FINAL REPORT
of the
SUBCOMMITTEE ON RESPONDING TO CHILD ABUSE, NEGLECT AND DEPENDENCY
to the
ADVISORY COMMITTEE ON CHILDREN, FAMILIES, AND THE COURTS

THE SUPREME COURT OF OHIO

Prepared under the Subcommittee's direction by:

The National Center for Adoption Law and Policy
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INTRODUCTION

Introduction

In January 2003, the United States Department of Health and Human Services found that Ohio was not consistent in its efforts to protect its children from abuse and neglect, with this problem exacerbated by its failure to utilize clear and consistent criteria in initial child abuse screening decisions. Further analysis by an independent outside expert concluded that fragmentation of Ohio's abuse, neglect and dependency definitions, the lack of comprehensive statewide screening policies, and flaws in the definitional framework for case determinations were all contributing to inconsistencies among Ohio's counties in abuse, neglect and dependency case screening, investigation and follow-up response.

In response, the Supreme Court of Ohio Advisory Committee on Children, Families, and the Courts established a Subcommittee on Responding to Child Abuse, Neglect, and Dependency (the Subcommittee) (a list of Subcommittee members is found at Appendix 15) charged with determining if key terms associated with Ohio's investigation and disposition of child protection matters properly serve children and families in need of government intervention and, if not, to propose statutory, regulatory and other changes aimed at improving outcomes for Ohio's children.

After substantial research and analysis, the Subcommittee was able to detail ways in which current Ohio law and practice ill-serve the children of Ohio. This report details the Subcommittee's findings in that regard and its recommendations for reform. Central to the Subcommittee's recommendations are significant proposed changes to Ohio law discussed throughout the report. Appendices 13 and 14 contain the two statutes that the Subcommittee recommends for enactment.

EXECUTIVE SUMMARY

Project Purpose and Goals

The Supreme Court of Ohio Advisory Committee on Children, Families, and the Courts established the Subcommittee on Responding to Child Abuse, Neglect, and Dependency (the Subcommittee) to determine if Ohio's statutory guidelines for the investigation and prosecution of child abuse and neglect properly serve children and families in need of government intervention. The Subcommittee, in turn, focused its primary efforts on identifying statutory and regulatory definitional barriers to consistent and effective practice in child protection case screening and investigation, and on developing proposals for statutory/regulatory revisions aimed at eliminating those barriers.

Methodology

The Subcommittee retained The National Center for Adoption Law and Policy (NCALP) and the American Bar Association Center on Children and the Law (ABA) to perform the project work, with the Subcommittee's oversight, input and ultimate direction.

The project was carried out in three somewhat overlapping phases. First, the ABA and NCALP conducted concurrent research on national law related to child abuse and neglect screening and investigation and on current Ohio abuse/neglect/dependency law. While the legal research was in progress, NCALP researched both 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 and NCALP synthesized their research conclusions and NCALP developed tentative alternative proposals for statutory/regulatory reform. NCALP and the ABA tested these alternatives in the field in

stakeholder focus groups and the Subcommittee reviewed them through means of an online survey.

Based on the testing and stakeholder input, various alternative reform proposals were rejected, others were refined, and preliminary recommendations were developed. These recommendations were honed through further stakeholder input and through additional legal and practice-based research. The resulting final recommendations were approved by the Subcommittee for submission to the full Committee with the hope that the Ohio Supreme Court will ultimately submit the statutory recommendations to the Ohio General Assembly for its consideration.

Summary of Recommendations

The Subcommittee considered options for changes to Ohio's child protection statutes and regulations ranging from mere correction of improper cross-references, to editing confusing, redundant or ambiguous language, to the complete overhaul of key terminology and its application. Given the extent of the inconsistencies, problematic language, ambiguities and other concerns identified, the first option, a simple revision of existing law, was quickly ruled out. Instead, the Subcommittee responded to the problems identified by the research by developing a proposal for a broad-based change in systemic philosophy and modification of statutory definitions designed to effect that change. The Subcommittee's recommendations also include various training, model demonstration and evaluation initiatives in support of the implementation of its recommendations.

There are four fundamental components to the Subcommittee's final recommendations:

- Overall structural, statutory change from an "abuse, neglect, dependency" system to a "**Child in Need of Protective Services**" model

- The statutorily mandated establishment of an **Alternative Response** case-management paradigm in the Ohio Administrative Code (preceded by an 18 month pilot program,

authorized by separate statute, to test the new model in at least ten Ohio counties)

- The establishment of a **new array of statutory definitions** for use in intake, investigation, adjudication and disposition of child protection cases, and

- Statutory **modification of the dispositional categories** in child protection cases with required recordation of dispositional and outcome determinations

The major features of these recommended components are:

"*Child in Need of Protective Services*"

The Subcommittee recommends that Ohio revise its overall child protection statutory structure and adopt a "Child in Need of Protective Services" structure. Such an approach will 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 proposed statutory language endorsed by the Subcommittee can be found in Appendix 13.

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 who has done so is culpable for that conduct. Ohio law should, rather, first inquire whether a child is a need of state intervention, regardless of whether it is someone's "fault" that the child is in need of those services. A "Child in Need of Protective Services" approach to child protection would rely on a statutorily defined array of circumstances to establish when a child protection agency is authorized to intervene in the life of a family and child. The protection of injured and at risk children would become paramount, with state intervention authorized whenever articulated conditions – independent of fault – were demonstrable.

Under this system, parents would still be accountable for conduct harmful or risky to their children and would be required to correct behavior in accordance with a well-developed case plan. But child protection workers would be encouraged to focus on the needs of children,

rather than on the understandable desire to punish parents who harm or endanger their children. The Subcommittee believes that maximizing systemic focus on child protection rather than on parental punishment, while still requiring parental accountability for harmful or risky conduct, will result in more children avoiding the trauma of separation from parents who are not putting them at substantial risk. In addition, clearer and more comprehensive definition of the circumstances in which the State may intervene in a family in order to protect a child would substantially increase the likelihood that similarly situated families in different parts of the state will be treated similarly.

Alternative Response Case-Management

The Subcommittee recommends that an Alternative Response case-management system be statutorily mandated. Such a system would allow child protection agencies, as appropriate, to divert lower risk cases away from the traditional investigative case-management activities to an assessment case-management track. In those jurisdictions that have implemented alternative response systems, child protection service providers are perceived by families as less adversarial or threatening than they are in jurisdictions exclusively engaged in traditional child protection investigations.

Accordingly, alternative response systems aid in engaging families in a positive and productive relationship with child protective service agencies. Agencies that have employed an alternative response approach have reported increased motivation and cooperation by families participating in case planning and recommended services, as well as higher levels of satisfaction among families receiving services and caseworkers assisting those families. The literature indicates that alternative response systems, implemented in conjunction with strong, empirically-based assessment tools, have produced positive outcomes for children and families without compromising child safety.

The Subcommittee's specific recommendation is for the adoption of a "hybrid" alternative response model which combines successful elements from other states. It is the Subcommittee's view that the statutorily mandated enactment of an alternative response model containing various statutorily required characteristics that is further defined by administrative rule, will assure an alternative response system carrying the full force and effect of law while providing some flexibility for change as dictated by practice in the field. The Subcommittee further recommends that the state-wide implementation of such a model should follow an 18-month statutorily mandated pilot program for at least ten Ohio counties so that the model may be "fine-tuned" prior to full-scale adoption. The proposed statutory language mandating the establishment of an Alternative Response approach to the management of child protection reports can be found in section M of Appendix 13. The proposed statutory language authorizing an Alternative Response Pilot and Evaluation can be found in Appendix 14.

The Subcommittee's proposed alternative response hybrid model features the following components:

- ✓ **Statutorily required alternative investigative and family assessment tracks**
- ✓ **Criteria defined by administrative rule that would mandate an investigation**
- ✓ **Strong alternative response screening, risk and safety assessment processes**
- ✓ **Express authorization for the "re-tracking" of cases**
- ✓ **Established timeframes for initiating and completing a family assessment**
- ✓ **Clearly defined dispositional and outcome categories**

Changes in Statutorily Defined Child Protection Categories

The Subcommittee recommends the statutory enactment of seven defined circumstances in which a child is "in need of protective services." These new categories, which would replace abuse, neglect and dependency in Ohio law, reflect the Subcommittee's intent to shift to a child-

centered, but family focused, system enhanced by the alternative response practice model just discussed. 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.

Under this new approach, a child could be adjudicated in need of protective services when proven to be:

- ✓ **Physically harmed**
- ✓ **Sexually harmed**
- ✓ **Harmed by exposure to substance misuse**
- ✓ **Emotionally harmed**
- ✓ **Lacking necessary medical care**
- ✓ **Lacking legally required education services**
- ✓ **Lacking necessary care and supervision.**

Definitions for each of these terms have been painstakingly developed to achieve the dual goals of focusing systemic resources on the needs of Ohio's children and maximizing consistency in their treatment by child protective service agencies throughout the state.

Modifications in the array, meaning and use of child protection case investigation and outcome labels

The Subcommittee recommends that every child protection investigation carry a label, at its conclusion, of "Substantiated," "Unsubstantiated," or "Unable to Locate." In addition, the Subcommittee recommends that these terms be carefully defined in the Ohio Administrative Code and that the definition of "Unable to Locate" include specific steps which must have been taken by the local child protection agency before that label may be applied to an investigation. Finally, the Subcommittee recommends that an label indicating a specific defined outcome be assigned to every case screened into a child protection agency for either assessment or

investigation. Draft language for the Administrative Rule establishing this labeling structure can be found at the end of Appendix 13.

The changes envisioned by this Report would by no means bring about all the reform in the child welfare system which might be constructive. Nonetheless, our proposed changes to Ohio law represent an effort to start positive change to child welfare case management at the beginning – at the point of screening and intake. These changes are critical for the systemic improvement of the law and practice under which our public children services agencies serve Ohio's at-risk children and families.

PROJECT OVERVIEW

Purpose

The purpose of this project was to assess the effectiveness of Ohio's laws, regulations and practice in the area of child protection and to make recommendations for improvement, both in the law and in the application of the law in the field. Specifically, the project was intended to identify instances in which the definitions of key terms set up statutory and/or practice-based barriers to consistent and effective practice in child protection case screening and investigation, and to propose statutory/regulatory revisions aimed at eliminating those barriers.

Background

In its January 2003 Final Report from the Ohio Child and Family Services Review (CFSR), the United States Department of Health and Human Services found that Ohio is not consistent "in its efforts to protect children from abuse or neglect…." The Department also noted its concern about Ohio's lack of "clear and consistent statewide criteria" for initial child abuse screening decisions.[1]

Following this report, the Ohio Department of Job and Family Services commissioned a study to assess Ohio's screening policies and practices and the definitions and categories used for classifying reports of child maltreatment: "abuse," "neglect," and "dependency." This study, which was conducted by Howard Davidson, Director of the American Bar Association Center on Children and the Law (ABA), concluded, in part, that fragmentation of Ohio's abuse, neglect and dependency definitions, the lack of comprehensive statewide screening policies, and flaws in the definitional framework for case determinations all contribute to inconsistencies among Ohio's counties in abuse, neglect and dependency case screening, investigation and follow-up response.[2]

The CFSR Report and the ABA Study prompted the Supreme Court of Ohio Advisory Committee on Children, Families, and the Courts (a body appointed by Chief Justice Thomas J. Moyer to make recommendations regarding family law initiatives) to establish the Subcommittee on Responding to Child Abuse, Neglect, and Dependency (the Subcommittee) to do the following:

- Determine if the definition of key terms associated with Ohio's investigation and disposition of child protection matters properly serve children and families in need of government intervention;
- Make statutory and administrative recommendations to improve the definition of key terms associated with Ohio's system for accepting and investigating reports of child abuse and neglect; and
- Make recommendations to standardize and make uniform Ohio's statutes regarding child protection cases.

Pursuant to this charge, the Subcommittee sought the services of vendors to provide expert research, writing and project management. The Subcommittee chose the American Bar Association Center on Children and the Law (ABA) and the National Center for Adoption Law and Policy (NCALP) to carry out this important work.[3]

Scope of Work

Under the direction and with the input of the Subcommittee, the ABA and NCALP provided the following services, all aimed at improving Ohio's legal definitions and practice processes associated with child protection case screening and investigation:

►**A comprehensive review of all Ohio criminal and civil statutes and regulations**, locating all provisions dealing with the investigation and prosecution of cases involving child abuse, neglect and dependency in order to identify:

- Existing definitions of working terms and any conflicts in such definitions as between various statutes and regulations;
- Archaic language, as compared with language currently considered to reflect best practice definitions;

- Ambiguities in language/definitions that could lead or contribute to confusion or inconsistencies in the investigation and/or prosecution of child abuse, neglect and dependency cases;

- Any deficiencies in language that could impede procedural fairness, foster inconsistencies in investigative/prosecutorial processes, or fail to reduce potential trauma to victims and their families; and

- Ambiguities or inconsistencies in language that could lead or contribute to inconsistencies among the courts in interpretation and application.

►**A comprehensive review of Ohio statutory/regulatory dispositional categories** | for child abuse, neglect and dependency ("substantiated report," "indicated report," "unsubstantiated report—no evidence," and "unable to locate") in order to identify:

- Ambiguities or other characteristics of the language that could lead to inconsistency among jurisdictions in interpretation and/or application to case processing; and

- Archaic language and/or dispositional categories inconsistent with that/those currently considered to reflect best practice.

►**A comprehensive review of current child welfare literature** to identify the definitions, dispositional categories and investigative processes currently considered to reflect best practices, and to analyze the results of this research in comparison with Ohio law and practice to identify any variance from best practices that could lead or contribute to confusion or inconsistency in intake, investigation, disposition, or adjudication of child abuse/neglect/dependency cases.

►**A comprehensive survey of the statutory and regulatory definitions and dispositional categories of other states** and of other materials relating to child abuse, neglect and dependency to determine preferred language and dispositional categories and to identify those states that are measurably successful in incorporating the best practices (as identified above) in language, intake and dispositions.

►**Formulation of specific conclusions** about the effect of current Ohio statutory and regulatory definitional language and dispositional categories on the intake, investigation and adjudication of child abuse, neglect and dependency cases and recommendation of specific changes in definitions and categories of dispositions in order to address the identified ambiguities and inconsistencies in language, practice and adjudication.

►**Development of a final report**, approved by the Subcommittee, describing the activities of the study, proposing statutory and regulatory changes, proposing practice and/or administrative changes, making recommendations as to experimental, model or pilot programs, and identifying potential fiscal impacts of the proposed recommendations.

Other matters, while important to child welfare law and process, were determined to be outside the scope of this project. The focus of this project was primarily on the pre-adjudicatory phases of child protection cases: the screening and investigation of cases where it is alleged that a child is in need of protective services. The scope was limited to those situations in which the person legally responsible for the care and protection of the child ("parent," legal guardian," or "legal custodian" herein) is the actor whose acts or omissions created the need for child protective intervention. Thus, there were topics and issues that were not addressed in this Report, although they deserve careful thought and attention, especially if the Subcommittee's recommendations become the law of this State. Some of these issues and topics include:

- The revision of other sections of Ohio law and administrative rules to ensure compatibility with the recommended statutory amendments (for example, amending criminal law back references to child protection law for such things as the definition of child endangerment)

- Continuation of the reasoning supporting adoption of a "child in need of protective services" system through all phases of case life -- adjudication, disposition, and post-placement

- Investigations of 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 domestic violence, as it impacts child maltreatment case investigation and processing[4]

- The treatment of non-custodial parents in child welfare investigations and dispositions, 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.

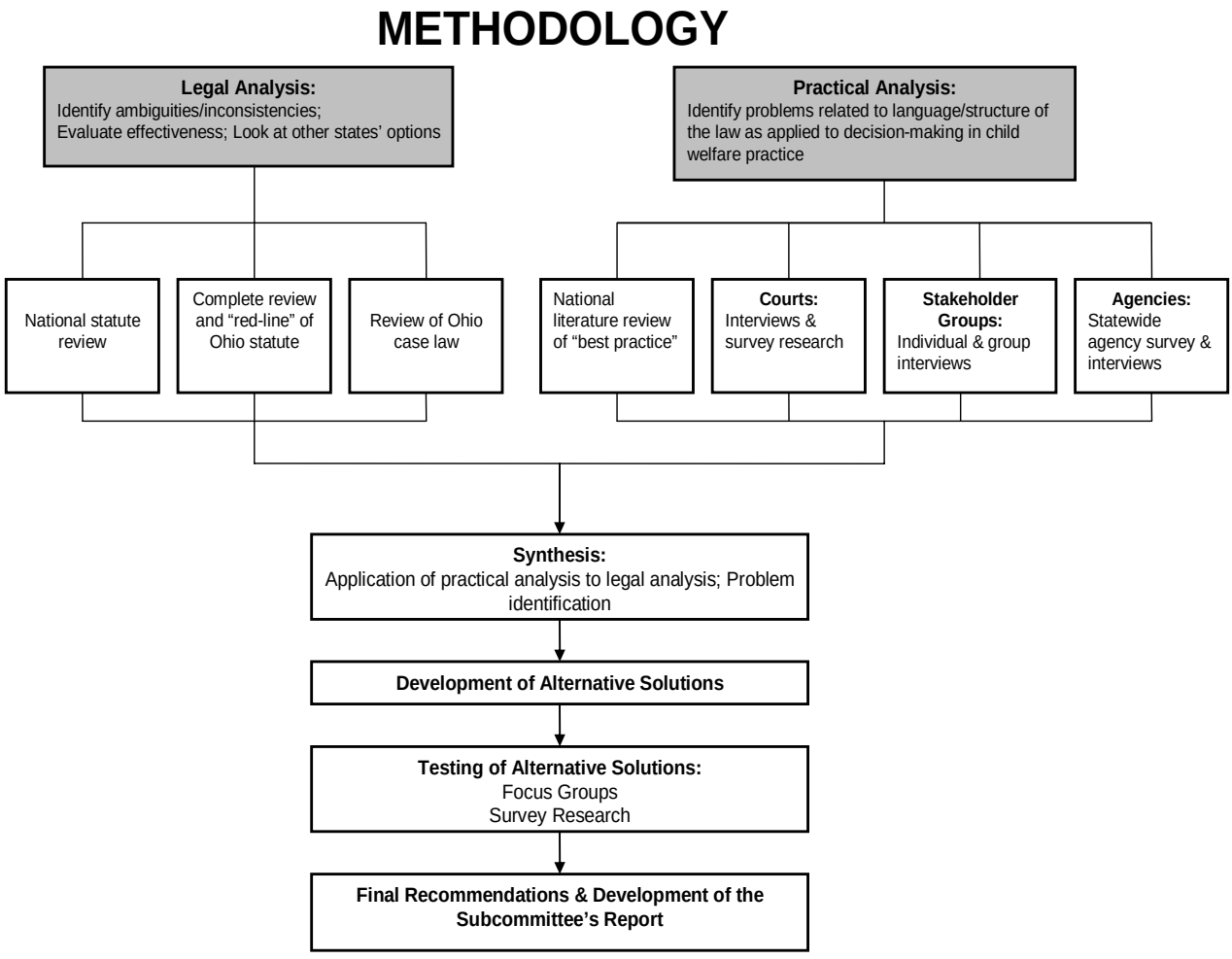
- Issues related to the entry of data into and access to data from the Central Abuse/Neglect state registry and/or SACWIS

- 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
- Establishment of consistent child maltreatment screening and intake procedures

Process Summary

The work of the project was conducted in overlapping phases consisting of legal, practical and field research and analysis components, with the ABA and NCALP responsible, under the Subcommittee's oversight, for both discrete assignments and for collaborative segments of the research and analysis in each phase. This is the project schematic:



The Legal Analysis and Practical Analysis components of the project ran roughly concurrently in an initial phase devoted primarily to research of the law, best practices and field practice in Ohio. The following activities (with the contractor with primary responsibility for each noted) comprised the **Legal Analysis** component:

- **Reviewing Ohio statutes (NCALP)**
- **Reviewing Ohio regulations (NCALP)**
- **Reviewing Ohio cases (NCALP)**
- **Reviewing abuse, neglect and dependency statutes nationwide (ABA and NCALP)**
- **Reviewing best legal practices nationwide (NCALP and ABA)**

The **Practical Analysis** component included these activities, all with Subcommittee input:

- **Conducting a comprehensive review of current child welfare literature to identify definitions, dispositional categories and investigative processes currently considered to reflect best practices nationally (NCALP)**
- **Reviewing state-of-the-art, empirically-based research related to screening/intake procedures, risk assessment and outcomes (NCALP)**
- **Developing and conducting a survey of Ohio public children services agency intake and investigation staff and administrative staff (NCALP)**
- **Conducting stakeholder interviews with Ohio intake and investigation and administrative staff judges, attorneys, mandatory reporters, public children services agency caseworkers, supervisors and administrators (NCALP and ABA)**
- **Synthesizing results of all field research activities (NCALP)**
- **Preparing alternative statutory proposals for focus group testing (NCALP and ABA)**
- **Scheduling and conducting focus groups to test alternative solutions (NCALP and ABA)**
- **Preparing tentative recommendations (NCALP and ABA)**
- **Preparing final recommendations for Subcommittee approval (NCALP and ABA)**

RESEARCH

Legal Research

The legal research associated with this study was both national and Ohio-based in scope, involving review of state and federal statutes and regulations and best practices literature. Detailed reports of the legal research results are contained in various appendices to this report, as noted herein. The following is a summary of the methodology employed and the materials reviewed in the research phase of the project.

Ohio

The Ohio research was aimed at:

1. Identifying ambiguities and/or inconsistencies, archaic language, confusing or inconsistent definitions, and other statutory or regulatory language-influenced or organizational barriers to effective abuse, neglect and dependency case management and adjudications; and

2. Gathering and analyzing key Ohio court decisions regarding interpretation and application of the terms "abuse," "neglect" and "dependency" to determine if and how statutory/regulatory language leads to inconsistencies among the jurisdictions in the adjudication of abuse, neglect and dependency cases.

Statutes and Regulations

In order to identify statutory and regulatory language problems, NCALP staff conducted a review of the most relevant sections of the Ohio Revised Code (ORC) and the Ohio Administrative Code (OAC), noting potential problem areas throughout. In addition, all cross-references from the primary statutes and regulations to other statutes or regulations were tracked to identify areas of confusion.[5] Finally, computer-aided research of the entire ORC and OAC was performed to identify all other provisions that could potentially impact abuse, neglect and dependency case screening, investigation and/or adjudication.[6]

Review of the **Ohio Revised Code** (ORC) started with the three primary definitions of ORC Chapter 2151 (as summarized below):

- **Abused child**: the child is a victim of sexual activity; endangered; non-accidental physical or mental injury (except permitted corporal punishment)

- **Neglected child**: abandoned; lack of adequate parental care through no fault of others; parental refusal to provide proper and necessary care; physical or mental injury due to parental omission

- **Dependent child**: child homeless, destitute and without adequate care due to no fault of parents; inadequate parental care due to parents' mental or physical condition; living condition or environment warranting state intervention; child lives with parent with a abuse/neglect/dependency adjudication regarding child's sibling and because of that adjudication and other household conditions, child in danger of being abused or neglected

The review also included analysis regarding the following "**related definitions"** that impact abuse, neglect and dependency appearing in the abuse, neglect and dependency primary statute or in other **related statutes**:

- **Abandoned**
- **Endangered**
- **Child without proper care**
- **Delinquent**
- **Deserted**
- **Unruly**
- **Parental unfitness**
- **Parental unsuitability**

Related Statutes included those relating to:

- **Domestic Violence**
- **Criminal Abuse**
- **Mandated Reporting**
- **Compulsory School Attendance**
- **Sex Crimes**
- **Delinquency**

The review of the **Ohio Administrative Code (OAC)** began with the primary treatment of abuse, neglect and dependency found in OAC Chapter 5101. Other pertinent regulations reviewed included:

- **OAC Ann. 109**, as it relates to child victims of sexual assault
- **OAC Ann. 3301-32**, School Child Program, as it relates to prevention and reporting of child abuse and neglect
- **OAC Ann. 3301-37**, Child Day Care Program, as it relates to prevention and reporting of child abuse and neglect
- **OAC Ann. 3301-57** Child Abuse Detection Training
- **OAC Ann. 3701-41-04 APPX a**, Poison Control, Prevention, and Treatment, as it relates to poisoning as child abuse
- **OAC Ann. 3793:2**, Alcohol and Drug Addiction Programs, as it relates to procedures for reporting suspected child abuse and/or neglect
- **OAC Ann. 4732-17**, State Board of Psychology, Rules of Professional Conduct, as it relates to requirements for recognizing and reporting child abuse
- **OAC Chapter 4757-13**, Licensing of Counselors
- **Chapter 5101**, Public Assistance, as it relates to definitions and reports of child abuse/neglect and domestic violence

Court Decisions

The purpose of the Ohio case review was to investigate the extent to which the ambiguities and other problematic issues identified in the statutory/regulatory review negatively impacted adjudication of abuse, neglect and dependency cases. This research focused, in particular, on decisions regarding similar issues that appeared to be treated inconsistently by courts in different jurisdictions and on decisions that appeared to be at odds with the language of the statutes.

A comprehensive review of over 800 cases was conducted to identify language-influenced inconsistencies between jurisdictions, inconsistencies between the court decisions and

the laws upon which they were based, and other such indicators that court outcomes for children may be negatively influenced by current statutory language. The Ohio case review began with review of cases found in the annotations of the primary and secondary abuse, neglect and dependency statutes as identified above. Additional cases were identified through citations found in the initial cases. Finally, computer-aided legal research of all Ohio case law yielded relevant cases not previously identified.[7]

Summary of Research Results

►Major problems identified in the review of **statutes and regulations** are summarized below by category of maltreatment:

"Abuse"

- **Confusing and/or circular cross-references**, such as that from ORC § 2151.031(B) to ORC § 2919.22 (criminal code) for definition of form of abuse known as "endangerment;" criminal code, however, merely lists "abuse" as a form of endangerment.

- **Inconsistent exceptions** in the abuse, neglect and dependency and criminal code sections both for failure to provide medical care for religious reasons and for corporal punishment. Cross-references are confusing and blur distinctions between criminal and civil abuse.

- **Undefined terms**: for example, no guidance is given as to what factors should be considered in determining whether conduct is "cruel" or "excessive" under the statute, such as the child's age, health, intelligence, ability to respond to other corrective action, severity, risk of harm, etc.

- Use of the **archaic term "mental injury**," with no accompanying definition. The definitions in OAC § 5101 and ORC § 2151.011 cross-references to the criminal code. Under this definition, a mental injury must be an act or omission under ORC § 2919.22 (the criminal endangering statute).

- **Cross-references to criminal** code § 2907 for definition of "sexual activity;" the child is not referred to by an practice term such as "sexually abused," but as "a victim of sexual activity," as defined in the criminal code.

"**Neglect**"

- **Guidance is ambiguous** on parental obligation to provide medical care necessary for the child's health and well-being; ORC § 2151.03 provides that failure to do solely

for religious beliefs is not grounds for criminal liability, but does not indicate what impact religious grounds have on a neglect determination.

- Neglect is defined as acts by parent, guardian, custodian or "**out-of-home care-giver**," but no definition is given in the neglect statute for out-of-home care.

- One type of neglect under ORC § 2151.03 is "**abandonment**," which is not defined in the neglect statute itself. ORC § 2151.011, the definitional sections of the code, set up a "presumption" of abandonment, but not a definition. OAC § 5101 defines abandonment by reference to this presumption.

- Another type of neglect is **lack of adequate parental care**, a fault-based term not defined in the code or regulations. Court decisions indicate that adequate parental care includes such things as the provision of adequate food, clothing, and shelter to ensure the child's health and physical safety.

- There are **three "lack of care"- based sections** of the statute, each with a different modifier: "proper and necessary," "adequate," and "special." There are no definitions provided for these terms.

- There is **no definition of the term "mental condition**," for which failure to provide "special services" is an indicia of neglect, either in the code or by cross-reference to the OAC.

"**Dependency**"

- Although dependency appears to be intended as a **non-fault based** category, one section, 2151.04(D), **requires fault** on the part of the parent.

- One section of the **dependency statute** is a catch-all category that is **conclusory** rather than definitional: dependency can mean a condition or environment that would warrant the state taking "guardianship."

- One section of the **dependency statute is particularly at odds with non-fault-based conduct**, as it defines a dependent child as one whose sibling has been adjudicated as abuse, neglect and dependency because of conduct of a parent or caregiver in the home and who is in danger of abuse, neglect and dependency because of the circumstances surrounding that adjudication.

- **No definition is given for "mental or physical" condition** of the parent that could prevent provision of adequate care.

"**Domestic violence**"

- There is **lack of clear guidance as to the interaction** between the delinquency law and abuse, neglect and dependency statutes, as well as redundancy between the two.

- There is **no clear indication as to how parental conduct is to be treated** vis-a-vis delinquency cases.

- The ambiguity of the law creates the potential for "**dependency dump**" (i.e., juvenile cases being inappropriately transferred for abuse, neglect and dependency case handling).

Other existing categories complicate the analysis of abuse, neglect and dependency cases**:**

- **"Unruly"**

- **"Without proper parental care"**

- **Truancy/Educational Neglect**

►Problem areas that were identified in the **court decision review** include the following:

- **Blurred distinctions** between categories exist in opinions (for example, the failure to seek medical care can be either neglect or abuse/endangerment; lack of parental care can lead to either a neglect or dependency finding).

- There are a few court-declared **"*per se*" violations** that may appear somewhat arbitrary. For example:
  - abuse: prenatal maternal drug abuse (Supreme Court)
  - neglect: leaving 6- and 8-year-old sons home alone on regular basis (Court of Appeals)

- Whether or not there is **parental fault** appears to be a primary determination. Although the following are trends, fault-based and non-fault-based categories are not always distinct:
  - abuse: typically, but not always, parental fault is required
  - neglect: parental fault required, leading to inadequate parental care
  - dependency: no parental fault required, but parent's conduct relevant as it affects child's environment

- Courts have filled in with **specific guidance** where the statutes lack specificity, articulating, for example, factors that may be considered in determining whether corporal punishment amounts to abuse.

- Courts have also **clarified** nebulous terms (albeit not always consistently). For example, in relation to "dependency," a finding may focus on factors that would support either abuse or neglect findings.

In addition, the statutes may **foster inconsistent judicial outcomes.** For example, in the relation to the provision by a parent to the child of care by another as neglect, the Ohio Supreme

Court (1997) held that a neglect finding requires a showing of parental fault before a finding of lack of proper or adequate care is made, and a parent's voluntary act of temporarily placing the child with a responsible relative is an indicator of *proper* parental care. But one Court of Appeals (2003) has held that it is a mother's duty to provide for her children and reliance on volunteers to fulfill those duties may result in a neglect finding.

National

Methodology

The ABA's nationwide legal research was conducted in four phases. First, project staff identified and agreed upon the specific state statutory issues to be covered. This was a complex process in that there were many more abuse/neglect law "issues" to be covered than project funds or time constraints permitted to be analyzed. Once topics were selected, project staff met with law student interns to discuss each type of law to be collected and analyzed. Discussion included the attorneys' views as to what, based on their extensive experience in the field of child protection law improvement, "model" state laws might look like. Students then did the initial pulling of statutory provisions on each topic from updated state codes maintained at the ABA Center on Children and the Law. They compiled charts for each topic, summarizing each definition (e.g., "neglect") within categories (e.g., less descriptive, more descriptive, unusual components). The results were extensive tables of summarized statutory material on over twenty separate issues.

The three project attorneys at the ABA then carefully reviewed these materials. Each attorney was responsible for a range of issues. Based on the state-by-state statutory analysis, they selected laws that could be considered by Ohio as worthwhile models to follow, or, if not, at least laws that provided helpful statutory language to consider. Each attorney had ample opportunity to discuss and critique the conclusions of their fellow attorneys as to what statutory

reform to recommend, issue-by-issue, to the state. Finally, based on a group consensus, a document was prepared, entitled "National Child Protection Law Analysis." [8] For each of the 16 "issues" addressed there is a summary of the issue, citations to state statutes elsewhere that best reflect the reform principles the ABA recommends, suggested elements for revising Ohio law, alternative statutory reform approaches possible, and some other factors that should be considered during the Ohio statutory reform process.

Conclusions

Overall Structure of Definitions of Child Maltreatment as a Basis for Protective Intervention

- ✓ Ohio should create a single category of child maltreatment (e.g., Child in Need of Protection or Child in Need of Care and Protection) that would contain an inclusive list of different types of maltreatment. Eliminate separate statutory categories of abuse, neglect, and dependency.

