

## Child In Need of Protective Services

### A. Declaration of Policy

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 and sound professional practice standards. 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. However, where a child is found to be in need of protective services because of maltreatment or deprivation of necessities required for his/her physical or emotional health and safety, the State is justified in intervening. In such circumstances, the paramount considerations guiding all decisions, with due deference to constitutionally guaranteed parental interests, are the health, safety and well-being of the child.

### B. Statement of Intent

1. Ohio's child services and protection system is intended to:
  - a. be child-centered and family-focused in its prevention and intervention efforts and to accommodate the individualized needs of different families;
  - b. provide effective services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate;
  - c. operate within a fair and equitable procedural framework, compatible with due process and equal protection requirements, when it is necessary to intervene in family life for the safety and welfare of a child; and
  - d. collaborate, whenever appropriate, with law enforcement and other government agencies to maximize efficiency and minimize trauma to children.
2. State and county services for families should be accessible and aimed, so far as possible, at encouraging and enabling families to adequately address their problems within their own family systems and at preserving families whenever possible. The need for a child's removal from a parent, legal guardian or legal custodian should always be balanced against the trauma that removal would cause the child. When removal is necessary for a child's health, safety and well-being, all efforts should be made to ensure permanency for that child on a timely basis.
3. An approach to child services and protection that stresses the safety of the child and builds on the strengths of the family through collaboration efforts between the public children services agency and the family is the preferred response in cases not requiring the involvement of law enforcement or investigation by a public children services agency.

### C. Scope of Authority

1. A public children services agency is authorized to investigate a report that a child may be in need of protective services only when there is reason to believe that any alleged harm or risk of harm to a child resulted from an act or omission by a parent, legal guardian, or legal custodian of the child. A court may adjudicate a child "in need of

protective services” only when there is clear and convincing evidence that any alleged harm or risk of harm to a child resulted from an act or omission by a parent, legal guardian, or legal custodian of the child.

2. When there is no credible explanation for harm to a child or the public children services agency has a reasonable belief that the explanation given for any harm is at variance with the nature of the harm, the public children services agency may presume, until a contrary credible explanation is presented, that the child is in need of protective services. In addition, if a court finds that there is no credible explanation for harm to a child or that the explanation given for any harm is at variance with the nature of the harm, that finding may be sufficient to support an adjudication that the child is in need of protective services
3. A public children services agency receiving a report concerning a child shall, in addition to following its own required protocol, refer the matter for services by other agencies and to law enforcement authorities when appropriate.
4. Nothing in this section is intended to preclude a public children services agency from acting under the scope of its authority under other sections of Ohio law to conduct an investigation regarding or provide services for a child who has been injured or who is at substantial risk of harm due to an act or omission by a person other than the child’s parent, legal guardian or legal custodian.

#### D. Child in Need of Protective Services

1. A child may be adjudicated a “Child in Need of Protective Services” if, due to one or more acts or omissions of the child’s parent, legal guardian or legal custodian, the child is:
  - a. Physically harmed;
  - b. Sexually harmed;
  - c. Emotionally harmed;
  - d. Harmed by exposure to substance misuse;
  - e. Lacking necessary health care;
  - f. Lacking legally required education; or
  - g. Lacking necessary care or supervision.
2. Evidence provided to support an adjudication that a child is in need of protective services may be relevant to more than one of the categories enumerated in section D.1 above, and may justify such an adjudication regardless of the category or categories under which the court action was initiated.
3. Whenever a showing of substantial risk is necessary to support an adjudication of a child in need of protective services, substantial risk means the risk that a specified injury is markedly more likely than not to result from one or more acts or omissions.
4. In assessing or investigating a report that a child is in need of protective services, the public children services agency shall, as part of its response:
  - a. provide written notice of the rights of and services available to a parent, legal guardian or legal custodian of the child who is the subject of such a report;
  - b. make all reasonable efforts to prevent the removal of the child from a parent, legal guardian or legal custodian who has not been alleged to have harmed the child or placed the child at substantial risk of harm, balancing the risk of harm

to the child of remaining with such person against the trauma that removal would cause the child;

- c. provide assistance, to the extent it is reasonably able to do so, to a parent, legal guardian or legal custodian seeking the removal of, or a protective order against, one who is alleged to have harmed the child or placed the child at substantial risk of harm; and
- d. when appropriate, refer the case to law enforcement officials for criminal investigation.

