors or social workers who work with young adults. For example, a licensed counselor or social worker may learn from an individual aged eighteen or older or a mentally-retarded individual aged twenty-one or older that the individual was abused or neglected as a child, and the counselor or social worker may be concerned about whether there is an obligation to report the abuse. You state that the Counselor and Social Worker Board needs to know whether there is such an obligation because the issue “may have impact on the Board’s responsibility in the area of disciplinary action if a licensee fails to either report if required or makes a report when not required to and therefore violates the client/patient’s right to privileged communication.”<sup>3</sup>

In order to address your question, let us first look at the statute that imposes the duty of reporting child abuse. That statute, by its terms, applies to a variety of officials and professionals, including persons “engaged in social work or the practice of professional counseling.” R.C. 2151.421(A)(1)(b). The portion of the statute imposing the duty to report reads as follows:

*No person described in division (A)(1)(b) of this section [including a person engaged in social work or the practice of professional counseling] 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 fail to immediately report that knowledge or suspicion to the public children services agency 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.*

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<sup>3</sup> By statute, confidential communications and advice between a professional counselor or social worker and a client are privileged and the counselor or social worker “shall not testify” about those communications, with limited exceptions. R.C. 2317.02(G). The exceptions include instances in which the communication indicates clear and present danger to the client or other persons, including cases in which there are indications of present or past child abuse or neglect, R.C. 2317.02(G)(1)(a); however, the statute provides expressly that it does not relieve a person licensed or registered under R.C. Chapter 4757 “from the requirement to report information concerning child abuse or neglect under [R.C. 2151.421],” R.C. 2317.02(G)(2). *See generally* 1987 Op. Att’y Gen. No. 87-005. Further, the Counselor and Social Worker Board is required by law to establish a code of ethical practice for persons licensed as professional clinical counselors or professional counselors and to include violations of client confidentiality (except as permitted by law) as unprofessional conduct. R.C. 4757.11; *see* 11 Ohio Admin. Code 4757-5-01(B)(5); *see also* R.C. 4757.36; 11 Ohio Admin. Code 4757-11-01.

R.C. 2151.421(A)(1)(a) (emphasis added). *See generally* 45 C.F.R. § 1340.14 (2000).<sup>4</sup>

Division (A) of R.C. 2151.421 thus provides that, when a professional counselor or social worker acts in an official or professional capacity and knows or suspects that a child has suffered or faces a threat of suffering any condition that reasonably indicates abuse or neglect of the child, the counselor or social worker must immediately report that knowledge or suspicion to the appropriate public children services agency (PCSA)<sup>5</sup> or municipal or county peace officer. R.C. 2151.421(A)(1)(a). A person who makes a report under R.C. 2151.421(A) is immune from civil or criminal liability for injury, death, or loss that might occur as a result of making the report. R.C. 2151.421(G)(1)(a). A person who fails to perform the duty to report known or suspected child abuse is subject to civil or criminal liability for such failure. *See* R.C. 2151.281(B)(2); R.C. 2151.99(A); *Campbell v. Burton*, 92 Ohio St. 3d 336, 750 N.E.2d 539 (2001).<sup>6</sup>

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<sup>4</sup> Various other statutes also impose a duty to report certain types of abuse or neglect. R.C. 5123.61 imposes a duty to report abuse or neglect of a person with mental retardation or a developmental disability. R.C. 5123.61(C)(1). The duty extends to a variety of officials and professionals, including physicians, employees of various health care facilities, school authorities, psychologists, social workers, and employees of public or private providers of services to persons with mental retardation or a developmental disability. R.C. 5123.61(C)(2).

R.C. 5101.61 imposes a duty to report abuse, neglect, or exploitation of a person who is sixty years of age or older, who is handicapped by the infirmities of aging or has a physical or mental impairment that prevents the person from providing for the person's own care or protection, and who resides in an independent living arrangement. R.C. 5101.61(A); *see also* R.C. 5101.60(B). The duty extends to a variety of officials and professionals, including physicians, psychologists, nurses, employees of various homes and health care facilities, senior service providers, and persons engaged in social work or counseling. R.C. 5101.60(A). The duty relates to abuse, neglect, or exploitation suffered as an adult. R.C. 5101.60(B); R.C. 5101.61(A).