- ✓ Revisions should also consider additional or stricter criteria that must be met to allow the court to remove children from home, such as at dispositional hearings.

- ✓ The law should establish criteria for intervention focusing on long-term or lasting harm to the child.

- ✓ The law should establish criteria for intervention focusing on types of harm to children. These should be types of harm that are in themselves so long lasting or severe that there need be no additional proof that such harm is long-term or long lasting. Do not include general language or broad terms to describe such types of harm. Keep the list of such harms narrow.

- ✓ The law should establish criteria for intervention that are types of parental behavior to children. These should be types of parental behavior that are so extreme or abnormal that they, in themselves, are highly likely to establish extreme risks to children. Do not include general language or broad terms to

describe such behavior. Keep this list of such behaviors narrow.

Basis for, and Labeling of, Child Protective Services Investigation Outcomes

- ✓ Ohio should have investigative outcome labels in all child protection investigations, and the evidence standard for application of those labels, be clearly stated in statute.

- ✓ Other than in cases utilizing an alternative response assessment in lieu of investigation, all completed investigations should, by law, be given one of the following labels:
    - o Substantiated
    - o Unsubstantiated
    - o Unable to locate child/family (which should be very rare)

- ✓ The evidentiary standard for a substantiated finding should be specified in state policy and guidelines for practice as "preponderance of evidence," defined as requiring more credible facts to indicate that child maltreatment occurred than to suggest it did not occur. Policy and guidelines should also list types of information that would support a substantiated finding (such as an admission of maltreatment by the person(s) responsible; a child's disclosure; a court adjudication related to the maltreatment; a caseworker or other professional witnessing the abuse; a medical diagnosis of maltreatment; other credible information from both witness statements and observations, as well as caseworker observations, concerning the maltreatment).

- ✓ Investigative findings should clearly indicate when a deliberately false report has been made in a specific case.

- ✓ Separate from the investigative "label," the law should require child protective services to categorize every completed investigation and alternative response assessment with one of the following category labels:
    - o No services needed

- Referral made for voluntary community services
- Child protective services required
- Court petition required

Defining Physical Maltreatment of Children as a Basis for Intervention

- ✓ Ohio's definition of physical maltreatment should include physical harm that is caused by intentional acts of parents or caretakers, or negligent acts or omissions by parents or caretakers that present a substantial risk of future physical harm to a child. The incapacity of the parent or caretaker to care for the child should be no defense to an allegation of physical maltreatment.

- ✓ Harm should always be considered sufficiently severe to justify intervention if it involves lasting disfigurement or impairment or interference with bodily functions. Harm to siblings should justify intervention on behalf of another child in the home, if the circumstances in which there was harm to the sibling also demonstrate that there is a risk to the child.

- ✓ A degree of pain, discomfort, or humiliation severe enough to lead to lasting emotional harm should justify intervention, but that type of harm should be included in the definition of emotional maltreatment instead of the definition of physical maltreatment.

- ✓ Generally, for the acts or omissions of a parent or caretaker to justify intervention based on a risk of harm, the acts or omissions should either have created a substantial risk of lasting harm to the child or a significant risk of death.

- ✓ The statute should list examples of "per se" harm that do not require further proof that their impact will be lasting. Such a list should include, for example, asphyxiation, bone fractures, bleeding, burns or scalding, cartilage damage, brain or spinal cord damage, poisoning, sprain or dislocation, injury to internal organs, and unconsciousness. A list of such examples should be carefully and narrowly

drawn because a showing of a likelihood of lasting harm would not be required.

- ✓ The statute should also include a definition of very severe physical maltreatment that can be a specific ground for termination of parental rights, as well as for not requiring reasonable efforts to preserve and reunify that family. Such a definition should include, for example, a parent who has caused actual injury to a child or sibling that could have caused death if untreated; more than one act or omission to a child or sibling that has caused lasting harm; or more than one separate act or omission causing per se harm to child or sibling.

- ✓ The statute should shift the burden of presenting evidence from the government to the parents or caretaker when the parents' or caretaker's explanations of a child's injury are inconsistent with the actual nature of the injury. That is, when parents offer an explanation of how an injury took place, and expert testimony shows that the injury could not have taken place as the parent described, the parents or caretaker will have the burden of proving that they are not responsible for the injury.

Defining When Use of Corporal Punishment Rises to the Level of Child Abuse

- ✓ Injuries inflicted upon a child by a parent, guardian, or legal custodian, during physical discipline or corporal punishment of the child, that may be construed as constituting physical abuse should include but not be limited to adult acts that produce the following specific child injuries: sprains, dislocations, or cartilage damage; bone or skull fractures; brain or spinal cord damage; cranial hemorrhage or injury to other internal organs; asphyxiation, suffocation or drowning; injury resulting from use of a deadly weapon; burns or scalding; cuts, lacerations, punctures, or bites; permanent or temporary disfigurement; death; permanent or temporary loss or impairment of a body part or function; and nontrivial injury or soft tissue swelling or skin bruising .

- ✓ Ohio law should be changed so that a parent, guardian, or legal custodian in the home who is responsible for that child may not use, for the purposes of correction or restraint of the child, any physical discipline, or corporal punishment, against the child that consists of any of the following: striking a child with a closed fist; shaking a child under age three; intentional burning of the child; twisting the arm of a child under age seven; throwing, kicking, cutting, or puncturing a child; smothering or otherwise interfering with a child's breathing; threatening a child with a deadly weapon; gross degradation of a child; prolonged deprivation of a child's sustenance or medication; or causing a child severe pain or extreme mental distress. [Note: some of these actions, and some of the injuries. below, are also covered in the mental injury or physical maltreatment sections of our analyses]. These parental acts should not require proof of actual or lasting harm to a child for these to be a basis for child protective intervention.

- ✓ In construing whether an act of physical discipline or corporal punishment constitutes child abuse, the force used against the child should be considered with respect to: the size, age, and condition of the child; the location of the injury; the strength and duration of the force used by the adult; whether the adult's actions would be considered torture of, or extreme cruelty to, the child (that is, whether the acts of the parent would be considered so abnormal or sociopathic as to infer that continuing care by this person will lead to harm to the child); and whether the injuries to the child were caused recklessly or while the adult was angry and out of control, such as while being under the influence of alcohol or drugs.

- ✓ A "corporal punishment" defense to a child protection intervention or criminal child abuse prosecution should only be available to a child's parent, legal guardian, or legal custodian.

Defining Sexual Abuse and Exploitation of Children as a Basis for Child Protective Intervention

- ✓ Ohio should define child sexual abuse within the civil child protection law, without reference to the separate, existing set of criminal child sexual abuse laws.

The definition should include contacts or interactions in which a parent, guardian, or other adult having custodial control or supervision of the child or otherwise responsible for the child's welfare within their home, commits, coerces, encourages, allows, permits, or fails to protect the child from any of a listed set (see below) of sexual acts against the child.

- ✓ Prohibited sexual acts within the civil child sexual abuse laws should include:
  - o any penetration, however slight, of the vagina or anal opening of one person by the penis of another;
  - o any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person;
  - o any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, other than for a valid medical purpose;
  - o the intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this would not include acts that would be reasonably construed to be a normal caregiver responsibility, or showing of affection for a child, or have a valid medical purpose;
  - o the intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act in the presence of a child if such exposure is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;
  - o the sexual exploitation of a child, including allowing, encouraging, or forcing a child to solicit for or engage in prostitution or a commercial sexual act or performance, or to make a photographic record of any of the acts defined herein;
  - o forcing the child to watch pornography for the purpose of the adult's sexual arousal or gratification, child degradation, or other similar purpose;
  - o flagellation, torture, defecation or urination, or other sado-masochistic acts involving the child when for the purpose of the adult's sexual stimulation;
  - o facilitation of the statutory rape of the child, where the parent, guardian, or caretaker has knowledge of the child's unlawful sexual relationship;
  - o Sexual abuse of a child by a teacher, day care provider, or other person with some level of responsibility to the child while the child is out of the home

should not be covered by this definition, unless a parent knowingly encouraged, allowed, or permitted such acts.

- ✓ Sexual acts between a minor child in the home (or another location) and the sexually victimized child should *not* be covered here, unless the parent knowingly encouraged, allowed, or permitted such acts, or where a parent was extremely negligent in their supervising of a child and that was related to the child's sexual victimization by another child. Parental gross negligence in such supervision that results in an older child sexually abusing a younger child should be a basis for an agency substantiation and court finding that a child is in need of care and protection due to parental failure to supervise.

Failure to Provide Adequate Care and Supervision, and Abandonment

- ✓ Ohio should define a failure to provide necessary care to include failure to provide adequate shelter, nutrition, clothing, or supervision where such failures present a substantial risk of serious long-term physical or mental harm to the child.

- ✓ Failure to provide care should also include leaving the child unattended under circumstances presenting a substantial risk of serious long-term physical or mental harm to the child. [Note: being grossly inattentive to the child is covered above]

- ✓ Abandonment should be defined to address the situation where the parent has left the child without making adequate provision for his care and has failed to maintain contact.

- ✓ An exception where poverty is the only reason for the neglect should be included.

- ✓ The act or omission should be analyzed in light of the child's age or ability.

Parental Substance Abuse as Child Maltreatment

- ✓ Ohio should clearly provide for child protective intervention for use of alcohol or a

controlled substance by a parent or person responsible for the care of the child that harms or causes a risk of harm to the child. Harm in this context should require a showing that the parental behavior connected with the substance abuse and the results of such behavior on the child would constitute maltreatment as otherwise defined in the law.

- ✓ Intervention should also be based upon exposing a child to the criminal distribution of dangerous drugs, the criminal production or manufacture of dangerous drugs, or the operation of an unlawful clandestine laboratory to which the child has access.

- ✓ Intervention should also be based upon causing, permitting, or encouraging a child to use a controlled substance except for controlled substances that are prescribed and dispensed to the child in accordance with the law.

- ✓ Intervention should also be based on the presence of an illegal drug in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child, as well as a child born with fetal alcohol syndrome.

- ✓ Ohio law should more clearly define "failure to provide medical care" in the law to include the failure of a parent or legal guardian to supply a child with necessary medical, surgical, mental health (including psychiatric or psychological treatment), or other care required for a child's health. This should include, but not be limited to, parental failure to use resources made available to treat a diagnosed medical condition if such treatment may prevent the child's death, disfigurement, or serious impairment, or where such treatment is necessary to make a child substantially more comfortable, reduce the child's pain and suffering, or correct or substantially diminish a child's debilitating or crippling condition from worsening.

- ✓ This should apply to children both who have become medically or emotionally impaired, as well as where the impairment would be imminent as a result of the failure to provide or consent to such care. It should also cover medical situations that

endanger a child's life as well as those that endanger a child's development or impair a child's functioning.

- ✓ The "religious exemption" issue should be handled as follows. We favor eliminating the religious exemption altogether from civil child protective intervention statutes. Instead, we suggest that child protective agencies through their practices and procedures exercise restraint in bringing court actions to simply label parents for "neglect" in non life-threatening situations where parents have chosen spiritual healing pursuant to the tenant of a recognized religion and by a faith healer certified by their denomination.

- ✓ However, if the state chooses to retain any form of religious exemption, we propose the following provisions. First, that the law be clear that the "exemption" does not in any way negate the responsibility of mandated reporters to report all situations to child protective services involving parental failure to provide medical care. Second, that the child protective service agency, upon receipt of such reports, must quickly determine whether a parent's decisions are in the child's best interests or may be subjecting the child to serious harm or potential serious harm. If so, the agency should be clearly directed to file a juvenile court petition, including access to emergency relief, to have the child and family's situation brought to the attention of the court, with the judge empowered to order medical or other care over parental objections. The law should also clearly authorize physicians or hospitals to file such petitions.

- ✓ Pursuant to the federal Child Abuse and Prevention Treatment Act ("CAPTA"), the law should include provisions addressing the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

- ✓ The law should make it clear that, as a condition to intervention for parental failure to provide medical care, the parents either be financially able to pay for such care or have other reasonable means to access such care for their child.

- ✓ The child welfare agency should not be required to take physical custody of a child in order to make medical decisions when authorized by the court.

Jurisdiction Over Parents for Failure to Provide for a Child's Education

- ✓ Ohio law should make "failure to provide for a child's education" a basis for child protective system reporting, investigation, intervention, and juvenile court involvement, but only for a child's chronic (as opposed to occasional) non-attendance or chronic substantial lateness in arriving at school, or for parental impediments to a child receiving needed educational services.

- ✓ The basis for intervention should include not only the failure or refusal of a parent to secure the child's regular and timely school attendance (including tutoring and summer school, when educationally required) over an extended period of time, but also parental actions or failures to act that interfere with the provision of any needed educational services or individualized educational program for the child pursuant to the federal Individuals with Disabilities Education Act.

- ✓ A petition solely based on the parents' failure to provide their child with an education should have to allege what efforts educational system personnel have made to bring about the child's regular and timely attendance, or the initiation of any needed special education program for the child, and whether the child's continued truancy, tardiness, or lack of necessary educational program is related to the parent's refusal to cooperate with school personnel. If educational system personnel have not made such efforts, the court should be able to join the schools, whether public or private, as parties to the case, but the school's efforts should not be a requirement for filing such a petition or proving the case.

- ✓ Parents should either have had the financial ability to provide the child with such legally-required education or services, or they should have been given other reasonable means to so provide, including assistance with addressing any pre-enrollment conditions for the child's school attendance.

- ✓ "Failure to provide for a child's education" should be preferably handled through the state's alternative response family assessment process, rather than through the traditional adversarial approach.

- ✓ "Failure to provide for a child's education" intervention should not be an appropriate allegation for a parent's refusal to provide their child with medications recommended by the school for addressing a child's in-school behavioral or attention problems. These actions should be the basis for intervention only when they represent failures to provide medical care.

Defining Mental Injury of Children as a Basis for Protective Intervention

- ✓ If it uses the term, Ohio law should define as "mental injury" the deliberate infliction of mental harm on a child by a parent, guardian, or other person responsible for the child's care, that has an observable, sustained, and adverse effect on the child's physical, mental, emotional, or social development, or conduct towards the child that is so severely humiliating and degrading that a sustained and adverse effect can be inferred.

- ✓ This should include any injury inflicted by the above persons to the psychological capacity, emotional stability, or intellectual functioning of a child, as evidenced by a substantial and observable impairment in the child's ability to function within a child's normal range of performance, behavior, emotional response, or cognition based on their age and stage of development, with due regard to their culture. This would include, but not be limited to, a child's failure to thrive, control aggressive or self-destructive impulses, ability to think and reason, or severe acting-out behavior; however, such impairment must be shown to be clearly attributable to the unwillingness or inability of the adult to exercise a minimum degree of care toward the child.

- ✓ This should also include any act or failure to act by the above persons that causes a child's psychological condition as described above, including the adult's refusal of appropriate treatment of the child for this condition, when this renders the child

chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic, or in unreasonable fear that their life or safety is threatened.

Parental Incapacity as a Basis for Protective Intervention

- ✓ Ohio law should include within the definition of child maltreatment cases where parents are unable to care for their child at all after the child welfare agency has made reasonable efforts to help assist them in that care, or the parents have died.

- ✓ It should also require that the petitioner in child maltreatment court proceedings plead and prove parental incapacity whenever relevant to allegations of child maltreatment. In the alternative, include within the definition of child maltreatment cases situations where, due to a parents' inability to meet children's needs, children are subject to harm or risk of harm.

- ✓ The law should include within the definition of child maltreatment cases where parents are unable or unwilling to meet children's special needs for treatment when (a) the parents could reasonably be expected to provide such care (e.g., because most families under similar financial circumstances could meet those needs with the child remaining in the home) and (b) the child would suffer harm, as defined by state law, if the care is not provided.

- ✓ The law should prohibit the state from requiring a parent to relinquish custody in order to arrange out of home care of a child needing special care if there is no substantiated report of abuse or neglect. When the parents have maltreated the child, the law should prohibit the child welfare agency from fully "diverting" the case to another agency, at least until the factors leading to the maltreatment no longer exist.

- ✓ The law should include within the definition of child maltreatment cases where parents are temporarily hospitalized or face temporary emergencies and either (a) parents do not resume care of the child after the emergency passes or (b) the hospitalization or emergency is the result of a pattern of parental behavior that is

likely to recur. But the law should prohibit the state from requiring a parent to relinquish custody to place a child in foster care if the sole reason the child requires placement is the parent is facing a family emergency or requires temporary hospitalization.

- ✓ The law should include within the definitions of child maltreatment cases where parents repeatedly have to place their children in foster care due to financial emergencies that they could prevent. But the law should prohibit the state from requiring a parent to relinquish custody in order to arrange foster care if the only reason for the placement of the child is an isolated or excusable emergency faced by the parent.

Including a Child's Exposure to Domestic Violence in the Definition of Maltreatment

- ✓ Child protective services agencies should be statutorily authorized to work with victims of domestic violence and their children on a voluntary basis.

- ✓ Ohio law should include a requirement that the child protection agency show that the victimized parent was offered protective assistance and refused such assistance, and that the refusal has caused harm to the child.

- ✓ The child protection law should not be overly restrictive; i.e., it should not require the agency to prove a child has already been damaged by a domestic violence situation in the home; rather, risk of harm should be included in the definition.

- ✓ The statute should not be overly inclusive by mandating child protective intervention against parents who have taken adequate steps to remove their child from a violent situation.

- ✓ The state should coordinate implementation of its child maltreatment laws and policies, civil restraining order laws, and criminal domestic violence statutes.

- ✓ Additionally, the state should work with community partners, including domestic violence agencies, to fashion solutions and provide specialized services to parents and children affected by domestic violence.

Amending Criminal Child Endangerment Laws to Specifically Apply to Parents

- ✓ Ohio law should define an act constituting criminal child endangerment in which a child has died or suffered severe physical or mental injury, or a second or subsequent offense of criminal child endangerment, as a felony with appropriate punishments provided.

- ✓ A parent, legal guardian, or other person legally charged with the care of a child should be considered to have committed criminal child endangerment if that person has intentionally or recklessly committed one of the following acts:
    - o Leaving a child without adult supervision where the child has suffered death or serous bodily harm
    - o Leaving a child in any place under circumstances where there is a clear and substantial risk of death or severe harm to that child
    - o Leaving a child with someone who has had sex with children in the past, a registered sex offender, or one who has repeatedly physically abused children
    - o Allowing physical or sexual abuse of a child by another person
    - o Having a child in the car while a parent is driving drunk
    - o Contributing to or failing to prevent a child from buying or possessing a weapon
    - o Depriving a child of food, clothing, shelter, or health care with serious ill-effects on the child
    - o Allowing a child to be in a place where illegal drugs are being manufactured
    - o Using greatly excessive or prolonged force, torture or extreme cruelty to discipline a child
    - o Giving children intoxicating substances, where death or serious bodily harm results

- Facilitating a child's involvement in prostitution, or videotaping or photographing them in a sexually suggestive way, or otherwise sexually exploiting them

- A parent, legal guardian, or other person legally charged with the care of a child should be considered to have committed criminal child endangerment if that person knowingly or recklessly acts in any other manner that creates a substantial risk of serious harm to a child's physical, mental, or emotional health or safety, or death.

Summary Transfers of Custody from a Juvenile Justice Agency to the Child Welfare Agency

✓ Ohio law should require, before transfer of custody of a child from the juvenile court or juvenile justice agency to the child welfare agency in a delinquency or status offense case, prior notice to the child welfare agency and the initiation of a child maltreatment case.

✓ Where it is necessary to immediately place a child in the child welfare agency's custody to prevent potential harm to a child from a placement with delinquents, the law should permit the court to temporarily transfer custody of the child, to be followed by a shelter care (emergency custody) hearing and the immediate initiation of child maltreatment proceedings.

✓ The law should allow courts to consolidate juvenile justice and child maltreatment proceedings when the court already has jurisdiction based on delinquency or status offenses. When the court first has jurisdiction based on child maltreatment, the law should allow consolidation of the cases after delinquency or status offense jurisdiction has been established. In such cases, the law should apply all legal protections and other requirements that apply in other child protection cases.

✓ The law should require state and local agencies and courts to develop protocols to address cases where delinquent children are also subject to parental maltreatment, including but not limited to parental disinterest and abandonment.

Timeliness Requirements for Court Proceedings

- ✓ Ohio law should specify deadlines for every stage of the process.
- ✓ It should define deadlines for hearings based on when hearings end.
- ✓ It should create deadlines for the completion of written court orders.
- ✓ It should specify strict grounds for continuances and other exceptions to deadlines.
- ✓ It should require parties to submit written statements explaining their reasons for requesting delays, and require courts to state their reasons in writing for granting delays.
- ✓ It should require courts to schedule hearings earlier, if possible, when court dates must be changed.
- ✓ It should support the improved use of judicial computer systems to avoid delays.
- ✓ It should support caseflow management initiatives for child protection cases.
- ✓ It should support better judicial workloads for dependency cases and better judicial workload analysis.
- ✓ It should maintain strict deadlines for adjudication, including the current 30-day deadline, and impose these requirements:
    - o 30 day extensions for delays in service of process and for further investigation and case preparation, but only when additional time is essential and when the party making the request has been diligent in trying to locate parties, conducting investigations, and preparing the case.
    - o Allowing adjudication to go forward for only one party, but allowing the other party to reopen the adjudication when served and requiring ongoing efforts to locate and serve the missing party.
    - o Requiring pretrial hearings when there are delays in the service of process.
- ✓ It should limit delays in disposition hearings by:
    - o Maintaining the current 30-day deadline.
    - o Not providing exceptions for delays in evaluations.

- Maintaining requirement of dismissal without prejudice for non compliance with deadline and also imposing other strict requirements for extensions in cases where cases are immediately re-filed, including:
    - Imposing very strict deadlines for disposition after dismissal with prejudice.
    - Directing the court not to deny the dismissal of dispositional hearings where there is no compelling reason to take the hearing off the docket.
    - Requiring the filing of written statements explaining the reason for dismissal and written court orders specifying why it is being allowed.
    - Authorizing or directing judges to apply sanctions for a pattern of improper dismissals or requests for dismissals.

✓ It should encourage or require more frequent periodic review hearings.

✓ It should require more timely termination of parental rights (permanent custody) proceedings by:

- Setting deadlines for the service of process.
- Requiring pretrial hearings when service of process is not completed on time.
- Imposing deadlines for completion of termination of parental rights hearings based on completion of service.
- Imposing deadlines for completion of court orders following the end of termination of parental rights hearings.

✓ It should ensure that other court proceedings do not routinely take precedence over child protection proceedings by requiring specific findings when that occurs, explaining why the individual circumstances of the child require such delays.

✓ It should require cases to be on the court docket at all times.

Alternative Response System

✓ Ohio law should assure that most serious allegations of child maltreatment, along with cases involving prior reports of child maltreatment or possible criminal activity involving child maltreatment, should be investigated.

- ✓ The law should require that alternative response "assessments" be initiated within a short time frame so as to ensure that child safety issues are addressed as soon as possible.

- ✓ Statutory language should clearly provide for flexibility to conduct an investigation after the case has been referred to the assessment track.

- ✓ The law should authorize community service teams to provide assessments, in order to encourage community development of partnerships to maximize alternative response systems.

- ✓ The law should create a pilot program, with a strong evaluative component required by law, which would help the state determine whether its alternative response system is effectively keeping children safe.

Practice Research

The practice-side research component of the study entailed a broad-based review of the "state of the state" in terms of child abuse, neglect and dependency screening and investigation, with the dual aims of providing Ohio child welfare practitioners and stakeholders with opportunities to provide input and to express their concerns regarding current Ohio laws, and identifying problems created or exacerbated in practice by the language of current laws.

The information gathered in the field, together with the legal research and conclusions from the ABA national review and the NCALP Ohio and national legal review, were used in developing and testing alternative proposals, and ultimately guided the preparation of final recommendations for legal approaches that we believe will positively impact practice and adjudication of abuse, neglect and dependency cases.

The tools utilized for information gathering in this component (with assistance and input from the Subcommittee) were:

- A national literature review
- A statewide survey of intake/screening/administrative staff at all 88 Ohio Public Children Service Agencies
- Interviews with child welfare professionals and stakeholders (including public children services agency staff, attorneys, judges, educators, physicians etc.); and
- Focus groups with child welfare professionals (public children services agency staff, attorneys, judges) to test alternative proposals for change

National Literature Review

The initial phase of practice-based research included a comprehensive review of the professional literature concerning best practices in child welfare screening, intake, and investigation. NCALP consulted a broad base of both national and local resources in order to identify effective emerging practices in the field. Numerous social work and child welfare journals, child welfare web resources, government reports and other professional publications were reviewed. Additionally, NCALP contacted prominent researchers in the areas of screening, risk assessment and the Structured Decision Making model during this information-gathering phase. NCALP worked closely with the Ohio Department of Job and Family Services and the Comprehensive Assessment and Planning Model—Interim Solution ("CAPMIS") Pilot Project Screening Committee in order to relate findings to current and newly developing practices within the state of Ohio.[9]

Although the literature reflects varying professional viewpoints on what constitutes "best practice" in child welfare screening, intake and investigation, the overall review found a consistent emphasis on improving clinical decision-making in child welfare through evidence-based practice. Effective clinical judgment on the part of caseworkers and supervisors must be augmented and supported by the use of objective, measurable criteria, empirically validated assessment tools, and consistent protocols for screening, response prioritization, safety and risk

assessment, case planning and review. Research from the field has found that evidence-based practice leads to increased reliability and objectivity in decision-making throughout the life of the case resulting in improved outcomes for children and families. However, there is also a strong cautionary emphasis in the literature regarding the need to balance effective screening and assessment processes with a family-centered approach to service provision that is adaptable enough to meet the unique needs and circumstances of individual families.

Alternative, differential, or multiple response systems are emerging family-centered methods of child welfare practice that have been given significant attention in the literature. While alternative response models are varied in their structure and implementation among jurisdictions, the over-arching goal of these systems is to enable child protection agencies to provide a more targeted response based on each case's individual circumstances. Alternative response systems allow child protection agencies, as appropriate, to divert lower risk cases to different tracks or categories of response.

In general, alternative response tracks are perceived by families as less adversarial or threatening than the traditional child protection investigation. Therefore, alternative response systems aid in engaging families in a positive and productive relationship with Child Protective Services. Agencies that have employed an alternative response approach have reported increased motivation and cooperation among families participating in case planning and recommended services as well as higher levels of satisfaction among both families receiving services and caseworkers implementing the system. The literature indicates that alternative response systems, implemented in conjunction with strong, empirically-based assessment tools, have produced positive outcomes for children and families without compromising child safety.

Program Evaluations Review

After identifying Alternative Response as a respected model, NCALP conducted a review of evaluations of other states' alternative response models. The following is a summary of the review findings:

Minnesota

The Institute of Applied Research conducted a longitudinal study of the Minnesota Alternative Response (Alternative Response) pilot program. Completed in 2004, the three-year study randomly assigned 5,049 Alternative Response-appropriate families in 14 counties into experimental and control groups, with the experimental group being served with the Alternative Response model and the control group receiving traditional investigations.[10]

According to the researchers, Alternative Response families were more satisfied with the services they had received than were those in the control group. They were more likely to report:

- Greater satisfaction with the way they were treated by child protection workers;
- Greater satisfaction with the help they received;
- An increase in positive feelings following the initial CPS visit from workers, more often reporting that they were "relieved, reassured, hopeful and optimistic;"
- That the entire family was better off because of the experience.

The case workers providing the Alternative Response services also generally had very positive attitudes towards the Alternative Response process, with satisfaction increasing as workers gained experience using this model.

Positive outcomes were achieved more often in Alternative Response cases than in the control group. Alternative Response families were less likely to experience a recurrence of maltreatment than control families. One year after their last contact with CPS, Alternative

Response families were less likely to report drug abuse and domestic violence problems within their households. Two years later the Alternative Response families were more likely to report that their family and children were better off because of the intervention.

The study results analyzed the relative costs of the Alternative Response and traditional approaches and concluded that total costs for case management and other services were lower for Alternative Response cases than control cases. The mean cost per family of achieving the goal of recurrence avoidance was $398 less with Alternative Response than with the traditional approach.

Missouri

In the early 1990's the Institute of Applied Research conducted a study of Alternative Response programs being piloted in 14 small and medium Missouri counties and in St. Louis.[11] The researchers found that in the pilot areas:

- Hotline reports declined
- The percentage of reported incidents in which some action was taken increased
- Child safety was not compromised and in some situations improved
- Children were made safe sooner
- Recidivism decreased overall
- Removal of children from homes neither increased nor decreased
- Children spent less time in placement (depending upon services offered)
- Needed services were delivered more quickly
- There was greater utilization of community resources
- Cooperation of families improved
- Families were more satisfied and felt more involved in decision-making

- Workers judged the family assessment approach to be more effective
- Community representatives preferred the family assessment approach
- The impact of the demonstration was mitigated by large caseloads and limited resources

Because of the generally positive results, the Alternative Response approach was implemented statewide. In 1999 a follow-up study was commissioned.[12] This follow-up study showed:

- The reduced recurrence rates in Alternative Response families persisted after five years (only 60.7% of Alternative Response families had a new FCS case opened during the five-year follow-up period, compared to 75.7% of the comparison families)
- The Alternative Response approach was most effective with families with problems that could be addressed through short-term services and referrals. "Chronic" families (those who came to the attention of CPS agency numerous times for abuse and neglect over a period of years) seemed unaffected whether approached with traditional investigations or the newer family assessment approach.
- Some families with more fundamental and long term needs may have been provided fewer services under this approach. Case openings for such families occurred more frequently under the traditional approach (case openings led to services funded by DJS).
- Alternative Response children were removed from their families and placed less often than children from the comparison group in the five year follow-up.
- Most agency administrators and supervisors (68%) reported positive attitudes toward the Alternative Response approach, with 40% saying that their attitude had improved over time.
- 58% of administrators and supervisors responded that the safety of children in their county had never been compromised due to Alternative Response.
- 66% of administrators and supervisors reported that Alternative Response had improved the satisfaction and cooperation of families.

Caution: A number of respondents indicated that workers were sometimes lax in upgrading a situation from an assessment to an investigation when needed. There was some indication that this resulted in injury to some children.

> "Some counties continue to assume that investigations keep children safer than assessments, although there is no evidence to support this, unless assessments are not properly done, or if safety is a priority in investigations but not in assessments."

Mississippi

The Institute of Applied Research also conducted a study of Mississippi's pilot Alternative Response program, in 8 counties, over a period of 42 months, ending on September 30, 2004 (originally scheduled for 60 months, the program was cut short due to funding and staffing problems).[13]

667 families were randomly assigned to a control group, processed with traditional investigations, and an experimental group, processed with Alternative Response.

The results of the abbreviated study included:

- A lower general recurrence rate in Alternative Response families (14.5% vs. 19.7%);
- A lower subsequent incidence of physical abuse also.
- Experimental families were more likely to receive services than control families;
- Experimental children were less likely to be removed from their homes and placed in foster or relative care than control children.
- Control children experienced new reports sooner, and, therefore, more reports, during the four-month follow-up period studied by researchers.
- Control children experienced out-of-home placement sooner and more often during the follow-up period.
- Experimental children in placement were reunified at a slightly higher rate than were control children. Although the increase was not statistically significant the researchers commented that the difference represented a statistical trend that may have reached statistical significance had the project continued.

Virginia

The Virginia General Assembly authorized a test of its Multiple Response child protective services system (MRS) in five local departments from March 1997 to December 1999.[14] The children services workers who participated in this study expressed very positive views of MRS:

- 76 percent believed that families felt less threatened by the presence of a CPS worker when using MRS;
- 70 percent believed families were more willing to discuss their problems;
- 87 percent believed families were more satisfied overall with their contact with CPS.
- 65 percent of CPS workers believed that MRS had improved child safety.
- Overall, 68 percent preferred MRS to the single response, investigation- only system.
- Mandated reporters also expressed support for MRS: 65 percent believed MRS had increased child safety; 30 percent believed it had no impact, and 6 percent believed it had decreased child safety.

Field Research

Survey

A statewide survey, aimed specifically at Ohio Public Children Service Agency intake and screening caseworkers and supervisors throughout the state, was developed to elicit feedback concerning the relevance and utility of Ohio's abuse, neglect and dependency laws from these front-line practitioners, and simultaneously gather statistical data to assist us in our evaluation of the practical implications of Ohio's current laws.