E. Non-Parental Acts. A child may be adjudicated a child in need of protective services due to one or more acts or omissions of a person other than the child's parent, legal custodian or legal guardian, if the child's parent, legal guardian or legal custodian:

- 1. required, directed, coerced, encouraged or permitted the child to be physically harmed, sexually harmed, emotionally harmed, harmed by exposure to substance misuse, lacking necessary health care, lacking legally required education, or lacking necessary care or supervision; or
- 2. knowingly or negligently failed to prevent the child from being physically harmed, sexually harmed, emotionally harmed, harmed by exposure to substance misuse, lacking necessary health care, lacking legally required education, or lacking necessary care or supervision; or
- 3. knowingly or negligently placed the child at substantial risk of being physically harmed, sexually harmed, emotionally harmed, harmed by exposure to substance misuse, lacking necessary health care, lacking legally required education, or lacking necessary care or supervision.
- 4. placed the child with a long-term caregiver through a legally recognized mechanism and the child was harmed or at substantial risk or harm during that placement.

F. Physically Harmed

- 1. For purposes of this section, a child is "physically harmed" when:
  - a. the child has suffered physical injury, or was placed at substantial risk of such injury, from one or more intentional or negligent acts or omissions by the child's parent, legal guardian, or legal custodian.
  - b. In construing whether an act placed a child at substantial risk of physical injury, contextual factors to be considered may include: the size, age, and any pre-existing condition of the child; the location of the injury; the strength and duration of any force used against the child; and whether the act was committed by an adult whose judgment was impaired at the time of the act.
- 2. For purposes of this section, "physical injury" includes, but is not limited to:
  - a. a sprain, dislocation, or cartilage damage;
  - b. a bone or skull fracture;
  - c. brain or spinal cord damage;
  - d. a cranial hemorrhage or injury to other internal organs;
  - e. asphyxiation, suffocation or drowning;

- f. an injury resulting from use of a deadly weapon;
  - g. a burn, scalding, laceration, puncture, or bite;
  - h. loss of consciousness;
  - i. loss or impairment of a body part or function;
  - j. nontrivial soft tissue swelling;
  - k. nontrivial bruising;
  - l. injury that requires medical treatment;
  - m. severe pain; or
  - n. death.
3. Examples of circumstances that may result in a child's physical injury, or a substantial risk of physical injury, include, but are not limited to:
- a. being struck with an object or a closed fist;
  - b. being shaken;
  - c. having a limb twisted;
  - d. being thrown, kicked, burned, or cut;
  - e. having breathing interfered with;
  - f. being threatened with a deadly weapon;
  - g. being deprived of sustenance;
  - h. being provided with dangerous substances; or
  - i. being physically restrained in a cruel manner or for a prolonged period.
4. It is the policy of this State to protect children from maltreatment and to encourage parents and other caretakers to use methods of correction and restraint that are not dangerous to children. In keeping with this policy, "physical harm" includes corporal discipline by a parent, legal guardian, or legal custodian that results in physical injury or creates a substantial risk of physical injury.
5. An act or omission of a parent, legal guardian, or legal custodian that results in physical injury to a child, or the substantial risk of physical injury, shall not be considered physical harm if the act or omission was necessary to prevent imminent physical injury to another person, or more serious physical injury to the child.

G. Sexually Harmed

1. For purposes of this section, a child is "sexually harmed" when:
- a. the child's parent, legal guardian or legal custodian, participated in a sexual act with the child, or
  - b. the child's parent, legal guardian or legal custodian required, directed, coerced, encouraged, permitted or negligently failed to prevent participation in a sexual act by the child with another person.
2. For purposes of this section:
- a. the provision of a product or information for the purpose of avoiding pregnancy or a sexually transmitted disease to a child by that child's parent, legal guardian or legal custodian shall not, by itself, be evidence that such person has encouraged, permitted or negligently failed to prevent the child's participation in a sexual act; and
  - b. the participation by a child of at least 16 years of age in a consensual sexual act with a non-relative who is at least sixteen 16 years old but less than twenty

20 years old shall not be evidence that the child was sexually harmed, but may be evidence that the child is, for other reasons, a child in need of protective services.

