

*Child in Need of Protective Services:
Understanding HB 371*

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Background

The January 2003 federal Ohio Child and Family Services Review, an assessment of States for substantial conformity with certain Federal requirements for child protective services, found that Ohio is not consistent in its efforts to protect children from abuse or neglect and that Ohio lacks “clear and consistent statewide criteria” for initial child abuse screening decisions. In response, the Supreme Court of Ohio Advisory Committee on Children, Families, and the Courts established the Subcommittee on Responding to Child Abuse, Neglect, and Dependency¹ to determine if Ohio law relating to the investigation and prosecution of child abuse and neglect properly serves children and families in need of government intervention.

► Need for Reform

A subsequent Subcommittee-commissioned study by the American Bar Association Center on Children and the Law (ABA Center) highlighted the need for reform to Ohio law to address the issues identified in the CFSR. This report, and supplemental research directed by the Subcommittee, found that Ohio child welfare statutes and rules are, in many respects, circular, ambiguous and confusing, which leads to inconsistent responses from one county to another and to compromised outcomes for children and families. Also noted were a child protection practice culture and a peculiarly prosecutorial orientation in child protection cases that have led to deep mistrust between parents and the PCSAs.

► Subcommittee Response

In response to these issues, the Subcommittee focused its efforts on identifying statutory and practice-based barriers to consistent and effective child protection practice. To aid its work, the Subcommittee retained the ABA Center and the National Center for Adoption Law and Policy (NCALP). The ABA Center and NCALP conducted research on national and Ohio law related to child abuse and neglect screening and investigation. In addition, NCALP researched national best field practices and current Ohio field practice, using various tools such as online research, surveys, and group and individual interviews. As the legal and field research neared completion, the ABA Center and NCALP synthesized their conclusions and, directed by the

¹ The Subcommittee’s membership spans all disciplines that touch child protection issues. Barbara Riley, then Director of the Ohio Department of Job & Family Services, was Chair of the Subcommittee when the CHIPS recommendations were finalized. For a Subcommittee membership list, please go to:

http://www.supremecourt.ohio.gov/Boards/familyCourts/CAND_roster.pdf

Subcommittee, developed alternative proposals for statutory/regulatory reform. The Subcommittee tested these alternatives in the field in stakeholder focus groups and an online survey, as detailed below.

In approaching drafting, the Subcommittee considered options for reform ranging from merely correcting improper cross-references, to editing confusing, redundant or ambiguous language, to the complete overhaul of key terminology and its application. The first option, a simple revision of existing law, was quickly ruled out because of the extent of the inconsistencies in the law's application, the problematic and ambiguous statutory language, and other identified concerns. Instead, the Subcommittee responded to these problems by developing a proposal for a broad-based change in systemic philosophy and modification of the statutory framework designed to effect that change.

The ultimate product of the Subcommittee's two years of intensive project work was a set of final recommendations for Ohio to revise its overall child protection statutory structure and adopt a "Child in Need of Protective Services" structure. Such an approach promises to refocus Ohio child welfare law onto the needs of Ohio's children, leaving to the criminal justice system the punishment of those who cause substantial harm or risk of substantial harm to our children. The full Advisory Committee accepted the Subcommittee's recommendations in 2006.²

The structure recommended by the Subcommittee provides for a single allegation for complaint of child maltreatment and a single adjudication, that of a Child in Need of Protective Services," based on seven detailed categories of harm:

- Physically Harmed
- Sexually Harmed
- Emotionally Harmed
- Harmed by Exposure to Substance Misuse
- Lacking Necessary Health Care
- Lacking Legally Required Education
- Lacking Necessary Care or Supervision

In addition to the single adjudication and seven categories of harm, the CHIPS recommendations included "Declaration of Intent," "Statement of Policy," and "Scope of Authority" provisions aimed at articulating the strong public policy favoring family integrity

² In addition to the recommendation for adoption of a CHIPS statutory framework, the Subcommittee recommended the adoption of an Alternative Response practice model in Ohio. SB 327 (2007) authorized the piloting of this model in 10 Ohio counties. Plans for statewide phased-in implementation of AR are underway.

embodied in the legislation and at defining the scope of conduct encompassed by the legislation.

From Research to CHIPS Recommendations

► **Feedback Gathering**

In addition to research on Ohio and other state child protection laws, the Subcommittee gathered preliminary stakeholder feedback to guide the development of its recommendations.

- **Initial Survey:** Nearly 500 PCSA staff from over 57 counties³ responded to an initial survey disseminated to all 88 county PCSAs that was designed to elicit feedback concerning the relevance and utility of Ohio's abuse, neglect and dependency laws from front-line practitioners, and simultaneously gather statistical data to assist in the evaluation of the practical implications of Ohio's current laws.
- **Interviews:** Group and individual interviews were conducted with more than 135 participants representing a wide range of disciplines and more than 40 counties, including juvenile court judges, public defenders, GAL/CASAs, agency administrators, agency directors, prosecutors, PCSA intake/screening supervisors and caseworkers, educators, including principals, teachers and school nurses, pediatricians, court administrators, mental health professionals, ODJFS legal department, CAPMIS screening committee members, and OCWTP staff. Participants were asked to identify issues with the language in current law that impede practice or lead to inconsistent response or compromised outcomes.
- **Interview Questionnaire:** A questionnaire designed to elicit the same type of practice insight was distributed at the 2005 ODJFS Annual Conference for Child Welfare Attorneys. Responses came from 25 assistant prosecutors from Butler, Clark, Cuyahoga, Franklin, Greene, Hancock, Montgomery, Sandusky, Summit, Tuscarawas, with 8 additional questionnaires returned that did not specify the county. The questionnaire was also distributed at the PCSAO's Annual Executive Membership Meeting of PCSA directors. Six agency directors completed the questionnaire.