Subjects were asked to respond to 42 survey questions, in a total of seven categories: Demographic; Screening; Investigation; Disposition; Statutory Language; Inter-Agency Collaboration; and Training Needs. The questions were posed in a variety of different formats, including:

- Either/Or formulations (e.g. yes or no; screen in or screen out);
- Multiple choice (e.g. abuse, neglect, dependency, or none of these; under-substantiated, appropriately substantiated, or over-substantiated; excellent, good, or poor)
- Ranking (e.g. from most helpful to least helpful; from most positive impact to least positive impact)
- Open-ended (soliciting comments and/or suggestions)

The survey was created and distributed electronically, using an online survey service, to better accommodate the schedules of respondents and thereby maximize the number of responses. Respondents completed and submitted the questions on-line for analysis by NCALP.

The concern and commitment of the target participants for this initiative yielded 440 responses from public children services agency staff in at least 57 counties from across the state (34 respondents failed to identify their county). The following counties are known to have responded:

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	Trumbull	

The survey responses were representative of a wide cross-section of Ohio's child welfare community in terms of the demographics of the population served (geography, urban/rural population, number of children in care, etc.) and in terms of the characteristics of the caseworkers responding (age, education and experience level, responsibility area, etc.).[15]

Although the purpose of the survey was not to quantify this type of data, some relevant information was extracted through application of filters to the survey results in order to guide the process of selection of alternative recommendations. The filters applied included those intended to elicit information on response differentials based on the amount of experience in child welfare, the category of position held, and the demographics of the county of response (i.e., size of client population, county population, and location in urban or rural environment).

These filters were not expected to yield reliable quantifiable data, but were intended to provide – and did indeed yield -- anecdotal information on cultural/demographic influences on case intake and screening.

Interviews

Face-to-Face Interviews

The interview phase of the field research, which began in late March, 2004 and continued until mid-June, consisted of individual and group interviews with key child welfare stakeholders across the state. Several questions were sent to each interviewee prior to the actual meeting, with the assurance that the questions were intended only to initiate discussion, and that the interviewer would be prepared to discuss the particular interests and concerns of each interviewee. The initiating questions were:

1. How (if at all) do Ohio's child welfare laws (statutes, regulations, case law…) cause problems in actual *practice* at Public Children Services Agencies?

2. What problems, if any, does current law cause in terms of the *adjudication* process and outcome?

3. Can you give examples of cases in which the wording of a particular law led to an undesirable result?

4. What (if any) problems arise due to the current statutory distinctions (abuse, neglect, dependency)?

5. Do these distinctions affect the children's parents in terms of willingness to cooperate?

6. What would the potential benefits and drawbacks of discarding these distinctions and creating one category, e.g., "children in need of service"?

7. In general, what (if any) ambiguities or inconsistencies would you like to see changed in Ohio's child welfare laws? Why?

8. Are there any laws whose wording consistently lead to unfair results for parents? For children? For the public children services agency?

To construct a balanced picture of the opinions from the field, it was necessary to interview stakeholders from a variety of professions, locations and perspectives throughout the

state. Below is the breakdown of the counties represented in the individual and local group interviews. Interviews were also conducted with public children services agency directors from 40 unspecified counties at an annual public children services agency conference, and with pediatricians from the Ohio Chapter of the American Pediatric Association, also from various unspecified locations across the state.

County	**Location**	**Size***	**Demographic**
Athens	Southeast	Small	Rural
Cuyahoga	Northeast	Large	Metro
Franklin	Central	Large	Metro
Greene	West	Medium	Urban
Hancock	Northwest	Small	Rural
Hocking	South Central	Small	Rural
Lorain	North	Medium	Urban
Montgomery	Southwest	Large	Urban
Morrow	North Central	Small	Rural
Muskingum	East	Small	Rural
Pickaway	South Central	Small	Rural
Summit	Northeast	Large	Urban
Trumbull	Northeast	Medium	Urban

*Populations below 100,000 = "Small", 100,000 to 500,000 = "Medium", and over 500,000 = "Large".

Below is the breakdown of interviewees by profession:

5	Juvenile Court Judges (including 1 Magistrate)
17	Juvenile Division Prosecutors/In House Counsel
6	Juvenile Division Public Defenders
1	Children's Advocacy Center Director
1	Ohio Department of Job and Family Services Legal Department
40	Public Children Services Agency Directors
10	Public Children Services Agency Intake/Screening Supervisors
14	Public Children Services Agency Intake/Screening Caseworkers
1	Public Children Services Agency Social Services Director, recently retired after 30 years of service
1	Public Children Services Agency Intake Supervisor, recently retired after 30 years of service
10	CAPMIS Pilot Screening Committee Members (Public Children Services Agency and Ohio Department of Job and Family Services staff)

1	Guardian ad Litem Project Director
1	Court Administrator
4	Educators
1	School Principal
2	School Nurses
1	School Counselor
12	Pediatricians
2	Mental Health Professionals
2	Ohio Child Welfare Training Program Staff
1	Public Children Services Agency Director
2	Ohio Assistant Attorneys General
135	

The interviews were generally about two hours in length. With the permission of the interviewees, detailed notes were taken on a laptop computer throughout each interview. The notes were later edited for spelling and organization, but not for content.[16]

The Interview Questionnaire

An additional interview tool, the "Research Project Questionnaire," was constructed with an open-ended format, allowing respondents to share insights and concerns in writing.[17] In this questionnaire, respondents were asked to read Ohio's current abuse, neglect and dependency statutes (2151.03, .031, and .04) and then perform these three tasks:

1. Highlight any statutory language considered problematic
2. Identify problems that the language causes in actual practice|
3. Make suggestions regarding needed changes in the law

This questionnaire was distributed at the Ohio Department of Job and Family Services Annual Conference for child welfare attorneys. It elicited responses from 25 assistant prosecutors from: Butler (2), Clark (1), Cuyahoga, (3) Franklin (1) Greene (1), Hancock (1), Montgomery (1), Sandusky (1), Summit (5), and Tuscarawas(1), with 8 additional questionnaires not specifying the county.

The questionnaire was also distributed at the Public Children Services Agency Organization's Annual Executive Membership Meeting of agency directors. Six agency directors completed the questionnaire at that meeting.

Syntheses of Field/Legal Research

Following the legal and field research phase, synthesis of the nationally based research identifying legal best practices within the context of current Ohio practice was an essential step in the overall process of creating a flexible continuum of recommendations that could work within Ohio's unique landscape. Feedback from the field informed a thorough examination of specific problems and potential solutions identified by Ohio's child welfare practitioners. As a result of this field research, identified best practice models may be adopted in whole or in part or adapted as necessary in order to adequately address Ohio's particular needs.

Not surprisingly, the study's legal and field research led to conclusions consistent with many of those contained in the ABA's preliminary study. Further, problems identified in the pure legal research in relation to confusing language, redundant definitions, murky categories and unnecessary cross-references were echoed in the results of the field research.

Broadly, the major areas of concern identified were as follows[18]:

- Ohio's **"dependency"** provisions are confusing, overly broad, and capable of manipulation to cover any type of abusive or neglectful conduct. The dependency statute was enacted to provide an alternative for situations in which children lacked adequate care *through no fault of their caretaker*. Over time, because of broad and confusing language that permits wide application, the category has come to be used by judges and magistrates, attorneys on both sides, and Public Children Services Agencies to accomplish various objectives that have little to do with the original intent of the statute.

- In addition, the **dependency** category does not provide clear guidance regarding the scope of services to be provided by the Public Children Services Agencies --- i.e.,

how wide should the door be opened for eligibility for child protection services? These ambiguities also result in "delinquency dump" issues (children being placed in custody from the delinquency system where there is no evidence of abusive or neglectful parental conduct), and in children being placed in custody solely for the provision of necessary mental health services that are not covered by health insurance and that the parents cannot afford.

- Ohio law lacks definitive guidance on **emotional abuse** as an abuse, neglect and dependency category. A major problem is the absence of a definitive law proscribing or describing parental acts and omissions that harm children "behaviorally, cognitively, emotionally, or mentally." Instead, practitioners must refer to several different statutes which allude to this problem almost as an afterthought, in nebulous terms. These ambiguities lend themselves to significant confusion regarding what types of parental behaviors constitute emotional abuse, and what is meant by "mental injury" to children. Current language makes it extremely difficult, often impossible, to prove legally that a child is being "emotionally abused," although it is well established that this is a very real problem with long-term mental health and criminal repercussions.

- Ohio law fails to clearly define acceptable limits of **corporal punishment**. For example, there is little guidance on how to determine, under the statutory language, what punishment is "excessive under the circumstances and creates a substantial risk of serious physical harm to the child" or what type of discipline could create the "substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development." This lack of clarity has led to confusion in the field as to what constitutes unacceptable discipline and inconsistency in response from agency to agency.

- The Ohio Revised Code's cross-references to criminal code for definitions of abuse and neglect, including those for **sexual abuse**, create confusion for agency workers and inconsistent outcomes for children. Ohio's reliance upon the criminal code (specifically **§** 2907) to define the legal parameters of sexual abuse of children causes

significant confusion among public children services agency investigators, and another "disconnect" between child welfare agencies and the courts. For example, § 2907 defines illegal sexual activity as *touching* or *penetration* in various forms. From the child welfare perspective, other behaviors, such as inappropriate sexual talk or voyeurism, are also sexually abusive behaviors from which children need to be protected. However, a strict reading of the criminal definition seems to preclude public children services agency intervention in such situations.

- Ohio abuse, neglect and dependency law lacks coordination with the **domestic violence** criminal statutes, and is ambiguous in relation to the child who is a victim by virtue of witnessing domestic abuse. The issue of domestic violence is a focal point of the debate within the field as to what constitutes mental injury/emotional abuse and when public children services agency involvement is warranted. Our survey and interview participants fell along a continuum of viewpoints, those at one end believing that domestic violence should be handled only by police as a criminal matter, those on the other believing that children should be *removed* from homes in which domestic violence occurs.

- Ohio's **neglect** law is silent as to what types of parental omissions qualify as neglect. In addition, the word "neglect" itself is used to define neglect and the word "adequate" to define adequate. The statute is rife with subjective terms such as "necessary," "proper," "adequate", "fault", "morals", and "well-being," all of which mean different things to different people. This ambiguity has lent itself to confusion in those who investigate and substantiate neglect and tension between agencies and mandated reporters who most often report neglect—particularly educators. It also exacerbates a problem that is particularly endemic in neglect cases—the tendency to impose one's own values and standards in evaluating the behavior of others.

- Rules regarding **physical abuse** in Ohio are found in the Ohio Revised Code civil and criminal statutes, the Ohio Administrative Code, individual public children services agency policies, principles of child welfare and of the various professions who regularly deal with child abuse issues, and the mores and norms of local communities.

The definitions and requirements provided by these various sources are often contradictory, causing a great deal of confusion and undermining working relationships and ultimately the effectiveness of Ohio's child protection efforts.

Other problem areas relate to:

- **Addiction issues**—the statutes allow for inconsistency in disposition of parental alcohol and drug abuse (is it abuse, neglect or dependency, or none of the above?)
- **Central registry issues**—requirement of immediate classification of referral as abuse, neglect and dependency and subsequent inclusion in the registry even if complaint is found to be unsubstantiated
- **General ambiguities**, confusing cross-references and disorganization
- **Timeliness issues** (in particular, the "90 day rule" for disposition hearings)
- **Educational neglect** as a category of neglect, and the ambiguous treatment of truancy issues
- **Corporal punishment** exclusions from the definitions for physical abuse
- Concern over the **scope of abuse, neglect and dependency services** required under the law and inconsistencies as to what the scope of services should be

Focus Group Testing of Alternative Statutory Schemes

Methodology for Focus Group Testing

The third and final phase of field research—the focus group phase—was initiated in July, 2005 and continued through mid-August, 2005. The objective of the focus groups was to test reactions from the field with regard to the alternatives for possible changes to Ohio's abuse, neglect and dependency laws.

Sets of alternative statutory proposals were developed for each of the following categories of child maltreatment:

- Physical abuse
- Sexual abuse
- Emotional maltreatment
- Domestic violence
- General neglect

- Medical neglect
- Educational neglect
- Substance abuse
- Dependency

These alternative proposals were developed using the recommendations of the ABA as a result of their research regarding abuse, neglect and dependency statutory schemes in various states across the country; NCALP's Ohio-specific review of case law and statutory language; data collected through NCALP's Ohio field research; and statutory language from other state models.

The alternative proposals were sent to participants several days prior to focus group date to provide the opportunity for review and evaluation prior to the meeting itself. During the focus groups, which typically lasted approximately two hours, participants were asked to consider the following questions, which remained posted throughout the meeting, as a starting point for the discussion:

1. Of the four alternatives presented (including current Ohio law), which do you prefer?
2. Of the alternative that you prefer, what *don't* you like?
3. Of the alternatives that you do not prefer, what *do* you like?

Participants were encouraged to dialogue about the benefits and detriments of the alternatives. The researcher's role was that of neutral facilitator whose function was to keep the discussion moving, monitor time, ask clarifying questions and respond to questions raised by the participants.

Nine focus groups were conducted in four counties. In order to allow for in-depth discussion in a relatively brief time period, each group in Focus Groups 1-4 and 6-9 was asked to evaluate alternative proposals for four or five of the nine topic areas as set out in the chart below, allowing approximately 30 minutes for each topic.

Focus Group 1	Focus Group 2	Focus Group 3	Focus Group 4
Physical Abuse Sexual Abuse General Neglect Substance Abuse	Physical Abuse Sexual Abuse General Neglect Substance Abuse	Physical Abuse Emotional Mal. Educational Neglect Child in Need of Protective Services Approach	Physical Abuse General Neglect Medical Neglect Educational Neglect
Focus Group 6	**Focus Group 7**	**Focus Group 8**	**Focus Group 9**
Sexual Abuse Emotional Abuse Domestic Violence Dependency	Sexual Abuse Emotional Abuse Medical Neglect Domestic Violence Child in Need of Protective Services Approach	Emotional Abuse Educational Neglect Medical Neglect Domestic Violence Substance Abuse	Emotional Abuse Emotional Abuse Domestic Violence Substance Abuse Dependency

Focus Group 5 was six hours in length; therefore, all nine sets of alternative proposals were tested with this group. As with the interviews, detailed notes were taken with the group's permission regarding the reactions, comments, and suggestions of the participants.[19]

Selection of Alternatives for Testing

The selection of alternative proposals for statutory change was informed by the legal research conducted by NCALP and the ABA, input from survey responses, the intensive field interviews, and Subcommittee input. In synthesizing the legal and field research, NCALP generated an extensive and comprehensive list of areas of concern. NCALP then distilled this broad range of concerns down to a list of ten over-arching topic areas to be addressed in further national research by the ABA.

For each of these general subject areas, the ABA provided a summary of statutory models currently in use by other jurisdictions, as well as recommendations regarding particular models and outline of additional issues to consider in planning statutory changes. Then, drawing on both the national and Ohio-based legal research as well as the wide range of reform suggestions culled

from its field research, NCALP formulated three broad options for its approach to statutory reform. The options ranged from a simple revision of existing law to a full scale restructuring of the existing statutory construct within the context of a new practice model. The three general options considered were as follows:

1. A revision of existing statutes/regulations to eliminate such things as confusing cross-references, ambiguous definitions, redundant categories and over-inclusive categories (a minimum fix).

2. A more comprehensive rewrite of the statute incorporating, in addition to the revisions referred to in Option 1, "topic by topic" revisions of each category of maltreatment, with new definitions for each category.

3. A full-scale, over-all restructuring of both the fundamental statutory scheme and the current practice model, incorporating the topic-by-topic revisions referred to in Option 2.

Summary of Alternatives Selected for Testing:

Given the scope of the inconsistencies, problematic language, ambiguities and other areas of concern identified, Option 1, a simple revision of existing law, was quickly ruled out. Alternatives were then developed and tested in relation to Options 2 and 3. The following is a summary of the testing process:

"Topic by Topic" Revisions

To test the contemplated "topic by topic" revisions, we developed a set of four alternatives for each of the nine topic areas. One alternative in each topic area incorporated current law; the other three alternatives consisted of statutory variations ranging from very specific, detailed definitions to very broad definitions. These alternatives were presented to the focus groups in charts containing side-by-side comparisons, drafted in actual proposed statutory language.[20]

Revisions to Overall Child Protection Statutory Structure

A second category of alternative proposals involved a more fundamental restructuring of the conceptual underpinnings of the statute. These proposals include various forms of a "Child

in Need of Services" or "Child in Need of Protective Services" model, as well as Alternative Response options. While these models would certainly require substantial statutory changes in order to be implemented, more importantly, they represent varying degrees of a fundamental shift in child welfare practice toward a non-fault based system.

In general, these models focus on the condition of the child rather than the behavior of the caretaker. They are philosophically child and family-centered, decreasing the emphasis on fault of the caregiver without removing accountability or compromising child safety. There are several advantages to models of this type, including avoidance of the quagmire that results from a fault-based system where dependency is used as a bargaining tool in the courtroom as well as increased flexibility and potential for child protection agencies to successfully engage families in needed services. It should be noted here, that although these models are being presented as a separate category from the more topically-based statutory changes, the two categories are certainly not mutually exclusive. The recommendations for topical changes outlined in the previous section should be considered in conjunction with these proposals for more fundamental systemic change. In addition, the Child in Need of Protective Services and Alternative Response models presented below should be considered in combination with one another.

"Child in Need of Services or Protection" Model

The only identified substantial alternative statutory structure to an abuse/neglect or abuse/neglect/dependency (or another variant on that same fundamental structure) was the "single-category" or "Child In Need of Services" model. While states also use the labels "Child In Need of Assistance" or "Child In Need of Care and Protection," these labels have widely varying meaning in the states in which they are currently employed. In several cases, these labels are merely categories within a traditional abuse/neglect statutory structure. Narrow uses

of such a term, along with its use in defining a structure wholly different from an abuse/neglect construct, were considered by the Subcommittee.

In New Hampshire, Virginia, and Massachusetts, Child in Need of Protective Services is used to describe a disposition separate from abuse and neglect and outside the primary jurisdiction of child protection agencies. A child in need of services is usually a very specifically defined troubled or truant youth. The court or the children's services agency may find that a child is in need of services; however, this finding does not warrant removing a child from his or her home or the involuntary imposition of a case plan. This is the state's way to provide services to families who are not under abuse or neglect investigations but whose child is still in need of attention. If a child is found to be in need of services, community services are offered to that child and to the child's family.

In Washington, Child in Need of Protective Services is used to describe a disposition separate from abuse or neglect which is still within the primary jurisdiction of child protection agencies. Again, the Child in Need of Protective Services definition is very specific; it is generally reserved for families in which a child needs protection because of conflict between the child and parent produces dangers to the health or safety of the child. This is usually evidenced by a child's truancy, running away from home, residing outside the home, or substance abuse. This is the state's way to intervene in families even if the family is not under an abuse or neglect investigation but when the child is in need of protection. If a child is found to be in need of services, the court may order removal of the child from the family home, with the intent to reunify; the court may also order services to the family. In this system, many features of a child in need of services will overlap with a fault based abuse/neglect system.

The last Child in Need of Protective Services model, and the broadest, exists in Indiana and other jurisdictions. In this model, Child in Need of Protective Services describes the status

of the child rather than focusing – at the outset -- on those who may or may not have done something to a child. All circumstances which would cause a child in a fault-based system to be declared abused, neglected, or dependent would, in a Child in Need of Protective Services state, result in the child being declared "in need of services." Accordingly, those statutes which describe abused, neglected or dependent children in a state operating under that model would be imported to serve as the characteristics of a "Child In Need of 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 solely upon the needs of the child with case plans aimed at correcting the circumstances which have resulted in harm or risk to the child.

Alternative Response Model

Research conducted by the NCALP and the ABA went beyond identifying broad support in the literature for the family-centered focus these systems provide to exploring and comparing the specific features of different models. The national child welfare literature review and the national statute review phases of the project revealed common major elements among alternative response systems, including

- The availability of two or more tracks to assist the child protection agency in providing the most appropriate response for each family's individual circumstances
- The use of specific screening tools and decision-making protocols to guide the process of assigning a case to the appropriate track
- The repeated use of safety and risk assessment tools to guide case decision-making, to monitor family progress, and to re-assess whether a case has been "tracked" properly
- Specific statutory mandates guiding the "tracking" of the most serious cases
- Flexibility to "re-track" a case if it becomes apparent that another response path would be more appropriate for the family or if child safety issues develop

This phase of the project also revealed some fundamental differences among alternative response systems that would serve as the basis for the selection of state models for further research and comparison, including:

- The number of tracks or response paths built into the system—dual versus multiple tracks
- The nature of these tracks
- The point at which a case is assigned to a particular track—intake versus disposition
- The level of inclusiveness at the front-end of the intake process

Several state models were initially reviewed for their varying features reflecting the fundamental differences noted above, including Louisiana, Michigan, Minnesota, Mississippi, Missouri, South Carolina, Virginia, and Washington. The list was further narrowed by review of published research measuring and documenting the outcomes of alternative response systems. In particular, studies were examined for Minnesota, Mississippi, Missouri, and Virginia.

Three of these four models —Minnesota, Mississippi, and Missouri — are examples of dual-track alternative response structures. These models feature a two-track system in which families may either receive a traditional child protection investigation or be diverted to a family assessment track. The dual-track approach is the most common among alternative response structures. Of these dual-track systems, Minnesota's was selected for further study and comparison to other fundamentally different structures. Minnesota's alternative response program was implemented and rigorously evaluated through a 14-county pilot program prior to statewide implementation. In addition, the state of Minnesota's child welfare system is a state-supervised, county-administered system similar to Ohio's.

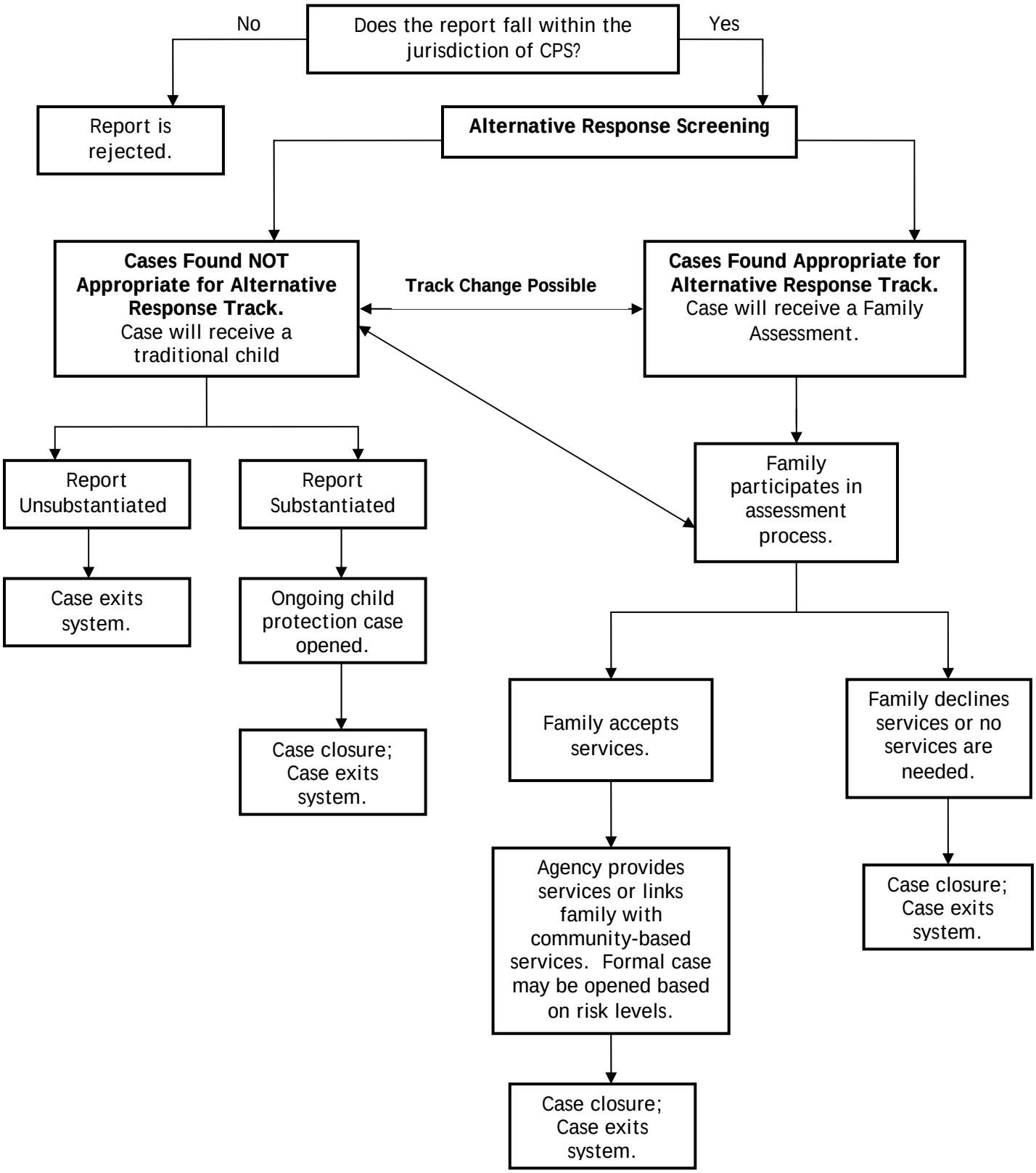
Virginia and Michigan are examples of multiple track models—alternative response systems featuring more than two tracks. Virginia's model features the investigation and assessment tracks (very much like the dual track systems) along with a third "referral response

track" at the intake level. This referral response track gives the agency authorization to respond to cases that fall outside of the jurisdiction of child protection but that still may impact the welfare of a child. The Virginia model was discarded at this juncture for two reasons. First, although this model includes one additional track, the overall structure and flow of the case process closely resembles that of the Minnesota dual-track approach. Secondly, stakeholder and Subcommittee feedback indicated that a move toward greater inclusiveness at the front-end of Ohio's child welfare system would not be practical or desirable at this point in time given the lack of resources available to agencies to handle such an expansion of duties.

The Michigan model was also selected for further study and comparison. The national literature review phase of the project revealed strong support in the professional literature for its case management tools and protocols. In addition, the Michigan model varies significantly from the Minnesota model in structure and case flow. Rather than having two diverging tracks assessed and assigned at the outset of the case flow process, the Michigan model features five differentiated tracks that are assigned post-investigation. These dispositional tracks give the agency specific guidance on appropriate levels of intervention with families based on a given family's individualized circumstances and measured levels of risk of future harm for children.

Specific features of the Minnesota and Michigan models were studied and compared, and key informant telephone interviews were conducted with personnel from both the Michigan and Minnesota Departments of Human Services. These interviews provided deeper insight into each model's philosophical underpinnings and procedural elements as well as the benefits and challenges of each state's respective model.

The Following Flow Chart illustrates the case flow process of the Minnesota model:



Information from the Institute of Applied Research Presentation to California CPS Practitioners, 2005
http://www.iarstl.org/papers/CAPresentation.pdf

Notable aspects of the Minnesota Alternative Response Model:

- The initial screening decision as to whether or not a case is appropriate for the Family Assessment track is made with the information gathered in the report. In Minnesota there are 13 types of reports that are statutorily required to be investigated, so the first question is whether the report falls within one of these 13 categories. If the case is not statutorily required to be investigated, a screening tool is then applied, which helps to discern other possible reasons a case might need to go directly to the investigative track. In most counties, differential response screening decisions are made by a screening team.

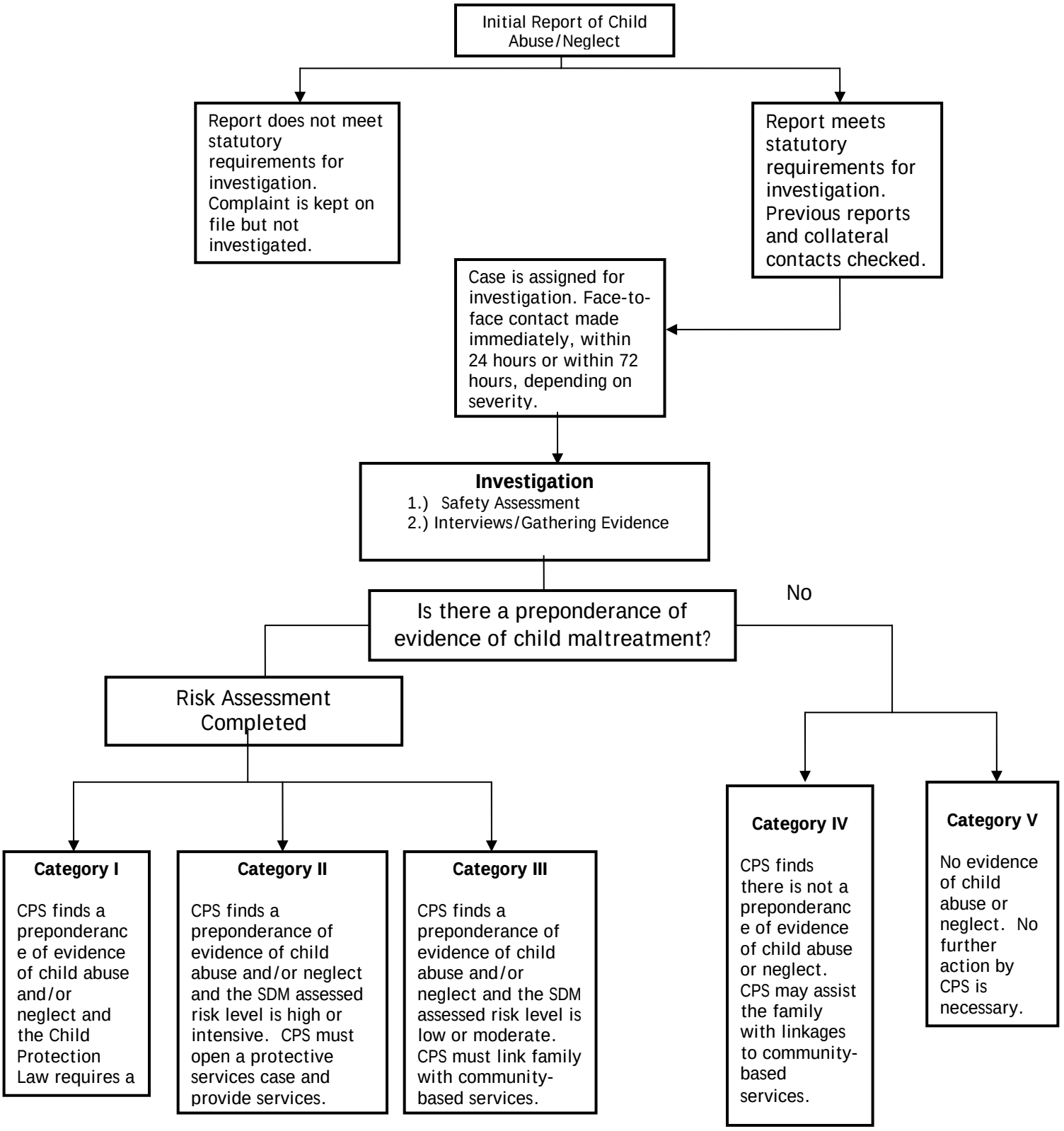
- This screening decision is made prior to any face-to-face contact with the family. This is critical to the success of the alternative response path because it completely changes the focus of the initial contact with the family. For families assigned to the Assessment track, the worker emphasizes from the outset that he/she is not there to make a determination of whether child maltreatment occurred but to help identify any family needs and provide access to services to help minimize stressors, strengthen the family, and help keep kids safer. When going out on a Family Assessment, the worker is coming from a strengths-based perspective, which aids in engaging caretakers from the outset.

- The initial face-to-face contact is made within a period ranging from immediately to up to 5 days – depending on the severity of the report.

- A worker has 45 days to complete either the investigation or the Family Assessment. In both cases, the use of safety and risk assessment instruments is required, but how they are implemented is different. In the Family Assessment track, these tools are completed face-to-face with the family. In the investigation track, these tools are typically completed without direct parental input.

- An investigation results in a determination of whether the maltreatment is substantiated or unsubstantiated. A Family Assessment results in voluntary services, no services, or in cases where the child's safety or risk of future harm are at unacceptable levels, the agency **must** provide services until the risk level is lessened. If need be, a case may change tracks from assessment to investigation (or from investigation to assessment). A written service plan is developed with the family following a Family Assessment.

The following Flow Chart illustrates the case flow process of the Michigan model from MI DHS website: http://www.michigan.gov/dhs/0,1607,7-124-5452_7119_7194---,00.html



Notable aspects of the Michigan Differential Response Model:

- In the Michigan model, the differentiated response does not occur until after an initial determination that there is sufficient evidence of child maltreatment and the risk of future harm to the child has been assessed. The five category dispositional system gives clear direction to public children services agencies about appropriate levels of ongoing intervention justified by both the evidence of prior maltreatment and differing levels of risk of future maltreatment.

