

HB 371, Child in Need of Protective Services

PCSAO Trustees and Membership Discussion

04/09/10

Summary of Amendments and Key Questions – The membership dialogue on CHIPS has been vigorous and valuable through a series of district meetings, emails and meetings at the Statehouse. Important amendment issues and key questions have been identified, and many fears relieved. Below is a summary of the status and next steps related to these key amendment items and questions:

1. **Loss of IV-E and other federal dollars** – NOT true! ODJFS official response – *see appendix A*
2. **SACWIS Language** – amdmnt proposed, agreed, accepted by Rep. Pillich (3/2/10); two year implementation from effective date of bill (ODJFS, Counties, Juv Crt Rules) – *see appendix B*
3. **CHIPS vs CHINS** – carefully considered by SCO Subcommittee and **CHild In need of Protective Services** best defines the population this legislation is working to address, and moving to CHINS might trigger bigger concerns that legislation aims for expanded authority to intervene in family life. No recommended changes, accepted by Rep. Pillich (3/2/10).
4. **One Strike Provision** – concern that one act/omission might be grounds to remove child or terminate parental rights. [Page 157, a) and b), starting lines 4822]. Uncertain where this language came from, but agreed it could be troublesome, and that changing either to both, would respond to concern IDed by others. Recommended amendment change below, accepted by Rep. Pillich (3/2/10). *See appendix C*
5. **FINS (Family In Need of Services) cases** – CHIPS does not create a barrier to serving FINS families as many agencies do now. Does not affect ODJFS rule-making authority authorizing specific types of existing cases to be entered into SACWIS via FINS designation.
6. **Local Levy Language** authority for CHIPS use – amdmnt proposed, agreed, accepted by Rep. Pillich (3/2/10); LSC looking into language to grandfather existing levies (Temp Law); requested input from local county auditors. *See appendix D*
7. **General Funding transferability issue** – Greg and Eva talked with LSC and they'll check into language for grandfathering all types of funding; not sure necessary unless specific fed/state provision that restricts funding.
8. **Definition of Protective Services** – draft amdmnt to define "protective services" (clarify that protective services does not just mean removal) – define as a continuum of services ranging from assessment, voluntary services, in-home, ..., out of home care (model after existing language, etc...) *See appendix E*
9. **General authority for Governmental Intervention Concern from Rep. Amstutz**, re: language below, and in other parts of bill – good discussion at 3/2/10 meeting, **Meeting held with Rep. Amstutz**, Rep. Pillich, ODJFS and PCSAO. Plan to clarify with amdmnt, CHIPS applies to intentional or negligent acts and intentional or negligent omissions; also defining Protective Services (see #8 above). Other notes provided below:
 - a. Discussing that intentional or negligent applies to any acts and any omissions
 - b. Note that current law uses this phrase for abuse and neglect
 - c. Federal CAPTA law has similar definitions, but without intentional or negligent threshold
 - d. We could revise language to better quote federal law "failure to act"

2151.031 (A)

(5) "Physical harm" means that the child has suffered physical injury, or was placed at substantial risk of physical injury, from one or more intentional or negligent acts or INTENTIONAL OR NEGLIGENT omissions FAILURE TO ACT by the child's parent, legal guardian, or legal custodian, including corporal discipline. "Physical harm" includes, but is not limited to, any of the following: ... PLUS other sections w/similar wording throughout HB 371. *See appendix F*

Comparing proposed HB 371 and federal CAPTA language defining maltreatment:

CHIPS	CAPTA
Suffered physical injury – with list of injuries...(similar section for other CHIPS categories)	Death, serious physical or emotional harm, sex abuse or exploitation
Or was placed at substantial risk of physical injury	Or ...presents an imminent risk of harm
Intentional or negligent act	An act
Intentional or negligent omission	A failure to act
By child's parent, legal guardian/custodian	Parent or caretaker

Current Definitions in Existing Law include:

Neglected Child (2151.03) includes any child “who because of the omission of the child’s parent, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare.”

Abused Child (2151.031) includes any child who “exhibits evidence of any physical or mental injury or death...” and “because of the acts of his parents, guardians, or custodians, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare.”

Dependent Child (2151.04) means any child “whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship.”

10. **Emotional Harm category** – make sure a CHIPS adjudication is not used to require PCSA to take custody to pay for services for delinquent, developmentally disabled or children from other systems because they exhibit behavior described in this section: aggression, self-destructive impulses, significant acting out behavior, etc. Delete lines 2266-2271... See *appendix G*
11. **Substance Misuse category** – same concern as Emotional Harm. Delete lines 2296-2301. See *appendix H*
12. **Central Registry Issues** – significant discussion in amdm workgroups; and a solution proposed to sponsors that will address this and items #13-14.
13. **Harm to a child by a “Person having a significant relationship to the child”** – significant discussion in amdm workgroups w/proposed fix.
14. **Harm to a child by a “Person responsible for a child’s care in out of home care”** – Fed defn of “child abuse and neglect” (45 CFR 1340.2) adds “by a person including any employee of a residential facility or any staff person providing out of home care who is responsible for the child’s welfare”; proposed fix.
15. **Voluntary Surrender process/Permanent Surrender adjudication** – infants surrendered voluntarily wouldn’t necessarily be a Child In Need of Protective Services (currently dependent; no fault of parent); how to fit current practice (crt motion, etc) within CHIPS framework?? Adoption process experts say amdm not necessary; **Crystal** check age (6 mos) particular to vol surr or not?; **Denise** – option under probate?
16. **Emergency Removal provision** – review Sec 2151.31 (3) (a)-(c) [p. 106; line 3234] to make sure no unintended consequences related to ability to use emergency removals for child safety. Amdmt lang proposed. See *appendix I*
17. **Public Duty issue due to recent Graves vs. Circleville appellate court decision. Beth Tsvetkoff of Co. Commissioners Assoc. of Ohio** to summarize and CCAO legal staff to recommend amendment language. Randy Muth on point for PCSAO; assess impact of ruling in Brodie v. Summit County Children Services Board (1990), 51 Ohio St.3d 112 that public duty rule does not apply to Children Svcs. **Beth** to research sovereign immunity in other states and write short paragraph summary/rationale for amdm; **Randi L** to send 5th Circuit Crt case to Beth. See *appendix J*
18. **Case Law Applicability current to CHIPS – In re C.R.**, a SCO decision held that finding of A/N/D is finding of unfitness; court ruled on side of best interest and long term permanent placement of child over additional trauma of removal. NCALP and FCCS agreed to compromise amdm language. See *appendix K*
19. **Case Law Applicability – In re Blackshear**, a SCO decision that a child born with a positive toxicology screen is per se an abused child. Amend Substance Misuse and Physical Harm categories accordingly. See *appendix L & M*

NOTES for Amendment Workgroup to keep in mind; moving forward

20. **Need for multi-system training and education on changes** – agreed!; beauty of two-year implementation from effective date.
21. **Fear that Home schooling would be illegal** – CHIPS does NOT make home schooling illegal; if necessary, compare existing ORC requirements for home schooling to CHIPS language (any extra steps or new burdens on home schoolers in CHIPS?)
22. **Fear that PCSA given more power to remove children** – no changes in local assessment and decision making; due process remains the same; ORC 2151.412 (F)(1)(a) remains the same “...to achieve a safe out-of-home placement in the least restrictive, most family-like setting available and in close proximity...”