► **Drafting**

³ The responding counties were: Adams, Clark, Fulton, Knox, Montgomery, Tuscarawas, Allen, Clermont, Geauga, Lake, Morgan, Union, Ashland, Clinton, Green, Licking, Noble, Van Wert, Ashtabula, Columbiana, Guernsey, Logan, Paulding, Washington, Athens, Crawford, Hamilton, Lucas, Pickaway, Wayne, Auglaize, Cuyahoga, Hancock, Madison, Pike, Wood, Belmont, Delaware, Hardin, Marion, Richland, Lorain, Butler, Erie, Henry, Medina, Sandusky, Carroll, Fayette, Hocking, Meigs, Stark, Champaign, Franklin, Holmes, Mercer, and Trumbull.

Not surprisingly, the study's legal and field research led to conclusions consistent with many of those contained in the ABA Center's preliminary study: confusing language, redundant definitions, murky categories, and circular cross-references to the criminal code were identified as impediments to effective practice.⁴ Feedback from the field, synthesized with the national and Ohio-based statute and best practice research, informed the Subcommittee's drafting of alternatives for language revisions to be tested in the field.

► Testing and Feedback Gathering

Sets of alternative statutory proposals, to be tested in focus groups and via a survey instrument, were developed for each of the following types of child maltreatment: physical abuse, sexual abuse, emotional maltreatment, domestic violence, general neglect, medical neglect, educational neglect, substance abuse, and dependency. The Subcommittee's months of intense research, study, formulation, survey, testing consultation, drafting and redrafting culminated in a set of final recommendations for comprehensive change to the way child maltreatment reports are screened and processed that incorporates a "Child in Need of Protective Services" framework support by seven detailed categories of harm that could result in a child becoming a CHIPS.

► Review and Finalization

Prior to finalizing its report, the Subcommittee reached out to numerous stakeholder organizations for additional feedback on the draft recommendations. Presentations were made to groups including: PCSAO directors and legislative committee; the Ohio Association of Juvenile Court Judges, the Ohio Bar Association Family Law Committee, the Ohio Prosecuting Attorneys' Association, the Buckeye State Sheriffs' Association, the political action committee of the Ohio Education Association, Legal Aid and Public Defender Groups, and the advocacy committee of the Ohio Chapter of the American Academy of Pediatrics.

⁴ Some of these issues include: the overly broad definition of "dependency" under ORC 2151.04, which leaves its use open to many different interpretations all over the state; the civil sexual abuse definitions found in ORC 2151.031 are inappropriately reliant on cross-references to Chapter 2907 of the criminal code for definitions of relevant sexual activity, leaving conduct more typically encountered by PCSAs unaddressed; a similar cross reference to the criminal code for the definition of "abused child" as one who has been "endangered" ; the criminal code, however, lists "abuse of the child" as a form of endangerment. This circular reference does not assist caseworkers, prosecutors or judges in determining the definition of abused child or endangered child and leads to different interpretations throughout the state.

► Educational Outreach: The Ohio Child Protection Law Reform Initiative

The Ohio Child Protection Law Reform Initiative (OCPLRI) is the name the Subcommittee has given its legal/practice reform initiative. OCPRLI is aimed at educating stakeholder groups on the proposed changes to Ohio's statutes and rules and at garnering support for legislative enactment. Through OCPLRI, the Subcommittee has continued its educational outreach and stakeholder feedback gathering from the time of its submission of its recommendations to the Advisory Committee to the present.

In the past four years, there have been at least 35 stakeholder education sessions. Participating organizations have included: various committees of the PCSAO, the Ohio CASA/GAL Association, the Ohio Council of Behavioral Health & Family Services Providers, the County Commissioner's Association of Ohio, and many others. Although this comprehensive outreach has elicited many questions and valuable input, it has not identified any significant opposition to CHIPS. In addition, the Subcommittee maintained an online comment form and disseminated the link to the form to individuals and agencies throughout the state.

From Subcommittee CHIPS Recommendations to HB 371

► Sponsorship

In November, 2009, House Bill 371, adopting a "Child in Need of Protective Services (CHIPS)" statutory structure, was introduced in the Ohio General Assembly. House Bill 371's sponsors were Representatives Connie Pillich and Robin Belcher. Representatives Pillich and Belcher were joined by 28 bipartisan co-sponsors from districts across the state.