- In cases when there is an emergency removal, the case is immediately tracked to Category I. Michigan's Child Protection Law specifies additional circumstances under which a court petition (Category I designation) is required.

- A worker has up to 30 days in which to complete the initial investigation. In cases where the agency determines that there is a preponderance of the evidence that child maltreatment occurred, a Family Risk Assessment is conducted to determine whether the risk of future harm is "intensive," "high," "moderate," or "low." There is a built-in risk assessment "discretionary override" for workers to assign a higher risk level in cases with unique circumstances that would warrant such action. All discretionary override decisions must be approved by a supervisor.

- In cases with risk levels deemed "high" or "intensive," the agency must open an ongoing child protection case. Cases with "moderate" or "low" risk levels (Category III) must receive referrals for appropriate community-based services. The agency does not provide any direct services (other than case oversight) for these cases. Agency resources are thereby dedicated to the most at-risk families. The agency can keep a Category III case open for up to 90 days while monitoring the family's progress with community-based service referrals.

- Category I and II cases are entered in the state's Central Registry – Category III cases are not.

- The Family Risk Assessment is completed every 90 days throughout the life of the case. As risk levels and family progress are re-assessed, a case may be tracked to a different, more appropriate category.

Conclusions

Both the Michigan and Minnesota alternative response models successfully aid Child Protective Services in achieving more precise service delivery for children and families. In creating an alternative to the traditional child protection investigation, the Minnesota system has improved the agency's capacity to productively engage caretakers in the change process without compromising child safety. Michigan's system has successfully provided greater clarity to child

protection agencies regarding appropriate levels of intervention while facilitating the allocation of agency resources to the families at greatest risk. Minnesota's model clearly illustrates the paradigm shift to the more family-centered, strengths-based approach that the State of Ohio is moving toward, while the Michigan model provides for the clear direction and specificity that are lacking in our current dispositional categories. Therefore, an ideal alternative response model for Ohio's child welfare system might be a hybrid model that encompasses the relative strengths of both the Michigan and Minnesota models.

Summary of Focus Group Responses

"Topic by Topic" Revisions

All of the focus groups generally tended to favor greater specificity in the statutory language. In each of the nine subject areas, most of the participants preferred the first alternative which, typically, was a more specific type of definition.

Participants, obviously sensitive to ambiguities in the current laws, identified terminology in the alternatives that would benefit from further definition (e.g. "lasting harm," "not dangerous," "reasonable and moderate", " and substantial risk of harm" (physical abuse), "seriously held beliefs" (medical neglect), "controlled substances" (substance abuse). The group members also offered suggestions with respect to terminology that they believed should be deleted. For example, nearly all participants suggested removing the "opposite sex" terminology from one alternative sexual abuse statute, pointing out that adults frequently perpetrate sex abuse upon victims of the same gender. Another suggestion was that the phrase "intent to permanently sever" not be used to define abandonment in an alternative neglect statute, because requiring proof of intent would unnecessarily complicate abandonment cases.

There was nearly unanimous agreement on some issues. All groups but one agreed that the emotional maltreatment law should not require a formal diagnosis. All agreed that the seriousness of the domestic violence in a home should be considered when determining whether a single act is enough to warrant intervention. The groups agreed that schools should be required by law to attempt to deal with educational issues prior to contacting the Public Children Services Agencies, and that the religious exemption should be retained in medical neglect cases, with the State permitted to intervene only in life threatening cases. On other subjects the groups were divided. For example, they were evenly split on the issue of whether any behavior by a child could indicate emotional maltreatment, or whether it should be "behavior consistent with a diagnosis of a diagnosable mental health condition."

Attorneys analyzed the proposals with an eye to their impact on the provability of allegations. For example, both attorney groups expressed concern about requiring a "pattern of behavior" in domestic violence situations, suggesting that either the "pattern of behavior" language be replaced with "repeated", or "pattern" should be clearly defined. Public children services agency staff, on the other hand, viewed the alternatives with an eye toward how they would impact their case management. Among the suggestions by public children services agency social workers and supervisors: add Licensed Independent Social Workers and Licensed Professional Clinical Counselors to the list of those who can identify emotional harm to child, but remove medical doctors; make Emotional Maltreatment Alternative 1 more readable by breaking it into sections; and provide examples of behaviors that constitute emotional maltreatment (e.g. berating, name-calling…).

Several of the initial topical recommendations were modified as a result of the input of the focus groups.

Revisions to Overall Child Protection Statutory Structure

Focus groups were questioned regarding their opinions on the Child in Need of Protective Services child protection model. Most participants were unfamiliar with this concept, and the reaction among those unfamiliar tended to be skeptical. Interestingly, of the few who were familiar with the Child in Need of Protective Services concept or came from states that utilized a Child in Need of Protective Services-like model, most tended to approve of this approach and spoke positively about its benefits.

Concerns commonly raised were that a Child in Need of Protective Services model would:

- greatly expand the types of cases Public Children Services Agencies would be expected to serve, without a corresponding increase in funding;
- fail to hold abusive and neglectful parents accountable for their actions;
- preclude the therapeutic value of honesty in the casework relationship; and/or
- make it difficult to document a history of abuse or neglect, thereby compromising the ability to build a case over time to protect maltreated children.

The consensus was that these concerns, while important to address, should not preclude adoption of a carefully-constructed Child in Need of Protective Services Model.

RECOMMENDATIONS FOR CHANGE

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. The following sections detail the rationale for the recommendations in relation to each topic area and set out the actual proposed language for the corresponding code sections.

Recommendations Regarding Revision of Existing Statutes/Regulations

A simple "fix" of existing law is not recommended. Merely re-organizing and cleaning up statutory and regulatory language will not solve the fundamental issues identified, particularly the concerns related to scope of abuse, neglect and dependency services. It is recommended that changes be much more broad-based and comprehensive.

Recommendations Regarding Overall Child Protection Statutory Structure

The Subcommittee recommends that a new practice model, based its study of "child in need of services" models of other states, be adopted. This model is intended to incorporate the best features of existing systems and to shift the focus of child protective services from punishment to protection.

A copy of the Subcommittee's proposed statute, discussed section by section below, can be found at Appendix 13.

"*Child in Need of Protective Services" Model*

Rationale for Recommendations

Ohio should revise its overall child welfare statutory structure and should adopt a "Child in Need of Protective Services" structure. Such an approach would 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.

Although most states simply give juvenile courts civil jurisdiction over families when a child has been "abused" or "neglected", many states have laws that provide for juvenile court "civil" intervention in families due to child maltreatment under non-pejorative definitional labels. These include a child being "in need of care and protection" (Massachusetts Chapter 119 § 24) or the court making an overall "dependency" finding (e.g., Arizona, California, Florida, and Pennsylvania).

Ohio's current child protection system focuses first on whether someone has harmed a child or put a child at risk of harm and whether an individual who has done so is culpable for that conduct. It is time to change that focus. Ohio law should first inquire whether a child is a need of state intervention, regardless of whether it is someone's "fault" that the child is in need of those services.

Though the title of the statute is focused on the child, and not the parent, the Subcommittee does not suggest that there be no requirement for proof of parental responsibility in order to justify a court's adjudication. However, a "Child in Need of Protective Services" approach to child welfare would utilize the circumstances described in the topical categories below to establish the circumstances in which a child protection agency would be authorized to intervene in the life of a family and child, with the protection of injured and at risk children paramount, with state and intervention only authorized when articulated conditions – independent of fault – were demonstrable.

Upon a child being adjudicated "in need of services," the agency and court would establish a dispositional case plan, just as they do now. Less agency and judicial time and

energy would be focused on whether a parent should carry the "abuser" or "neglectful" label and more would be focused on the child's circumstances and needs.

Parents would still be accountable for conduct harmful or risky to their children and would need to correct behavior in accordance with a well-developed case plan. And child protection workers would be encouraged to focus on the needs of children rather than on the understandable desire to punish parents who harm or endanger their children. By maximizing systemic focus on child protection as opposed to parental punishment, more children may be able to avoid the trauma of separation from bad parents who are not putting their children at substantial risk.

Recommended Statutory Language

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.**

Scope of Agency Authority

Under the proposed statutory construct, the jurisdiction of public children services agencies is limited in terms of the kinds of cases in which they can involuntarily intervene in a family to circumstances in which a parent, legal guardian or legal custodian has caused harm or risk of harm to a child. Under current Ohio law, public children services agencies have had the discretion to investigate and involuntarily intervene in a wide range of situations that do not involve any culpability on the part of the child's parent, legal guardian or legal custodian. Most notable are the so-called "stranger-danger" cases, in which the child is harmed by an outsider who has no ongoing access to the child and whose behavior could not have been anticipated or prevented by the parent.

The recommended statutory language reflects two well-established principles: (1) that the primary responsibility for child protection rests with a child's parents and (2) that state interference with parental rights is constitutionally limited. Unless parents cannot fulfill their responsibility, or forfeit their right to parent due to some act or omission on their part which harms their child or places the child at substantial risk of harm, there is neither need nor justification for state intervention. Agency involvement in the absence of some indication of

parental culpability constitutes an unwarranted infringement on parents' constitutional liberty/privacy rights.

Many agencies regularly cross this constitutional boundary, reasoning that the fact that a child has been or may be harmed entitles or requires them to intervene. Such agencies may conduct intrusive, time-consuming, involuntary investigations of the child's family in such cases. Although recognizing the constitutional due process rights associated with actions for removal or for termination of parental rights, agencies often fail to recognize the applicability of similar constitutional limitations in less intrusive contexts, such as preliminary investigations of abuse/neglect reports.

As the proposed statutory revision recognizes, however, proof of parental unfitness is constitutionally necessary to support forced government intervention, especially since such intervention can result in that parent's temporary or permanent loss of custody. The Supreme Court noted two decades ago that the "absence of dispute [concerning the fundamental nature of the parent-child legal bond] reflect[s] this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *see also Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)("[i]t has long been recognized that the right to raise one's children is included as part of guaranteed liberty interests."). Parents have a constitutional right to the care, custody, and control of their children that includes the right to be free from interference by the state in raising their child, so long as *they do not harm or seriously endanger* their children. Thus, state intrusion (through the juvenile court's civil child protection process) is permissible only if strict due process safeguards are observed –such as notice and proof of the specific parental acts or omissions that justify state intervention.

Although civil in nature, juvenile court child protection cases share certain similarities with criminal prosecutions of offenders. They are initiated by the state. The potential impact on the parent is severe: a victory by the state (adjudication) can result in temporary damage to the parent-child relationship and placement of their children in foster care, followed by potential action to legally end the parent-child relationship. A federal court has called termination of parental rights "a drastic, final step which, when improvidently employed, can be fraught with danger." *Alsager v. District Court*, 406 F.Supp. 10, 24 (S.D. Iowa 1975), *aff'd per curiam*, 545 F.2d 1137 (8th Cir. 1976).

It is clear to nearly everyone involved with child protection issues that situations in which a child's removal or the termination of parental rights is imminent require full respect for parent(s)' constitutional rights. However, what is less universally acknowledged is that these rights attach at *all* stages of child welfare proceedings, from the initial response to a report of child maltreatment through a final case disposition. In order to intervene constitutionally, even at the initial response stage, there should be a nexus 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.

Two federal cases – one arising here in Ohio -- graphically drive these points home. In *Calabratta v. Floyd*, 189 F.3d 808 (9th Cir. 1998), agency workers coerced entry into a home, without a warrant, in order to investigate an anonymous tip of child abuse. While inside, an agency worker required the mother to remove a child's clothes to check for bruised. Such conduct, the courts held, violated the parent's right to because no exigency existed. Despite the agency's claim that the "social worker was doing just what she was supposed to do under state administrative regulations (*id. at 812),*" and should thus be afforded protection not available to

police officers, the Court of Appeals rejected the agency's claim for qualified immunity to liability stemming from the non-consensual entry. The Court noted:

> The Fourth Amendment preserves the 'right of the people to be secure in their persons [and] houses . . . .' without limiting that right to one kind of government official....

Id. at 814, citations omitted.

In a similar case here in Ohio, *Walsh v. Erie Department of Job and Family Services,* 240 F. Supp.2d 731 (N.D. Ohio 2003), parents sued a county agency and others, asserting that their state and federal constitutional due process rights were violated where agency workers conducted a warrantless search of their home on an anonymous tip that their children were living in unsafe conditions. Responding to the agency's claim of immunity, the Court stated:

> Despite the defendants' exaggerated view of their powers, the Fourth Amendment applies to them, as it does to all other officers and agents of the state whose requests to enter, however benign or well-intentioned, are met by a closed door. There is, the defendants' understanding and assertions to the contrary notwithstanding, no social worker exception to the strictures of the Fourth Amendment.

Id. at 746-47.

Contrary to fears expressed by some agency staff, 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 need of protective services.

Others have expressed concerns that clarifying the need for parental culpability prior to involuntary intervention in a family by the state will undermine efforts to protect or assist a child who has been harmed or is at risk of harm by someone other than a parent. Yet again, so long as that harm or risk has occurred as a result of some act or omission on the part of the parent, state intervention is appropriate. If the parent acquiesces or encourages the maltreatment, or negligently fails to prevent it, then state intervention is triggered. Absent such parental involvement, however, upon learning for the first time about the harm or risk, the responsibility to protect remains with the parent, not the state. The agency may choose to provide services to the extent that they are requested or voluntarily accepted by the parents, but may not force such services. There are other systems equipped to address such situations, most notably law enforcement.

There are also 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 eliminate this responsibility (as is specifically stated in the recommended statutory language), but the parameters of such response are outside the scope of this project.

Clearly articulating the parameters of the agency jurisdiction will greatly reduce, and hopefully eliminate, unwarranted governmental intrusion into the lives of families that are meeting their child protection responsibilities, and will provide much-needed guidance to agencies and communities as to the proper scope of public children services agency involvement.

Further, although strict judicial findings of "parental fault" may not be constitutionally mandated, any state law that permits a court to adjudicate a child abused, neglected, dependent, or "in need of protective services" –thus permitting the state to forcibly intervene in the parent-child relationship –will likely not pass constitutional muster without mandated judicial findings related to parental acts or omissions. That is, agency and court decisions will most likely withstand scrutiny and review when a factual showing is made that a parent is in some way responsible for the child's injury or risk of injury, through proof of a parent's culpability or that the parents' "condition" renders them unable to provide minimally adequate care.

Recommended Statutory Language

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, by itself, may constitute clear and convincing evidence 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.**

Recommendations Regarding Individual Topical Areas

Topical Areas Addressed

Based largely on input received from field research and from the Subcommittee, but guided as well by the national and Ohio-specific legal research, the proposed recommendations were narrowed to eight general topic areas. A global change in each topic area included revision in the labels for categories of child maltreatment to reflect a new emphasis on language phrased in terms of child impact rather than parental conduct, as follows:

- 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

Following the field and legal research, including the testing of alternative proposals for change through focus groups and a survey of the Subcommittee, and after extensive discussion among the Subcommittee, the contractors and various stakeholder groups, the following recommendations as to the content of ideal legislation in each topic area were developed.

Recommendations for Change and Rationale for Each Topic

Physically Harmed

Rationale for Recommendations

Ohio-specific information gathered through legal and field research contributed to our recommendations with regard to physical harm (under current law termed "physical abuse"). Problems identified included: (1. confusion caused by the current ambiguous language and cross-references to the criminal code; (2. a lack of definitive guidance with regard to when corporal punishment rises to the level of abuse; and (3. frustrations expressed by mandated reporters and public children services agency staff alike concerning differences in the ways in different professions define child maltreatment.

The national research also identified factors that should influence the formulation of model statutes. One key consideration in developing a definition of "physically harmed" is the degree of specificity desired in describing the types of physical harm to a child that justify state intervention. Some states define physical harm broadly, using terms such as "physical injury" or "harm to a child's health or safety," an approach that may broaden the discretion of prosecutors and judges. Other states narrow the definition by specifying an exclusive list of physical symptoms or by requiring that harm be permanent or long-term. Still other states include a list of physical symptoms to supplement, rather than narrow, a general definition.

Physical harm may also be defined in terms of parental behavior. That is, certain parental acts may be deemed so dangerous or threatening to children that no further proof of harm is required. Other possible dimensions to consider in defining physical harm include the risk of harm that is sufficient to establish maltreatment; and the required intent of the parent or caretaker in connection with the maltreatment.

In developing possible alternatives for defining physical abuse, we rejected models which cross-referenced criminal codes, those which failed to specify actual behaviors that constituted

abuse, language that was over-inclusive as to the actual perpetrator (e.g. includes others than parents guardian custodian), and language that failed to specifically distinguish between abuse or neglect, identifying all children as "abused or neglected."

Recommended Statutory Language

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.**

Sexually Harmed

Rationale for Recommendations

Current Ohio law's cross-references to the criminal code for the definition of child sexual abuse are confusing and needlessly cumbersome; these cross-references also appear to result in the exclusion of categories of conduct that should be considered sexually abusive. Like Ohio, most states define acts that constitute sexual abuse of a child by reference to their criminal codes. Many of those criminal laws, however, are focused on a broader range of child sexual abuse perpetrators than intra-familial abusers (i.e., offenses within the home), which should be the proper focus of civil child protection laws. Further, criminal definitions may exclude conduct that should form the basis for intervention in the child welfare context.

For these reasons, we recommend a statutory approach that defines child sexual abuse for purposes of child maltreatment reporting, investigative substantiation, and civil (juvenile court) child protective intervention with family-focused language within the civil child protection law, rather than referencing criminal statutes. We chose the term "sexually harmed" as the label for this category of child harm.

In developing possible alternatives for defining child sexual harm, we avoided models that cross-reference criminal codes to define sexual abuse. We also rejected language that is over-inclusive as to perpetrator, language that requires public children services agencies to deal

with stranger-danger situations in which there are no continuing child protection issues, language which bases the definition of sexual abuse on the intent of the adult, and language that discriminates on the basis of sexual orientation.

Recommended Statutory Language

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.

Emotionally Harmed

Rationale for Recommendations

Recommendations regarding emotional harm 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, and one that looks to several different provisions for definition.. Moreover, under current law mental injury is extremely difficult to prove and even more difficult to tie to a single parental act or omission as is required by many Ohio courts.[21]

Another consideration in drafting an emotional harm statute is how domestic violence is to be treated within the statutory umbrella. Few states specifically include exposure to domestic violence in their child maltreatment statutes (those that do include Alaska, California, Florida, Minnesota, Montana, Utah, and Puerto Rico). Many states, however, include children exposed to domestic violence in their civil restraining order laws, often as an aggravating circumstance. All states address domestic violence in their child custody laws. It was the ultimate conclusion

of the Subcommittee that Ohio will continue, for the present, to address domestic violence within all the framework of "emotional harm" provisions.

As we developed alternative statutory models for defining emotional harm we avoided models that were too stringent in requiring either a diagnosable or diagnosed injury, those requiring a link between a specific act and the child's condition, and language that would tend to include single acts that are not severely humiliating or degrading.

Recommended Statutory Language

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.

Harmed by Exposure to Substance Misuse

Rationale for Recommendations

We deemed it vital to include in a statutory treatment of substance abuse, or misuse, as it impacts children to include:

- specific inclusion or reference to harm from substance misuse as including conduct resulting in infants born with illegal drugs in their systems.
- inclusion of exposure of children to the manufacture or sale of dangerous drugs as part of the statute, not as a reference to the criminal code. Inclusion of definitions and specific terms or categories of drugs should be carefully crafted to avoid under-inclusiveness.

- Guidance on whether parental substance abuse is alone sufficient to constitute child neglect, and whether, and under what circumstances, there must be showing of harm to the child from such abuse.

- Guidance on the nature of the harm that must be shown

The label of the recommended provision was given careful thought. We avoided use of the term "substance abuse" in order to avoid the implication that use must rise to the level of a diagnosable impairment in order to support a showing under this law. We also believed it important to distinguish between conduct that is permitted by law, such as providing one's own child alcohol, which should require a showing of harm or risk of harm to the child, and those in which harm is presumed, such as providing a child illegal drugs.

Recommended Statutory Language

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.

Lacking Necessary Health Care

Rationale for Recommendations

In developing specific statutory language for the category of harm currently known as "medical neglect" under Ohio law, we sought to strike a balance between the right of parents to determine when medical care is necessary and what medical care is appropriate, and the interests of the state in preventing harm to children. Elements that we determined should be addressed in the statute included:

- Specification both of parental responsibilities with regard to provision of medical or psychological treatment for children and of acts that constitute medical neglect.
- Definition, elimination or substitution of key terms that are subject to widely different interpretations—words such as "adequate," "proper or necessary" and "necessary for the child's health, morals, or well being."
- Narrowly tailored exceptions for failure to provide medical treatment in the practice of religious beliefs. Such exceptions:
    - should not excuse *all* behavior premised on religious practice, but should set parameters for reasonable conduct in reliance on religious beliefs.
    - should set constitutionally-recognized parameters on the nature of "religious beliefs" requiring deference
    - should contain explicit authorization for medical treatment to be sought and approved despite the parents' religious objections, where needed for the child's safety and welfare.
    - should defer to parental discretion, except where necessary to protect the child

Recommended Statutory Language

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.**

Lacking Legally Required Education

Rationale for Recommendations

States disagree in relation to whether "educational neglect" or, alternatively, failure to provide for necessary education, should be included in abuse, neglect and dependency laws and whether child protective services involvement with families is appropriate in such cases. Some state laws reflect the belief that this is an issue that should be handled exclusively through state truancy laws, excluding the traditional child protective system from such cases.

About half the states, however, have laws that provide for mandatory reporting, child protective services involvement, and judicial child protection proceedings when parents fail to arrange for necessary education for their children. It was important, in fashioning an appropriate statutory response to educational negligence on the part of parents, to recognize that the primary responsibilities for ensuring a child's school attendance are first with the parents but secondly with the *school*. Thus, any changes in law should include a requirement that the school

itself make diligent efforts to procure parental and student compliance with compulsory school attendance laws.

We thus developed a model in which the school has stated obligations that must be met prior to an education provider requesting public children services agency involvement in cases that only involve deficient school attendance. This model gives agencies discretion in deciding when and how to become involved in such situations, and provides for court involvement to compel compliance by education providers with their statutory obligations. The statute also addresses those situations in which failure to attend school is symptomatic of other child protection issues.

Recommended Statutory Language

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 a substantial, good faith effort to investigate and enforce Ohio's compulsory school attendance laws has been made or when the notice fails to provide the information required in section 2, above.

4. If a substantial, good faith effort to investigate and enforce Ohio's compulsory school attendance laws has not been undertaken, 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 it 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.**

Lacking Necessary Care and Supervision

Rationale for Recommendations

This new category reflects a modification of Ohio's current "neglect" category. The current law's use of ambiguous, value-laden words has contributed to inconsistencies from agency to agency, caseworker to caseworker, and court to court in terms of the types of parental omissions that are deemed to constitute "neglect." Practitioners repeatedly request guidance as to the parameters of conduct warranting public children services agency intervention.

National research indicates that child maltreatment law can encompass many different acts or omissions by a caretaker. Many states define neglect very broadly, using terms such as "failure to provide basic care," without defining a basic level of care for which the caretaker should be responsible. Some state definitions are not only broad, but circular in their logic, using the word "neglect" within the definition of neglect. The degree of specificity of conduct or required care that is desirable is also an issue. Most states choose to add specific types of care which must be provided by the parent. Typically included are adequate shelter, nutrition and supervision.

Some states use the term “lack of supervision” interchangeably with the term “neglect.” For example, a lack of supervision is defined in some states as a failure to provide adequate care, food or shelter. Other states use the term “lack of supervision” to describe the situations in which the child is not properly attended. Many states also include in their definitions, in addition to the acts or omissions of the caretaker, a requirement that the act or omission have a negative effect on the child or risk of such an effect. For example, such definition might require that the act caused (or placed the child at substantial risk of) physical or emotional harm.

In an attempt to clarify what conduct should be actionable, some states have added a “reasonable person standard” –a standard of negligence based on what a reasonable parent or caregiver would do under the circumstances. Such language does not, however, remove subjectivity from the determination of whether a particular act or failure to act justifies state intervention. In addition, some statutes require that the act place the child at risk or harm, taking into account the child’s age and abilities. This prevents the state from automatically defining an act or omission as neglect without full consideration of whether the behavior was reasonable under the circumstances.

Some statutes require that neglectful acts be continuous or that the caretaker show a pattern of such behavior. However, requiring the existence of a pattern could preclude the inclusion of serious, but singular, acts from the definition of neglect. For example, leaving a small child home alone overnight only once warrants state intervention.

“Abandonment” is a closely related issue often addressed in neglect statutes, although many states fail to define or clarify the word “abandonment.” States that have attempted to clarify “abandonment” have taken different approaches. The common law definition of abandonment of a child was based on case law referring to the abandonment of property, i.e.,

acts showing a settled and firm intention to forego all parental rights to the child. All states have broadened the concept of abandonment, but to widely varying degrees; for example, definitions of abandonment appearing in state law use such terms as "conscious disregard of parental responsibility," "failure to maintain a normal parental relationship," "failure to provide adequate support and supervision" or "failure to visit or maintain contact."

Based on the foregoing concerns, we included the following elements in our recommendations for a provision labeled "Lacking Necessary Care and Supervision":

- Articulation of the specific "parental cares" (duties) which, if omitted, constitute a lack of care or supervision
- Articulation of factors to be considered in determining whether a parental omission is neglectful
- Avoidance of terms such as "adequate," "proper," "morals," "well-being," etc. that lend themselves to individual interpretation; to the extent possible, we replaced them with *quantifiable* terms
- Avoidance of a distinction between "fault" and "non-fault"- based conduct, with the focus instead being the condition of the child[22]

Recommended Statutory Language

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

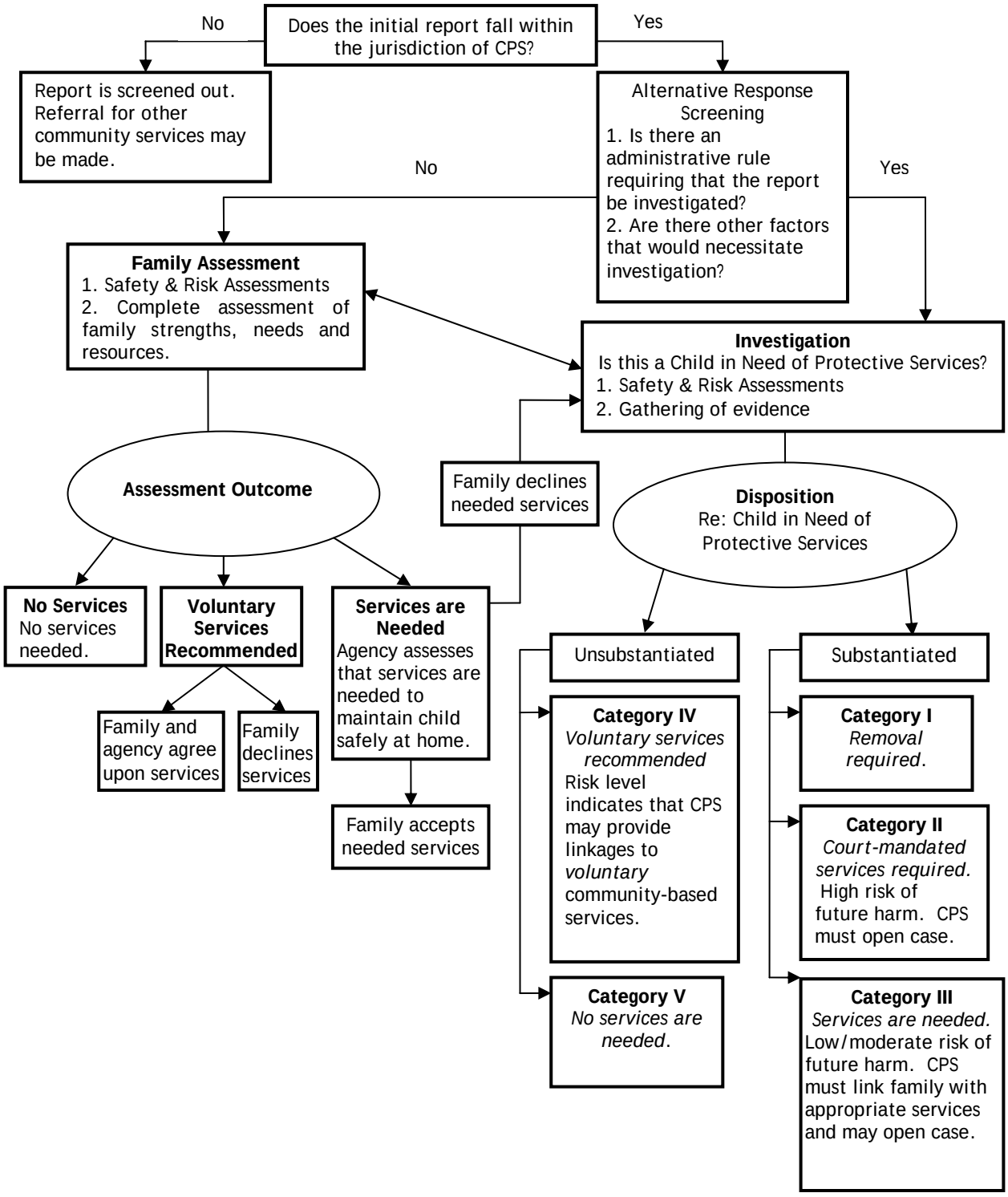
c. the failure to provide the life necessities described above creates a substantial risk that the child would suffer injury which could result in an adjudication of a child in need of protective services under any provision of this chapter.

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.

Alternative Response Model

The Subcommittee recommends statutory adoption of a hybrid alternative response model, combining elements from both the Michigan and Minnesota models, within the framework of a Child in Need of Protective Services structure, with the practice processes for the model to be set by administrative rule. Such a hybrid model is represented by the diagram on the following page.

Alternative Response Hybrid Proposal



This model reflects initial categorization of cases through the proposed alternative response system. Re-assessment would occur at regular intervals throughout the life of the case to determine whether a category change or case closure is appropriate.

Recommended Hybrid Model Features:

- **Statutorily authorized dual investigative and family assessment tracks.**
  The creation of a dual track alternative response system in Ohio would provide public children services agencies an approach that would substantially increase their capacity to engage caretakers in a proactive relationship. The family assessment option is consistent with current best-practice standards for family-focused child welfare service provision. This track should be made available through an alternative response screening process implemented as soon as the agency has accepted a report of child maltreatment. This process should include the application of a well-designed decision-making tool in order to help ensure the best possible track placement for a case from the outset. Permitting public children services agencies to initiate family contact from the assessment rather than the investigative perspective creates the foundation for a positive and productive partnership between the agency and the family.

- **Criteria that would mandate an investigation defined by administrative rule.**
  There should be requirements defined by administrative rule for specific types of child maltreatment reports to be automatically assigned to the investigative track. Examples of these may include reports involving potential criminal child abuse, sexual abuse allegations, reports involving maltreatment that resulted in hospitalization of the child, or cases where there were previously investigated and substantiated reports of child maltreatment.

- **Strong alternative response screening, risk, and safety assessment processes, as defined by administrative rule.**
  Carefully designed and empirically tested screening, safety and risk assessment tools are imperative for the successful implementation of an alternative response system. For this reason, many alternative response jurisdictions, including Minnesota and Michigan, have elected to work within the Structured Decision Making (SDM) framework created by the Children's Research Center of the National Council on Crime and Delinquency. The Michigan SDM case management model was a finalist for the Innovations in American Government Award. The SDM model seeks to provide caseworkers with the tools to

improve accuracy and consistency in decision-making from intake to case closure. SDM components include screening and response priority instruments to aid in the process of assigning a case to the investigative or assessment track and to help determine which reports require the most immediate action. The SDM model also includes rigorously designed safety and actuarial risk assessment instruments developed to inform agency decisions with regard to both immediate and future child safety. Additional SDM features include child and family strengths and needs assessment tools, case planning standards, and case review protocols.

The state of Ohio has invested significant resources in developing screening, safety and risk assessment tools through the CAPMIS pilot project. An essential factor for consideration must be how these tools would be aligned within an alternative response framework. Substantial study and evaluation of these instruments would be necessary in order to make that determination. Adequate training in the proper use of any of the screening, safety and risk assessment tools ultimately selected is another critical factor for the successful implementation of alternative response. Improperly utilized, even the best tools will not be effective.

- **Provision to allow for re-tracking of cases**.
  In this hybrid model, there is a built-in mechanism for cases to be re-assigned from assessment to investigation (or from investigation to assessment) if it becomes apparent to the agency that the family's specific circumstances would be better addressed by the opposite track. If following a complete family assessment, the worker determines that a family is in need of child protective services, but the family will not accept those services, the agency may then proceed with an investigation and seek authorization for involuntary services.

