

How Will the Ohio Child Protection Law Reform Initiative Impact Behavioral & Mental Health Professionals and Community Service Providers?

The Ohio Child Protection Law Reform Initiative was developed in response to both substantial external criticism and internal concern regarding inconsistent application of Ohio’s child protection statutes. Poorly defined terms have led to widely differing approaches throughout the state in child welfare case screening decisions, investigative practices and adjudication. These inconsistencies have raised significant questions about whether the law is fair to Ohio families and concerns regarding compromised outcomes for our children.

This document, prepared specifically for behavioral and mental health professionals, is intended to supplement more extensive materials regarding the entire Ohio Child Protection Law Reform Initiative. Further information about the proposed changes may be found at www.ohiochildlaw.com.

Components of the Proposed Law

There are three fundamental components to the proposed law:

- Statutory mandate for establishing an Alternative/Differential Response case management structure through rules created in the Ohio Administrative Code
- Overall structural, statutory change from an “abuse, neglect, dependency” system to a “Child in Need of Protective Services” model
- The establishment of a new array of statutory definitions for use in intake, investigation, adjudication and disposition of child protection cases

What Does the Proposed Law Accomplish?

- Eliminates a “one -size -fits -all” investigative mandate.** The proposed statute gives PCSAs the authority to provide differentiated responses to reports of child maltreatment by establishing an Alternative Response System. This practice model allows public children services agencies to serve families involved in reports of alleged abuse and neglect via different pathways or response tracks. Pathway assignment is based on the presenting concerns, risk or safety issues. The proposed Ohio Alternative/Differential Response system is a dual track system, which includes a traditional child protection response and a new alternative response family assessment pathway.
- Creates a child protection statute that includes clearer, more comprehensive definitions that will be easier to apply consistently.** The proposed law adopts a “Child in Need of Protective Services” statutory structure and the enactment of seven defined circumstances in which a child is “in need of protective services.” These new definitional categories, which would replace abuse, neglect and dependency in Ohio law, reflect the intent to shift to a child-centered, but family focused, system. Specifically, the child protection definitional language has been revised to emphasize the impact of an act or acts on a child, rather than the culpability of an actor. The new categories are:
 - Physically Harmed
 - Sexually Harmed
 - Emotionally Harmed
 - Lacking Necessary Health Care
 - Harmed by Exposure to Substance Misuse
 - Lacking Legally Required Education
 - Lacking Necessary Care or Supervision

Rationale Behind the Changes

Establishment of an Alternative/Differential Response System

Alternative Response (also called Differential, Dual Track or Multiple Response in some jurisdictions) is a family-centered method of child welfare practice that recognizes the varying nature of child maltreatment reports and provides child protection agencies with options to respond accordingly. The traditional response pathway is reserved for higher risk cases alleging serious harm, such as allegations of sexual or severe physical abuse. Cases assigned to the traditional response pathway may require a more forensic approach, including specialized interviewing and evidence gathering skills, in order to reach a formal determination about the alleged maltreatment and to achieve child safety. Under an Alternative Response structure, lower to moderate risk reports may be assigned to the alternative response pathway. In this response track, a formal determination regarding the allegation is set aside. Child protection workers still complete a comprehensive family assessment; however, the focus is less incident driven, reducing systemic barriers to parental engagement.

Data on existing Alternative Response models has shown that for lower to moderate risk cases, a non-adversarial, non-threatening family assessment approach aids parental engagement and increases the likelihood of voluntary participation in services. Jurisdictions that have implemented Alternative Response systems have demonstrated positive outcomes with regard to worker satisfaction, family satisfaction, and most importantly, child safety.

Child in Need of Protective Services

Ohio's current child protection system focuses, in philosophy, on whether someone has harmed a child or put a child at risk of harm and whether an individual that has done so is culpable for that conduct. Ohio law should, rather, first inquire whether a child is in need of intervention, regardless of whether it is someone's "fault" that the child is in need of those services. Ohio's civil child protection law should emphasize the conditions and needs of the children, leaving to the criminal justice system the punishment of those who cause substantial harm or risk of substantial harm to our children. The protection of injured and at risk children is paramount, with state intervention authorized when articulated conditions – independent of fault – are demonstrable. The new definitional categories under this system reflect this shift in emphasis by defining categories of harm in terms of impact on the child.

Emotionally Harmed & Harmed by Expose to Substance Misuse Provisions (Please see attachment for the complete language of these provisions.)

One of the definitional changes in the proposed statutory structure that may be of great interest to mental health professionals is the inclusion of an "Emotionally Harmed" category in the Child in Need of Protective Services statute. 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.

Another proposed definitional change includes a category for children "Harmed by Exposure to Substance Misuse." This provision was drafted to provide additional clarity about situations in which harm to a child is related to the misuse or abuse of substances. To assure the proper reach of the statute, definitions and specific terms have been carefully crafted to avoid under-inclusiveness, intentionally including substances which are dangerous when misused beyond those falling within the rubric of drugs and alcohol.

Frequently Asked Questions of Mental Health Professionals

Why is emotional harm included as a separate category of child maltreatment under CHIPS?

Answer: 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.

Under the “Emotionally Harmed” provision, who will be responsible for providing courts evidence that a child has been emotionally harmed?

Answer: 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.

What if it is unclear whether a child’s injury was caused by an act or omission of a parent, legal guardian or legal custodian?