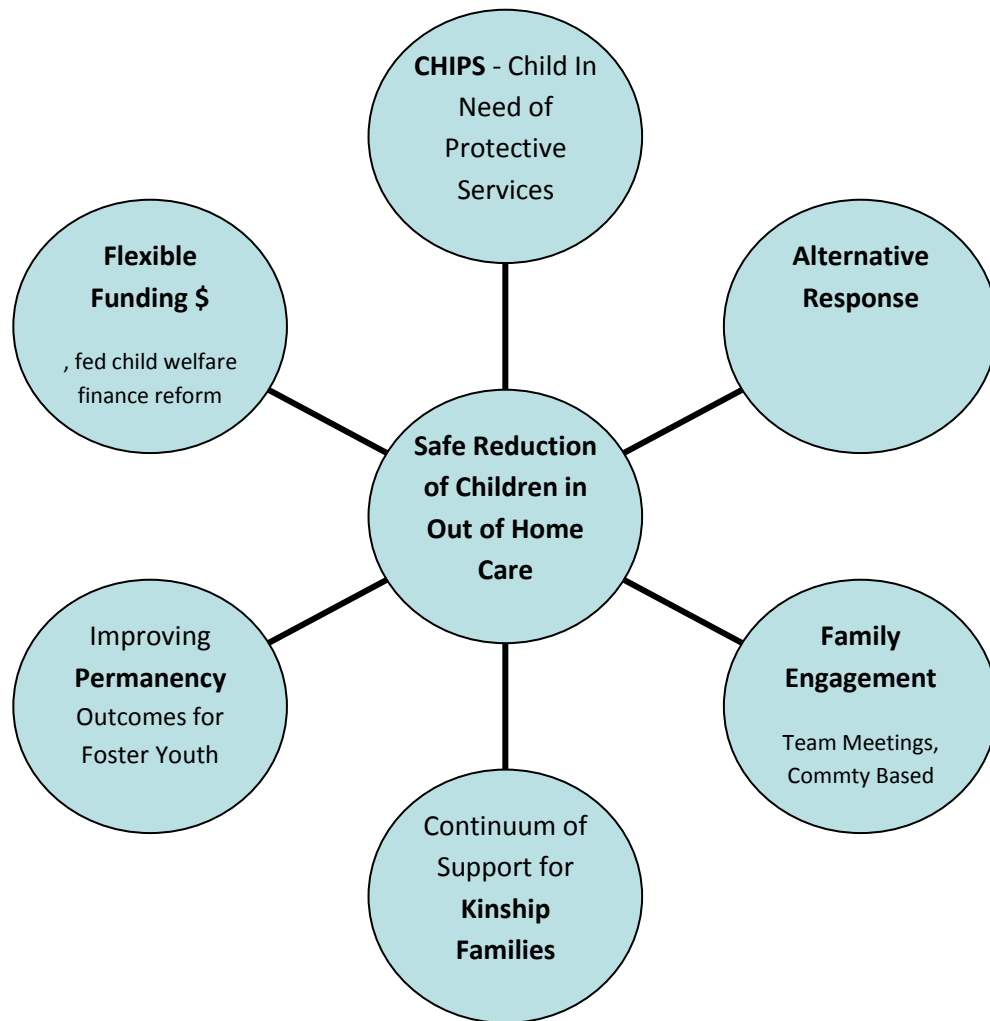
► LSC Drafting

The structure of the Ohio Revised Code did not allow for wholesale incorporation of the Subcommittee's CHIPS recommendations in a single, unified provision. Rather, the language is incorporated in various sections of the Code, primarily in Section **2151.02**, starting at l. 1708.

Although HB 371 exceeds 500 pages, it is important to keep in mind that most of the Bill reflects changes to code sections that eliminate or replace former "abuse, neglect, and dependency" language with CHIPS terminology. The substantive amendments comprise only about 20 pages, primarily at: **pp. 56-58; 70-79; 156-157; and 167-170.**

► HB 371: A Critical Piece of Ohio's Child Welfare Reform Effort

Since 1991, Ohio has experienced a 42% safe reduction in the number of children experiencing the trauma of out of home care due, in part, to recent statewide accomplishments such as CAPMIS (safety, risk and family planning tool), supports for kinship care, and a statewide SACWIS MIS system. CHIPS will provide the critical legislative foundation needed to continue reform, and to bring other innovations and initiatives to scale statewide, as graphically illustrated in the visual below:



Goals of HB 371

► Based on the Subcommittee’s CHIPS recommendations, HB 371 was drafted with the following goals in mind:

- To establish a child protection framework that focuses on the safety and well-being of children while respecting parental rights and autonomy and promoting family preservation.

- To recognize that for the government to constitutionally intervene in with a family, even at the initial response stage, there must be a connection between parental conduct and the alleged harm or risk of harm to the child, and there must be deference given to the parents' constitutional right to be free of unwarranted government intrusion into private family life.
- To clarify the type and level of harm or risk of harm to a child's safety and well-being that justifies the state's intervention in the life of a family.
- To eliminate current confusing, circular, broad, and vague definitions for child maltreatment.
- To promote consistency from county to county in report screening, case response, and case decision-making.
- To focus on assessing and responding to children's needs rather than on punishing parents, while at the same time creating enhanced parental accountability.

HB 371 serves these goals through the establishment of a "Child in Need of Protective Services" framework with seven carefully defined categories of harm articulating the circumstances that would support an accepted report, complaint, disposition, and/or adjudication of CHIPS.

► The CHIPS Categories of Harm

- **"Physically Harmed"**: Requires an injury or substantial risk of injury to a child caused by intentional or negligent acts or omissions. A determination of "substantial risk" shall take into account factors including age and condition of child, duration and strength of force used, etc. The provision includes a representative list of physical injuries and a representative list of circumstances that could result in physical injury. The category includes corporal discipline that results in or causes substantial risk of physical injury. There is also an exception for harm caused in effort to prevent greater harm to a child.
- **"Sexually Harmed"**: This category is more specific to the type of conduct typically seen in home-based sexual abuse situations than the criminal code definitions currently applicable, covering circumstances in which a parent participates in a sexual act with a child or permits, intentionally or negligently, the child to participate in sexual act with another. The provision includes a representative list of sexual acts, an exemption for a parent providing birth control, and exemptions for some voluntary sexual acts of older children.
- **"Emotionally Harmed"**: "Harm" is defined to include psychological, emotional or cognitive injury or the substantial risk of same. The term "psychological, emotional or cognitive injury" is defined and types of evidence that would support a finding of such injury are listed.

- **“Harmed by Exposure to Substance Misuse”:** This category avoids the use of the term of art “abuse.” “Harm” may be physical or psychological, emotional, or cognitive, and arise through direct parental substance misuse, through a parent intentionally or negligently permitting child’s use of alcohol that results in harm or substantial risk of harm, through a parent intentionally or negligently permitting child’s use of illegal substance or illegally used legal substance, or through a parent intentionally or negligently permitting child’s exposure to illegal substance sale or manufacture. “Substance” is defined to include any mood or behavior altering product.
- **“Lacking Necessary Health Care”:** Under this provision, a child lacks necessary health care when, through act or omission of parent, the child is not provided care required to treat a condition if such care will likely prevent death, serious impairment or disfigurement or substantially reduce pain or debilitation. The provision contains an exemption for treatment not provided due to parental beliefs, with authority provided to the court to override parental decision-making when necessary for a child’s health and safety. Guidance on findings necessary for court to override parental authority is provided.
- **“Lacking Legally Required Education”:** This provision is intended to address the overuse of PCSAs in situations more appropriately handled by school authorities, such as simple tardiness or absence issues. The provision does not attempt to define educational standards; rather, it speaks to requirements of compulsory school attendance law, and provides that intervention by a PCSA may be sought after appropriate school officer provides notice of steps taken to ensure compliance with school attendance laws and notice of all acts or omissions of the parents that contributed to the child allegedly lacking legally required education. It allows a PCSA to refuse to investigate if notice not provided by school and to seek order of court to compel school to provide such notice.
- **“Lacking Necessary Care or Supervision”:** This provision includes parental acts placing child at substantial risk of becoming a child in need of protective services under all categories of harm and covers the failure to provide a child necessary food, shelter, clothing, supervision or living arrangements. It includes a “no-fault” provision.