- **Established timeframes for initiating and completing a family assessment**.
  As there are currently for investigations, there should be designated timeframes for initiating and completing the family assessment process. Without such statutorily defined timeframes there is a danger that there will be a presumption that cases assigned to the

family assessment track are less serious and do not need timely attention. To maximize child safety, the assessment process should be initiated as quickly as possible.

- **Clearly defined needs and result outcome categories**.
  Following a full investigation, there should be clearly defined categories that provide greater clarity to public children services agencies about the appropriate levels of intervention justified by differing levels of risk faced by children. In this hybrid model, once harm has been substantiated or unsubstantiated (or it is determined whether the child is in need of protective services), an investigative outcome category is assigned based on the presence of high, moderate, or low level risk factors for future maltreatment. In this way, the public children services agency's most intensive resources may be focused on the families at greatest risk for future maltreatment, while providing for agency oversight of linkages to other community-based services for cases where the relative risk is lower. In this model, outcome categories may be re-assessed as necessary based on a given family's cooperation and progress (or lack thereof). Likewise, following a complete family assessment, there are clearly defined assessment outcome labels assigned to each case.

Global Recommendations:

The following are broader, more global recommendations that should be considered regardless of the specific type of alternative or differential response model being developed.

- **Centralized oversight.**
  Although Minnesota has a county-administered child welfare system similar to that of Ohio, they have provided for centralized state oversight to monitor consistency and effectiveness in their statewide implementation of alternative response. Initially, there was some disparity among counties in Minnesota with regard to screening decisions and the numbers of cases assigned to the family assessment track. Through centralized oversight, these numbers are beginning to become more balanced throughout the state as decision-making is becoming more consistent.

- **Consultation with states that have established alternative response systems**.
  While extensive research went into the recommendations contained in this report, the work is not yet finished. In order to ensure development of the most effective alternative response system possible for the state of Ohio, we recommend additional research and comprehensive consultation with states, such as Michigan and Minnesota, who have already implemented systems with the elements outlined in this report. These states can provide guidance on critical issues – such as the interface of alternative response and Ohio's Statewide Automated Child Welfare Subsystems Information System ("SACWIS").

- **Consultation with states that are developing alternative response systems.**
  Several other states are currently in the process of developing differential/alternative response systems, including Tennessee, New York, California, and Wisconsin. Consultation and collaboration among states may help inform the process and help troubleshoot to avoid potential pitfalls.

- **Rigorously designed pilot program.**
  Prior to statewide implementation of any alternative response structure, a pilot program should be developed and subjected to the most rigorous evaluation standards. In addition to ensuring sound program design, a pilot effort may aid in achieving "buy-in" throughout the state, as it did in Minnesota when agency personnel learned about alternative response "success stories" from their colleagues in the field.

- **Intensive statewide training effort**.
  In order to achieve the paradigm shift demanded by alternative response and the Child in Need of Services or Protection statutory structure, an intensive statewide training effort would be required. Training should be provided for public children services agency personnel, juvenile/family court personnel, and other system stakeholders. A particular example from Minnesota – where one county prosecutor strongly urged agency personnel to track all physical abuse allegations to the investigation track – illustrates the need for

such multi-disciplinary education involving *all* system stakeholders.

- **Strengthening agency-community collaboration**.

  Strong partnerships between public children services agencies and community-based service providers are an essential foundation for effective service delivery in differential response systems. A particular focus in many alternative response jurisdictions has been building relationships among local child protection agencies and service providers in the greater community. Some states have created multidisciplinary task forces or "community service teams" to form a more cohesive network among existing service providers and to identify and fill gaps in services where needed.

Recommended Statutory Language

M. Alternative Response

1. The Department of Job and Family Services shall promulgate an administrative rule for the implementation of an Alternative Response approach to reports of a child in need of protective services which requires all public children services agencies, through the use of an appropriate set of screening procedures contained in the rule, to respond to reports of a child in need of protective services by assigning the report either to an assessment track or an investigation track.

2. The administrative rule implementing the Alternative Response approach to reports of a child in need of protective services shall require each public children services agency to respond to all such reports as follows:

a. if, in the opinion of agency, the allegations in the report will not result in an adjudication that the child is in need of protective services, the agency shall assign the report to an assessment track which utilizes collaboration between the family and the agency in the determination and implementation of appropriate actions on behalf of the child; or

b. if, in the opinion of the agency, the allegations may result in an adjudication that the child is in need of protective services, the agency shall assign the report to an investigation track which utilizes a comprehensive evidence gathering and case planning process in the determination and implementation of appropriate actions on behalf of the child; and

c. the agency shall assign all reports alleging that a child may be in need of protective services to the assessment track unless its screening procedures establish that the assessment track's collaborative approach is unlikely to adequately protect the child.

3. The administrative rule implementing the Alternative Response approach to reports of a child in need of protective services shall establish:

a. timeframes within which the public children services agencies must make assignments of reports to each track and process reports along each track; and

b. standard labels, and their definitions, for use in describing the results of completed assessments and investigations and any agency determinations made regarding those assessments and investigations; and

c. explicit authority for the public children services agencies to move reports from one track to the other when appropriate.

d. any other provisions necessary for the effective implementation of the Alternative Response approach to reports of a child in need of protective services.

The following is recommended text for an administrative rule implementing the Alternative Response provisions:

Draft of Administrative Rule Implementing the Alternative Response Statutory Provisions

1. Upon the receipt of a report by a public children services agency that a child is in need of protective services, the agency shall, in addition to taking any immediately necessary protective actions, determine, within 24 hours, whether the substance of the report falls within the jurisdiction of the agency, and if so, assign the report to either an assessment or an investigation track.

2. For cases assigned to the assessment track, the public children services agency shall assess the child's safety, any risk of future harm to the child, and the family's strengths, needs and resources within 45 days of the assignment of the report to the assessment track. A case assigned to the assessment track may, at any point in time, be reassigned to the investigation track.

a. Upon the completion of the assessment, each case shall be assigned one of the following needs determination labels: "No Services Needed," "Voluntary Services Recommended," or "Services are Needed." At any time after the assignment of a needs determination label, the agency may change the needs determination label to reflect changes in its risk assessment.

b. When the agency determines that Voluntary Services are Recommended, the agency shall provide information to the family about recommended services and shall, to the extent the agency is reasonably able to do so, assist the family in obtaining any services the family wishes to access.

c. When the agency determines that Services are Needed, the agency shall provide information to the family about the services it deems necessary to protect a child from harm or risk of future harm and shall assist the family in obtaining those services. If the family refuses services deemed necessary by the agency, the agency shall assign the case to the investigation track.

3. For cases assigned to the investigation track an investigation shall be conducted regarding the child's safety and any risk of future harm to the child and shall be completed within 45 days of the assignment of the case to the investigation track. A case assigned to the investigation track may, at any point in time, be reassigned to the assessment track.

a. Upon the completion of the investigation, the case shall be assigned one of the following investigation result labels: "Substantiated," "Unsubstantiated," "Unsubstantiated/Report based on fabricated allegations" or "Unable to Locate."

i. "Substantiated" cases are those in which there is a preponderance of evidence that a child is in need of protective services.

ii. "Unsubstantiated" cases are those in which there is not a preponderance of evidence that a child is in need of protective services.

iii. "Unsubstantiated/Report based on fabricated allegations" cases are those in which the agency has concluded that an unsubstantiated report was based upon fabricated allegations.

iv. "Unable to Locate" cases are those in which, after substantial efforts, as defined in the Ohio Administrative Code, the public children services agency is unable to locate the child or the child's parent, legal guardian or legal custodian.[23]

b. For purposes of this section, "preponderance of the evidence" means evidence which shows that the proposition that is sought to be proved is more likely than not; that the evidence in favor of the proposition is more persuasive than the evidence against the proposition.

c. The agency shall make a needs determination with respect to all cases on the investigation track and shall assign each case to one of the categories described below. A case assigned to any category may, at any point in time, be reassigned to a different category.

i. A "Substantiated Report" will be assigned to one of the following categories:

(a) Category I – Removal required. Cases shall be assigned to this category when the agency determines that a change in the custodial status of a child is necessary to protect the child from injury or substantial risk of injury.

(b) Category II – Court mandated services required. Cases shall be assigned to this category when the agency determines that a change in the custodial status of a child is not necessary to protect the child from injury or substantial risk of injury, but court mandated services are.

(c) Category III – Services are needed. Cases shall be assigned to this category when the agency determines that services are needed to protect the child from injury or substantial risk of injury and that the family is likely to cooperate with the provision of those services.

ii. An "Unsubstantiated Report" will be assigned one of the following categories:

(a) Category IV – Voluntary services recommended. Cases shall be assigned to this category when the agency determines that services are not necessary to protect the child from injury or substantial risk of injury, but that the family would benefit from services which may be available.

(b) Category V – No services are needed. Cases shall be assigned to this category when the agency determines that services are not necessary to protect the child from injury or substantial risk of injury.

The Subcommittee recommends a preliminary pilot period for testing in at least ten Ohio counties of the Alternative Response model. The following is proposed legislation, which can also be found at Appendix 14, authorizing the pilot program:

Child Protective Services – Statutory Authorization for Alternative Response Pilot and Evaluation

1. **The Department of Job and Family Services shall develop, implement, oversee and evaluate, on a pilot basis, an "Alternative Response" approach to reports of child abuse, neglect and dependency. The pilot program shall be implemented in at least ten counties that agree to participate in the pilot program.**

2. **The pilot program shall last eighteen months, not including time expended in preparation for the implementation of the pilot program and any post-pilot evaluation activity. The pilot program, including all implementation preparation and post-pilot evaluation activity, shall be completed by December 31, 2007.**

3. **Public Children Services Agencies in counties participating in the pilot program shall respond to all reports that a child is abused, neglected or dependent as follows:**

    a. **if, in the opinion of agency, the allegations in the report will not result in an adjudication that the child is abused, neglected or dependent, the agency shall assign the report to an assessment track which utilizes collaboration between the family and the agency in the determination and implementation of appropriate actions on behalf of the child; or**

    b. **if, in the opinion of the agency, the allegations in the report may result in an adjudication that the child is abused, neglected or dependent, the agency shall assign the report to an investigation track which utilizes a comprehensive evidence gathering and case planning process in the determination and implementation of appropriate actions on behalf of the child; and**

    c. **the agency shall assign all reports of abuse, neglect or dependency to the assessment track unless its screening procedures establish that the assessment track's collaborative approach is unlikely to adequately protect a child from abuse, neglect or dependency.**

4. **The Department of Job and Family Services shall establish for the Alternative Response pilot counties:**

    a. **timeframes within which the pilot agencies must make assignments of reports to each track and process reports along each track;**

b. standard labels, and their definitions, for use in describing the results of completed assessments and investigations and any agency determinations made regarding those assessments and investigations;

c. explicit authority for the pilot agencies to move reports from one track to the other when appropriate;

d. any other provisions necessary for the effective implementation of the Alternative Response pilot.

5. The Department shall assure that the Alternative Response pilot is independently evaluated with respect to costs, outcomes for children and families, worker satisfaction and any other criteria the Department believes will be useful in the consideration of statewide implementation of an Alternative Response approach to child protection. The measures associated with the 18 month pilot program period shall, for purposes of such evaluation, be compared with those same measures in the pilot counties during the 18 month period immediately preceding the beginning of the pilot program period.

6. The Department is authorized to enact any Administrative Rules necessary to the implementation of this provision.

Alternative Recommendations for Dispositional Categories

The types of dispositional labels appropriate in the hybrid Alternative Response Model recommended above herein are discussed within the context of that recommendation. Assuming, however, that the recommended Alternative Response Hybrid is not adopted, the following are our recommendations for revisions to current Ohio law.

Rationale for Recommendations

Investigative Labels

States take varying approaches to labeling the finding, and the amount of "evidence" they need to support that finding, in a child abuse or neglect investigation conducted by child protective services. Some states have these things specified in their statutes, others in agency written policies that are binding statewide.

The most common "labels" of investigative findings are substantiated/unsubstantiated" or "founded/unfounded." These two sets of terms, as defined by the states, often have the same meanings. Some states mix these terms (e.g., "substantiated/unfounded"). Several other terms

are used by some states that may have three or even more categories of case labels (e.g., true, confirmed, unconfirmed, inconclusive, undetermined, ruled out, unable to locate, verified, indicated, reason to believe, unable to determine, without merit, false, unsupported, and even a catch-all "other").

A few states have moved away from having *any* of these traditional categorizations. One state (MI) by policy, not statute, assigns each completed investigation to a *category* that is services or intervention focused, rather than simply a label (e.g., Category V- services not needed; Category II, child protective services required). "Services required/not required" is also how ND policy categorizes case outcomes. As states move toward including an "alternative response" substituting for investigation, outcomes may, like MN, not have labels assigned to them at all.

Level of Requisite Evidence

The "level of evidence" a worker needs to place a "substantiated" or similar label on a completed investigation also varies from state-to-state. The most common standards (again, some in statute, but often only in agency policy) are "preponderance" of evidence or any "credible" evidence that abuse or neglect occurred. Other standards for substantiation include: reasonable cause or reasonable evidence; probable cause; material evidence; and even clear and convincing evidence (which is a high standard that state courts must use in termination of parental rights cases). Some states do not have, in law or policy, any clear indication of what level of evidence is needed for a case substantiation. It is important to understand that the concept of "evidence" is generally one used by courts. Terms like "preponderance" are also legal terms that may be inappropriate for use by caseworkers unless they are clearly explained in lay terms.

Use of Investigative Outcome Labels

The most important consideration in deciding how to classify and label the results of investigations is how such classifications and labels will be used. If they will be used to determine what cases will be included in a state "central registry", then the next step is to consider who gets access to the central registry and for what purposes. If the central registry is mostly used, for example, to screen people who are applying for jobs with children or for volunteer positions with children, then we should consider which labels (and requirements for such labels) would best protect children without unnecessarily denying opportunities to many adults.

If, as we believe is currently planned, there will be no central registry, the labels of reports are far less important. This is because without a central registry, no one outside of the child welfare agencies will have access to the results of reports and investigations. In addition, without a central registry there is no need to expunge reports when investigations show that there is no evidence of child maltreatment.

Local child welfare agencies should have access to all reports and their investigative outcomes, and this information should never be expunged. When there is a report of child abuse or neglect, the child welfare agency needs to know about all past reports and the resulting investigations. Past investigations that did not establish abuse or neglect can be useful for a number of reasons:

- They may show a past pattern of false and malicious reports by the same person making the current report, making it easier and simpler to resolve the report.
- They may show a past pattern of reports by a number of different individuals, possibly showing that the current report requires very careful investigation.
- Through descriptions of the former circumstances of the family, they may help explain what is currently happening in the home.

If the labels of investigation reports will not govern whether a report is expunged or retained, then what is the effect of such labels? There are several possible uses of investigation labels:

- They may be used for statistical purposes, to measure the incidence of actual abuse or neglect (and to meet state and federal reporting requirements).

- The labels may provide brief shorthand information to help caseworkers receiving future reports to efficiently review the past investigations, deciding what light, if any, prior reports and investigations shed on their current investigation.

- The labels may help discipline the investigation itself, inducing the investigator to sift through and summarize the evidence.

- If the local child welfare agency issues or approves licenses, such as for foster and adoptive parents, they may affect caseworkers' decisions whether to grant such licenses.

Final Observations

These several possible uses of investigation labels not only demonstrate the need to retain investigation labels, but also show that labels alone are insufficient. There should be a carefully designed format for reporting the results of investigation that guide workers in summarizing the relevant facts and in drawing conclusions to support the ultimate label of the investigation.

Regarding the labels themselves, there are several possibilities. First, a term such as substantiated should be retained, with a description of the burden of proof that is easy for caseworkers to understand. "More likely than not, based on the information available" is a simple and accurate description and is easier to understand than the phrase "preponderance of evidence."

Besides "substantiated" or "unsubstantiated," agency forms or guidelines should call for additional information. For example, the report filed by the investigator should specify what specific facts are established and which are not; if a child has been physically harmed, but the investigator could not determine which parent inflicted the harm, this should be stated. For

example, assume that a worker cannot substantiate that a child has been assaulted but there are suspicious facts that are not fully explained. The investigation report should describe the suspicious facts and should explain why the investigation ultimately was inconclusive. For example, assume that a person filed the report maliciously. The investigation report should state that conclusion and list the facts supporting the conclusion. Overall, it should be easy to pull out such key information from investigation reports without reviewing the entire investigation file.

Recommendations as to Statutory Language

Based on our analyses of these laws as well as agency policy manuals and regulations, we recommend the following changes in the law:

1. That the investigative outcome labels in all child protection investigations, and the evidence standard for application of those labels, be clearly stated in statute.

2. That, other than in cases utilizing an alternative response assessment in lieu of investigation, all completed investigations be given one of the following labels:

    a. Substantiated
    b. Unsubstantiated
    c. Unable to locate child/family (which should be very rare)

3. That the evidentiary standard for a substantiated finding be, as specified in state policy and guidelines for practice, a preponderance of evidence, defined as there being more credible facts to indicate that child maltreatment occurred than to suggest it did not occur. Policy and guidelines should also list types of information that would, although not all-inclusive, support a substantiated finding (such as an admission of maltreatment by the person(s) responsible; a child's disclosure; a court adjudication related to the maltreatment; a caseworker or other professional witnessing the abuse; a medical diagnosis of maltreatment; other credible information from both witness statements and observations, as well as caseworker observations, concerning the maltreatment).

4. That investigative findings clearly indicate when a deliberately false report has been made in a specific case.

5. That separate from the investigative "label," the law should require child protective services to categorize every completed investigation and alternative response "assessment" with one of the following category labels:

    a. No services needed

b. Referral made for voluntary community services
c. Child protective services required
d. Court petition required

Recommendations for Education of Various Stakeholders

Significant educational efforts would need to be undertaken in order to successfully implement the statutory and practice reforms outlined in the previous sections. Given the substantial changes under consideration, a number of potential educational recommendations are in the preliminary stages of development. These include:

- ***Intra-disciplinary training in new statutory schemes***. An overhaul of Ohio's abuse, neglect and dependency laws, policies, and practices would require extensive training for judges, attorneys, child welfare supervisors and caseworkers, and mandated reporters to ease the transition to new systems and to ensure consistent implementation of changes throughout the state.
- ***Development of training and practice materials***. Such materials should include a state-wide screening manual providing clear examples of situations that warrant screening-in and those that do not (the CAPMIS Pilot Project Screening Committee draft document is an excellent example of what such a manual might look like), written tools for consistent case assessment and case plan development, and other written materials designed to ensure uniform interpretation and application of the law.

- ***Inter-disciplinary training to bring child welfare stakeholders together***. A consistent message echoed throughout the NCALP's field research was the need for increased collaboration and communication among various stakeholders in the child welfare system, including members of the courts, child protection staff, and mandated reporters. A major multi-disciplinary educational initiative is recommended to foster increased understanding and awareness of the varying perspectives among stakeholders and to encourage collaborative efforts. Such an initiative might include CLE/CEU/CME workshops to bring professionals from diverse backgrounds including law, social work, psychology, education, and medicine together for training specific to child welfare

reform efforts.

- ***Development of a mandated reporter handbook***. Due consideration should be given to the creation of a handbook or manual to give specific guidance to mandated reporters on new definitions of abuse and neglect, when to report, and how cases will be handled when reports are made. This handbook could be used in conjunction with the educational efforts outlined above.

Recommendations for Model Demonstration Programs

- ***Pilot of alternative response model***. Any alternative response model should be implemented on a pilot basis and rigorously evaluated prior to statewide implementation. Counties that are currently being used to pilot the CAPMIS initiative may be an ideal setting for an alternative response pilot, as they would be ideal locations to test the interface of the new CAPMIS screening, safety and risk assessment protocols within an alternative response framework.

- ***Pilot of educational efforts***. Again, educational efforts must be subjected to thorough investigation and evaluation before being implemented statewide. Both intra and inter-disciplinary educational models should be piloted in conjunction with any pilot of statutory and/or practice change

IMPLEMENTATION AND FISCAL IMPACT ANALYSIS

The proposed amendments to Ohio law and administrative rules will require many changes in the systems through which counties address child maltreatment. These changes will significantly impact both the way public children services agencies conduct business and, it is anticipated, the number of cases of child maltreatment that are opened and the extent of services agencies will be responsible for providing.

The impacts described above necessarily will result in fiscal impacts at state, county, and local levels. While it is impossible to predict specific cost increases or savings with a reliable degree of accuracy at this early stage of planning, especially since it has not yet been determined whether the State will adopt an Alternative Response practice model and, if so, what the particular features of the model will be, the following discussion highlights the probable categories of fiscal impact from the adoption of all the Subcommittee's recommendations and whether it is anticipated that the impact will result in increased costs or savings.

Implementation Costs

There will be costs on state and county levels for implementation of the far-ranging reforms recommended herein. IT systems modification will likely be required to integrate new labeling protocols within existing data bases. Interface with the SACWIS system that is now being adopted will also likely result in IT – related expenditures by the State and individual county agencies.

Implementation will also require revision of existing written materials, including those required under CAPTA, those used by mandatory reporters, and those used in training caseworkers and other child welfare professionals.

Implementation costs will also likely include those for personnel to oversee the implementation phase itself, although existing personnel may adequate for the responsibilities involved.

Direct Case-Related Costs

The financial premise of an Alternative Response system might, at first blush, appear contra to the conventional wisdom that says that the extremely limited financial resources typical of most child protection agencies should be carefully allocated, with the lion's share of resources being dedicated to the most severe cases. The reasoning behind Alternative Response instead posits that early intervention in less severe cases should, logically, result in long-term savings; families will become healthier sooner, or be diverted from the system entirely, or be able to avoid recidivism.

A cost analysis of the Minnesota Alternative Response system tends to support this reasoning. The study was intended to determine the relationship between an early financial investment in a case assigned to an alternative response track and the longer term costs associated with those cases. The bottom line of the study: lower incidence of recurring reports in the experimental (AR) families as compared to control families and a slightly lower cost of services to experimental families as compared to control families. The study concluded:

> The cost-effectiveness figures reported … represent positive economic benefits to the state, to counties and to the public at large whose tax moneys fund CPS. However, based on information from families about employment and income differences between experimental and control families, AR must be considered to have positive cost benefits to CPS families as well.
>
> ….[T]he question was asked: How much is a society willing to pay for a reduction in future harm to its children? The findings of this analysis suggest that, if done smartly and with the commitment of social workers, without whose hard work and faithfulness to the AR model none of this would be remotely feasible, it may be possible to achieve CPS goals at a long-term reduction in public costs, but only if upfront investments are made.

Training Costs

Although it is anticipated that if an Alternative Response model is adopted, case worker training will, eventually, be incorporated into the standard training offered by the Ohio Department of Job and Family Services, there will be costs associated for initial training in the new system for both individual county agencies and at the State level.

There will also be costs associated with training of other state employees who are responsible for aspects of child welfare case management, such as prosecutors, agency attorneys and other personnel, and judges.

POST-REPORT ACTIVITIES

In January of 2006, the Subcommittee will present its work and final recommendations for consideration by the full Supreme Court of Ohio Advisory Committee on Children, Families and the Courts. The Subcommittee has already engaged the project vendors in efforts to present recommendations to key stakeholder audiences, such as the National Council of Juvenile and Family Court Judges and the Ohio PCSA directors.

These presentations have provided the Subcommittee an opportunity both to inform key stakeholder groups about proposed recommendations and to gather additional feedback concerning the recommendations. Such feedback may be particularly valuable for the purpose of developing training initiatives that will address the major concerns of specific system stakeholders prior to implementation of the proposed recommendations. Should the full Advisory Committee adopt the recommendations of the Subcommittee, project vendors may be retained for similar post-report presentations to additional stakeholder groups.

In addition, if the recommendations are adopted by the full Committee, it is anticipated that state-wide meetings and symposia for the purpose of public education and solicitation of support will be necessary.

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The Subcommittee, the National Center for Adoption Law and Policy, and the American Bar Association Center on Children and the Law relied on many individuals and organizations for input and assistance as they carried out the work on this significant project. We would like to recognize the following for their contributions to improving Ohio's child welfare law and practice:

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- Carole Johnson, Child Protection Response Consultant with the Minnesota Department of Human Services
- Ted Forrest, Manager of Child Protective Services Division with the Michigan State Department of Human Services
- Dr. Aron Shlonsky, Columbia University
- Christopher Baird, National Council on Crime and Delinquency
- Members of the Ohio "Comprehensive Assessment and Planning Model—Interim Solution" (CAPMIS) Pilot Project Committee

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- Public children services agencies
- Public Children Services Association of Ohio
- The Ohio Department of Job and Family Services
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- Juvenile prosecutors and defenders
- Legal Aid attorneys
- Family Law Practitioners
- Teachers and education administrators

- Medical doctors and other health providers
- Law enforcement officials

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- Doug Stephens and Patty Fry, Ohio Supreme Court
- Kristin Gilbert, Ohio Department of Job & Family Services

CONCLUSION

Our Subcommittee was asked to "determine if Ohio's statutory guidelines for the investigation and prosecution of child abuse and neglect properly serve children and families in need of government intervention." Not surprisingly, especially in light of pre-existing criticisms of Ohio law in this regard, which partially motivated this inquiry, we found that substantial revision of Ohio law is needed to improve its clarity and to bring Ohio child welfare practice into the 21st Century.

The changes envisioned by this Report would by no means bring about all the reform in the child welfare system which might be constructive. Nonetheless, our proposed changes to Ohio law represent an effort to start positive change to child welfare case management at the beginning – at the point of screening and intake. These changes are critical for the systemic improvement of the law and practice under which our public children services agencies serve Ohio's at-risk children and families.

If the amendments recommended in this Final Report are adopted by the Ohio Legislature, it will mark the most sweeping reform of Ohio child welfare law in well over a decade. Change is necessary, not only to ensure improved child outcomes through statutory clarity and consistency, but to modify Ohio's overall approach to child protective services to make it more child-centered and family-focused. We need a system that is less adversarial in philosophy and allows for the diversion of lower risk cases to an alternative response track, reserving precious agency resources for those cases that require a more intensive intervention in a family.

The need for reform in child welfare law is acknowledged by all involved with Ohio's child protective services system. The Ohio Department of Job and Family Services has already announced recommendations for changes in other areas of Ohio's foster and adoption law and process and the Governor has publicly endorsed both those reform recommendations and the work of this Subcommittee.

The Subcommittee on Responding to Child Abuse, Neglect and Dependency wholeheartedly recommends the changes proposed in this report and encourages the Advisory Committee on Children,

Families, and the Courts to accept the report and take immediate steps to advance the implementation of those proposals.

January 3, 2006

ENDNOTES

[1] *Final Report, Ohio Child and Family Services Review*, U.S. Department of Health and Human Services, Administration for Children and Families, January 2003 (found at http://jfs.ohio.gov/ocf/finalReport.pdf).
[2] The ABA report is attached as Appendix 1 hereto
[3] A copy of the Supreme Court RFP for this project, Number 2004-11, is attached as Appendix ("App.") 2 hereto.
[4] NCALP and the ABA submitted proposed language for statutory treatment of children harmed by exposure to domestic violence; however, the Subcommittee determined that this type of harm should not be included in the proposed revisions as a separate category, as it is subsumed in the treatment of "emotional harm" and other categories of harm included in the recommendations.
[5] Frequently, such cross-references are to criminal code provisions in ORC Chapter 2919. For example, the type of abuse called "endangerment" in ORC 2151.031(B) is cross-referenced for a definition to the criminal provision ORC 2919.22 (which merely lists endangerment as a type of "abuse"). The abuse, neglect and dependency statutes also cross-reference to the criminal code for definitions of sexual abuse.
[6] Complete results of this review are included as App. 3 hereto; analysis of how the statutory language may negatively impact field practice is included in the topical analyses contained in App. 4.
[7] A chart with abstracts of 200 selected cases from the 800+ originally reviewed is at App. 5.
[8] A full report of the ABA's research methods and conclusions is at App. 9.
[9] For a complete annotated bibliography of the national literature review, see App. 6.
[10] Source: Minnesota Alternative Response Evaluation, Final Report, November, 2004. L. Anthony Loman, PhD and Gary L. Siegel, PhD, Institute of Applied Research, St. Louis MO; online at http://www.iarstl.org .
[11] Source: The Missouri Family Assessment & Response Demonstration, Impact Evaluation Final Report, January, 2000, L. Anthony Loman, PhD and Gary L. Siegel, PhD, Institute of Applied Research, St. Louis MO; online at http://www.iarstl.org .
[12] Source: Differential Response In Missouri After Five Years, Final Report, February 2004, L. Anthony Loman, PhD and Gary L. Siegel, PhD, Institute of Applied Research, St. Louis MO; online at http://www.iarstl.org.
[13] Source: State of Mississippi Title IV-E Child Welfare Demonstration Project, Final Evaluation Report, June 2005, Executive Summary, L. Anthony Loman, PhD and Gary L. Siegel, PhD, Institute of Applied Research, St. Louis MO.
[14] Source: *Best Practice, Next Practice: Family Centered Child Welfare*, National Child Welfare Resource Center for Family-Centered Practice, Spring, 2001, online at http://www.cwresource.org/Online%20publications/Spring%202001.pdf
[15] For a copy of the survey and the compiled results, see App. 11.
[16] The edited notes of these interviews are found at App. 7.
[17] A copy of the Interview Questionnaire is found at App. 8.
[18] Detailed conclusions in relation to each of these areas are found at App. 4.
[19] See App. 12 for charts of focus group comments.
[20] For specific language of alternative proposals see App. 10.
[21] One field respondent participating in the survey noted: "ORC sec 2151.03(A0(6) an d2151.031(D) use the archaic and unclear term 'mental injury.' The definition of mental injury in ORC 2151.011(B)(22) requires that the mental injury be caused by an act or omission that is described in the endangering child criminal statute. Further, the definition of 'mental injury' in ORC 2151.01(B)(22) requires an act or omission described in ORC 2919.22 requiring the patching of a 'description' from the criminal code into this juvenile code definition. But mental injury is not clearly described in the endangering child statute…"
[22] It should be noted that this provision addresses the needs of children regardless of parental "fault" or "lack of fault." One circumstance, in addition to parental disability, that frequently leads to such findings is poverty. Families on public assistance are four times more likely than those who are not to be investigated and have their children removed on the basis of child maltreatment (Dana Mack, *The Assault on Parenthood: How our Culture Undermines the Family* 67 (1997). Under this model, family poverty issues are intended to be addressed non-judgmentally and cooperatively with parental involvement.
[23] [22] With regard to the "unable to Locate" investigative result label, the Subcommittee recommends the adoption of a defined protocol, contained in the Ohio Administrative Code, which agencies must document prior to assigning the

label. Such protocol might include a specific number of attempted home visits at various times of day, a specific number of attempted telephone contacts to the family and any collateral contacts, and an attempt to contact via certified mail.

Appendix 1 ABA Report to ODJFS (9/10/2002)

REPORT TO THE BUREAU OF FAMILY SERVICES, OHIO JOB AND FAMILY SERVICES

Policies/Practices on (1) Not Accepting (Screening Out) Reports for Investigation, and (2) Definitions/Categories Used for Classifying Report Outcomes after Investigation/Assessment

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(The views and opinions expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association or the United States Department of Health and Human Services, and accordingly, should not be construed as representing the policy of the American Bar Association or the Children's Bureau)

I. Introduction

Request for Assistance

The author of this report was informed that, throughout Ohio, there is considerable variation in how child abuse and neglect reports, particularly reports made by the general public, a) are accepted for investigation or assessment, or b) are summarily "screened out" after information is provided by a "reporter" of maltreatment. I was asked to look at, under the auspices of our National Child Welfare Resource Center on Legal and Judicial Issues, variations in these discretionary "screening out" policies and to report on how such variations might be affected by Ohio laws and agency policies. I was also asked to examine and evaluate regulatory language used to define the state's four separate report disposition categories, and to compare these to case outcome categories used in other states.

The basic questions explored in this analysis are:

- What can be learned from examining county variations in child maltreatment report screening-in and screening-out policies, and related Ohio law and administrative regulations, that might inform improvements in the response to reported child maltreatment?
- What flaws exist in the Ohio policy that defines four case determination categories in which completed investigations/assessments of reported child maltreatment are to labeled, and how might those categories and their definitions be improved?

Materials Reviewed

I examined many applicable subsections of Ohio Revised Code Section 2151 that address reporting of child abuse and neglect. I reviewed Ohio Administrative Code Section 5101:2-1-01 in which the State created its four child abuse/neglect report disposition categories: substantiated report, indicated report, unsubstantiated report-no evidence, and unable to locate. I also reviewed other child protection related subsections of Administrative Code Section 5101.

