

House Civil and Commercial Law Committee
Sponsor Testimony - HB371, Representatives Pillich and Belcher
Tuesday, January 19, 2010

Thank you, Chairman Okey, Vice-Chair Murray, Ranking Member Oelslager, and members of the House Civil and Commercial Law Committee for the opportunity to speak in support of House Bill 371.

In August 2006, three-year old Marcus Fiesel was murdered by his foster parents in suburban Cincinnati. As shocking and tragic as this toddler's death was, Marcus was – according to the Columbus Dispatch – only one of 18 children to die under the supervision of foster care that year. From 2002-2007, 87 children have died in Ohio foster care settings.

One of – if not the first – of the priorities we have as legislators is to keep children safe. In many, incomprehensible instances, children have to be removed from their homes and families. We work hard to provide them safe havens in foster homes. With enabling language in HB 1, we continued and expanded the Alternative Response program, giving case workers additional ways to help children and families.

The next step is HB 371, Child In Need of Protective Services, or CHIPS.

What is CHIPS?

CHIPS strengthens Ohio's child protection laws with clearer and more comprehensive child protection definitions.

CHIPS adopts a "Child in Need of Protective Services" statutory structure (hence, the name), which includes seven carefully defined categories of circumstances in which a child could be found to be a "Child in Need of Protective Services." These new definitional categories will replace the "abuse, neglect and dependency" phraseology in Ohio law to promote effective and appropriate treatment of at-risk children and families.

The seven categories of circumstances are:

1. Physically Harmed
2. Sexually Harmed
3. Emotionally Harmed
4. Harmed by Exposure to Substance Misuse
5. Lacking Necessary Health Care
6. Lacking Legally Required Education
7. Lacking Necessary Care or Supervision

I'm not going to read the expanded definitions to you, but I have printed them in my written testimony.

Physically Harmed

- Injury or substantial risk of injury
- Intentional or negligent acts or omissions
- Substantial risk to take into account factors including age and condition of child, duration and strength of force used, etc.
- Representative list of physical injuries
- Representative list of circumstances that could result in physical injury
- “Physically harmed” includes corporal discipline that results in or causes substantial risk of physical injury
- Exception for harm caused in effort to prevent greater harm to the child

Sexually Harmed

- More broadly defined than in current criminal code
- Definition includes parent participating in sexual act with child or parent permitting, intentionally or negligently, child to participate in sexual act with another
- Representative list of sexual acts
- Exemption for parent providing birth control
- Exemption for some voluntary sexual acts of older children

Emotionally Harmed

- Harm defined to include psychological, emotional or cognitive injury or substantial risk of same
- Clinical diagnosis not required
- “Psychological, emotional or cognitive injury” defined and types of evidence that would support a finding of such injury listed

Harmed By Exposure to Substance Misuse

- Avoids use of term of art “abuse”
- “Harm” may be physical or psychological, emotional or cognitive
- “Harm” may arise through:
 - Direct parental misuse
 - Parent intentionally or negligently permitting child’s use of alcohol that results in harm or substantial risk of harm
 - Parent intentionally or negligently permitting child’s use of illegal substance or illegally used legal substance
 - Parent intentionally or negligently permitting child’s exposure to illegal substance sale or manufacture
 - “Substance” defined to include any mood or behavior altering product
 - Definition of psychological, emotional or cognitive harm does not require clinical diagnosis

Lacking Necessary Health Care

- Child lacks necessary health care when, through act or omission of parent, 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

- Exemption for treatment not provided due to parental beliefs, with authority provided court to override parental authority
- Guidance on findings necessary for court to override parental authority

Lacking Legally Required Education

- Intended to avoid overuse of PCSAs in situations more appropriately handled by school authorities, such as simple tardiness or absence issues
- Does not attempt to define educational standards; rather, speaks to requirements of compulsory school attendance law
- Intervention or assistance of 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
- Allows PCSA to refuse to investigate if notice not provided by school and to seek order of court to compel school to provide such notice
- Exemption for refusal by parent to administer behavior-altering medication (although may be relevant to lacking necessary health care)

Lacking Necessary Care and Supervision

- Includes parental acts placing child at substantial risk of becoming a child in need of protective services under all categories of harm
- Covers failure to provide necessary food, shelter, clothing, supervision or living arrangements
- Includes “no-fault” provision

Thus, a child in any of these categories may need protective services – that is, intervention in any number of ways. By clarifying the situations in which children need protective services, we ensure consistent evaluation, intervention, and treatment from county to county, across the state.

CHIPS will go hand in hand with Alternative Response, the process begun as a pilot program in 10 counties and expanded in HB 1, to provide a broader array of services to families and to keep them intact when child safety is not an issue.

CHIPS touches only our civil law system, and does not affect the criminal framework that punishes those who inflict harm on children. It also cleans up some problems in our current law that create confusion from definitions that are overbroad, overly narrow, circular cross-references, or wholly undefined. I’ve included some examples for you in my written testimony.

Overbroad: Section 2151.04(C) defines dependency in wholly conclusory rather than explanatory terms: a dependent child is one whose “condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship”.

Narrow: The civil sexual abuse definitions are fundamentally reliant on cross-references to criminal code 2907 for definitions of relevant sexual activity. The child is not referred

to by a typical practice-based term such as “sexually abused,” but as “a victim of sexual activity,” as defined in the criminal code.

Confusing: Circular cross-references, such as that from §ORC 2151.031(B) to ORC 2919.22 (criminal code) where an “abused child” is one who has been “endangered” as that term is defined in the criminal code and the criminal code provision lists “abuse of the child” as a form of endangerment.

Undefined: One type of neglect under ORC 2151.03 is “abandonment,” which is not defined. ORC 2151.011, the definitional section of the code, creates a “presumption” of abandonment, but does not define the term. OAC 5101:2-1-01(A) says that “abandoned child” “means a child presumed abandoned [pursuant to the language of ORC 2151.011]”.

CHIPS in other States

A dozen other states (Florida, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, New Hampshire, Virginia, Washington, Wisconsin, Arkansas, New Mexico) have a form of CHIPS, but none are as comprehensive as HB 371.

CHIPS will provide new and appropriate definitions, clarify ambiguities, and ensure consistent application and treatment across the state. CHIPS puts more tools in the caseworker’s toolbox. And helps us keep children safe.

Chairman Okey, Vice- Chair Murray, Ranking Member Oelslager, and members of the House Civil and Commercial Law Committee, I would like to thank you for allowing me to provide testimony to this important piece of legislation. I will be happy to answer questions.