Clarifying What HB 371 Does Not Do

► **HB 371 does not bring more kids into the foster care system.** The CHIPS framework supports the entire spectrum of responses and services for parents and children that currently fall within PCSA jurisdiction, from initial screening responses to reports of child maltreatment through disposition and adjudication. The intent is actually to preserve family integrity and prevent child removal, if at all possible:

- **2151.02 (I. 1712-1715):** “Parents have the primary responsibility for the care of their children and the primary right to make decisions on behalf of their children, and children should have the chance to grow up in their own families if at all possible.”
- **2151.021(B) (I. 1741-1744):** “...[S]ervices should be accessible and aimed, so far as possible, at encouraging and enabling families to adequately address their problems within their own families and at preserving families wherever possible.”
- **2151.02 (I. 1708-1712):** “The bonds between children and their parents or legal guardians and the preservation of family relationships are matters of great importance; thus, intervention into family life on behalf of a child must be guided by clearly drafted law...”
- **2151.021(A)(3) (I. 1734-1736):** “Ohio’s child services and protection system is intended to ... [o]perate within a fair and equitable procedural framework compatible with due process and equal protection requirements...”
- **2151.021(A)(1) (I. 1728-1730):** “Ohio’s child services and protection system is intended to ... [b]e child-centered and family-focused in its prevention efforts and to accommodate the individual needs of families.”

► **HB 371 does not mean that more reports of child maltreatment must be made or screened in.**

HB 371 does not add additional grounds for involvement by PCSAs. The intent, rather, is to foster consistency in relation to the reporting of and response to child maltreatment by:

- Clarifying definitional barriers in current law that can result in different interpretations and responses, including screening-in reports that do not justify PCSA intervention (for example, parental provision of alcohol that does not harm or create risk or harm to a child or the failure to attend school as legally required, where such failure is not attributable to harmful parental conduct).
- Revising current definitions of abuse, neglect and dependency in law that are overbroad, too narrow, confusing, or undefined.
- Continuing to allow for the exercise of professional judgment by mandated reporters acting in a professional capacity by maintaining current law’s standards for reporting suspected child maltreatment, which require reports only where there is reasonable cause to suspect maltreatment, based on facts that would cause a reasonable person in a similar position to suspect that a child has suffered or faces a threat of suffering a “physical or mental wound, injury, disability, or condition of a nature that reasonably indicates” the child is in need of protective services (**2151.421(A)(1)(b)**, I. 4935-4947).
- Providing clearer definitions and parameters for the circumstances that justify intervention into the life of a family through such means as the use of specific examples of sexual and physical injury and circumstances that can result in such injury, the factors

that would support a finding of emotional harm, and through explicit exemptions for certain specified conduct that does not implicate parental wrongdoing.

► **HB 371 does not take away the right of parent to administer reasonable physical discipline of a child.** The intent, rather, is to:

- Provide a framework that explicitly recognizes a parent’s right to administer reasonable discipline, but that establishes clearer parameters for the exercise of that right. (**2151.031(5)**, l. 2147-2198)
- Eliminate confusing cross-references to the criminal code for guidelines on acceptable corporal punishment.
 - Currently, Ohio’s civil treatment of corporal punishment relies on an inclusion in the definition of abuse of non-accidental physical or mental harm at odds with a parent’s explanation of the harm, unless such harm was caused by corporal punishment that was not either prohibited under the criminal code or did not constitute a threat to a child’s mental health or welfare.
 - This definition relies on a circular cross-reference to the criminal code’s offense of “child endangerment,” which, in turn, lists “abuse of the child” as a form of endangerment, with an exception for discipline that does not constitute abuse, torture, or that which is not cruel, prolonged, excessive under the circumstances, or create a serious risk of physical or mental harm.
- CHIPS does away with this confusion, and clarifies the parameters of acceptable parental discipline by:
 - Eliminating circular cross references to the criminal code. The definition is self-contained and detailed to provide clearer guidance.
 - By creating, in **2151.031(A)(5)**, a definition of physical harm that clearly defines terms, carefully articulates circumstances in which intervention is justified, and provides guidelines for assessment of whether a child has been physically injured or is “at substantial risk” of physical injury due to parental conduct
 - Including a non-exclusive list of physical injuries that may result from physical harm to supplement a general definition. These injuries include such things as bone/skull fracture, asphyxiation, burns, brain or spinal cord damage, or death.
 - Providing further supplementation of the definition with reference to a non-exclusive list of specific types of conduct that can result in physical injury, including: being thrown, kicked or burned, deprived of sustenance, or struck with an object or closed fist.
 - By recognizing, in **2151.031(D)**, l.2184-2193, that there are many factors to consider in determining whether parental conduct, including corporal punishment, is appropriate and providing a list of factors to be considered, including the child’s size, the strength and duration of any force used, and the location of any injury.

- By further recognizing, in **2151.031(E)**, 1.2194-2198, that physical intervention that results in harm may, at times, be required to prevent greater harm to the child or imminent harm to another person.

► **HB 371 does not do away with the terms abuse and neglect.** The terms “abuse” and “neglect” are the most commonly used and widely identifiable general descriptors of child maltreatment and CHIPS is not intended to do away with these terms. For example, **2151.03(27)** (l. 1950) & **(28)** (l. 1968), retain the definitions of “out-of-home care child abuse” and “out-of-home care child neglect.” CHIPS replaces these terms with more descriptive and less stigmatizing language in the specific context of maltreatment by a parent or guardian.

HB 371, in its definitional section, provides specifically that current abuse, neglect, and dependency definitions will apply to past “acts, adjudications, and statuses (**2151.03(D)**, lines 2127-2137).

Further, HB 371 provides for adjudication of CHIPS only in relation to acts or omissions occurring on or after its effective date (line 17244); for acts or omissions committed prior to the effective date, the law in effect prior to that date will apply.

In addition, a review of HB 371 is underway to identify any amendments that change the statutory language from abuse and neglect to CHIPS in provisions that fall outside of the context of maltreatment by a parent or guardian where such change may not be appropriate.