I was provided a county-by-county chart, dated 7/12/02, of "Child Abuse/Neglect Statistics Incidents Reported in 2001" that had data on how each Ohio county classified child abuse and neglect case dispositions by category. I also received copies of screening-in and screening-out policies and procedures for eight Ohio counties.

Importance of This Inquiry

The decisions made by public child protective service (CPS) agencies to accept – or not accept – reports of child maltreatment have a major impact on government efforts to protect children from abuse and neglect. If reports are inappropriately rejected (and proper referrals for services not made), the children affected may fail to receive from the counties the appropriate

protective responses that the Ohio legislature contemplated, thus placing many children at higher risk of endangerment.

With child safety now clearly (and appropriately) a national child welfare system priority pursuant to the 1997 federal Adoption and Safe Families Act, the decision to screen a report in or out takes on special policy significance. As states undergo their federal Child and Family Services Reviews, Ohio and other states must recognize that one of the key elements being evaluated is whether children are re-reported for abuse and neglect after the state's earlier involvement with the child and family. It is thus critical that CPS provide the correct response to a report of a child's maltreatment the very first time such a report is made. Inappropriately screening-out a report can have life-or-death significance for an at-risk child.

As the rate of child maltreatment reporting rose dramatically in the 1980's and 90's throughout the country, state legislation and CPS agency regulations nationwide underwent many changes related to how CPS carries out its report intake and investigation process. The high volume of child maltreatment reports has led to both formal and informal state and county "screening out" policies and practices. In 1998, for example, there were over 2.8 million reports to CPS agencies nationally. CPS screened in about two-thirds of these reports (66%) as warranting an investigation or assessment, while it screened out approximately one-third of these reports (34%). [Note: I was not provided with any Ohio county screening-in versus screening-out report rates.] The most common reasons CPS agencies nationally give for screening reports out are: a) they don't meet the statutory definition of maltreatment; b) they don't contain sufficient information upon which to proceed; or c) the problem cited in reports does not pertain to the service population of the CPS agency.

Each year, the U.S. Department of Health and Human Services, through its National Child Abuse and Neglect Data System (NCANDS), identifies how many reports of child maltreatment are made and then investigated or assessed, as well as how many investigated reports fall within each of several case determination categories. The most common categories are "substantiated" and "unsubstantiated." In 1998, according to NCANDS data, there were 475,534 substantiated reports and 1,041,205 unsubstantiated reports, nationally. That year, Ohio reported 11,690 cases as substantiated, another 9,448 as "indicated," and 27,057 as unsubstantiated.

Ohio Data Shows Considerable County-by-County Variation

Ohio's counties show great variation in how many cases fall within each of its case determination categories. 2001 Ohio data provided to me shows that while several counties have an approximately equal number of substantiated and indicated cases, several others have from 1.5 to 6 times as many substantiated as indicated reports (and in some other counties, just the reverse). Counties appear equally varied in reported statistics on unsubstantiated versus their combined substantiated/indicated reports.

It would be impossible for me to explain all the reasons for these variations in case determinations, given the limited materials I was provided, and our not having done on-site interviews and case record reviews. However, I know that where caseloads are high, various practical ways are often found to lower the burdens on individuals responsible for investigating and acting on reports. I also recognize that there are pressures on CPS agencies, such as complaints about "over-intervention" and inappropriate CPS action, which can lead to case-limiting practices. A major ABA Center on Children and the Law/American Humane Association national study of screening in child protective services (Wells, Fluke, Downing, and Brown, 1989) concluded that there are many factors influencing screening out and substantiation

decisions by CPS agency intake and investigative staff. Among these are, importantly, laws and agency regulations. The analysis I was asked to do for Ohio focused on these two factors.

Key Findings

As will be more thoroughly discussed below, I conclude that several provisions of Ohio Revised Code Section 2151 that define child abuse, child neglect, endangering children, dependent child, and child without proper care can, in their totality, contribute to intake and screening confusion by CPS staff. These multiple provisions, coupled with the lack of comprehensive state guidance to the counties on applying them in decision-making, can also lead to unacceptable variations among counties as to which reports of child maltreatment should be screened in and to what case determination category an investigated report should be given. I also find that Ohio Administrative Code Section 5101:2-1-01 contains four case determination categories and definitions that create confusion and ambiguity on which reports should fall within which category. Administrative Code Section 5101:2-34-06, which specifically addresses screening of reports, fails to give sufficient uniform and specific guidance on what reports must provide, in order to be accepted, with the result that counties have created their own, widely varying, screening-in or screening-out criteria.

II. Screening and Case Determination Problems Related to Ohio Laws

Ohio Revised Code Sections 2151.03(A) and .031 contain definitions of "neglected child" and "abused child" respectively, similar to applicable statutory definitions in other states. These are reasonably clear child maltreatment definitions, and with well-qualified screening staff who are well trained on the application of these definitions, it should be possible to easily and properly decide whether to screen out at intake a report that alleges neglect or abuse. Of course, providing case scenarios during training could better help assure this.

However, there is another definition of child maltreatment in the mandatory reporting law, contained in Section 2151.421. That provision differs from 2151.03(A) and .031 in several ways. It implies that abused and neglected children can include youth under age twenty-one that are mentally retarded, developmentally disabled, or physically impaired. It requires reporting of those children suffering or under threat of suffering a "physical or mental wound, injury, disability, or condition" that "reasonably indicates" child abuse or neglect.

Additional types of child maltreatment are contained in Section 2919.22, which is titled "Endangered Children." This provision of the law prohibits parents from creating "a substantial risk to the health or safety of a child, by violating a duty of care, protection or support." It goes on to include important statutory language distinguishing lawful corporal punishment from forms of parental discipline that are prohibited. It also has a final provision that prohibits parents from supporting their child's involvement in "sexually oriented" or "nudity-oriented" matters or activities.

Furthermore, there are – beyond neglect, abuse, and endangerment – two additional child maltreatment categories in the Code that can be easily overlooked when county CPS agencies receive child maltreatment reports. These are a) those children who fall into the category of "dependent child" (Section 2151.04) and b) those children whose home situations fall within the "child without proper parental care" (Section 2151.05) provision.

State laws should, as simply and clearly as possible, define what forms of child maltreatment must be reported. It is not unusual for states to have one definition of abuse and neglect in their law that addresses reporting of child maltreatment and still another definition of child maltreatment in the law that provides for court jurisdiction over families where maltreatment has occurred. From my description of the laws, above, Ohio appears to have various general

descriptions of child maltreatment scattered throughout several sections of the law. This can make more difficult the provision of instructions for what CPS intake workers must "screen in."

To further complicate things, Ohio, as does some other states, adds a statutory category called "dependent child." It is not clear what the legislature, in creating this category, intended to have happen by identifying an additional set of conditions that might be reported to CPS. Did the legislature intend a report of a dependent child to trigger a CPS investigation? If so, why didn't it say so?

Because "dependent child" provisions are not clearly enumerated within Ohio's conventional abuse and neglect statutory definitions, county CPS personnel may fail to properly follow up on, for example, children (described in Section 2151.04) who are brought to their attention as:

- Without "adequate parental care";
- Lacking care due to a parent's "mental or physical condition"; or
- Living in a "condition or environment" that warrants assumption of government care.

I see little reason for state laws having two, potentially overlapping, categories for child protective court interventions: "abused or neglected child" and "dependent child." With multiple permissible categories for court adjudication, there is substantial likelihood that abuse or neglect cases will be inappropriately "plea-bargained" down to softer "dependent child" adjudications that mask the actual types of child maltreatment that occurred. This can later inhibit successful permanency planning for children who enter foster care, including a clouding of the actual factual record of past child maltreatment that would become relevant in later termination of parental rights cases. According to the *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, published in 1995 by the National Council of Juvenile and Family Court

Judges, "The accuracy of adjudicatory findings should not be bargained away and judges should discourage this practice" (at p. 48).

It appears from the statutes that, when Ohio juvenile courts adjudicate, and make dispositions in, child protection cases, there are no real legal distinctions between the permissible court dispositions for "abused or neglected children" and "dependent children." It also does not appear, from a review of the Administrative Code, that county agencies distinguish between these types of cases, in terms of foster care and other agency services to the child and family.

I have considerable concern, given how "dependent child" is defined in Ohio law (see above three bullets), that "dependent" children who may be in great danger of harm will have CPS reports about them "screened-out" because they don't fit under the statutory definition of "abused" or "neglected" child. In this regard, it is noted that the Ohio child maltreatment report "screening rule" contained in Administrative Code Section 5101:2-34-06 mentions "abuse and neglect" but makes no reference to reports of "dependent" children.

Furthermore, the law, without any explanation, has an apparently old but still operative additional statutory category of maltreated child. This is a "Child Without Proper Parental Care," which under Section 2151.05 includes children:

- With "filthy and unsanitary" homes (we'd guess CPS agencies get many of those reports);
- Whose parents "permit them" to become dependent, neglected, abused, or delinquent;
- Whose parents, although able to do so, don't provide "necessary" care, support, medical attention, or education;
- Whose parents fail to subject them to "necessary discipline."

It is not clear what the intention of the Ohio legislature was in enacting 2151.05. Did it intend these factors to be considered by CPS agencies when determining what action to take on reports of child maltreatment alleging one or more of the four factors bulleted above? One may question the appropriateness of these bulleted criteria as a basis for CPS intervention (and arguably some of this language is overly vague and can lead to inappropriate intrusions into families). However, I can only surmise without benefit of legislative history that children reported to be "without proper parental care" as defined above should receive a CPS investigation/assessment of their family situation.

It is recommended that the legislature amend Section 2151 of the law to have one category for reporting and court intervention, either a) "abused and neglected child" or b) "dependent child" (or, a similarly non-pejorative term like "child in need of care and protection"). Within the definition of whichever one category/label is chosen should come all the various specific types of child abuse and child neglect, including the parental behaviors, failures, and incapacities that support courts taking jurisdiction over children. Having, in one section of the law, a definitional section that encompasses all grounds for child maltreatment intervention would avoid confusion and ambiguity in the following key decision questions that must be answered after a child is reported to CPS:

- Does the report encompass a basis for screening the report in?
- Is there factual support for labeling the report "substantiated" or "indicated"?
- Have the grounds for judicially adjudicating a child as maltreated been proven?

The state must develop an inclusive and clearer set of criteria for these decisions.

III. Screening Reports In or Out– County Practices in Ohio Vary Widely

The State, in Administrative Code Section 5101:2-34-06, has provided counties with some guidance on what elements of a child maltreatment report need to be included in a valid report for screening it in. However, I found considerable variation among the counties on their individual county criteria for screening reports in or out. Of the counties for which I was provided information, I saw no single circumstance used by all counties as a screening in or screening out factor. There was, however, considerable overlap in addition to considerable variation.

For example, counties frequently listed as examples of reports that would be screened out: truant children over 13; unruly or delinquent children; suicidal children whose parents were arranging treatment; incapacitated parents who had made arrangements for substitute caretakers; and persons reported who were over 18. Screening out some of these cases, at telephone intake, may be inappropriate and place children at greater risk. A chronically truant 14 year old may be receiving such minimal parental care that his or her health and safety is in jeopardy. A child may be suicidal because of severe parental abuse or neglect. Reports that are child problem-centered may, or may not, involve parents who are attempting to appropriately help their troubled children. Without an investigation of the report, how would one know?

Likewise, some of the screening out factors listed by multiple counties that relate to parental problems or the family's living environment may, without investigation, deny endangered children the protection they require. For example, parental drug or alcohol abuse (even if the child has not yet been clearly abused or neglected) may be so severe that the child is at great risk of maltreatment. Likewise, some environmental resource concerns expressed within reports – such as children left alone, lack of child immunizations or appropriate clothing, no electricity or

gas in the home – may, upon investigation, reveal some children who are at such elevated levels of endangerment that agency and court intervention may be necessary.

Admittedly, some reports of severe family problems that lack evidence of abuse or neglect of children can risk inappropriate government interventions, especially if caseworkers have been inadequately trained. But to simply screen-out all reports of severe family problems when the reporter can't say that abuse or neglect already occurred is to deny protection to many children who are at considerable risk of serious abuse or neglect.

It should be stated that, despite the wide variations in how counties decide to accept or reject a child maltreatment report for investigation, I did not find any county with screening-out factors that totally lacked some reasonable basis. But I also found that criteria in several counties for screening-in cases often included factors that were nowhere listed in the legislative definitions of "abused child," "neglected child," or "dependent child." Therefore, the state should be encouraged to expand its Administrative Code Section 5101:2-34-06 "Screening Rule" to include uniform criteria for all counties to follow in screening reports, based upon the many child maltreatment categories that have been defined by the legislature.

IV. Categorizing Completed Abuse/Neglect Investigations– Confusion and Ambiguity

It must be candidly stated at the outset that I have seldom seen such confusing and ambiguous definitions of outcome categories in abuse/neglect investigations. Since Ohio maintains a statewide central registry, the ambiguity of these definitions makes it impossible to know what a case listed in the registry really signifies. Each of the four categories listed in Administrative Code Section 5101:2-1-01 will be discussed separately.

1) Substantiated Report. State policy apparently requires that reports with this label have clearer evidence of abuse or neglect than the second category, Indicated Report. Certainly,

parental admissions and court adjudications can form a strong basis for concluding that maltreatment occurred. But what is meant by "or other forms of confirmation deemed valid"? This seems to be a basis for substantiating a report so wide as to "drive the proverbial truck through." I could not find in any part of Ohio law or administrative regulations a uniform state definition, for counties to apply, of what "other forms of confirmation deemed valid" means. It is also not clear whether the "adjudication" referred to is only a juvenile court adjudication, or if it would also would include a criminal conviction for abuse or neglect.

Substantiated reports stay on the Central Registry much longer than indicated reports. Ohio child welfare policymakers wanted a tighter set of requirements for making that stronger finding. This is not necessarily a bad thing, but most other states address this far differently. For one thing, according to the 1998 federal NCANDS report, only seven states have both substantiated and indicated categories. A more reasonable way of having the two separate categories (e.g., as in Pennsylvania) is to have one category only for court-adjudicated cases. This would provide a full measure of due process of law for those parents whose abuse/neglect cases are listed in the registry as substantiated.

2) Indicated Report. This definition is filled with ambiguity. The category includes cases where there are "circumstantial or other isolated indicators" of abuse/neglect "lacking confirmation" and also cases where the caseworker's investigation determines that "the child has been abused or neglected." A lot of different things are thrown together in this category without apparent reason. What are circumstantial or other isolated indicators? That basis, and the need for "confirmation," suggests that policymakers wanted there to be clear and corroborated evidence of maltreatment (e.g., possibly not simply the child's disclosure of abuse without also medical or photographic evidence of abuse). I doubt that CPS caseworkers know much about

what "circumstantial indicators" mean (I don't). And what is an "isolated indicator"? Isn't the first part of this definition for what constitutes an indicated report (a finding that there is something less than clear and corroborated evidence) negated by the latter part that permits this finding when a caseworker simply makes a "determination" that abuse or neglect occurred?

If Ohio policy keeps these two separate categories, then why not, as with some other states, make Indicated Reports those where, upon investigation, a caseworker determined there was (credible evidence) (sufficient evidence) (substantial evidence) to conclude that abuse or neglect of the child occurred? With this category of case determination, aggrieved parents can appeal the determination and challenge the sufficiency of the evidence upon which the "indicated" conclusion was reached.

3) Unsubstantiated Report- No Evidence. For a case investigation to receive this label, there must be a caseworker determination that no child abuse or neglect occurred. Yet, the "no evidence" title suggests something quite different. Does this label apply to cases where there was indeed some evidence of abuse (say, a child's disclosure or a neighbor's alleged witnessing of abuse) but that after a full investigation the worker determined that in fact no abuse occurred? Many other states define "unsubstantiated" by, rather than having to factually determine abuse/neglect didn't occur, a finding that allegations in the report were not supported by credible evidence, a preponderance of the evidence, or whatever level of evidence the state lists as applicable to caseworker determinations of abuse/neglect. Completely ruling out that child maltreatment occurred is, in many cases, quite difficult.

Some people might misinterpret this current Ohio label to encompass "intentionally false reports." It would therefore be preferable, when CPS actually determines that a report was clearly fabricated, for Ohio to have a separate category for those cases, especially since the

NCANDS data system has been attempting to track the number of such reports. Alternatively, another approach (as in California) is to have three basic categories: substantiated (caseworker found credible evidence that abuse/neglect occurred); inconclusive (caseworker had insufficient evidence to determine whether abuse/neglect occurred); and unfounded (caseworker found report to be false, inherently improbable, to involve accidental injury, or to not constitute abuse/neglect).

4) Unable to Locate. This label is given to cases where the family can't be located, either before or during the investigation/assessment. There may be other reasons why a report was accepted for investigation but never completed, other than just a family's disappearance. This category might be appropriately modified "Unable to Complete Investigation/Assessment" with several reasons given why the case falls within this determination.

V. Concluding Suggestions

1. In my opinion, the fragmentation of child maltreatment definitions among various sections of Ohio law, and the lack of comprehensive statewide policies to guide counties in taking appropriate uniform action in screening reports of maltreatment, are major factors in the discrepancy among county responses to reported cases. Likewise, flaws in the definitional framework for case determination labels contribute to inconsistencies among the counties in investigative decision-making and follow-up responses. I urge the Bureau to support changes in the statutes and administrative code that would address these problems.
2. Changing laws and policies are not enough. The Bureau should place a new emphasis on uniform statewide training for intake screeners and investigators on what is, and is not child maltreatment. New training materials should be developed using illustrative case

types, factors in decision-making, and sample scenarios. The quality of the workforce, and the professional backgrounds, for those engaged in intake and investigation should be upgraded.

3. . Statewide research should be supported that examines county records on reported and investigated cases to assess consistency with laws and policies regarding acceptance and substantiation of reports. County intake and investigation workers should be interviewed about their report screening and case determination decision-making attitudes and practices. Every county's case screening criteria should be carefully reviewed and data gathered on each county's percentage of reports screened in and out. Finally, research should be conducted to identify what counties are doing to refer "screened out" families to useful and accessible services that will help prevent child maltreatment.

Appendix 2 Supreme Court RFP #2004-11

The Supreme Court of Ohio

REQUEST FOR PROPOSALS

Number: 2004-11

ISSUING OFFICE: Office of Judicial & Court Services

Date: 03/04/04

The Supreme Court invites proposals on the purchase of research and writing, in accordance with the following specifications:

Regarding dependency, neglect, and child abuse definitions.

Proposals Due to the Supreme Court: March 29th, 2004 at 10:00 a.m.

NOTICE

R.C. Section 9.24 prohibits the Supreme Court from awarding a contract to any offeror against whom the Auditor of State has issued a finding for recovery if the finding for recovery is unresolved at the time of award. By submitting a proposal, an offeror warrants that it is not now, and will not become subject to an unresolved finding for recovery under R.C. Section 9.24, prior to the award of any contract arising out of this Request for Proposals, without notifying the Supreme Court of such finding.

(1) **Overview**

The Advisory Committee on Children, Families, and the Courts was appointed by Chief Justice Moyer of the Supreme Court of Ohio to make recommendations regarding family law initiatives. A *Subcommittee on Responding to Child Abuse, Neglect, and Dependency* (Subcommittee) has been established by the Advisory Committee to:

- determine if Ohio's statutory guidelines for the investigation and prosecution of child abuse and neglect properly serve children and families in need of government intervention;
- make statutory and administrative recommendations to improve Ohio's system for accepting and investigating reports of child abuse and neglect; and
- make recommendations to standardize and make uniform Ohio statutes regarding abuse, neglect, and dependency cases.

The Supreme Court of Ohio is seeking the services of a vendor to provide expert consultation services to the Subcommittee on research, writing, and project management. The final report of the Subcommittee may be used to initiate legislative and program reform.

Disparity in the provision of child protection services between geographical jurisdictions is an inevitable struggle within a county-based system. Two recent documents have prompted the study solicited by this RFP:

1. In its January 2003 Child and Family Services Review Final Report, the U.S. Department of Health and Human Services charged that "Ohio is not consistent in its efforts to protect children from abuse or neglect" and expressed concern regarding "...the absence of clear and consistent statewide criteria for making (this) initial screening decision." This document can be found at http://jfs.ohio.gov/ocf/publications.stm.

2. A report authored by Howard Davidson, Director, American Bar Association Center on Children and the Law, asserts, in part, that "[t]he fragmentation of child maltreatment definitions among various sections of Ohio law and the lack of comprehensive statewide policies to guide counties in taking uniform action in screening reports of maltreatment, are major factors in the discrepancy among county responses..." The report also asserts that "...flaws in the definitional framework for case determination labels contribute to inconsistencies among counties in investigative decision-making and follow-up responses." (Copy of report provided at Attachment A)

The Supreme Court of Ohio expects work on this project to begin by April 30, 2004 and to conclude by October 1, 2005.

(2) **Scope of Work or Deliverables**

The vendor shall work under the oversight of the Subcommittee and shall be responsible for project management. The following specifications describe the activities and responsibilities that shall be expected of the vendor in project management in completing a final report:

A. The vendor shall develop and implement a written plan for the report. The report must include the following:

a. a review of Ohio's civil and criminal statutes regarding the investigation and prosecution of child abuse, neglect, and dependency to identify:
    i. archaic and inconsistent language;
    ii. ambiguities in statutory language that contribute to the absence of consistent statewide criteria for investigating and prosecuting child abuse, neglect and dependency;
    iii. ambiguities in statutory language that lead to conflict or chronic variance in court interpretation between jurisdictions;
    iv. if current language offers public entities (e.g. child welfare, law enforcement, judicial) the most appropriate and/or effective options to serving families;
    v. if current language promotes investigative and judicial handling of cases in a manner that reduces additional trauma to the child victim and the child victim's family;
    vi. if current language promotes investigative and judicial handling of cases in a manner that ensures procedural fairness to the accused.

b. a review of the dispositional categories of child abuse, neglect and dependency (substantiated report, unsubstantiated report, indicated report) defined in Ohio Administrative Code 5101:2-1-01 to identify:
    i. ambiguities in language that cause a disparity in case handling between counties;
    ii. if criteria for dispositional decision-making is sufficiently defined to permit entry of the public children services agency's findings in court proceedings.

c. a comparative review of other states' "model" statutes and/or alternative practices, when appropriate

d. an analysis of current Ohio practice as indicated appropriate by Item A.

B. The vendor shall work under the general oversight of the Subcommittee. The Subcommittee is comprised of selected Ohio practitioners representing the disciplines that will be primarily impacted by the outcome of the report. The Subcommittee will be available to the vendor to solicit outside contacts, provide appropriate information, and assist the vendor's activities as appropriate. The Subcommittee will be staffed by a representative of the Supreme Court of Ohio who will be responsible for advisory committee-related activities and who will act as liaison to the vendor.

C. The vendor shall prepare quarterly updates of study activities.

D. The vendor shall develop a final report that has been approved by the Subcommittee that does the following:

a. describes the activities of the study;

b. proposes statutory changes, including specific language, to address items identified in the report;

c. proposes changes to the Ohio Administrative Code or the Rules of Superintendence to address items addressed in the report;

d. proposes practice and/or administrative changes that address items identified in the report;

e. makes recommendation regarding experimental, model and/or demonstration programs;

f. identifies a fiscal impact analysis of proposed recommendations, including both direct and indirect cost benefits and costs;

g. sets forth necessary steps for implementation of recommendations, including possible training needs; and
h. may set forth a plan for an evaluative pilot site phase to follow, which shall include:
    i. Number of pilot and control sites and selection methodology or recommendation;
    ii. Data collection instrumentation and required training;
    iii. Implementation methodology;
    iv. Training requirements;
    v. On-site technical assistance;
    vi. Time frames;
    vii. Estimated costs;
    viii. Any projected products.

E. The vendor shall participate in five public information activities designed to either solicit outside input and/or present report findings that are identified by the Supreme Court.

F. The vendor shall submit twenty-five copies of the report to the Supreme Court in a time frame appropriate to the plan set forth in item A, but in no case later than October 1, 2005.

The Subcommittee will be responsible for providing the following services to the vendor:

A. Assisting the vendor in identifying areas of issue.
B. Providing representation of individual disciplinary fields, and acting as liaison between respective professional associations.
C. Providing entry to appropriate professional contacts and entities, as appropriate.
D. Responding to vendor requests for input and review of designated materials in a timely manner.
E. Ensuring accuracy and acceptability of the report.

(3) <u>Additional Requirements</u>

A. In addition to vendor anticipated staff and travel costs, the budget should include travel and staff costs to support participation in:
    a. seven quarterly Subcommittee meetings; and
    b. five public information activities.
B. Staff assigned by the vendor to the project should have:
    a. a familiarity with child abuse, neglect and dependency civil and criminal programming and national "best practice;"
    b. an ability to conduct legal research;
    c. an ability to facilitate and assimilate different opinions from a diverse group of individuals;
    d. an ability to work with groups;
    e. a developed writing style with capability of producing informational documents;
    f. the vendor must ensure direct involvement of personnel with sufficient authorization within the organization to ensure that project needs are met within a timely fashion.

C. The vendor is responsible for its own office and support logistics.
D. The selected vendor shall make an in person presentation of their proposal to the Subcommittee at the Supreme Court on Tuesday, April 13, 2004.

All processes and products of the contract must adhere to federal confidentiality laws and restrictions.

(4) Terms and Conditions

The Supreme Court is exempt from taxation. Federal transportation and excise taxes, as well as state excise taxes shall not be included in the proposal prices. Excise tax exception certificates will be furnished upon request.

This purchase will not be subject to state taxes; tax exempt number: 31-6402047.

The Supreme Court has adopted a goal of utilization of certified minority business enterprises where possible in its awards for goods and services. Accordingly, the vendor should indicate a minority business enterprise or when business operations are shared with a certified minority business enterprise.

The Supreme Court represents that it will have adequate funds to meet the obligations that will be incurred by contract. However, the Supreme Court shall have at its option the right to terminate any resulting contract should its appropriations, spending authority, or other revenues be reduced or, if applicable, if grant funds used to support this project are reduced or terminated.

Vendor warrants that it is not subject to an unresolved finding for recovery under R.C. Section 9.24. If the warranty is false on the date the parties sign a contract awarding vendor's proposal, the contract is void *ab initio*, and the vendor must immediately repay to the Supreme Court any funds paid under the contract.

All proposals offered are firm. Check your proposal carefully because errors cannot be corrected after the proposals are opened. It is a condition of any award, under this proposal, that vendors shall deliver at prices quoted, even if in error.

A proposal, upon acceptance by the Supreme Court, immediately creates a binding contract between the vendor and the Supreme Court. Once accepted, it may not be rescinded, canceled, or modified by the vendor.

Any contract resulting from this request for proposals is binding on the successful vendor. Failure of the contractor to meet or perform any of the contract terms or conditions shall permit the Supreme Court to rescind or cancel the contract and purchase replacement articles or services of comparable grade in the open market. The contractor shall reimburse costs and expenses in excess of the contract price necessitated by such replacement purchases to the Supreme Court. The Supreme Court does not waive the right to insist upon future compliance with these proposal specifications when there is undiscovered delivery of non-conforming goods or services.

(5) Notice Regarding Disclosure of Confidential, Proprietary Information and Trade Secrets

The Supreme Court hereby advises vendors that all documents submitted in response to this Request for Proposals, including those documents that purportedly contain trade secret information, will become public records. The Supreme Court will allow the public, including other vendors, to inspect and obtain copies of these documents in accordance with section 149.43, Ohio Revised Code, after the Request for Proposals deadline expires unless: 1) in its response to this Request for Proposals, the vendor clearly identifies the document or document excerpt that the vendor believes is not a public record as defined in section 149.43, Ohio Revised Code; 2) in its response to this Request for Proposals, the vendor identifies the statutory provisions that exempt the document or document excerpt from the public records provisions of section 149.43, Ohio Revised Code; or 3) Supreme Court staff determine that the document or document excerpt is not a public record as defined in section 149.43, Ohio Revised Code. In weighing whether a vendor's proposal contains trade secret information that may be protected from disclosure under section 149.43, Ohio Revised Code, and *State ex rel. Seballos v. School Employees Retirement Sys.* (1994), 70 Ohio St.3d 667, Supreme Court staff may consider the definition of "trade secret" in section 1333.61(D), Ohio Revised Code, and the factors described in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513.

(6) Format and Content of Vendor's Proposal

Submitted proposals should provide a concise delineation of the vendor's capabilities to provide the equipment and perform the services requested. The proposal submitted must provide the requested information in sufficient detail to enable the Supreme Court to evaluate vendors pursuant to the specifications and other requirements.

Solicited vendors responding to the request for proposals should satisfy all the requirements specified in the request for proposals to qualify.

Two complete and signed copies of the proposal must be submitted for evaluation. Please provide the name; telephone and facsimile numbers, including area code; and street and electronic mail addresses of the representatives of the company, the company's business EIN number, and who may be contacted regarding this proposal. In addition, any request for confidentiality regarding the proposal submitted must be clearly delineated by the vendor. Proposals shall be clearly marked as follows:

Supreme Court of Ohio Request for Proposals Number 2004-11.
Attn: Douglas Stephens
The Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215-3431

- **Budget**
  The budget must contain sufficient detail to permit delineation of individual line item costs. Construction of the budget may be on a "cost per deliverable" or actual cost basis.

- **Methodology/Deliverables**
  The methodology section should contain a brief outline, general time frame and any other relevant information regarding how the vendor intends to complete the required deliverables.

- **Staffing**
  This section should identify by name and/or title the staff who will be assigned to this project, their relevant qualifications, and the estimated hours that will be allocated in regards to this project. For each individual included in the project, this section should contain a brief biographical sketch. The vendor shall demonstrate sufficient staff to satisfy the personnel resources needed to meet the study's requirements. The education and experience of staff shall be consistent with job responsibilities.

- **Qualifications**
  This section should include relevant information regarding the qualifications or work history of the vendor that makes the vendor particularly capable of completing this project.

- **References**
  This section should identify at least two, but no more than five, entities for whom the vendor has completed a similar or related project within the past two years. A one to two line description of each project should be included, as well as the name and telephone number of the reference contact for each project.

(7) Evaluation Criteria

The proposals received will be evaluated by the Supreme Court, which may accept or reject any or all proposals, in whole or in part, and may waive minor defects in a proposal, if no prejudice results to the rights of another vendor or to the public.

All proposals will be evaluated on the basis of the vendor's understanding of the project, quality of the proposed solution, services offered, personnel recommended for project, and costs. All information should be presented in the format recommended by this Request for Proposals. With this information the Supreme Court will select a vendor who provides the lowest, responsive and responsible proposal.

(8) Submission of Proposal and Contact Information

Sealed proposals are to be received no later than Monday, March 29, 2004 at 10:00 a.m. The Supreme Court reserves the right to reject any and all proposals. The preparation of the proposal shall be at the vendor's expense. All proposals will be opened on Monday March 29, 2004, at 12:00 p.m., in the office of Judicial & Court Services.

(9) Equal Employment Opportunity Policy

The Supreme Court is an equal opportunity employer. Persons conducting or seeking to conduct business with the Supreme Court are subject to Adm. P. 5 (Equal Employment Opportunity), a copy of which can be obtained from the office issuing this request for proposals.

(10) Discrimination and Sexual Harassment

The Supreme Court prohibits discrimination and sexual harassment. Persons conducting or seeking to conduct business with the Supreme Court are subject to Adm. P. 6(A) (Discrimination and Sexual Harassment), a copy of which can be obtained from the office issuing this request for proposals.

(11) Drug and Alcohol Free Workplace

The Supreme Court intends to provide a drug and alcohol free workplace. Persons conducting or seeking to conduct business with the Supreme Court are subject to Adm. P. 19 (A-C), a copy of which can be obtained from the office issuing the request for proposals.

(12) Attachment

A. Report to the Bureau of Family Services, Ohio Job and Family Services, Howard Davidson, ABA Center on Children and the Law.