3. For purposes of this section, examples of a “sexual act” include, but are not limited to:
  - a. penetration, however slight, of the vagina or anal opening of one person by the penis of another;
  - b. sexual contact between the genitals or anal opening of one person and the mouth or tongue of another;
  - c. intrusion by one person into the genitals or anal opening of another person, including the use of objects for this purpose, other than for a valid medical purpose;
  - d. intentional touching of the genitals, breasts, genital area, groin, inner thighs, or buttocks, or the clothing covering them, except when such touching occurs as part of appropriate child care activity, including medical care;
  - e. intentional exposure of genitals in the presence of a child if such exposure is for the purpose of sexual arousal or gratification, humiliation, degradation or other similar purpose;
  - f. sexual exploitation of a child, including requiring, directing, coercing, encouraging or permitting a child to solicit or engage in prostitution or a commercial sexually related act or performance, or negligently failing to prevent such sexual exploitation;
  - g. making recorded images of a child for sexual gratification or commercial sexual exploitation;
  - h. requiring, directing, coercing, encouraging or permitting a child to view one or more sexually explicit acts or materials or negligently failing to prevent a child from viewing sexually explicit acts or material;
  - i. flagellation, torture, defecation or urination, or other sado-masochistic acts involving a child when for the purpose of the adult’s or the child’s sexual stimulation; or
  - j. requiring, directing, coercing, encouraging, permitting or negligently failing to prevent the statutory rape of a child.

#### H. Emotionally harmed

1. For purposes of this section, a child is “emotionally harmed” when the child has suffered psychological, emotional or cognitive injury, or has been placed at substantial risk of such injury, from one or more intentional or negligent acts or omissions by the child’s parent, legal guardian, or legal custodian.
2. For purposes of this section, psychological, emotional or cognitive injury is a substantial, observable, adverse effect on a child’s behavioral, emotional, social or cognitive performance or condition. Evidence relevant to proving such an effect may include, but is not limited to, the child’s failure or inability to control aggressive or self-destructive impulses, significant acting-out or regressive behavior, social

withdrawal, or inability to think or reason, and whether such behavior or condition is age or developmentally appropriate.

I. Harmed by Exposure to Substance Misuse

1. For the purpose of this section a child is “harmed by exposure to substance misuse” when a child’s parent, legal guardian or legal custodian:
  - a. used a substance and such use, including use first discovered through a newborn child’s positive toxicology screen, resulted in physical, psychological, emotional or cognitive injury, or substantial risk of such injury, to the child; or
  - b. required, directed, coerced, encouraged, permitted, or negligently failed to prevent the child’s use of alcohol and such use resulted in physical, psychological, emotional or cognitive injury, or substantial risk of such injury, to the child; or
  - c. required, directed, coerced, encouraged, permitted, or negligently failed to prevent the child’s use of an illegal substance or use of a legal substance illegally; or
  - d. required, directed, coerced, encouraged, permitted, or negligently failed to prevent the child’s exposure to the sale, manufacture or distribution of an illegal substance or the illegal sale or distribution of a legal substance, or to the presence of chemicals or equipment intended for use in the manufacturing of an illegal substance.
2. For purposes of this section, the term “substance” refers to any mood or behavior-altering product, including, but not limited to, alcohol, illegal or controlled drugs, legal drugs, such as over-the-counter or prescription medications, and other products that can be inhaled, ingested, injected or applied.
3. For purposes of this section, psychological, emotional or cognitive injury is a substantial, observable, adverse effect on a child’s behavioral, emotional, social or cognitive performance or condition. Evidence relevant to proving such an effect may include, but is not limited to, the child’s failure or inability to control aggressive or self-destructive impulses, significant acting-out or regressive behavior, social withdrawal, or inability to think or reason, and whether such behavior or condition is age or developmentally appropriate.