There is, in addition, a general duty to report a felony of which one has personal knowledge. R.C. 2921.22. Certain exceptions apply, including exceptions relating to services for drug dependence and counseling for crime victims. R.C. 2921.22(G)(5) and (6).

<sup>5</sup> A public children services agency is a county children services board, a county department of job and family services, or a private or governmental entity designated under R.C. 307.981. R.C. 5153.02; *see also* R.C. 5153.01(A).

<sup>6</sup> Your request asks also about division (B) of R.C. 2151.421. That provision imposes no mandatory duty to report. Rather, it provides generally that anyone who knows or suspects the abuse or neglect of a child may report that knowledge or suspicion to a public children services agency or a municipal or county peace officer. A counselor or social worker who is not acting in an official or professional capacity may make a report pursuant to this provision. *See, e.g., State v. Rosenberger*, 90 Ohio App. 3d 735, 739, 630 N.E.2d 435, 438 (Summit County 1993) (“[t]his

R.C. 2151.421 does not state expressly whether the duty to report knowledge or suspicion of child abuse or neglect exists if the knowledge or suspicion is acquired after the child has attained adulthood and, in fact, is somewhat ambiguous on that point. The statute refers repeatedly to “child” and also refers to the child’s custodian and residence, thereby suggesting that the reporting requirement of R.C. 2151.421(A) applies only with respect to abuse or neglect of an individual who is still a child. *See, e.g.*, R.C. 2151.421(A)(1)(a) (“a child ... has suffered or faces a threat of suffering ... that reasonably indicates abuse or neglect of the child”; “report that knowledge or suspicion to ... the county in which the child resides”); R.C. 2151.421(C)(1) (report shall contain “names and addresses of the child and the child’s parents or the person or persons having custody of the child, if known”); R.C. 2151.421(C)(2) (“child’s age and the nature and extent of the child’s ... injuries”). However, the statute also speaks generally of abuse or neglect that “has occurred,” thereby suggesting that a passage of time since the abuse or neglect might not negate the duty to report, and that the important fact is that the individual was a child when the abuse or neglect occurred. R.C. 2151.421(A)(1)(a) (“a child ... has suffered”; “the abuse or neglect ... has occurred”); *see also* R.C. 2151.421(C)(2) (“known or suspected injuries ..., including any evidence of previous injuries, abuse, or neglect”); R.C. 2151.421(J)(3)(a) (memorandum of understanding shall include “roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect”).<sup>7</sup>

When statutory provisions are ambiguous, it is appropriate to look at related provisions, at legislative intent, and at the manner in which the provisions have been implemented. *See* R.C. 1.49. The procedure established by R.C. 2151.421 to be followed when a report is made clearly indicates that it is anticipated that the subject of the report will be a child when the report is made. The PCSA is required to investigate within twenty-four hours, R.C. 2151.421(F)(1), and to make protective services and emergency supportive services available “on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact.” R.C.

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statutory duty to report suspected sexual abuse, however, arises only if an individual listed in R.C. 2151.421 “is acting in his official or professional capacity”; an adult who is not acting in an official or professional capacity listed in R.C. 2151.421(A)(1)(b) “would not be under a statutory duty to report the suspected abuse”), *motion overruled*, 68 Ohio St. 3d 1473, 628 N.E.2d 1392 (1994); 1997 Op. Att’y Gen. No. 97-031.

<sup>7</sup> R.C. 2151.421(A)(2) exempts an attorney or physician from the reporting requirement for communications that are privileged under R.C. 2317.02(A) or (B), but provides an exception to that exemption for clients or patients who are children, thus requiring the reporting of child abuse regarding a client or patient who is a child at the time of the communication with the attorney or physician, unless the child is attempting to have an abortion without notification of her parents, guardian, or custodian. This exemption is not made applicable to counselors or social workers. It appears to reflect the general understanding, discussed later in this opinion, that reporting is not required if information is received after the alleged victim has attained adulthood.

2151.421(I). These requirements are directed toward alleged victims who are children and may be in need of immediate attention. *See also* R.C. 2151.421(E) (addressing the removal from home of a child who is the subject of a report and permitting it only in limited circumstances); R.C. 2151.421(F)(2) (requiring the PCSA to make recommendations “that it considers necessary to protect any children that are brought to its attention”); R.C. 2151.421(J)(3)(b) (memorandum of understanding includes methods for interviewing “the child who is the subject of the report and who allegedly was abused or neglected”); R.C. 2151.421(L) (authorizing Department of Job and Family Services to enter into a plan of cooperation with another governmental entity “to aid in ensuring that children are protected from abuse and neglect,” and to make recommendations to the Attorney General to protect children from abuse and neglect).