Appendix 3 Statute/Regulation Review Notes

First Intake Category: **Child Abuse/Neglect Report**

intake subcategory	statutory reference	definition
physical abuse	ORC 2151.031	"abused child" = non-accidental physical mental injury or death that doesn't match history of incident corporal punishment doesn't count, as long as it's not prohibited by **2919.22**
• see also 5101:2-1-01(A) (same definition) • ORC 2151.05: child without proper parental care –		
sexual abuse	ORC 2151.031	"abused child" = victim of "sexual activity" as defined under ORC Chapter 2907
• see also 5101:2-1-01(A) (same definition), no conviction required		
	Chap 2907 Sexual Offenses	"sexual activity" = sexual conduct or sexual contact, or both "sexual conduct" = vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. "sexual contact" = any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttocks, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

emotional maltreatment/ mental injury	ORC 2151.031	"abused child" = non-accidental mental injury that doesn't match history of incident corporal punishment doesn't count, as long as it's not prohibited by **2919.22**
physical neglect	ORC 2151.03	"neglected child" = parents, guardian, or custodian neglects the child or refuses to provide proper or necessary medical or surgical care or treatment , or other care necessary for the child's health, morals, or well being due to omission of his/her child's parents, guardian, or custodian, there is physical or mental injury that harms or threatens to harm the child's health or welfare
• see also 5101:2-1-01(A) (same definition)		
environmental neglect	ORC 2151.03	"neglected child" = parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence ,
• see also 5101:2-1-01(A) (same definition) • ORC 2151.05: child without proper parental care – filthy and unsanitary home • ORC 2151.011(B)(1): adequate parental care -- provision of adequate food, clothing and shelter to ensure the child's health and physical safety, with specialized services required by the child's physical or mental needs		
medical neglect	ORC 2151.03	"neglected child" = parents, guardian, or custodian neglects the child or refuses to provide proper or necessary medical or surgical care or

		treatment parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition no criminal liability when the parent doesn't provide medical or surgical care or treatment for the child solely in practice of religious beliefs
• see also 5101:2-1-01(A) (same definition) • ORC 2151.05: child without proper parental care –parents, when able, refuse or neglect to provide necessary medical attention		
educational neglect	ORC 2151.03	"neglected child" = parents, guardian, or custodian neglects the child or refuses to provide proper or necessary education
• see also 5101:2-1-01(A) (same definition) • ORC 2151.05: child without proper parental care – parents, when able, refuse or neglect to provide necessary education		

comments:

- seems like there should be some type of cross-referencing going on here, with all instances in both the ORC and OAC cited for each specific subcategory term
    - I'm working on making sure the cross-referencing is complete
- changed "2151.03.1" to 2151.031"
-

what about?

1. **child without proper parental care (ORC 2151.05)** = (other parts "disbursed" above) parents: permit child to become dependent, abused, or delinquent; when able, refuse or neglect to provide necessary care and support; fail to subject child t necessary discipline

2. **deserted child (ORC 2151.3515(A))** = parent voluntarily delivered child to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return for the child; and (OAC 5101:2-1-01(A)) who is less than 72 hours old and has no apparent signs of abuse or neglect

3. **endangered child (ORC 2919.22)** = substantial risk to a child's health or safety by violating a duty of care, protection or support [no such violation if the child is being treated by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body]

   can't do any of the following to a child under age 18 or a mentally or physically handicapped child under age 21:
   - abuse the child
   - torture or cruelly abuse the child
   - administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, that is excessive under the circumstances and creates a substantial risk of serious physical harm
   - repeatedly administer unwarranted disciplinary measures, with a substantial risk that such conduct will seriously impair or retard the child's mental health or development
   - in any way cause or permit the child to in any way participate in material or performance that the offender knows or reasonably should know, is obscene, is sexually oriented matter, or is nudity-oriented matter

4. **out-of-home care child abuse (ORC 2151.011(B)(28))** = committed by a person responsible for the child's care in out-of-home care:
   - engaging in sexual activity with a child in his/her care
   - punishment by denial of proper and necessary subsistence, education, medical care, etc.
   - use of restraint procedures that cause injury or pain
   - administration of medication without a licensed physician's written approval and ongoing supervision
   - commission of any non-accidental act that results in the child's injury or death, or an accidental act that results in a child's injury or death that conflicts with the history of the accident (also 5101:2-1-01(A))

5. **out-of-home care child neglect (ORC 2151.011(B)(29))** = committed by person responsible for the child's care in out-of-home care:
   - failure to provide reasonable supervision appropriate to the child's age, mental and physical condition, or other special needs
   - failure to provide such supervision that results in the child's sexual or physical abuse by any person
   - failure to properly administer, monitor the use of and provide ongoing security for medication
   - failure to provide proper or necessary subsistence, education, medical care, etc for the child's health or well-being
   - confinement of the child to a locked room without staff monitoring
   - isolation of the child for a period of time, creating a substantial risk that continued isolation will impair or retard the child's mental health or physical well-being (also 5101:2-1-01(A))

6. **abandoned child (ORC 2151.03)** = parents failed to visit or maintain contact with the child for more than 90 days, regardless of whether the parents resume contact with the child after the 90-day period

Second Intake Category: **Dependency Reports**

intake subcategory [list not inclusive]	statutory references	definition
overwhelmed parent mentally ill child minor pregnant parent death of parent leaving child without parental care	ORC 2151.04	"dependent child" = any child • who is homeless or destitute or without adequate parental care, through no fault of his/her parents, guardian, or custodian; • who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian; • whose condition or environment is such as to warrant the state to assume the child's guardianship; • to whom both of the following apply: o child lives with a parent with an abuse/neglect/dependency adjudication regarding the child's sibling or any other child living in the home; and o because of such abuse/neglect/dependency of sibling or other child and other household conditions, the child is in danger or being abused or neglected by that parent
• adequate parental care (ORC 21510.11(B)(1)) = provision of adequate food, clothing, and shelter to ensure the child's health and physical safety, with specialized services warranted by the child's physical or mental needs • see also OAC 5101:2-1-01(A)		
	ORC 5153.16(A)(1)	Except as provided in **2151.422 of the Revised Code** the public children services agency shall investigate any allegation regarding an abused, neglected, or dependent child.

notes:

- where did the non-inclusive list come from?

Third Intake Category: **Family In Need of Services**

intake subcategory	statutory reference	definition
emancipated youth	OAC 5101:2-42-19.2	upon request, each PCSA[1] shall provide services and support to former foster care recipients emancipated from the agency's custody at age 17, including evaluation of the young adult's strengths and needs to determine the services to be offered to complement the young adult's own efforts to achieve self-sufficiency, available until his/her 21st birthday.
permanent surrender	OAC 5101:2-42-09	the parents, guardian, or other persons having custody of a child may enter into an agreement with a PCSA or PCPA[2] to voluntarily surrender a child into the permanent custody of an agency at the mutual agreement that a permanent surrender is in the child's best interests; the permanent surrender form shall not be executed until at least 72 hours after the child's birth
Safe Haven/deserted child	OAC 5101:2-1-01	
out of home perpetrator/ stranger danger	OAC 5101:2-34-36	report to the PCSA alleging a criminal act against a child of assault or sexual activity when the alleged perpetrator: • is not a member of the alleged victim's family • has no sanctioned or continued access to the alleged victim • has no relationship with the alleged victim; and • is not involved in daily or regular out-of-home care for the

[1] PCSA = public children services agency
[2] PCPA = private child placing agency

		alleged victim
post-finalization-adoption services	OAC 5101:2-1-01	
preventive services	"see policy paper"	
unruly/delinquent	ORC 5153.16(A)(3)	except as provided in **2151.422** shall accept custody of children committed to the PCSA by a court exercising juvenile jurisdiction

1. **delinquent child (ORC 2152.02, OAC 5101:2-1-01)** = any of the following: any child, except a juvenile traffic offender, who violates any Ohio or federal law, or any ordinance of a political subdivision, that would be a crime if committed by an adult; any child who violates any lawful court order; any child who violates **ORC 2923.21(A)**; any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant; any child who is a chronic truant
    a. **habitual truant (ORC 2152.011(B)(17))** = any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one month, or twelve or more school days in a school year
        vs
    b. **chronic truant (ORC 2152.02)** = any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for 7 or more consecutive school days, 10 or more school days in one school month, or 15 or more school days in a school year
2. **unruly child (ORC 2151.022)** = the child: doesn't submit to reasonable adult control, habitually disobedient; habitual truant not previously adjudicated unruly for being truant; behaves so as to injure or endanger his own or other's health/morals; if a child, before age 18, allegedly commits an act for which he may be adjudicated an unruly child, and the complaint is not filed or a hearing is not held until after the child reaches age 18, the court has jurisdiction to hear and dispose of the complaint as if it were filed and the hearing held before the child reached age 18 (**ORC 2152.27(B)**)

	OAC 5101:2-34-71	The child abuse and neglect memorandum of understanding

		("memorandum") • required by **2151.421** • sets forth the normal operating procedure to be employed by all having the responsibility to report and/or investigate child abuse/neglect, nonsupport of dependents, child endangerment, custodial interference, or contributing to unruliness or delinquency of a child (**2919.21, 2919.22(B)(1), 2919.23(B), 2919.24**) • the memorandum prepared by the PCSA shall be signed by: o the county juvenile judge (or the judge's representative); o the county peace officer; o all chief municipal peace officers within the county; o other law enforcement officers handling child abuse and neglect cases in the county; o the county prosecuting attorney; and o the county department of job and family services, if applicable • the memorandum shall include o a statement that a failure to follow procedures set forth therein is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from any reported case of abuse or neglect or the suppression of any evidence obtained as a result of any reported child abuse or neglect and does not give, and shall not be construed as giving, any rights or grounds for appeal or post-conviction relief to any person o the PCSA's system for receiving reports of child abuse and neglect 24 hours per day, 7 days per week. If the PCSA contracts with an outside source to receive after-hours calls, there must be a signed agreement attached to the memorandum indicating all reports with identifying and demographic information of the reporter and report

		principals will be forwarded to a designated PCSA worker within 1 hour of receipt and that confidentiality requirements will be met. In addition, when the PCSA contracts with an outside source, the memorandum must include the system for informing the general public of the after-hours phone number o the roles and responsibilities for handling emergency and non-emergency cases of child abuse and neglect o a system for consultation among subscribers as it is deemed necessary to protect children including, at a minimum, the PCSA's protocol for consulting with law enforcement, the prosecuting attorney's office, and the juvenile judge for any cases requiring their intervention or assistance o standards and procedures for handling and coordinating investigations of reported cases of child abuse and neglect including sharing of investigative reports and procedures specific to cases which: ▪ involve out-of-home care child abuse or neglect; ▪ require third party involvement; ▪ involve an emergency requiring immediate response; ▪ involve a child death in which abuse or neglect is suspected as the cause; and ▪ involve alleged withholding of appropriate nutrition, hydration, medication, or medically indicated treatment from disabled infants with life-threatening conditions o methods to be used in interviewing the child who is the subject of the report o standards and procedures addressing the categories of persons who may interview the child who is the subject of the report

		○ a system for the elimination of all unnecessary interviews of a child who is the subject of the report ○ the PCSA's system for submitting reports to the central registry on child abuse and neglect ○ a system for receiving and responding to reports involving: ▪ individuals who aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court: • becoming a dependent or neglected child; • becoming an unruly or delinquent child; or • leaving the custody of any person, department, or public or private institution without the legal consent of same ▪ missing children ○ standards and procedures for removing and placing children on an emergency and non-emergency basis ○ the PCSA's system for notifying the county prosecuting attorney or city director of law when any mandated reporter of child abuse or neglect fails to report ○ the PCSA's system for notifying the county prosecuting attorney or city director of law when there is unauthorized dissemination of information
child fatality (non-child abuse/neglect)	"see policy paper"	
ICPC	OAC 5101:2-1-01	
courtesy interview/	OAC 5101:2-42-20	placement evaluation:

supervision		A placement resource, other than a certified residential facility, that is being considered as a placement by a sending agency of another state or territory (not a parent or individual holding legal guardianship for adoption purposes), shall be evaluated as to the placement's appropriateness an Ohio PCSA, PCPA or PNA[3] No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for foster care placement or possible adoption unless such agency complies with the applicable laws of the receiving state governing the placement of children. Placement of children into Ohio shall be made pursuant to OAC **5101:2-42-05.** A placement resource being considered as a family foster home shall be evaluated pursuant OAC **5101:2-7.** A placement resource being considered as an adoptive home shall be evaluated pursuant to OAC **5101:2-48.** An evaluation of an Ohio placement resource completed by an agency of another state for adoption purposes may be incorporated totally or in part by an Ohio PCSA, PCPA, or PNA as a supplement to the home study report. A placement resource being considered as an adoptive home in Ohio by a parent or individual holding legal guardianship in another state shall be evaluated pursuant to OAC **5101:2-42-22**. The PCSA, PCPA or PNA shall submit three copies of its

[3] PNA = private noncustodial agency

		evaluation and recommendation regarding approval or denial of the placement resource and its recommendation regarding placement of the specific child to ODJFS within thirty working days of receipt of an evaluation request from ODJFS. The recommendation regarding placement of the specific child shall only be made after presentation of all available information about the child has been made to the placement resource by the PCSA, PCPA or PNA. placement supervision: A PCSA, PCPA or PNA completing an evaluation utilized for the placement of a child from another state or territory shall also provide supervision and other services as the sending agency's agent and shall provide supervisory reports as requested or no less than quarterly. When a child placed under ICPC[4] moves to another Ohio county, the PCSA initially providing services to the placed child shall make a referral for the continued provision of services on the child's behalf.
	ORC 5103.20	The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows: . . . Article III Conditions for Placement Article V Retention of Jurisdiction

[4] ICPC = interstate compact on the placement of children

	ORC 2151.56	
home evaluation/ visitation assessment	OAC 5101:2-42-18	Before a child is placed with a relative or nonrelative substitute caregiver, the PCSA or PCPA shall follow the following procedures and document its actions in approving the placement setting o collect identifying information on the prospective caregiver and others residing within the home o check the PCSA's child abuse/neglect records for the prospective caregiver and others residing within the home o assess the home's safety by checking the: o home's cleanliness; o absence of hazardous conditions inside and outside; o storing of poisonous and otherwise dangerous or combustible materials; o proper heating, lighting and ventilation; o condition of indoor plumbing and toilet facilities; o installation of a working smoke alarm; o safe storing of weapons, including firearms and ammunitions, in inoperative condition and in a secured and locked area o adequacy of each child's bedding and appropriateness to his needs; and o availability of a working telephone within the home or reasonable access to a working telephone for emergency situations o assess the prospective caregiver's ability and willingness to provide care and supervision and a safe and appropriate placement for the child o initiate a criminal background check on the prospective relative or nonrelative caregiver and all adults residing within the home, to be completed before agency approval of the prospective placement o the PCSA or PCPA shall approve or deny the placement and

		provide written notification of the approval or denial no later than 30 days from the date the assessment was initiated, or the child was placed, whichever comes first ○ the PCSA or PCPA shall not approve the placement when the relative or nonrelative had his/her parental rights involuntarily terminated or when the relative or nonrelative or other adults residing in within the home have been convicted of or plead guilty to any offenses identified in ORC **2151.41.9** if the PCSA or PCPA disapproves of a court-ordered placement, it shall notify the court in writing of its findings and recommend a suitable substitute care placement
postnatal placement services to infant of incarcerated mother	OAC 5101:2-42-60	(A) Ohio children services boards or county departments of job and family services which have assumed the administration of children services functions prescribed by Chapter **5153** of the Revised Code (hereinafter referred to as "agency") are responsible for investigating and recommending a mother's placement arrangements or arranging placements for infants born to women who are incarcerated in correctional facilities. A "correctional facility" is a facility operated by the Ohio department of rehabilitation. (B) Agencies shall establish policies and procedures for coordinating service arrangements on behalf of incarcerated women and their infants with correctional facilities, departments of job and family services, and hospitals. (C) The agency in the county in which the woman was a resident at the time of conviction and sentencing shall be defined as the "responsible agency." In the event that there is no Ohio county of residence, the agency in the county in which the woman was convicted and sentenced shall be the "responsible agency." The

		responsible agency shall have responsibility for helping the mother and the correctional facility plan for the infant including investigation and recommendation regarding whether a placement plan arranged by the mother provides for the infant's care and safety, and arranging substitute care for the infant. (D) Correctional facility staff shall act in accordance with rule **5120-9-57** of the Administrative Code regarding notification of the need for postnatal placement services and establishment of procedures with hospital(s) for processing of "In-patient Hospital Admission" JFS 02453 forms and birth verification of the infant. Procedures include providing the hospital with the address where the infant will be placed. This address will be reported on the JFS 02453. (E) The responsible agency shall provide the correctional facility with a written report regarding its investigation and recommendation of a mother's placement plan. If the agency recommends that a mother's placement plan(s) be followed, the correctional facility shall act in accordance with rule **5120-9-57** of the Administrative Code regarding notification of a significant change in the placement plan. If the agency cannot recommend that a mother's placement plan(s) be followed, the responsible agency must seek temporary custody of the infant by execution of an "Agreement for Temporary Custody of Child" JFS j01645 or by obtaining juvenile court commitment. (F) When necessary, the responsible agency shall ensure relatives are assisted in applying for public assistance on behalf of the infant. (G) The responsible agency may ask and shall receive courtesy service from another agency when the placement plan involves a resident outside the responsible agency's county. Courtesy service

		shall include investigation and recommendation regarding placement plans and supervision of infants during their placement, if needed. (H) An incarcerated mother may wish to have an in-state or out-of-state private child-placing agency participate in the planning for her infant. Any such request shall be honored, whenever possible. In these cases, the responsible agency must contact the Ohio department of job and family services to verify the agency's authority to place children. The responsible agency must also contact the private child-placing agency to assure that a plan has been completed. A "private child-placing agency with placement authority" shall be an agency licensed by the Ohio department of job and family services or an agency licensed by the appropriate authority in another state. (I) The responsible agency is obligated for costs of medical care and services to the infant, commencing at the time of the infant's birth if the infant is in the agency's custody, and if other financial resources are insufficient or do not exist.

notes:

- I need to check case law regarding the "memorandum of understanding"
- lots of adoption stuff...
- how much ICPC stuff should go in here?

I. **Classifications**

A) **abused, neglected, dependent**

i) definition

(a) **abused**

(i) (O.R.C. § 2151.031, OH Juv. R. 2(A)) = any child who is

(a) victim of sexual activity as described in **§ 2907**, no conviction necessary

(b) endangered as described in **§ 2919.22,** no conviction necessary

(c) exhibits evidence of physical or mental injury or death that is not accidental or doesn't match explanation (corporal punishment doesn't count), if not prohibited by **§ 2929.22**

(d) physical or mental injury to the child by a parent, guardian or custodian (hereinafter "parent")

(e) subjected to out-of-home care child abuse[1]

(ii) (OAC § 5101:2-1-01(A)) = any child who:

(a) victim of sexual history as described in **§ 2907**, no conviction necessary

(b) endangered as described in **§ 2919.22**, no conviction necessary

(c) exhibits evidence of physical or mental injury that is not accidental or doesn't match explanation (corporal punishment doesn't count), if not prohibited by **§ 2929.22**

(d) because of parents' acts, suffers physical or mental injury that harms or threatens to harm child's health or welfare

(b) **dependent**

(i) (O.R.C. § 2151.04, OH Juv. R. 2(J)) = any child who

(a) is homeless, destitute, and without adequate parental care, due to no fault of parents[2]

(b) lacks adequate parental care because of parent's mental or physical condition

(c) has living condition or environment that warrants the state assuming child's guardianship

(d) if both apply:

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[1] **out-of-home care child abuse**: any of the following committed by a person responsible for the child's care in out-of-home care:

- engaging in sexual activity with a child in the person's care;
- punishment of the child by denial of proper and necessary subsistence, education, medical care, etc.;
- use of restraint procedures that cause injury or pain;
- administration of prescription or psychotropic drugs medication to the child without a licensed physician's written approval and ongoing supervision;
- commission of any non-accidental act that results in any injury to or death of the child, or commission of any accidental act that results in an injury to or death of a child and that conflicts the history of the accident (O.R.C. § 2151.011(B)(28)(a)-(e), OAC § 5101:2-1-01(A))

[2] **adequate parental care**: provision of adequate food, clothing, and shelter to ensure the child's health and physical safety, with specialized services warranted by the child's physical or mental needs (O.R.C. § 2151.011(B)(1))

1. child lives with a parent with an abuse/neglect/dependency (hereinafter "A/N/D") adjudication regarding the child's sibling or any other child living in home; and
2. because of A/N/D of sibling or other child and other household conditions, child in danger of being abused or neglected by that parent

(ii) (OAC § 5101:2-1-01(A) = any child
(a) who is home or destitute or without adequate parental care, through no fault of parents
(b) who lacks adequate parent care because of parent's mental or physical condition
(c) whose condition or environment is such as to warrant the state, in the child's interests, to assume the child's guardianship; or
(d) if both apply:
1. child lives with a parent with an A/N/D adjudication regarding the child's sibling and any other child living in home; and
2. because of A/N/D of sibling or other child and other household conditions, child in danger of being abused or neglected by that parent

(c) **neglected**
(i) (O.R.C. § 2151.03, OH Juv. R. 2(X)) = child
(a) is abandoned[3]
(b) lacks adequate parental care due to fault of others
(c) parent refuses to provide proper/necessary subsistence and other care necessary for child's health, morals, well-being
(d) parent refuses to provide special care made necessary by child's mental condition
(e) parent placed or attempted to place child in violation of **§§ 5103.16, 5103.17**
(f) child suffers physical or mental injury because of parents' omission
(g) child subjected to out-of-home child neglect[4]
(ii) (OAC § 5101:2-1-01(A)) = any child:

[3] **abandoned child:** a child who is presumed abandoned when the child's parents have failed to visit or maintain contact with the child for more than 90 days, regardless of whether the parents resume contact with the child after the 90-day period

[4] **out-of-home child neglect:** committed by person responsible for the child's care in out-of-home care:

- failure to provide reasonable supervision according to the standards of care appropriate to the child's age, mental and physical condition, or other special needs;
- failure to provide such supervision that results in the child's sexual or physical abuse by any person;
- failure to properly administer, monitor the use of and provide ongoing security for prescription or psychotropic drugs by the child;
- failure to provide proper or necessary subsistence, education, medical care, etc. for the child's health or well-being;
- confinement of the child to a locked room without staff monitoring;
- isolation of the child for a period of time that creates a substantial risk that continued isolation will impair or retard the child's mental health or physical well-being. (O.R.C. 2151.011(B)(29)(a)-(g), OAC § 5101:2-1-01(A))

(a) who is abandoned
(b) who lacks adequate parental care due to fault of others
(c) whose parent refuses to provide proper/necessary subsistence and other care necessary for the child's health, morals, well-being
(d) whose parent refuses to provide special care made necessary by child's mental condition
(e) whose parent placed or attempted to place child in violation of **§§ 5103.16, 5103.17**
(f) who suffers physical or mental injury because of parents' omission
(g) who is subjected to out-of-home child neglect

ii) reporting
(a) upon receipt of a report of a child at risk of abuse and neglect, the PCSA shall determine the immediacy of need for agency response (OAC § 5101:2-34-32(A)(1)-(3))
(b) the report shall be considered an emergency upon determination there is imminent risk in the child's safety or insufficient information to determine whether or not the child is safe at the time of the report (OAC § 5101:2-34-32(C))
(i) for emergency reports, the PCSA shall attempt a face-to-face contact with the alleged child victim within one hour of the report's receipt (OAC § 5101:2-34-32(D))
(ii) for all other reports, the PCSA shall attempt a face-to-face or telephone contact within 24 hours with a principal or collateral source to ensure the child is safe, and attempt a face-to-face contact with the alleged child victim within 3 calendar days of the report's receipt (OAC § 5101:2-34-32(E))
(iii) if the PCSA has attempted a face-to-face contact with the alleged child victim and the child was unavailable, these attempts shall continue at least every 5 working days until the child is seen or until the PCSA is required to make a case resolution and disposition (OAC § 5101:2-34-32(F))

iii) hearing
(a) OH Juv. R. 6(3)-(4): a child may be taken into custody:
(i) by a law enforcement officer or duly authorized court officer when any of the following conditions exist:
(a) reasonable grounds to believe the child is suffering from illness or injury and is not receiving proper care, and removal is necessary to prevent immediate or threatened physical or emotional harm
(b) reasonable grounds to believe the child is in immediate danger from the child's surroundings and removal is necessary to prevent immediate or threatened physical or emotional harm
(c) reasonable grounds to believe a parent, guardian, custodian, or other household member of the child has abused or neglected another child in the household, and that the child is in danger of immediate or threatened physical or emotional harm

(d) reasonable grounds to believe the conduct, conditions, or surroundings of the child are endangering the child's health, welfare or safety; or

(ii) ex parte by judge or magistrate order pending the outcome of the adjudicatory and dispositional hearing in an A/N/D proceeding, where it appears to the court that the child's best interest and welfare require an immediate shelter care order

(b) no later than 72 hours after complaint is filed, an adjudicatory hearing[5] shall be scheduled in no later than 30 days; for good cause shown, court may continue hearing (O.R.C. § 2151.28(A)(2)(a)-(b))

(i) the court's failure to schedule the hearing is not a basis for a jurisdictional attack on any order of the court (O.R.C. § 2151.28(K))

(c) summons shall be issued to the child, the parents, guardian, custodian, or other person with whom the child may be, and any other persons the court determine proper or necessary parties

(i) if the complaint seeks a planned permanent living arrangement, the parents' summons shall include an explanation that an A/N/D adjudication or order for such arrangement may result in an order of temporary custody and the child's removal from their legal custody pending a court decision (O.R.C. § 2151.28(D))

(ii) if a necessary person as identified by the court is not summoned may be subpoenaed to appear and testify at the hearing;

(iii) any person summoned or subpoenaed who fails to appear may be punished for contempt of court (O.R.C. § 2151.28(J))

(iv) if a parent of a child alleged or adjudicated to be an abused, neglected, or dependent child is under age 18, the parents of that parent shall be summoned to appear at any hearing respecting the child (O.R.C. § 2151.281(F))

(d) hearing procedure, adjudicatory and dispositional (O.R.C. § 2151.35, OH Juv. R. 34)

(e) at the hearing: (O.R.C. §2151.28(B))

(i) the court shall determine whether the child shall remain or be in placed in shelter care;

(ii) the child's parents have a right to be represented by counsel;

(iii) in no case shall the hearing be held later than 90 days after the complaint was filed.

(f) representation (also see OH Juv. R. 4(A)-(B))

(i) the court shall appoint the guardian ad litem as soon as possible after the complaint is filed

(a) the court shall appoint a guardian ad litem for the child in any case in which the alleged dependent child's parent appears to be mentally incompetent or is under age 18, there is a conflict of

[5] **adjudicatory hearing:** hearing held by the juvenile court to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court or whether temporary or legal custody should be converted to permanent custody (OAC § 5101:2-1-01(A), see also O.R.C. § 2151.28, OH Juv. R. 2(B))

interest between the child and the child's parents, or the court believes that the child's parent is not capable of representing the child's best interest, to serve until:

(b) the complaint is dismissed;
(c) all dispositional orders relative to the child have terminated;
(d) the legal custody of the child is granted to a relative of the child, or to another person;
(e) the child is placed in an adoptive home or, at the court's discretion, a final adoption decree is issued;
(f) the child reaches age 18, if he/she is not mentally retarded, developmentally disabled, or physically impaired; or the child reaches age 21, if he/she is mentally retarded, developmentally disabled, or physically impaired;
(g) the guardian ad litem resigns or is removed by the court and a replacement is appointed by the court (O.R.C. § 2151.281(G)(1)-(6))

(ii) if the guardian ad litem is a licensed Ohio attorney, he/she may also serve as the child's counsel. (O.R.C. § 2151.281(H))
(iii) in any A/N/D proceeding in which the parent appears to be mentally incompetent or is under age 18, the court shall appoint a guardian ad litem to protect the interest of that parent (O.R.C. § 2151.281(C))

iv) <u>investigation</u>
(a) agency **shall** investigate within 24 hours each report of known or suspected child abuse or neglect
(b) agency **shall** report each case to central registry to determine whether prior reports have been made in other counties involving the child or other case principals
(c) agency **shall** submit written report of investigation to law enforcement agency
(d) agency **shall** make recommendations to prosecutor it considers necessary to protect any children brought to its attention (O.R.C. § 2151.421(F)(1)-(2))
(e) the public children services agency (hereinafter "PCSA") assessment/ investigation in a non-stranger child abuse and neglect report
(i) the family risk assessment shall include the following factors and elements:
(a) type and degree and frequency of acts or conditions to which children have been exposed, including:
1. extent of inflicted physical injury and emotional maltreatment
2. adequacy of medical care and supervision
3. securement of basic needs
4. physical hazards in the home
5. sexual abuse; and
6. dangerous acts

(b) baseline risk for each child
(c) child characteristics, including:

1. age
2. physical/intellectual/social development
3. emotional/behavioral problems of children
4. self protection or
5. child's role in family

(d) characteristics of all involved adults, including:

1. victimization of other children;
2. history of assaultive behavior toward other adults
3. history of abuse or neglect as a child
4. substance abuse
5. intellectual, physical or psychological impairment
6. parenting skills and knowledge
7. recognition of problems in family functioning
8. protection of child; and
9. family stressors and response
10. adult/child relationship, including but not limited to the response to child's behavior and attachment/bonding
11. socio-economic factors, including but not limited to social connectedness of adults and the family's economic resources
12. alleged perpetrator access to child (abuse) or responsibility for care of child (neglect)
    a. structured decision making (OAC § 5101:2-34-33(E)(1)-(9))

(e) the report of these factors and elements shall be completed within 30 days from receipt of the report (45 days when sufficient information is not available to complete the case resolution (OAC § 5101:2-34-33(C))

(f) after the initial risk assessment, a case resolution, including case disposition[6], shall be completed by the PCSA within the time frame set forth in **5101:2-34-32(S)**

(g) the PCSA shall update the risk assessment, at a minimum, when the PCSA:

1. removes a child
2. returns a child to his/her home
3. completes a semi-annual administrative review
4. terminates agency services; or
5. receives any additional allegations of abuse or neglect throughout the life of the case (OAC § 5101:2-34-33(D)(1)-(5))

(ii) the PCSA investigation of a report of out-of-home care child abuse:

(a) immediate contact shall be made to the appropriate person(s) at the out-of-home care in order to:

1. share information regarding the report;
2. determine responsibility for informing the parents, guardian or custodian of the alleged child victim

[6] **case disposition:** which includes a report disposition, is determination whether or not abuse or neglect has occurred or is occurring

3. discuss what actions have been taken to protect the alleged child victim; and
4. provide information about the investigative activities that will follow (OAC § 5101:2-34-34(A)(1)(a)-(d))

(b) coordinate the alleged child victim's interview, if another agency is required by statute or administrative rule to conduct its own assessment to address issues other than child abuse or neglect; an assessment conducted independently by another agency (including a third party investigation conducted by law enforcement) does not relieve a PCSA of its responsibility for conducting the required investigation (OAC § 5101:2-34-34(A)(2)

(c) interview, not exclusively:
1. the alleged child victim(s)
2. all children or adults who are witnesses of the abuse and neglect; and
3. children or adults who are collateral sources of significant information. (OAC § 5101:2-34-34(A)(3)(a)-(c))

(d) contact the out-of-home care facility and the appropriate licensing and supervising authorities upon the investigation's completion (OAC § 5101:2-34-34(A)(5))

(iii) when the investigation is completed, but no later than 30 days after receipt of the report (45 days as permitted by regulation), the PCSA shall complete a case disposition; the case summary shall include:
(a) statements that support the case disposition
(b) the nature, extent, and circumstances surrounding the alleged abuse or neglect;
(c) the alleged child victim's ability and need to protect himself;
(d) the caretaker's ability and willingness to protect the alleged child victim;
(e) the access of the alleged perpetrator to the alleged child victim;
(f) the nature of the interaction of the alleged child victim with the caretaker and, if appropriate, the alleged perpetrator
(g) the strengths and concerns of the family or out-of-home care setting pertaining to the care of children; and
(h) the condition of the alleged child victim and, when applicable, other children residing in or participating in activities in the out-of-home care setting (OAC § 5101:2-34-34(B)(1)-(8))

(iv) no later than 72 hours after the investigation is completed, the PCSA shall enter the required information into the family and children services information system (OAC § 5101:2-34-34(E(1)-(2))