► **HB 371 does not give child service agencies more authority over parents.** To the contrary, CHIPS is intended to limit intervention into family life, balancing the need to intervene to prevent harm or risk of harm to a child’s safety and well-being with the ideal of deference to parental autonomy.

- **2151.021(A)(3)** (l. 1734-1736): “Ohio’s child services and protection system is intended to ... [o]perate within a fair and equitable procedural framework compatible with due process and equal protection requirements...”
- **2151.021(A)(1)** (l. 1728-1730): “Ohio’s child services and protection system is intended to ...[b]e child-centered and family-focused in its prevention efforts and to accommodate the individual needs of families.”

► **HB 371 does not impact the right to home-school children.** The Bill’s “Lacking Legally Required Education” provision is directed solely at situations in which a child’s failure to comply with compulsory attendance law is attributable to an act or omission of the parent. Careful thought was given in drafting to avoid unnecessary interference with home-schooling or other parental educational decision-making. The law is intended to prevent unnecessary PCSA intervention by:

- Placing appropriate limits on the involvement of the child protection system in educational matters. Child welfare involvement is appropriate only where a child fails to attend school or to receive legally required education services (**2151.036(A)**),

and that failure is a result of parental actions or negligence (**2151.036(B)(2)**). Thus, children who are home-schooled as provided by law are not impacted.

- Clearly delineating the responsibilities of schools and child protection agencies in enforcing compulsory school attendance laws. The new law recognizes the critical partnership between child protection agencies and schools in ensuring that children receive legally required education (**2151.036(C)** (l. 2360-2371)).
- Acknowledging that child protection agencies have a duty to respond to reports of deficient school attendance that may be attributable to parental acts or omissions, but requiring that schools demonstrate that they have taken appropriate measures to assure required attendance prior to enlisting the help of the agency (**2151.036(D)** (l.2373-2380)).
- Requiring that a school, when making a report that a child is “Lacking Legally Required Education,” must provide the PCSA with documentation describing actions taken by the school to resolve attendance problems as well as all known parental acts or omissions contributing to the child’s lack of required education (**2151.036(C)** (l.2360-2372)).

► **HB 371 does not cause further victimization of victims of domestic violence.** Although the Bill does not speak specifically to domestic violence, there are provisions aimed at protecting non-offending parents that are relevant in the domestic violence context :

- **2151.351(C)** (l.3859): Limits the adjudication of CHIPS to circumstances involving a person other than a parent, legal custodian, or guardian to those in which the child’s parent, legal custodian or guardian has knowingly or negligently permitted the conduct that caused the child to be in need of protective services, or at risk of being in need of protective services.
- In relation to parental conduct, HB 371 requires that there be an act or omission that causes a child to be in need of protective services (**2151.351(C)**). While that conduct triggers application of the CHIPS provisions, the focus is on the condition and needs of the child and not on punishment of the parent or parents.

► **HB 371 does not preclude offering evidence of emotional harm in court proceedings.** One of the definitional changes in HB 371 is the inclusion of an “Emotionally Harmed” category of harm (**2151.033** (l.2258)). This provision seeks to provide a clearer definition of the circumstances in which a child protection agency may intervene in a family due to parental acts or omissions causing emotional or mental harm to children.

- Recommendations regarding emotional maltreatment grew out of concerns from the field that current laws do not address this serious problem which has potentially lifelong repercussions for children. Currently, Ohio law includes “mental injury” in acts

prohibited as either abuse or neglect. However, mental injury is an ambiguous term that is inconsistent with the terminology used by child welfare practitioners. Moreover, under current law it is extremely difficult, if not impossible, to prove as many courts require the presence of a diagnosed condition that is tied to a single parental act or omission.

- Rather than requiring a “diagnosed” or “diagnosable” disorder, the proposed language suggests behavioral indicators and other factors to consider when determining whether a child has been emotionally harmed (**2151.033. (A) (1.2258)**).
- As under the current system, the expert testimony of mental health professionals will be of critical importance in establishing that a child has been a victim of emotional maltreatment. However, judges will also be able to consider other testimony and developmental or behavioral indicators that may fall short of a clear-cut diagnosis (**2151.033. (B) (1.2266)**).

► **HB 371 does not preclude engagement of law enforcement agencies in appropriate cases.**

In fact, the Bill encourages collaboration between PCSAs, law enforcement, and other partners where appropriate:

- HB 371 emphasizes the importance of coordinating law enforcement and child protection activities with the inclusion of a directive for children services agencies to collaborate with law enforcement and other government agencies to maximize efficiency and minimize trauma to children.
- Provisions relating to memoranda of understanding among PCSAs, law enforcement, and other agencies are not impacted, except to the extent that substitution of CHIPS language for abuse/neglect terminology was required.

► **HB 371 does not eliminate PCSA jurisdiction over third party conduct.** Instead, the Bill contains provisions explicitly addressing parental responsibility for third party actors and PCSAs’ jurisdiction in other situations involving child maltreatment:

- HB 371 limits PCSA intervention in relation to acts by persons other than parents to those circumstances in which a parent is in some way responsible for the child’s harm or risk of harm from non-parental conduct. Under this model, the non-parental actor is dealt with by the criminal justice system, as appropriate.
- HB 371 law does not impact those situations in which public children services agencies are statutorily assigned responsibility for response to allegations of child maltreatment by persons other than a child’s parent, legal guardian or legal custodian, most notably out-of-

home care providers. These recommendations are not intended to modify or eliminate this responsibility (as is specifically stated in the recommended statutory language).

► **HB 371** is not “soft on crime.” The Bill does not impact criminal prosecutions arising from reports of child maltreatment, nor does it release parents from accountability for their conduct toward their children.