The fact that the reporting requirement is directed toward the protection of individuals who currently are children is evident also in the procedure followed by a public children services agency in carrying out its mandatory investigation. By statute, the duty of a PCSA to make an investigation extends to “any *child* alleged to be an abused, neglected, or dependent *child*.” R.C. 5153.16(A)(1) (emphasis added). Rules of the Department of Job and Family Services require that, upon receipt of a report of child at risk of abuse and neglect, the PCSA determine “the degree of risk to the child.” 13 Ohio Admin. Code 5101:2-34-32(A). Like the statute, the rules reflect the intention of requiring reporting in order to ensure that protection is provided for children whose safety is at risk. *See, e.g.*, 13 Ohio Admin. Code 5101:2-34-32(C) (“[t]he PCSA shall consider the report an emergency when it is determined that there is imminent risk to the child’s safety”); 13 Ohio Admin. Code 5101:2-34-33(A)(1) (“[i]nformation gathering shall be for the purpose of making judgements about the likelihood of future abuse and neglect of children within a household”); 13 Ohio Admin. Code 5101:2-34-34(A)(1)(c) (in an investigation of a report of out-of-home care child abuse or neglect, the PCSA must “[d]iscuss what actions have been taken to protect the alleged child victim”). The law is clearly aimed at protecting children from current risks.<sup>8</sup>

The sense that mandatory reporting of child abuse is required only when the alleged victim is still a child is reflected also in the history of the statute. The purpose of the bill initially enacting R.C. 2151.421 was to require “reports by physicians and hospitals of certain physical abuses of children.” 1963 Ohio Laws 625, 1819 (Am. H.B. 765, eff. Oct. 10, 1963). A basic purpose of R.C. Chapter 2151 is “[t]o provide for the care, protection, and mental and physical development of children subject to [R.C. Chapter 2151].” R.C. 2151.01(A); *see also* 1992 Op.

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<sup>8</sup> The guardian ad litem appointed for an alleged or adjudicated abused or neglected child may bring a civil action against a person who is required by R.C. 2151.421(A)(1) to file a report and fails to do so, “if the child suffers any injury or harm as a result of the known or suspected child abuse or child neglect or suffers additional injury or harm after the failure to file the report.” R.C. 2151.281(B)(2). By statute, a guardian ad litem ceases to serve when a child attains adulthood. R.C. 2151.281(G)(5); *see also* R.C. 2151.011(B)(14).

Att’y Gen. No. 92-073. Hence, from its inception, the mandatory reporting requirement was directed toward the protection of children.

A recent amendment to the statute establishes a requirement for investigation of the death of a child who is the subject of a report under R.C. 2151.421, if the child “dies for any reason at any time after the report is made, but before the child attains eighteen years of age.” R.C. 2151.421(H)(4); *see* Sub. H.B. 448, 123rd Gen. A. (2000) (eff. Oct. 5, 2000). Again, the statute contemplates that the report will be made while the subject of the report is a child.

In interpreting and applying R.C. 2151.421, Ohio courts have recognized that the reporting and investigating duties were designed for the protection of children. In *Brodie v. Summit County Children Services Board*, 51 Ohio St. 3d 112, 119, 554 N.E.2d 1301, 1308 (1990), the Ohio Supreme Court stated that the action required by R.C. 2151.421 is “intended to protect a specific child who is reported as abused or neglected.” Of the duty to investigate within twenty-four hours, the court stated:

The mandate is to take affirmative action on behalf of a specifically identified individual. This individual is a minor whom the General Assembly has determined to be a proper recipient of the specialized care and protection that only the state through its political subdivisions is able to provide in many instances.

*Brodie v. Summit County Children Servs. Bd.*, 51 Ohio St. 3d at 119, 554 N.E.2d at 1308. Relying on *Brodie*, another court stated: “We believe that R.C. 2151.421 imposes a duty which is owed solely to the minor child of whom reports have been received concerning abuse or neglect.” *Curran v. Walsh Jesuit High Sch.*, 99 Ohio App. 3d 696, 700, 651 N.E.2d 1028, 1031 (Summit County), *appeal not allowed*, 72 Ohio St. 3d 1529, 649 N.E.2d 839 (1995); *see also Campbell v. Burton*.

