

# ***Child in Need of Protective Services (CHIPS) Ohio's History***

Supreme Court of Ohio Subcommittee on Child Abuse Neglect and  
Dependency (CAND)



Webinar  
February 6, 2018

# References

## *Handouts:*

- *“Two Pager” bullet-review of CHIPS*
- *Background and History*
- *Proposed Legislation since last updates in 2010, HB 371*

## *Timeline- the first years*

- January 2003: federal Ohio Child and Family Services Review (CFSR)
  - Assessment of States for substantial conformity with certain Federal requirements for child protective services
- CFRS found that Ohio
  - Was not consistent in efforts to protect children from abuse or neglect
  - Lacked “clear and consistent statewide criteria” for initial child abuse screening decisions

# *Timeline- the first years*

## ● In response to the CFSR:

- The Supreme Court of Ohio Advisory Committee on Children, Families, and the Courts established the Subcommittee on Responding to Child Abuse, Neglect, and Dependency (CAND).
- CAND's role was 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.

## *Timeline- the first years*

- CAND commissioned a 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.

## *Timeline- the first years*

- This ABA Center report, and supplemental research directed by CAND, found that
  - Ohio child welfare statutes and rules are, in many respects, circular, ambiguous and confusing,
  - That leads to inconsistent responses from one county to another and to compromised outcomes for children and families, and
  - Ohio had 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.

# Examples of Definitional Problems Identified

- ◎ 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 ]”.
- ◎ Note: Those definitions remain unchanged, today

# Examples of Definitional Problems Identified

- ① **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.”
- ① **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.

# The foundations for CHIPS

The Subcommittee focused on:

- Identifying statutory and regulatory definitional barriers to consistent and effective practice in child protection case screening and investigation
- Developing proposals for statutory/regulatory revisions aimed at eliminating those barriers

# The foundations for CHIPS

The Subcommittee's final report included recommendations for changes to Ohio law to:

- Refocus the State's child protection resources on the needs of Ohio's children
- Strengthen families
- Maximize the consistent treatment of families by child protective service agencies and courts throughout Ohio.
- Establish new, clearer definitions of the circumstances in which the State may intervene in a family in order to protect a child
- Authorize implementation of an Alternative Response practice model to provide a continuum of child protection responses

# Introducing CHIPS: A Completely New Statute

- ◎ **Clearly Defined Terms**
- ◎ **Child in Need of Protective Services Structure**
  - A single, less stigmatizing category of adjudication
  - More parental buy-in and cooperation
  - Increased caseworker, judicial, prosecutor, & parental focus on the child
  - More focus on family strengths rather than weaknesses
- ◎ **Alternative Response Case Management**

# Child In Need of Protective Services

## Components of the Draft Ohio Statute

- Declaration of Policy
- Statement of Intent
- Scope of Authority
- Child in Need of Protective Services
  - 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
- Non-Parental Acts
- Alternative Response

## Defining Terms: **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

## Defining Terms: **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
- Exception for parent providing birth control
- Exception for some voluntary sexual acts of older children

## Defining Terms: **Emotionally Harmed**

- ⦿ Harms include psychological, emotional or cognitive injury or substantial risk of same, as defined in provision
- ⦿ Clinical diagnosis not required (but not excluded)

## Defining Terms: **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

## Defining Terms: **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

# Defining Terms: **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)

## Defining Terms: **Lacking Necessary Care or 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

## Defining Terms: **Alternative Response**

- ⦿ Authorizes PCSAs to establish two tracks by which reports are pursued
  - Assessment Track
  - Investigation Track
- ⦿ The purpose of each track, and the spectrum of responses- from in-house supports to removal and change in custodial status- was defined in the proposal

# Enactment Efforts: HB 371

- ⦿ Representatives Connie Pillich and Robin Belcher introduced HB 371 in Fall, 2009
  - Bill was discussed and amended according to feedback from ODJFS, PCSA representatives, PCSAO, County Commissioners, Ohio Association of PCSA Directors, and others
- ⦿ Bill did not get traction...
  - ...but

# Enactment Efforts:

## Alternative Response Statutory Provisions

- Ohio did pass legislation to establish Alternative Responses for children & families involved with PCSAs.
  - Retained the spirit of the Assessment & Investigation tracks, if not the specific names of those tracks.

# Enactment Efforts: HB 371

- CHIPS is still seen as a good idea
- More meetings,
- More years,
- Subsequent efforts to obtain sponsorship have not panned out

# Renewed Efforts

- ① What if we tried to focus on components of CHIPS, rather than the entirety of the bill...
  - ...and submitted proposed legislation incrementally rather than wholly?

# Renewed Efforts

- ◎ Three components most likely to engender public support and legislative response?
  - Sexual Harm
  - Substance Misuse
  - Dependency (eliminate this current designation in favor of a no-fault adjudicatory option that emphasizes a child's need for protective services)

# CAND Meeting 11/29/17

- Committee members discussed the efficacy of advancing and promoting the three components,
- Committee members asked to review the Original CHIPS Legislation,
- And here we are.