- Although the Bill properly acknowledges that parents have clearly protected constitutional rights in relation to their children, the statute sets up a framework for balancing those rights with the responsibility of the State to intervene when necessary to ensure child safety and well-being. Under HB 371, parents will not be held any less accountable due to the proposed changes. The Child in Need of Protective Services model simply shifts systemic emphasis to the condition and needs of the child.
- Under the proposed system, parents are still accountable for conduct which is harmful or risky to their children and are required to correct behavior in accordance with a well-developed case plan. Furthermore, the creation of seven discrete categories of circumstances under which a child is to be considered “in need of protective services” as well as the elimination of the “catch-all” dependency category actually encourage increased accuracy in characterizing parental conduct.

► **HB 7 does not impose liability on parents for accidental harm to a child.** An adjudication of CHIPS may only result from an intentional or negligent act or omission of a parent, guardian or custodian. For example,

- “Physical harm” requires an injury or substantial risk of injury, from one or more “intentional or negligent acts or omissions” of the child’s parent, guardian, or custodian (2151.031(5), lines 2147-21510).
- “Sexual harm” requires specified intentional acts or negligent omissions (2151.032)

► **HB 371 is not intended to respond to all reform suggestions for current Ohio child protection law and practice.** It does not address:

- Response to acts of persons other than a child’s parent, legal guardian or legal custodian when there is no parental knowledge or involvement in those acts
- “Timing issues,” including the creation of and enforcement of statutory time limits for various court processes and milestones subsequent to the investigation phase

- The treatment of non-custodial parents in child protection cases, including ensuring that an adjudication of harm or risk of harm to a child by one parent will not compromise the paramount rights of a parent who has not harmed and does not present a risk of harm to the child.
- The availability of adequate counsel for families and agencies involved in the child welfare system, including appointment of counsel for indigent parents
- The standards of proof appropriate at all phases of child welfare cases

Frequently Asked Questions

► *Why was the term “Child in Need of Protective Services” selected?*

The Subcommittee sought to establish a model for child protection that focuses on the condition of the child rather than the fault of the caregiver, *without* removing parental accountability or compromising child safety. Such a model is intended to provide increased flexibility and potential for child protection agencies to successfully engage families in needed services. Various options for the model name were considered, with “Child in Need of Services” and “Child in Need of Protective Services” being the most favored options. In deciding on the latter, the Subcommittee looked to the models of other states with similar structures, including Indiana, which follows a CHIPS model with a philosophy and focus most consistent with the goals set for statutory reform in Ohio. In such a system, all circumstances which would cause a child in a fault-based system to be declared abused, neglected, or dependent would, instead, result in the child being declared “in need of protective services.” Such an approach is designed to focus the child protection system on child protection rather than the punishment of ill-performing parents, leaving punishment to the criminal justice system. State interventions are based upon the needs of the child with case plans aimed at correcting the circumstances which have resulted in harm or risk to the child. The use of the word “protective” in the model structure narrows the focus to those services designed for children whose families are involved with Ohio’s child protection agencies and serves to emphasize the child-centric focus and philosophy of the system.

► *How does CHIPS address domestic violence?*

HB 371 does not specifically address domestic violence as a category of harm; rather, reports in such cases will be assessed or investigated in order to determine whether a child was harmed or whether there may be risk of future harm to the child as a result of such violence. Harm or risk of harm due to domestic violence could be covered under the “physically harmed” or “emotionally harmed” categories of the CHIPS statute. Further, under the new law, public children service agencies will be required to make all reasonable efforts to prevent the removal of a child from a parent or legal guardian/custodian who has not been alleged to have harmed

the child or placed the child at substantial risk of harm. This requirement recognizes the importance of preserving children's relationships with non-offending parents, using removal only as a last resort to protect children from harm. In addition, public children services agencies will have the authority to offer assistance to non-offending parents in domestic violence situations when they are able to do so.

► ***What will need to be done to SACWIS to accommodate CHIPS?***

The Ohio Department of Job & Family Services routinely modifies the SACWIS system to accommodate changes in practice and terminology and is currently assessing the extent and timing of the modifications HB 371 will require. HB 371 already acknowledges the need for a SACWIS "CHIPS fix" in **Sec. 5153.52**.

► ***Will PCSA interface with law enforcement be impacted by CHIPS?***

HB 371 is designed to more clearly delineate the distinction between civil and criminal child protection statutes, but the criminal statutes, and the investigation and prosecution of offenders under those statutes, will remain fundamentally the same. The definitional changes were carefully crafted to provide greater guidance to agencies and the courts in civil child protection matters and should in no way impede the prosecution of criminal child abuse or endangerment cases. HB 371 emphasizes the importance of coordinating law enforcement and child protection activities with the inclusion of a directive for children services agencies to collaborate with law enforcement and other government agencies to maximize efficiency and minimize trauma to children.

► ***What is the anticipated financial impact of CHIPS?***

It is anticipated that part of the financial impact of implementing CHIPS will be akin to that of any change in law or practice. There will associated costs for training, materials, forms, manual revisions, etc. It is not anticipated that CHIPS will require the provision of additional or enhanced services.

► ***What is the interplay between CHIPS and Alternative Response?***

In addition to CHIPS legislative reform, a second major recommendation of the Subcommittee on Responding to Child Abuse, Neglect and Dependency was the pilot testing and evaluation of an Alternative Response child protection practice model in Ohio. House Bill 371 (CHIPS) is separate from Alternative Response. In fact, Alternative Response is already in progress through a ten county pilot and enabling legislation was included in HB 1, the Biennial Budget, to authorize Alternative Response to expand statewide upon evaluation of the program. However, CHIPS will provide a strong legal and legislative foundation to support this very important child protection reform.

CHIPS Case Scenarios⁵

► *Physical Harm*

The Facts:

During a routine scoliosis screening, a school nurse noticed several large, dark bruises, welts, and small cuts on thirteen year-old Max's lower back. When the nurse asked Max about the bruises, he stated that he was "fine" and that "his step-dad had just given him a whupping." The school nurse thought that Max's injuries might have come from being hit with a belt, and she placed a call to the local children services agency to report Max's injuries.

Max's step-father, Brian, told the children services caseworker that he had, in fact, used a belt on Max. Max and his friends had been caught shoplifting from a local store, and Max needed to "learn a lesson." Brian told the caseworker that he was a firm believer in corporal punishment. He said that he never intended to leave bruises, and he didn't believe that he had used excessive force while administering the

How would current law address this situation?