A similar concept was expressed in *Haag v. Cuyahoga County*, 619 F. Supp. 262, 281 (N.D. Ohio 1985), *aff’d*, 798 F.2d 1414 (6th Cir. 1986), as follows:

Ohio Rev.Code Ann. § 2151.421 was adopted by the Ohio legislature solely for the purpose of protecting minor children from abuse and/or neglect, to prevent any further neglect or abuse of children, to enhance and protect children’s welfare, and where possible, to preserve the family unit intact.

*See also, e.g., Hite v. Brown*, 100 Ohio App. 3d 606, 617, 654 N.E.2d 452, 459 (Cuyahoga County 1995) (“[t]he duty to report knowledge or suspicion of child abuse under R.C. 2151.421 is owed to the individual minor”), *appeal not allowed*, 73 Ohio St. 3d 1414, 651 N.E.2d 1311 (1995); 1989 Op. Att’y Gen. No. 89-108, at 2-530.

At least one court has declared that the statute contemplates that the alleged victim will be a child both when the abuse occurs and when it is reported to appropriate officials. The Second District Court of Appeals stated directly: “Indeed, R.C. 2151.421(A) contemplates that the report of child abuse will occur while the victim is still a child.” *State v. Wooldridge*, No.

17708, 1999 WL 812363, at \*7 (Ct. App. Montgomery County Oct. 8, 1999) (unpublished), *appeal not allowed*, 88 Ohio St. 3d 1416, 723 N.E.2d 121 (2000).<sup>9</sup> Further, we are aware of no

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<sup>9</sup> We are aware that civil and criminal actions for child abuse or neglect may be brought after the alleged victim has reached adulthood, and that cases addressing such matters consider issues of notification and time limits. In *State v. Hensley*, 59 Ohio St. 3d 136, 136, 571 N.E.2d 711, 712 (1991) (syllabus), the Ohio Supreme Court stated that, for the purpose of tolling the statute of limitations in a criminal case, “the corpus delicti of crimes involving child abuse or neglect is discovered when a responsible adult, as listed in R.C. 2151.421, has knowledge of both the act and the criminal nature of the act.” In reliance on *Hensley*, some cases have stated that, even after a child victim reaches adulthood, the statute of limitations is tolled until the victim informs a responsible adult, as listed in R.C. 2151.421. See, e.g., *State v. Whaley*, No. 95CA772, 1996 WL 679680 (Ct. App. Jackson County Nov. 20, 1996) (unpublished), *appeal not allowed*, 78 Ohio St. 3d 1463, 678 N.E.2d 220 (1997).

Other cases have held that the tolling of the statute of limitations ceases upon the victim’s attaining the age of eighteen, upon the presumption or proof that the individual understood the criminal nature of the act. See, e.g., *State v. Pfouts*, 62 Ohio Misc. 2d 587, 589-90, 609 N.E.2d 249, 250 (C.P. Wood County 1992) (“[t]o apply *Hensley* in an open-ended fashion permitting the prosecution of child sexual offenses at any time later in the victim’s life when the crime may first be reported to an R.C. 2151.421 responsible adult would open the door to such prosecutions long after the act and fly in face of the rationale for limiting criminal prosecutions as set forth in the Committee Comment and adopted by the Ohio Supreme Court in *Hensley*, and require those accused to possibly defend against charges, the evidence for which is obscured by the passage of time”); see also, e.g., *State v. Wooldridge*, No. 17708, 1999 WL 812363 (Ct. App. Montgomery County Oct. 8, 1999) (unpublished), *appeal not allowed*, 88 Ohio St. 3d 1416, 723 N.E.2d 121 (2000); *State v. Webber*, 101 Ohio App. 3d 78, 81, 654 N.E.2d 1351, 1354 (Medina County 1995) (“[a] requirement that a victim of child abuse who is fully aware of the abuse and its criminal nature contact proper authorities in sufficient time for a prosecution to be commenced within [the period of limitations] after that victim reaches the age of majority strikes an appropriate balance between the need for a prosecution to be based on ‘reasonably fresh’ evidence and a recognition that a ‘traumatized and susceptible child’ should not be expected to contact authorities”); *State v. Weiss*, 96 Ohio App. 3d 379, 645 N.E.2d 98 (Guernsey County), *appeal not allowed*, 71 Ohio St. 3d 1421, 642 N.E.2d 386 (1994); *State v. Hughes*, 92 Ohio App. 3d 26, 29, 633 N.E.2d 1217, 1219 (Brown County 1994); *State v. McGraw*, No. 65202, 1994 WL 264401, at \*3 (Ct. App. Cuyahoga County June 16, 1994) (unpublished) (“[u]nder the State’s theory that the victim herself was not a responsible adult, the statute of limitations could be tolled indefinitely, no matter what the circumstances, until she told another adult. As a logical matter, as long as the victim kept it to herself, she could wait until she was well into middle age to disclose the abuse and then the State would still have six years to indict. We do not believe that the legislature could have intended such an absurd result”).

