



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

October 10, 2007

TOM CORBETT  
ATTORNEY GENERAL

Office of Attorney General  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 787-3391

«Name»  
«Agency»  
«Address\_1»  
«Address\_2»  
«City\_State\_Zip»

***Re: PA Mandatory Reporting Requirements***

Dear Sir or Madam:

Just over a year ago, after my office received inquiries about whether a request for medical services or treatment made by, or on behalf of, a pregnant female who is less than 18 years of age triggers any duties to report to law enforcement agencies, I wrote to various health care providers in Pennsylvania to clarify the mandatory reporting requirements of state law. Because there have been changes due to statutory amendments passed by the General Assembly, which were signed into law by Governor Rendell on November 29, 2006, I am now sending this update.

As my previous letter explained, there are two sources for mandatory reporting requirements: the Pennsylvania Crimes Code and the Child Protective Services Law (“CPSL”). **The recent amendments by the legislature do not alter the existing reporting requirements in the Crimes Code, but do significantly change those contained in the CPSL.** What each mandates is summarized below.

The Pennsylvania Crimes Code requires that any “physician, intern or resident, or any person conducting, managing or in charge of any hospital or pharmacy, or in charge of any ward or part of a hospital . . .” who comes upon any person “upon whom injuries have been inflicted in violation of any penal law of this Commonwealth . . .” is obliged to immediately report such injuries, “both by telephone and in writing, to the chief of police or other head of the police department of the local government, or to the Pennsylvania State Police.” 18 Pa.C.S. §§ 5106(a)(1) and (2). While the obligation to report such injuries may not arise in certain limited situations involving adult victims, *see* 18 Pa.C.S. § 5106 (a.1), the reporting mandated by the Crimes Code applies *without exception* in the case of minor crime victims.

The Crimes Code defines “bodily injury” as the “[i]mpairment of physical condition or substantial pain.” 18 Pa.C.S. § 2301. Pregnancy is a type of bodily harm specifically identified as a “personal injury” in the criminal law of Pennsylvania. 18 Pa.C.S. § 1106(h)(pertaining to injuries for which mandatory restitution applies). Earlier this year, in *Commonwealth v. Kerrigan*, 920 A.2d 190 (Pa. Super. 2007), the Pennsylvania Superior Court ruled that a minor has sustained “serious bodily injury” when the minor is found to have certain sexually-transmitted diseases or conditions, specifically, human papillomavirus (HPV) and genital warts.<sup>1</sup>

Sexual intercourse with a child less than 13 years of age is *always* a crime without regard to the age or relationship of the offender, and without regard to the “consent” of the child. *See* 18 Pa.C.S. §§ 3121(c)(rape of a child); 3121(d)(rape of a child with serious bodily injury); 3123(b)(involuntary deviate sexual intercourse with a child); 3123(c)(involuntary deviate sexual intercourse with a child with serious bodily injury). Under Pennsylvania law, a child less than 13 years of age is incapable of consent to sexual intercourse.

Sexual intercourse with a child less than 16 years of age is a crime if the offender is four or more years older than the child, and the child and offender are not married to each other. 18 Pa.C.S. §§ 3122.1(statutory sexual assault); 3123(7)(involuntary deviate sexual intercourse). Under Pennsylvania law, an unmarried individual less than 16 years of age is incapable of consent to sexual intercourse with a person who is four or more years older.

Accordingly, *under all circumstances*, any child less than 13 years of age who is pregnant, or who is found to have a sexually-transmitted disease or condition, is a child “upon whom injuries have been inflicted in violation of [a] penal law of this Commonwealth.” So is any child less than 16 years of age if the person who caused the pregnancy, or who caused the child to have a sexually transmitted-disease or condition, is four or more years older than the child and is not married to the child. **Professional contact with a child less than 13 years of age who is pregnant, or who has a sexually-transmitted disease or condition, therefore triggers a duty, on the part of those health care providers identified in 18 Pa.C.S. § 5106 (a), to report under the Crimes Code in all circumstances. Contact with a child less than 16 years of age who is pregnant, or who has a sexually-transmitted disease or condition, triggers a duty to report under the Crimes Code if the person who caused the pregnancy, or who caused the child to have a sexually-transmitted disease or condition, is four or more years older than the child and is not married to the child. Failure to report as required by the Crimes Code is a summary offense punishable by fine and/or imprisonment.**

---

<sup>1</sup> A petition asking the Pennsylvania Supreme Court to review this ruling is pending. *See Commonwealth v. Kerrigan*, No. 271 Mal 2007 (Pa.).

In addition to the reporting obligations under the Crimes Code, the amendments the legislature has made to the CPSL have expanded the obligation to report suspected child abuse and now specify that

[a] person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made . . . when the person has reasonable cause to suspect, on the basis of medical, professional or other training and experience, that a child under the care, supervision, guidance or training of that person *or of an agency, institution, organization or other entity with which that person is affiliated is a victim of child abuse, including child abuse by a person who is not a perpetrator . . . .*

23 P.S. § 6311(a)(emphasis added).<sup>2</sup> **These changes became effective on May 29, 2007.**

The CPSL defines “child abuse” as any recent act(s) or failure(s) to act that cause(s) nonaccidental, serious physical or mental injury to, or the sexual abuse or sexual exploitation of, a child under 18 years of age, as well as serious physical neglect which endangers a child’s life or development or impairs the child’s functioning. 23 Pa.C.S. § 6303(b). Because the pregnancy of a child “significantly impairs a child’s physical functioning, either temporarily or permanently,” it constitutes “serious physical injury” for purposes of the CPSL. 23 Pa.C.S. § 6303(a). The same would be true of various sexually-transmitted diseases that have the same effect.

Importantly, **the amendments to the CPSL have redefined “sexual abuse or exploitation.”** This term now means:

- the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or to assist another individual in engaging in sexually explicit conduct, or to engage in simulation of sexually explicit conduct for the purpose of producing any visual depiction such as photographs, videotapes, computer images or films; and
- the following offenses committed against a child:
  - Rape
  - Sexual Assault
  - Involuntary Deviate Sexual Intercourse
  - Aggravated Indecent Assault
  - Molestation
  - Incest
  - Indecent Exposure

---

<sup>2</sup> A “perpetrator” is a “person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child’s parent.” 23 Pa.C.S. § 6303(a).

- Prostitution
- Sexual Abuse
- Sexual Exploitation


23 Pa.C.S. § 6303(a).

Health care professionals to whom these reporting requirements apply include, but are not limited, to “any licensed physician, osteopath, . . . dentist, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons . . . [and] mental health professional . . . .” 23 Pa.C.S. § 6311(b). **The recent changes to the CPSL have also increased the penalties for failures to report. Anyone obliged to report who willfully fails to do so, commits a misdemeanor of the third degree for the first violation and a misdemeanor of the second degree for a second or subsequent violation.** 23 Pa.C.S. § 6319.

It is important to note that state law expressly provides that no physician-patient privilege shall excuse a duty to report under the Crimes Code. 18 Pa.C.S. § 5106(c). Nor does physician-patient privilege, or any privilege other than those applying to confidential communications to clergymen and attorneys, excuse a duty to report under the CPSL. 23 Pa.C.S. § 6311(a). Pennsylvania law also provides that those making reports in good faith as required by the Crimes Code and the CPSL are entitled to immunity from civil and criminal liability. 18 Pa.C.S. § 5106(b) and 23 Pa.C.S. § 6318.

I trust that this information will provide helpful clarification and will assist you in meeting these very important obligations. If you have questions or require more information, please do not hesitate to contact my office.

Sincerely,



TOM CORBETT  
Attorney General