J. Lacking Necessary Health Care

1. For purposes of this section, a child is “lacking necessary health care” when, due to an act or omission of a child’s parent, legal guardian, or legal custodian, the child is not provided medical, surgical, psychiatric, psychological or other care required to treat a condition where such treatment is likely to prevent the child’s death, disfigurement, or serious impairment, or where such treatment is necessary to substantially reduce the child’s pain, suffering or serious impairment, or correct or substantially diminish a child’s debilitating or crippling condition.
2. A child’s parent, legal guardian, or legal custodian may, because of sincerely held religious or spiritual beliefs or for any other reason, provide or decline to provide health services to the child, even in contravention of the advice of a qualified health care provider, and a court may order the provision of such services over the objection

of a parent, legal guardian or legal custodian only if the court determines that the child is lacking necessary health care as defined in this section.

3. When there is a disagreement between a qualified health care provider and a child's parent as to the necessary course of health care treatment for that child, the child shall be found to be lacking necessary health care only if the course of treatment advised by the qualified health care provider is found by a court to be substantially more beneficial to the child than the course of treatment preferred by the child's parent, legal guardian or legal custodian.

K. Lacking Legally Required Education

1. For purposes of this section, a child is "lacking legally required education" when, due to one or more acts or omissions of a parent, legal guardian or legal custodian, the child has not regularly or timely attended school, or received other education services as required under the Ohio Revised Code or other law.
2. Any person responsible for reporting, investigating or enforcing alleged violations of Ohio's compulsory school attendance laws may provide written notice to an appropriate public children services agency when that person believes that the agency's intervention may help to assist the child in obtaining legally required education. Such notice shall specify:
  - a. all known steps taken to assure compliance with Ohio's compulsory school attendance laws; and
  - b. all known acts or omissions by the child's parent, legal guardian or legal custodian that may have contributed to the child's alleged lack of legally required education.
3. The public children services agency shall have no obligation to assess or investigate when such notice fails to demonstrate that any steps have been taken to assure compliance with Ohio's compulsory school attendance laws or when the notice fails to provide the information required in Section 2, above.
4. If no steps have been taking to ensure compliance with Ohio's compulsory school attendance laws, the public children services agency may seek from a juvenile court, and that court may enter, an order directing that such efforts be made.
5. When any person responsible for reporting, investigating or enforcing alleged violations of Ohio's compulsory school attendance laws knows or suspects that a child is in need of protective services for any reason other than that the child may lack legally required education, that person shall immediately report that knowledge or suspicion to the appropriate public children services agency for its standard assessment or investigation.
6. If, in assessing or investigating a report that a child is in need of protective services, a public children services agency discovers facts that may support an adjudication that a child is lacking legally required education, the public children services agency shall, in addition to its own required protocol, notify the appropriate person or entity responsible for investigating or enforcing alleged violations of Ohio's compulsory school attendance laws.
7. The refusal of a child's parent, legal guardian or legal custodian to administer or permit the child to take behavior modifying medication shall not be deemed an act or

omission relevant to a report that a child is lacking legally required education, but it may be relevant to a report that a child is lacking necessary health care.

L. Lacking Necessary Care or Supervision

1. For purposes of this section, a child is “lacking necessary care or supervision” when:
  - a. the child’s parent, legal guardian or legal custodian has placed the child at substantial risk of being physically harmed, sexually harmed, emotionally harmed, harmed by exposure to substance misuse, lacking necessary health care, or lacking legally required education; or
  - b. the child’s parent, legal guardian or legal custodian fails to provide the child with:
    - i. food, clothing, shelter, or supervision; or
    - ii. adequate supervision or arrangements for the child’s care in the absence of the child’s parent, legal guardian or legal custodian; or
    - iii. a safe and appropriate place to live after prohibiting the child from living at the residence of the child’s parent, legal guardian or legal custodian; and
  - c. the failure to provide the life necessities described above creates a substantial risk that the child would suffer injury which could result in an adjudication of a child in need of protective services under any provision of this chapter.
2. A child is lacking necessary care or supervision when any of the above circumstances arise from any reason, including the death or physical or mental incapacity of the child’s parent, legal guardian or legal custodian.