In the context of a civil case, a minor’s cause of action premised upon acts of sexual abuse may be brought within the appropriate period of limitations after the minor reaches the age of majority. R.C. 2305.16; *Doe v. First United Methodist Church*, 68 Ohio St. 3d 531, 629

court that has expressly held that a duty to report under R.C. 2151.421(A) extends past the age at which the victim becomes an adult.<sup>10</sup> Hence, it is appropriate to construe R.C. 2151.421 as imposing a reporting duty only with respect to abuse or neglect of an individual who is a child within the meaning of that statute. *See* note 2, *supra*.

Violation of the duty to report child abuse is a misdemeanor of the fourth degree and is subject to criminal penalties. R.C. 2151.99(A). Statutes defining offenses or penalties must be construed strictly against the state and liberally in favor of the accused. *See* R.C. 2901.04(A); *State ex rel. Moore Oil Co. v. Dauben*, 99 Ohio St. 406, 124 N.E. 232 (1919); 1997 Op. Att’y Gen. No. 97-031, at 2-181; 1985 Op. Att’y Gen. No. 85-088, at 2-363.<sup>11</sup> Accordingly, where

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N.E.2d 402 (1994). If the minor represses memories of the abuse until a later time, the delayed discovery rule operates to further delay the time during which the action may be brought based upon the time when the alleged victim recalls or otherwise discovers, or through the exercise of reasonable diligence should have discovered, the sexual abuse. *Ault v. Jasko*, 70 Ohio St. 3d 114, 637 N.E.2d 870 (1994).

Although cases dealing with these subjects may involve instances of the reporting of child abuse, our research has disclosed no case that is determinative of the issues you have raised.

<sup>10</sup> This conclusion, however, has been suggested. *See State v. Hughes*, 92 Ohio App. 3d at 30, 633 N.E.2d at 1219 (Walsh, J., dissenting) (“[n]othing in *Hensley* or the statute, however, indicates that incidents of child abuse must be reported before the victim reaches the age of majority or within the applicable limitations period thereafter.... The court made no distinction between whether or not the victim was still a minor when the abuse was reported”); *State v. McGraw*, No. 65202, 1994 WL 264401, at \*6 (Blackmon, J., dissenting) (“[a] responsible person [under R.C. 2151.421] ... is not the victim herself regardless of her age”; at age 29, the victim disclosed child abuse to judges who, “by definition, are responsible under R.C. 2151.421” and referred her to the appropriate authorities); *see also State v. Rosenberger*, 90 Ohio App. 3d at 739, 630 N.E.2d at 437-38 (stating that the *Hensley* court “decided that the ends of justice would best be served by tolling the limitation period until a responsible adult, as listed in R.C. 2151.421, obtained knowledge of the sexual abuse because these individuals were under a statutory duty to immediately report any suspected sexual abuse to certain governmental agencies”; the victim was a minor when she reported abuse during psychiatric counseling in 1987 and period of limitations began, though prosecution did not commence until 1992 when the victim was an adult), *motion overruled*, 68 Ohio St. 3d 1473, 628 N.E.2d 1392 (1994). *See generally Brozovich v. Circle C Group Homes, Inc.*, 120 Pa. Commw. 417, 422 n.4, 548 A.2d 698, 700 n.4 (1988) (concluding under Pennsylvania law that immunity is granted to those reporting child abuse without regard to the age of the victim when the abuse is reported).