Ohio law's current civil definition of abuse relies in part on a circular cross-reference to the criminal code's offense of "child endangerment," which, in turn, lists "abuse of the child" as a form of endangerment. The civil code also includes non-accidental physical or mental harm and physical or mental harm that is at odds with a parent's explanation as forms of abuse, with an exception for such harm administered as corporal punishment unless the punishment either is prohibited under the criminal endangerment provision or threatens the child's mental health or welfare. The effect of these provisions is to exempt from the definition of abuse some types of harm that would be considered abusive if not inflicted as an act of parental discipline.

How would CHIPS address this situation?

Under CHIPS, there are new, clearer definitions of the circumstances in which the State may intervene in a family in order to protect a child. The development of the CHIPS definitional framework for "physical harm" focused on identifying definitional barriers to consistent and effective practice in child protection case screening and investigation, and on creating statutory revisions aimed at eliminating those barriers by clearly defining terms, carefully articulating circumstances in which intervention is justified, and providing guidelines for assessment of whether a child is "at substantial risk" of physical injury due to parental conduct.

Specific features of the CHIPS definition of "physically harmed" relevant here are:

- Clarification of the current definition through the elimination of cross references to the criminal code. The definition is self-contained and detailed to provide clearer guidance.

⁵ The following case scenarios summarize the application of current law as compared to the application of CHIPS in relation to hypothetical fact scenarios. For more detailed legal analyses, please go to:

http://www.law.capital.edu/adoption/ohiochildlaw/09.11_Aggregated_CHIPS_Scenarios.pdf

- Inclusion of a non-exclusive list of physical symptoms that may result from physical harm to supplement a general definition.
- Further supplementation of the general definition by reference to a non-exclusive list of specific types of parental behavior that may result in physical harm.
- The elimination of corporal punishment as an excuse for the infliction of harm that would otherwise be considered maltreatment.
- Inclusion of a list of factors to be considered in the assessment of whether a child has been placed at substantial risk of physical injury.

► ***Harmed by Exposure to Substance Misuse***

The Facts:

Jim is the father of 17 year-old Kelly and grandfather of Kelly's two year-old son, Martin. Jim returned home from work one evening to find Martin at the bottom of the stairs of their two-story home, with a bad cut on his forehead and crying uncontrollably. Martin's mom, Kelly, was lying unconscious on her bedroom floor with a rag in her hand and a bottle of nail polish remover overturned on the floor next to her. Jim immediately called 911 to seek medical attention for both Kelly and Martin. Kelly regained consciousness before paramedics arrived, but she was disoriented and incoherent.

Martin had a large bruise and needed a few stitches in his forehead but was otherwise uninjured. The emergency room doctor believed that Martin probably fell down the stairs after Kelly passed out from inhalant use. She called children services to report Martin's injury and the suspected inhalant abuse.

Kelly later admitted to her father and the children services caseworker that she had been "huffing" repeatedly over a period of hours that afternoon trying to maintain a "high." Martin was playing in her room, and she had closed her bedroom door thinking that he wouldn't be able to get out of the room. Kelly reported that she had used inhalants many times before but had never previously passed out.

How would current law address this situation?

Currently, there are no provisions under current law, either in the civil provisions relating to child abuse/neglect/dependency or in the criminal code provisions relating to drug-related offenses, that speak specifically to this factual scenario. Thus, there are a number of ways these facts could be approached, resulting in potentially inconsistent treatment and outcomes from county to county. Turning to the most relevant provisions under current Ohio law, it appears that due to Kelly's conduct in this scenario, Martin could be categorized as "neglected" under ORC § 2151.03, or "abused," under ("ORC") § 2151.03, which includes endangerment and parental conduct that results in physical or mental injury that harms or threatens to harm the child's health or welfare. Finally, this scenario could potentially implicate ORC § 2151.04's dependency definition.

How would CHIPS address this situation?

Under CHIPS, there are new, clearer definitions of the circumstances in which the State may intervene in a family in order to protect a child. The development of the CHIPS definitional framework focused on identifying definitional barriers to *consistent* and *effective* practice in child protection case screening and investigation, and on creating statutory/regulatory revisions aimed at eliminating those barriers by clearly defining terms and carefully articulating circumstances in which intervention is justified.

There are many differences between the CHIPS provision definition of “harmed by exposure to substance misuse and current Ohio law that could be applied to parental drug/alcohol use:

- “Harmed by Exposure to Substance Misuse” is explicitly and comprehensively defined, unlike current child protection law provisions, under which agencies must select from and interpret a number of arguably relevant provisions, none of which specifically relate to substance use or misuse.
- The CHIPS definition of “substance” is intended to capture drug and alcohol use, but to also include other substances commonly used to achieve a “high” or another altered state.
- In addition to physical harm of the type that an impaired parent may intentionally or negligently cause to a child, the CHIPS “Harmed by Exposure to Substance Misuse” provision specifically speaks to the emotional harm or risk of harm that might be caused a child by a parent’s misuse of substances.

► ***From Report to Complaint:*** A Hypothetical Case

The following is a look at a hypothetical case at two critical decision points, considering potential outcomes under current law and under CHIPS.

The Facts:

A fifth grade teacher observes that ten year-old Katie has become very quiet and withdrawn, has recently failed to complete several homework assignments and has had trouble staying awake in class. This is a substantial change for Katie, who started the school year as a very outgoing child and conscientious student. The teacher shares her concerns with Katie after school one afternoon and asks if everything is okay. Katie confides that her mom’s boyfriend, Matt, moved in a few months ago and that she “hates him.” Because Katie’s mom is at work, Matt is always there when Katie comes home from school, so she’s had a hard time getting her homework done. When the teacher inquires further about the situation, Katie says that at first she really liked “hanging out with Matt” because he would take her places and do stuff she liked – “He was really nice, and it was kind-of like having a dad around.”