Answer: The proposed change would not preclude involuntary agency involvement in situations in which no explanation has been provided for harm which has befallen a child or the explanation given is dubious but can not be proven to be untrue. Parents have the responsibility to protect their children from harm and when their children have been harmed while in the custody and control of their parents, it is reasonable to presume, in the absence of a credible contrary explanation, that the harm resulted from an act or omission of the parent. The proposed statute expressly provides Ohio public children services agencies the authority to presume, throughout the course of its investigation, an act or omission of a parent in such circumstances and expressly authorizes the juvenile court to conclude, in such circumstances, that a child is in need of protective services.

How does the CHIPS model address domestic violence?

Answer: Although there is no specific definitional category related to domestic violence, 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.

How does the CHIPS model address substance abuse?

Answer: As in the case of domestic violence circumstances, any of the conduct included in the “Harmed by Exposure to Substance Misuse” section could be covered by either of the sections on physical harm or emotional harm. Additionally, substance abuse as child maltreatment should expressly include the exposure of children to the manufacture or sale of dangerous drugs as part of the child protection statute, and not as a cross-reference to the criminal code.

Consideration was given as to whether there should be a presumption that parental substance abuse is inherently harmful to children, or whether, and under what circumstances, there must be a showing of harm to the child from such abuse. The proposed provision requires a showing of harm to make a determination that a child is in need of protective services.

Will parents who abuse or neglect their child still be held accountable?

Answer: Absolutely. Parents are still fully responsible for preventing harm from befalling their children and 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. Additionally, the Alternative/Differential Response structure is directly aimed at increasing parental accountability by engaging parents in a proactive working relationship to ensure their child’s safety.

Will the CHIPS statute change mandated reporter obligations in any way?

Answer: No. Social workers, counselors, psychologists, and other mental health service providers are still required to report child maltreatment as under the current law.

What impact has Alternative/Differential Response had in other states?

Answer: Evaluative data on Alternative Response continues to emerge in jurisdictions around the country. Formal program evaluation studies out of Minnesota, Missouri, Virginia, and North Carolina as well as ongoing implementation data out of the state of California have shown that Alternative Response systems are resulting in increased satisfaction among families working with child protection agencies. Additionally, caseworkers within these Alternative Response systems report increased job satisfaction. Most importantly, data in several jurisdictions reflects that families served through an alternative response pathway are less likely to experience future incidents of maltreatment than *similar* families who received a traditional investigation. This is because an alternative response pathway facilitates linkages to needed services earlier – prior to crisis. By intervening with families earlier, in a cooperative and collaborative manner, families are more likely to successfully engage in services, resulting in fewer re-referrals to child protective services. Additionally, the research reflects that when Alternative Response families are re-entering the child welfare system, future interventions are less likely to result in out-of-home placement. (Institute of Applied Research 2006, 2005, 2004, 2000; Virginia Department of Social Services 2004; Duke University Center for Child and Family Policy 2004; Schene and Oppenheim 2005).

What is the timeline for implementation of Alternative Response in Ohio?

Answer: The Ohio legislature has statutorily authorized an 18-month pilot study of Alternative Response in Ohio beginning July 1, 2008. Ten counties were competitively selected to participate in this pilot program: Clark, Fairfield, Franklin, Greene, Guernsey, Licking, Lucas, Ross, Trumbull and Tuscarawas. The 18-month pilot will be rigorously evaluated by the Institute of Applied Research, one of the nation’s foremost research organizations for Alternative Response program evaluation. The pilot will measure outcomes related to child and family well-being, fiscal impact, caseworker satisfaction, family satisfaction, and any potential impact on Child and Family Service Review or judicial system

outcomes resulting from the new model. Decisions regarding wider implementation of Alternative Response will be guided by the outcomes of the pilot and experiences of the pilot counties.

How will the establishment of the Alternative Response system impact mental health and substance abuse service providers?

Answer: The implementation of an Alternative Response system in Ohio will rely heavily upon the creation of strong partnerships among service providers and local child protection agencies. Alternative Response models in other states have shown that effective collaboration among service providers and child welfare professionals is a critical component to successfully serving families and preventing future occurrences of child maltreatment.

What is the long-term fiscal impact of Alternative Response?

Answer: Although the implementation of Alternative/Differential Response requires a significant up-front investment, long-term data regarding the cost-effectiveness of the practice model is favorable. The state of Minnesota has conducted the most rigorous cost-benefit analysis of Alternative Response to date. Although Minnesota agencies spent more on services to families initially under Alternative Response, this investment resulted in long-term savings for the state. While the initial cost of providing services to families in the alternative response pathway was higher, over time, those families were less likely to have subsequent reports of child maltreatment or to need more expensive long-term services. According to the Institute of Applied Research (2006), over an extended research period lasting nearly five years (three year initial pilot and two year follow-up study), the state realized, on average, \$1279 in savings *per family* on the cost of case management, services, placements, etc. for families who had received alternative response services. This outcome was in direct comparison to families who presented with similar circumstances and risk factors who had received the traditional response.

Where can I find more information about the Ohio Child Protection Law Reform Initiative?

Answer: More extensive information about the Ohio Child Protection Law Reform Initiative is available online at www.ohiochildlaw.com.

How can I provide comment on these proposed changes?

Answer: Everyone is encouraged to give feedback on the proposed changes. To submit your feedback about the Ohio Child Protection Law Reform Initiative, please visit www.ohiochildlaw.com and complete our online survey.

Attachment A Draft Language

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.

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.