<sup>11</sup> The instruction of R.C. 2151.01 that R.C. Chapter 2151 be liberally interpreted and construed to provide for the care and protection of children provides an express exception for “those sections providing for criminal prosecution of adults.” R.C. 2151.01.

there is ambiguity concerning a criminal offense, the statute cannot be read to expand the circumstances in which a violation may be found. Our research has not disclosed statutory language or other authority that compels the conclusion that the duty to report extends to instances in which the victim has attained adulthood. Absent clear direction from the General Assembly or the courts, we lack sufficient grounds for reaching that result. Rather, we conclude that the mandatory reporting and prompt investigation required by R.C. 2151.421 were intended for the protection of children, and they do not apply to alleged abuse or neglect that occurred during the childhood of an individual after that individual has become an adult.

Therefore, should a professional counselor or social worker learn from an adult individual that the individual suffered abuse or neglect when the individual was a child, R.C. 2151.421(A) does not mandate that the counselor or social worker report that knowledge to a public children services agency or municipal or county peace officer. There may, however, be instances in which facts surrounding a particular situation require that the professional counselor or social worker submit a report. If information provided to a professional counselor or social worker who is acting in an official or professional capacity gives that person reason to know or suspect that an individual who currently is a child is at risk of child abuse, R.C. 2151.421(A) requires that such knowledge or suspicion be reported. For example, if an adult informs a professional counselor or social worker of abuse as a child at home and reveals that individuals who currently are children are still in the home and are at risk of abuse, that information may provide the professional counselor or social worker with sufficient knowledge of abuse or threat of abuse to the children still in the home to require that a report be made.<sup>12</sup> In such cases, the obligation to report would be based upon knowledge or suspicion of abuse or the threat of abuse to an individual who currently is a child, and not merely upon knowledge of past abuse of an individual who has attained adulthood. *See* R.C. 2151.421(A)(1)(a).<sup>13</sup> Further, a duty to report may exist under other statutory provisions in appropriate circumstances. *See* note 4, *supra*.

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<sup>12</sup> A similar duty to report may exist in circumstances in which a school teacher, child care worker, or other person with a mandatory duty to report under R.C. 2151.421(A) has knowledge or suspicion of abuse or threat of abuse to an individual who currently is a child.

<sup>13</sup> The Supreme Court of Montana upheld a social worker's report of child abuse and found the social worker immune from civil liability under Montana law in a situation in which a member of a therapy group revealed sexual abuse that had occurred between her husband and daughters sixteen years earlier, where the social worker's report was based on concerns about current threats of abuse to grandchildren. The court stated, in part:

[The social worker's] cause for suspicion must be based upon *a perceived present real harm or a perceived present imminent risk of harm*. This perception need not always be based entirely upon current, culpable acts of those responsible for the child. The primary purpose of the statute is the protection of the child. If [the social worker], in her professional opinion had *reasonable cause to suspect that a*

In conclusion, it is my opinion, and you are advised, that R.C. 2151.421(A) does not impose upon a professional counselor or social worker licensed under R.C. Chapter 4757 the duty to report knowledge or suspicion of child abuse of an individual if, when the professional counselor or social worker learns of the child abuse, the individual no longer is a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age. However, if information provided to a professional counselor or social worker who is acting in an official or professional capacity gives that person reason to know or suspect that an individual who currently is a child is at risk of child abuse, R.C. 2151.421(A) requires that such knowledge or suspicion be reported.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General

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*child presently is threatened with harm*, she must report, whether her suspicion is based upon past acts, present acts, or both.

*Gross v. Myers*, 229 Mont. 509, 513, 748 P. 2d 459, 461 (1987) (emphasis added). *See also Marcelletti v. Bathani*, 198 Mich. App. 655, 661, 500 N.W.2d 124, 128 (Michigan child abuse reporting statute “plainly confines the reporting requirement to the suspected abuse of a particular child”), *appeal denied*, 443 Mich. 860, 505 N.W.2d 582 (1993).

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SYLLABUS:

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R.C. 2151.421(A) does not impose upon a professional counselor or social worker licensed under R.C. Chapter 4757 the duty to report knowledge or suspicion of child abuse of an individual if, when the professional counselor or social worker learns of the child abuse, the individual no longer is a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age. However, if information provided to a professional counselor or social worker who is acting in an official or professional capacity gives that person reason to know or suspect that an individual who currently is a child is at risk of child abuse, R.C. 2151.421(A) requires that such knowledge or suspicion be reported.