“Then, a few weeks ago,” Katie said, “it started getting weird.” Katie told her teacher that Matt started trying to make her “watch movies and stuff on the computer that her mom wouldn’t want her to see because some of them had naked men and women in them.” Matt told her that she was “grown-up enough” and “that he trusted her and it would be their secret.” Katie told her teacher that she had tried to talk to her mom about the situation. Katie said she told her mom that she didn’t really feel comfortable

being around Matt and that he made her feel nervous. Katie said that her mom told her she just needed to get used to having Matt around and that she should try to be nicer to him. When Katie's teacher asked her if she had any other concerns, Katie responded that she was just feeling very sad and lonely because her mom was spending all of her time with Matt. She said she was also having a hard time sleeping and that she had nightmares every night and stomach aches almost every day. Katie's teacher is very concerned for Katie's safety and emotional well-being, and immediately decides to call in a report to child protective services.

Decision Point: Screening:

How would current law address this situation?

Under current Ohio law, the civil sexual abuse is a subset of child abuse, with its definition fundamentally reliant on cross-references to the criminal code. The child is not referred to by a typical practice-based term such as "sexually abused," but rather as "a victim of sexual activity," as defined in criminal code Section 2907. A major problem with this approach is that the criminal code provisions are aimed primarily at conduct involving actual physical contact, or concerned with non-parental acts or commercially-based offenses. The applicable statutory language simply is not specific to the type of sexual harm that may be most common within the home. Given that the criminal code language is not applicable here, a PCSA could screen out this report; however, given the potential risk to Katie, this report potentially could be screened in.⁶

How would CHIPS address this situation?

The CHIPS framework is built on the philosophy that the first focus in response to reports of child maltreatment should be on the condition of the child. Under this fact scenario, the initial inquiry is whether Katie is a child in need of protective services by virtue of being sexually harmed due to acts or omissions of her parent, specifically in relation to a third party actor. Under the CHIPS analysis, this case should be screened in.

There are many differences between the CHIPS definition of sexual harm and current Ohio law relating to sexual activity:

- "Sexual harm" is more explicitly and comprehensively defined than under current child protection law, which relies on a cross reference to an entire chapter of the criminal code with no other guidance.
- The CHIPS definition contains a representative list of sexual acts, which includes "knowingly permitting, encouraging, or forcing a child to watch pornography."
- The CHIPS definition of sexual harm excludes the acts of a person other than the child's parent, legal guardian or custodian, *unless* the parent, legal guardian or custodian

⁶ In fact, when presented with this fact scenario during a conference exercise, actual PCSA staff were split as to whether the report should be screened in or was not within PCSA jurisdiction because of the lack of physical conduct or the type of exploitation described in the criminal code.

permitted the child to participate in a sexual act with another, intentionally or negligently.

Additional Facts:

During the investigation of this report, Katie's mother tells the PCSA caseworker that she was unaware that Matt had made Katie watch sexually explicit material on the computer. Katie's mother also discloses that she had planned to ask Matt to move out anyway, as he refused to work or contribute financially to the home. The caseworker also learns, however, that Katie's mom has a history of addiction to prescribed painkillers for which she has refused treatment in the past. In talking to Katie, the caseworker learns that she often goes without dinner when her mom is asleep due to overusing her medications, and that her mom sometimes lashes out at her verbally, saying mean things about Katie's weight and her lack of friends. Katie says that makes her want to eat even more, and that it makes it hard to sleep and "hurts her stomach." She tells the caseworker that her mom took her to the doctor about a year ago. The doctor said that she would like to continue talking to Katie on a regular basis and prescribed medication for her stomach and "her nerves." Katie's mother, however, kept the medicine locked up and only gave it to her once in a while and never took her back to the doctor. Katie says that she feels much better when she is taking her medicine and that she liked talking to the doctor.

Katie's mom admits that she has been drinking more recently, but says that she wants to get help. She also says that she knows that her criticism has hurt Katie and that she is sorry for the way she has treated her. She wants to know how she can better manage her anger. She also wants to make sure that Katie gets the help she needs.

Decision Point: Complaint:

How would current law address this situation if a complaint were filed?

There are no provisions under current law, either in the civil provisions relating to child abuse/neglect/dependency or in the criminal code provisions relating to drug-related offenses, that speak specifically to this factual scenario. Thus, there are a number of ways these facts could be approached, resulting in potentially inconsistent treatment and outcomes from county to county. Under the most relevant provisions of current Ohio law, it appears that due to Katie's mother's conduct in this scenario, Katie could be categorized as "neglected," as lacking necessary care or treatment. (ORC 2151.03(A)). Katie might also fall within the broad category of a "dependent" child, as one who "lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian." (ORC 2151.04(B)).

A complaint filed under current law would specify either that the child is alleged to be "neglected," or "dependent," but not both. The complaint will allege facts supporting the chosen allegation.

How would CHIPS address this situation if a complaint were filed?

Under CHIPS, there will be a single allegation for a complaint: that the Child is in Need of Protective Services. However, that allegation will be supported by facts in relation to all categories of harm implicated by the situation. In this case, in addition to sexual harm, relevant

categories that would be specified are “Harmed by Exposure to Substance Misuse,” “Emotional Harm,” and “Lacking Necessary Health Care.”

These categories of harm are designed to provide more detail and guidance in case response by allowing for all details of any relevant conduct to be included. Such specificity better focuses attention on the needs of the child and provides a platform for better addressing those needs. For example, in relation to the category of “harmed by exposure to substance misuse,” there are some critical differences under CHIPS that are relevant here:

- CHIPS avoids use of term of art “abuse”
- “Harm” to a child may be physical or psychological, emotional or cognitive
- “Substance” is defined to include any mood or behavior altering product
- The definition of psychological, emotional or cognitive harm does not require clinical diagnosis

In relation to “Emotional Harm,” CHIPS:

- Defines harm as psychological, emotional or cognitive injury or substantial risk of same
- Does not require a clinical diagnosis, but provides a definition of “psychological, emotional or cognitive injury,” and provides examples of the types of evidence that would support a finding of such injury.

Under CHIPS a child may be “Lacking Necessary Health Care,” where, due to a parental act or omission, a child is not provided health care or treatment that is required to substantially reduce the child’s pain and suffering or to correct or substantially diminish a child’s debilitating condition.