(v) if the investigation cannot be completed, justification and written approval of the out-of-home care executive director or designee shall be filed in the case record no later than the time period in which a case disposition must be made. The PCSA may not waive the case disposition or the time frame for making the case disposition (OAC § 5101:2-34-34(G))

v) disposition
(a) (O.R.C. § 2151.33(B)(1)(a)-(f))
(i) after a case is initiated regarding an alleged or adjudicated A/N/D child is filed, the court, before the case's final disposition, may issue any of the following temporary orders:
(a) granting temporary custody of the child to a particular party;
(b) for the taking of the child into custody pursuant to **§ 2151.31** pending the outcome of the adjudicatory and dispositional hearings;
(c) granting, limiting, or eliminating parenting time or visitation rights with respect to the child;
(d) requiring a party to vacate a residence that will be lawfully occupied by the child;
(e) requiring a party to attend an appropriate counseling program that is reasonably available to that party;
(f) that restrains or otherwise controls the conduct of any party which conduct would not be in the child's best interest
(ii) (O.R.C. § 2151.33(B)(2)(a)-(b))
(a) before the case's final disposition, the court shall:
1. issue an order pursuant to §§ 3119 to 3125 requiring the parents, guardian, or person charged with the child's support to pay child support
2. issue an order requiring the parents, guardian or person charged with the child's support to continue to maintain any health insurance coverage for the child existing when the case began, or to obtain health insurance coverage in accordance with §§ 3119.29 to 3119.56
(b) (O.R.C. § 2151.353) if child adjudicated A/N/D, court **can**:
(i) place child in protective supervision[7]
(a) reasonable restrictions may be placed on the child and/or parents, including:
1. order party to vacate child's home, indefinitely or for specified period of time
2. order no contact between child and specific person(s)
3. order a person's conduct not in child's best interest be restrained or controlled (O.R.C. § 2151.353(C))
(ii) commit child to temporary custody
(iii) award legal custody to either parent or other person
(iv) commit child to permanent custody of public or private agency
(v) place child in planned permanent living arrangement, upon finding:

[7] if the juvenile court issues an order of temporary custody or protective supervision with respect to a child adjudicated to be an abused, neglected, or dependent child and the alcohol or other drug addiction of a parent or other caregiver of the child was the basis for the adjudication of abuse, neglect, or dependency, the court shall issue an order requiring the parent or other caregiver to submit to an assessment and, if needed, treatment from an alcohol and drug addiction program certified by the department of alcohol and drug addiction services. The court may order the parent or other caregiver to submit to alcohol or other drug testing during, after, or both during and after, the treatment. (O.R.C. § 2151.3514(B))

(a) child unable to function in family-like setting and must remain in residential or institutional care due to physical or mental or psychological problems or needs;
(b) child's parents have significant physical, mental or psychological problems and are unable to care for child
(c) adoption isn't in the child's best interest
(d) child retains significant and positive relationship with parent/relative;
(e) child is over age 16 and in agency program to prepare for independent living

(vi) order removal from child's home of person who committed, caused or allowed abuse of the child; the parent of a child adjudicated dependent; and order such person not to have contact with child or siblings
(a) court can't issue such order unless it provides notice, grounds, opportunity to appear at hearing, and opportunity to have counsel at hearing (O.R.C. § 2151.353(H)(1)-(4))

(c) there can be no order for permanent or temporary custody, or placement in planned permanent living arrangements, **unless:**
(i) the complaint alleging A/N/D requests such custody or placement
(ii) summons served on child's parents fully explains:
(a) that granting such order divests them of parental rights
(b) A/N/D adjudication might cause removal of child
(c) order for planned permanent living arrangement will result in removal of child from their legal custody
(d) advises parents of right to be represented by counsel and to have counsel appointed if indigent

(d) if the required hearing has not been held with respect to the child, or a parent does not attend the hearing, the summons also shall contain a statement advising that a case plan[8] may be prepared for the child and the possible consequences of failure to comply with a journalized case plan (O.R.C. § 2151.28(F)(2), see also OH Juv. R. 15)

(e) the court may order the summons served by a law enforcement officer, who shall take the child into immediate custody and bring the child forthwith to the court upon submission of a filed affidavit or sworn testimony that the child's conduct, condition, or surroundings are endangering his/her health or welfare or those of others, that the child may abscond or be removed from the court's jurisdiction, or that the child will not be brought to the court despite a summons (O.R.C. § 2151.28(G))

(f) if after hearing the court determines the alleged abused, neglected or dependent child is a dependent child, the court shall issue written findings of fact and conclusions of law to be entered in the record of the

[8] **case plan:** a written document that is developed y the PCSA which identifies strengths of the family, concerns to be resolved and supportive services to be provided which will result in ensuring permanence for the child

case; specifically included will be findings as to the existence of any danger to the child and any underlying family problems that are the basis for the court's dependency determination (O.R.C. § 2151.28(L))

(g) if a child has been adjudicated A/N/D, the court may enter an order restraining or otherwise controlling the conduct of any parent in his/her relationship to the child upon a court finding the order necessary to:
  (i) control any conduct or relationship that will be detrimental or harmful to the child;
  (ii) control any conduct or relationship that will tend to defeat the execution of the order of disposition made or to be made (O.R.C. § 2151.359(A)(1)(a)-(b))[9]

(h) a child alleged or adjudicated A/N/D child may not be held in any of the following:
  (i) a state correctional institution, county, multi-county, or municipal jail or workhouse, or other place in which an adult convicted of a crime, under arrest, or charged with a crime is held;
  (ii) a secure correctional facility;
  (iii) shall not be held in a detention facility (O.R.C. § 2151.312(B)(1)-(2))

B) **child without proper parental care**
  (a) definition (O.R.C. § 2151.05)
    (i) filthy and unsanitary home
    (ii) child permitted by parent to become dependent, abused, or delinquent
    (iii) parents, when able, refuse or neglect to provide necessary care, support, medical attention and education
    (iv) parents fail to subject child to necessary discipline
  ii) reporting
  iii) hearing
  iv) investigation
  v) disposition

C) **deserted**
  i) definition
    (a) (O.R.C. § 2151.3515(A)) = a child:
      (i) whose parent voluntarily delivered the child to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return for the child
    (b) (OAC § 5101:2-1-01(A)) = a child:
      (i) whose parent voluntarily delivered the child to an emergency medical service worker, peace officer or hospital employee without expressing an intent to return for the child; and

[9] before a juvenile court issues such order committing an unruly or delinquent child to the custody of a public children services agency, it shall give the agency notice in the manner prescribed by the Juvenile Rules of the intended dispositional order (O.R.C. § 2151.3510)

(ii) who is less than 72 hours old and has no apparent signs of abuse or neglect

ii) reporting

iii) hearing

iv) investigation

(a) upon receipt of a report a parent has delivered a child to an emergency medical worker, peace officer, or hospital employer pursuant to O.R.C. §, a PCSA shall:

(i) consider the child to be a deserted child and in need of public care and protective services

(ii) make face-to-face contact with the child within one hour of receipt of the report

(iii) complete the following activities within one hour of face-to-face contact with child:

(a) if necessary, transport the child or arrange for transportation of the child to the nearest appropriate hospital emergency department; and

(b) make arrangements for the child to be examined by a physician to assess the child's health and well-being, as well as assess indications of abuse and/or neglect

(iv) accept and take emergency temporary custody and place the child in substitute care

(v) before placement in substitute care, obtain a copy of the medical examination report completed by a physician documenting the child received all immediate medical treatment

(b) initiate an investigation

(c) to conduct the investigation, the PCSA shall:

(i) contact the individual who took possession of the child to determine:

(a) the time the child was delivered

(b) any information the parent who delivered the child may have given; and

(c) whether the parent who delivered the child a "Voluntary Medical History" form

(ii) obtain the "Voluntary Medical History" if available

(iii) secure all clothing or other articles left with the child

(iv) contact the following agencies to determine if a child matching the child's description has been reported missing:

(a) local law enforcement agencies

(b) Ohio's missing children's information clearinghouse; and

(c) national center for missing and exploited children

(v) conduct any necessary activities to obtain a birth certificate and social security card for the child (OAC § 5101:2-34-32.1(B)(1)-(5))

(d) the above activities shall be documented in the case record by the PCSA (OAC § 5101:2-34-32.1(C))

(e) the investigation shall be completed within 30 days from the receipt of the report (OAC § 5101:2-34-32.1(D))

v) disposition
   (a) person who delivers or attempts to deliver a child who has suffered any physical or mental injury or condition that reasonably indicates abuse or neglect is not immune from civil or criminal liability for abuse or neglect (O.R.C. § 2151.3523(B))
   (b) a parent who delivers or attempts to deliver a child who has suffered any physical or mental injury condition that reasonably indicates abuse or neglect does not have the right to remain anonymous and may be subject to arrest pursuant to ORC § 2935 (O.R.C. § 2151.3524(B))
   (c) court issuing temporary custody order shall treat the deserted child as if adjudicated neglected, except with the rebuttable presumption that it's not in child's best interest to return him/her to the natural parent (O.R.C. § 2151.3521)
      (i) agency receiving temporary custody shall provide services as if child was adjudicated neglected (O.R.C. § 2151.3522)
   (d) if the child is determined to be abused or neglected, the PCSA shall:
      (i) complete activities listed in OAC § 5101:2-34-32.1(A)(2) to (A)(6);
      (ii) make all possible attempts to identify and locate the parent(s); and
      (iii) conduct an assessment/investigation (OAC § 5101:2-34-32.1(F)(1)-(3))
   (e) the child shall be considered to be abused or neglected if:
      (i) the child has suffered a physical or mental wound, injury or the child's condition is of a nature that reasonably indicates abuse or neglect;
      (ii) it is determined that someone other than the parent delivered the child; or
      (iii) the child is determined to be more than 72 hours old when delivered (OAC § 5101:2-34-32.1(E)(1)-(3))

D) **delinquent**
   i) definition
      (a) (O.R.C. § 2152.02(F)(1)-(5)) = any of the following:
         (i) any child, except a juvenile traffic offender, who violates any Ohio or federal law, or any ordinance of a political subdivision, that would be a crime if committed by an adult
         (ii) any child who violates any lawful court order
         (iii) any child who violates § 2923.211(A)
         (iv) any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant
         (v) any child who is a chronic truant[10]
      (b) (OAC § 5101:2-1-01) = any child
         (i) who violates any Ohio or federal law, or any ordinance or regulation of political subdivision, that would be crime if committed by an adult; or

[10] **chronic truant:** means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for 7 or more consecutive school days, 10 or more school days in one school month, or 15 or more school days in a school year

(ii) who violates any lawful order of the court; or
(iii) who violates § 2923.211(A)

ii) reporting

iii) hearing

(a) the court shall appoint a guardian ad litem to protect the child's interest when:
(i) the child has no parent; or
(ii) the court finds that there is a conflict of interest between the child and the child's parent (O.R.C. § 2151.281(A)(1)-(2))

(b) in any proceeding concerning an alleged or adjudicated delinquent child in which the parent appears to be mentally incompetent or is under age 18, the court shall appoint a guardian ad litem to protect that parent's interest (O.R.C. § 2151.281(C))

iv) investigation

v) disposition

(a) if after an adjudicatory hearing on a complaint alleging a child is delinquent, the court determines the child is dependent, as set forth in the written findings of fact and conclusions of law entered in the record of the case, including specific findings as to the existence of any danger to the child and any underlying family problems (O.R.C. § 2151.28(L))

(b) when the department of youth services (hereinafter "DYS") unconditionally discharges a child adjudicated delinquent, immediate notice of the discharge shall be given to the committing court (O.R.C. § 2151.358(B)

E) **endangered**

i) definition (O.R.C. § 2919.22)

(a) the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under age 18 or a mentally or physically handicapped child under age 21, shall not create a substantial risk to the child's health or safety by violating a duty of care, protection, or support.
(i) there is no such violation if the child is being treated for a physical or mental illness or defect by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body (O.R.C. § 2919.22(A))

(b) no person shall do any of the following to a child under age 18 or a mentally or physically handicapped child under age 21:
(i) abuse the child;
(ii) torture or cruelly abuse the child;
(iii) administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, that is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;
(iv) repeatedly administer unwarranted disciplinary measures to the child, with a substantial risk that such continued conduct will seriously impair or retard the child's mental health or development;

(v) entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter[11] (O.R.C. § 2919.22(B)(1)-(5))

(c) whoever violates this section is guilty of endangering children

ii) reporting

iii) hearing

iv) investigation

v) disposition

F) **unruly**

i) <u>definition</u>

(a) (O.R.C. § 2151.022) = the child

(i) doesn't submit to reasonable adult control, habitually disobedient

(ii) habitual truant not previously adjudicated unruly for being truant

(iii) behaves so as to injure or endanger his own or other's health/morals

(iv) if a child, before age 18, allegedly commits an act for which he may be adjudicated an unruly child, and the complaint is not filed or a hearing is not held until after the child reaches age 18, the court has jurisdiction to hear and dispose of the complaint as if it were filed and the hearing held before the child reached age 18 (O.R.C. § 2152.27(B))

(b) (OAC § 5101:2-1-01(A)) = any child

(i) who does not subject himself/herself to the reasonable conduct of his/her parents, teachers, guardian or custodian, by reason of being wayward or habitually disobedient

(ii) who is a habitual truant

(iii) who acts as to injure or endanger his/her health or morals or the health or morals of others

(iv) who attempts to enter the marriage relation in any state without legal consent

(v) who is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons

(vi) who engages in an illegal occupation or is in a situation dangerous to life or limb or injurious to his/her health or morals or the health or morals of others

(vii) who violates a law other than 2923.211(A) that is applicable only to a child

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[11] this section does not apply to any material or performance that is produced, presented, or disseminated for a bona fide medical, scientific, educational, religious, governmental judicial or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance (O.R.C. § 2919.22(D)(1))

ii) reporting
iii) hearing
(a) no later than 72 hours after complaint is filed, court shall fix time for an adjudicatory hearing, to be held and continued according to Juvenile Rules (O.R.C. § 2151.28(A))
(b) the court shall issue a summons to the child, the parents, guardian, custodian, or other person with whom the child may be, and any other persons the court determine proper or necessary parties
(i) a summons issued to an alleged unruly child under age 14 shall be served on the child's parent in the child's behalf; if the person with physical custody of the child, or with whom the child resides, is other than the parent or guardian, the parents and guardian shall be summoned. (O.R.C. § 2151.28(C)(1))
(c) the court shall appoint guardian ad litem to protect the child's interest in any proceeding concerning an alleged or adjudicated unruly child when either:
(i) the child has no parent
(ii) the court finds that there is a conflict of interest between the child and the child's parent (O.R.C. § 2151.281(A)(1)-(2))
(d) in any proceeding concerning a child alleged or adjudicated unruly in which the parent appears to be mentally incompetent or is under age 18, the court shall appoint a guardian ad litem to protect the that parent's interest (O.R.C. § 2151.281(C))
iv) investigation
v) disposition
(a) the court: (O.R.C. § 2151.354)
(i) **may**
(a) make same disposition as if A/N/D
(b) place child in community control, as if delinquent[12]
(c) suspend driver's license and vehicle registration
(d) commit child to court's permanent or temporary custody

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[12] **community control:** including, but not limited to: (community service limited to 175 hours)

- period of basic or intensive probation supervision
- period of day reporting in which child is required each day to report to and leave center or another approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center
- period of community service determined by the criminal penalty for the act committed if the child were an adult
- requirement that child obtain high school diploma, certificate of high school equivalence, vocational training or employment
- period of drug and alcohol use monitoring; alcohol or drug assessment or counseling; alcohol or drug treatment program with level of security as determined necessary
- period of curfew for child involve daytime or evening hours
- requirement that child serve monitored time
- period of house arrest without electronic monitoring
- period of electronic monitoring without house arrest not to exceed maximum sentence that could be imposed upon adult who commits same act [2152.19(A)(4)(a)-(k)];

(e) dispositions permitted under §2151.312 (places where A/N/D may or may not be held) or per §§ 2151.56 to 2151.61 (Interstate Compact on Juveniles (re: delinquent))
(f) *after these dispositions,* if court finds further hearing child isn't amenable to treatment or rehabilitation, make other disposition per § 2152.19(A)(1), (3),(4),(7)

(ii) **shall**, if child committed adult drug offense:
(a) require child to participate in drug or alcohol abuse counseling program
(b) suspend driver's privileges, to be terminated at the court's discretion if the child attends and satisfactorily completes a drug or alcohol abuse program specified by court

(iii) **may**, if child is habitual truant[13]
(a) order child's school district to require child to attend alternative school if one established in school district
(b) require child to participate in any academic or community service program and/or a drug or alcohol abuse counseling program
(c) require child receive appropriate medical or psychological treatment or counseling
(d) make any order necessary to address habitual truancy
(e) if child is habitual truant and court determines *parent w/care of child failed to cause child to attend school,* all of the following apply:
1. court **may** require the parent to participate in community service program that requires involvement in child's school and/or a truancy prevention mediation program
2. court **shall** warn that any subsequent unruly or delinquent adjudication of the child for being habitual or chronic truant may result in criminal charge against parent

(b) a child alleged or adjudicated unruly may only be held in:
(i) a certified family foster home or a home approved by the court;
(ii) a facility operated by a certified child welfare agency;
(iii) any other suitable place designated by the court. (O.R.C. § 2151.312(A)(1)-(3))

(c) except as pursuant to ORC § 2151.311(C)(1), a child alleged or adjudicated unruly may not be held in:
(i) a state correctional institution, county, multi-county, or municipal jail or workhouse, or other place in which an adult convicted of a crime, under arrest, or charged with a crime is held;
(ii) a secure correctional facility (O.R.C. § 2151.312(B)(1))

(d) a child alleged or adjudicated unruly may not be held for more than 24 hours in a detention facility (O.R.C. § 2151.312(B)(2))

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[13] habitual truant: any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or twelve or more school days in a school year (O.R.C. § 2151.011(B)(17))

(e) a child alleged or adjudicated unruly who is taken into custody on a Saturday, Sunday, or legal holiday, may be held in a detention facility until the next succeeding day that is not a Saturday, Sunday, or legal holiday (O.R.C. § 2151.312(B)(3))
(f) after the court adjudicates a child unruly, it shall incorporate the determination into written findings of fact and conclusions of law, to be entered in the case record, including specific findings as to the existence of any danger to the child and any underlying family problems (O.R.C. § 2151.28(L))
(g) if a child is adjudicated unruly, the court may enter an order restraining or otherwise controlling the conduct of any parent in his/her relationship to the child if the court finds the order necessary to:
  (i) control any conduct or relationship that will be detrimental or harmful to the child; or
  (ii) control any conduct or relationship that will tend to defeat the execution of the order of disposition made or to be made (O.R.C. § 2151.359(A)(1)(a)-(b))[14]
(h) when the DYS unconditionally discharges a child adjudicated unruly, immediate notice of the discharge shall be given to the committing court (O.R.C. § 2151.358(B)
  (a) 2 years after such unconditional discharge, the committing court shall order the child's record sealed (O.R.C. § 2151.358(C)(1)(a)(i)-(ii)

II. **Reporting**

A) duty to report [O.R.C. § 2151.421]
  i) standard: "physical or mental wound, injury, disability or condition that reasonably indicates child abuse or neglect"
  ii) who:
    (a) person acting in official or professional capacity that knows or suspects child under 18, or mentally retarded, developmentally disabled or physically impaired[15] child under 21, has suffered or *faces threat of suffering* **shall** report (A)(1)
    (b) anyone who knows or suspect child under 18, or mentally retarded, developmentally disabled or physically under 21, has suffered or *faces threat of suffering,* **may** report (B)
    (c) any person having knowledge of child who appears to be an unruly, abused, neglected or dependent child may file a sworn complaint re: that

[14] before a juvenile court issues such order committing an unruly or delinquent child to the custody of a public children services agency, it shall give the agency notice in the manner prescribed by the Juvenile Rules of the intended dispositional order (O.R.C. § 2151.3510)

[15] physically impaired: having one or more of the following conditions that substantially limit one or more of an individual's major life activities, including self-care, receptive and expressive language, learning, mobility, and self-direction: a substantial impairment of vision, speech or hearing; a congenital orthopedic impairment; an orthopedic impairment caused by disease, rheumatic fever or any other similar chronic or acute health problem, or amputation or another similar cause (O.R.C. § 2151.011(B)(33)(a)-(c))

child in the juvenile court of the county in which the child lives or in which the unruliness or A/N/D allegedly occurred

(i) if the child is taken into custody without a complaint is filed and placed into shelter care, the sworn complaint must be filed before the end of the next day after the day on which the child was taken into custody

(ii) the sworn complaint shall allege the particular facts upon which the allegation that the child is an unruly, abused, neglected or dependent child is based (O.R.C. § 2151.27(A)(1))

(d) any person with knowledge of a child who appears to be an unruly child for being a habitual truant may file a sworn complaint with respect to that child and the parent or other person w/care of the child in the appropriate juvenile court (O.R.C. § 2151.27(A)(2))

B) complaint

i) contents of report

(a) names and addresses of child and the parents or person(s) with custody of child, if known

(b) child's age and the nature and extent of his/her known or suspected injuries, abuse or neglect or the known or suspected threat, including any evidence of previous injuries, abuse or neglect

(c) any other information helpful to establish cause of known or suspected injury

(d) any person required to report may take or cause to be taken color photographs of visible trauma on child and if medically indicated, have x-rays done (OAC § 5101:2-34:06(A)(1)-(6))

ii) the sworn complaint regarding an habitually truant and unruly child contain:

(a) the particular facts upon which the allegations are based;

(b) that the parent or other person with care of the child has failed to cause the child's attendance at school and the particular facts upon which that allegation is based (O.R.C. § 2151.27(A)(2)(a)-(b))

iii) if the complainant desires permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement, the complaint shall contain a prayer specifically requesting same (O.R.C. § 211.271(C))

C) processing complaint

i) peace officer **shall** refer report to public children services agency (D)(1)

ii) public children services agency **shall** comply with **§ 2151.422** (D)(2)

D) removal of the child

i) the child can't be removed without consultation between the peace officer and the PCSA unless the report was made by doctor and in the officer's judgment immediate removal is considered essential to protect child from further abuse or neglect (E)

III. **Dispositional Categories—A/N/D reports** (OAC § 5101:2-1-01(A))

A) indicated report: report to central registry in which there is circumstantial, or other isolated indicators of child abuse or neglect lacking confirmation; or a

determination by the caseworker that the child has been abused or neglected based upon completion of an assessment/investigation

B) substantiated report: report sent to central registry by the PCSA in which there is an admission of child abuse or neglect by the person(s) responsible; an adjudication of child abuse or neglect; or other forms of confirmation deemed valid by the PCSA "substitute care" is the care provided for a child apart from his parent or guardian, while the child's custody is held by a PCSA

C) unable to locate: report of child abuse or neglect sent to the central registry by the PCSA in which the investigation was not initiated due to the inability to locate the family or the family moved before the assessment/investigation was completed and the agency was unable to locate them

D) unsubstantiated report: no evidence: report of child abuse or neglect sent to the central registry by the PCSA in which the investigation determined no occurrence of child abuse or neglect

E) verified report: report submitted by the PCSA and assigned a child abuse and neglect central registry identification number under which the reporting agency receives information concerning the existence of a prior report involving an alleged perpetrator and/or child victim

F) upon a determination the information received does not constitute a report, the PCSA may:
   i) decline to accept the information as a report;
   ii) request the individual providing the information to submit the allegations in writing
   iii) refer the individual to the county prosecutor pursuant to the child abuse and neglect memorandum of understanding; or
   iv) refer the reporter to an appropriate agency or service provider (OAC § 5101:2-34-06(B)(1)-(4))

IV. **Domestic Violence**

A) OAC § 109.744. Training relating to domestic violence

B) OAC § 3113.33. Definitions
   i) attempting to cause or causing bodily injury to a family or household member, or placing a family or household member by threat of force in fear of imminent physical harm.
   ii) cross-reference from OAC Ann.5101:2-1-01 ("domestic violence pursuant to section 3113.33 of the Revised Code means attempting to cause or causing bodily injury to a family or household member, or placing a family or household member by threat of force in fear of imminent physical harm.")

C) cross-reference from OAC § 2151.011 (51) "Shelter for victims of domestic violence" has the same meaning as in section 3113.33 of the Revised Code.

D) cross-reference to 3113.33 from OAC § 2151.031. Abused child defined

E) OAC § 2151.23. Jurisdiction of juvenile court over reports of domestic violence

F) A child who is alleged to be delinquent because of a domestic violence offense may be placed in any setting authorized by RC § 2151.31.2(A) (per OAG No. 96-061 (1996))

G) OAC § 2301.03. Judges of domestic relations division; juvenile and probate court responsibility to hear charges of domestic violence arising under 3113.33

H) Child stealing cross-reference: Shelter for victims of domestic violence **is** not liable under RC § 2307.50 for sheltering a mother and her child. Shelter may be liable for emotional distress to the husband for failing to provide any information as to the wife and child: Waliser v. Tada, 1990 Ohio App. LEXIS 825 (10th Dist. 1990).

I) Criminal domestic violence: OAC § 2919.25. Domestic violence (No person shall knowingly cause or attempt to cause physical harm to a family or household member.)

J) OAC § 2919.251. Considerations in setting bail in **domestic violence** cases; schedule

K) Process, Criminal Domestic Violence:

ORC Ann. 2919.26 (2004), TITLE 29. CRIMES -- PROCEDURE, CHAPTER 2919. OFFENSES AGAINST THE FAMILY, DOMESTIC VIOLENCE , § 2919.26. Motion for temporary protection order

ORC Ann. 2919.27 (2004), TITLE 29. CRIMES -- PROCEDURE, CHAPTER 2919. OFFENSES AGAINST THE FAMILY, DOMESTIC VIOLENCE , § 2919.27. Violating protection order

ORC Ann. 2919.271 (2004), TITLE 29. CRIMES -- PROCEDURE, CHAPTER 2919. OFFENSES AGAINST THE FAMILY, DOMESTIC VIOLENCE , § 2919.271. Evaluation of defendant's mental condition

ORC Ann. 2919.272 (2004), TITLE 29. CRIMES -- PROCEDURE, CHAPTER 2919. OFFENSES AGAINST THE FAMILY, DOMESTIC VIOLENCE , § 2919.272. Registration and filing of out-of-state protection order

Appendix 4 Topical Analyses of Ohio Statutory, Field and Case Research

4A Physical Abuse Synthesis

PHYSICAL ABUSE

Current Law

§ 2151.031. As used in this chapter, an "abused child" includes any child who…:

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

(E) Is subjected to out-of-home care child abuse.

§ 2919.22. Endangering children

A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

1.Abuse the child;

2. Torture or cruelly abuse the child

3. Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child.

4. Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development.

Inconsistencies

There is a wide variation in how physical abuse of children is defined, reported, evaluated, and confirmed throughout the state.

Problem

Rules regarding physical abuse in Ohio are found in the Ohio Revised Code civil and criminal statutes, the Ohio Administrative Code, individual PCSA policies, principles of child welfare and of the various professions who regularly deal with child abuse issues, and the mores and norms of local communities. The definitions and requirements provided by these various sources are often contradictory, causing a great deal of confusion and undermining working relationships and ultimately the effectiveness of Ohio's child protection efforts.

Practical Considerations

Practitioners within the child welfare system itself quite frequently disagree about what constitutes physical abuse. [12] Caseworkers from county to county, and even within the same agency or the same unit disagree. There appears to be some confusion among caseworkers in distinguishing abuse from neglect and dependency in certain situations. For example, in our survey, 49% of respondents called a parent giving a two-year-old cough medicine to keep him quiet abuse, 37% called it neglect. [12] 87% said that Ohio's laws are not effective or only somewhat effective in helping them to distinguish which children are abused, neglected and dependent.

And there is a wide range of policies, definitions and decisions among Ohio's 88 PCSAs. We heard repeatedly that what some PCSAs would categorize as physical abuse requiring immediate intervention, others would screen out. At one extreme are counties in which bruising alone is sufficient to screen in. At the other are those that are reluctant to screen unless the child is hospitalized. As one respondent stated:

> *"There are 88 different ways to screen cases and determine when children need to be removed. This causes huge issues when cases transfer from one county to another because what may have been a serious case in one place may not even warrant an open investigation in another place."* [12]

There is also considerable confusion, disagreement and tension between different professions with regard to how to define and deal with child abuse. This is particularly true in the relationship between PCSAs and the courts. 63.7% of the survey respondents identified different interpretations as to what constitutes child abuse, neglect, and dependency as the single most important factor interfering with the ability of courts and agencies to see eye-to-eye. PCSA caseworkers who investigate abuse reports often apply a measuring stick based upon casework principles, child welfare

best practice, and agency policy. Legal practitioners on the other hand—prosecutors, defense counsel, judges and magistrates—rely upon the statutes and case law. PCSA workers often see situations that are not severe enough to meet the statutory requirement of "substantial risk of serious physical harm" but are still at a level that in the field is considered problematic.

In our survey, for example, when asked to identify abusive situations, 85% felt that slapping a child on the cheek leaving a handprint would constitute abuse. 86% felt that bruises on a child's buttocks caused by a spanking would constitute abuse.[12] It is questionable whether either of these situations would qualify as abuse under Ohio's statutory definition (although courts also are all over the board in their interpretations of what constitutes abuse under the statutory definitions). Interestingly, nearly 25% of survey respondents indicated that they "seldom or never" refer to Ohio's child maltreatment laws to assist them in determining whether a child is abused, neglected or dependent. Almost 40% indicated that they refer to these laws only "sometimes." [12]

Nevertheless, many caseworkers believe that situations involving legitimate child abuse are often rejected by their legal counsel or the judge as not meeting the statutory definition of physical abuse in Ohio. [12] As one worker stated:

> *"One of the biggest frustrations for me is the cases in which the PCSA sees a problem in the family and believes it is abuse or neglect and then when that case is presented to the court the court does not agree. Many times without the leverage of court involvement it is difficult to get families to even start services so that change can potentially occur. There is too much discrepancy between the social work definition of abuse...and the court definition."*

Caseworkers provided examples of cases in which this discrepancy had been problematic, from their perspective:

- Young child, 5-7 years old, playing with dad's tools, left them in the yard. Dad got extremely upset, took a board to child's behind, causing solid black bruises and open bleeding wounds all over the buttocks. The court recommended to dad that he not discipline the child in this manner in the future, but refused to call it abuse.

- Trial court refused to find abuse in a case in which child broke his collarbone while struggling to escape from parents who were holding him down to administer corporal punishment;

- Child had numerous bruises on his behind and thigh area from spanking; Court found this to be "correction" rather than abuse.

- Stepfather offered child a choice of being spanked or bitten, as the child allegedly had bitten another child. The Court of Appeals stated that because the child chose to be bitten, even though teeth marks were left, the incident was not abuse.

- Court of Appeals overturned a decision by a trial court which had found that leaving a handprint on a child's face was abuse;

- Child was seen in the emergency room with a black eye caused by parental discipline. The Court of Appeals overturned the lower court's finding of abuse, stating that that the injury failed to meet the legal definition of abuse.

In addition to different definitions of abuse, the standards of proof employed by caseworkers and courts are very different. While investigating caseworkers are more likely to analyze situations in terms of whether it is more likely than not that abuse occurred, courts require a showing of "clear and convincing evidence" in order to find abuse, a higher standard of proof that is more difficult to meet.[12]

Caseworkers also express frustration about the frequency with which they go to court with what they consider to be clear evidence of abuse only to have the case reduced to dependency through negotiations by attorneys in pursuit of settlement.[12] See Dependency section of this report. They believe that this allows parents to minimize the seriousness of their behavior. As one administrator put it: "There's a psychological dynamic; it allows the parent to say: "If the judge said I didn't abuse my child I don't have to change how I discipline my child."

On the other hand, prosecutors and defense counsel alike express frustration regarding caseworkers' lack of knowledge about the law [12] and their lack of understanding about how the legal system works. We heard from attorneys on both sides who find it very disturbing that PCSAs are able to "substantiate" child abuse administratively and log this finding in Ohio's central registry in cases which would not warrant an adjudication of abuse under statutory law. As one assistant prosecutor said:

> *"We've had parents who left a mark or a bruise labeled child abusers. This is not abuse; It may look bad, it may be against [a worker's] personal or agency philosophy, but it is not abuse. 'You should never hit a child' may be the prevailing view, but it is not the law. So parents, mostly African American parents, are being wrongly labeled child abusers. I'm not trying to promote hitting kids, but until the legislature says otherwise it's not abuse—not legally."*

Many of the attorneys we spoke with felt that the child abuse laws are so complex and "user-unfriendly" it is no wonder that caseworkers do not understand or use them. [12] Many felt that streamlining, simplifying, and clarifying these laws would improve this situation.

Differences in interpretations as to what constitutes abuse also cause confusion about what types of situations should be reported to PCSAs and what should be investigated. In cases of suspected child abuse, PCSAs interface quite frequently with medical professionals, who are mandated reporters under Ohio law. There seems to be significant tension between these two professions surrounding the making, receiving and investigation of child abuse concerns. Just as PCSA caseworkers tend to believe that courts define physical abuse too narrowly, thus impeding their ability to protect children who need protection, physicians that we heard from seem to believe that the PCSAs themselves often define physical abuse too narrowly.

The pediatricians that we interviewed expressed great frustration because on the one hand they are required by law to report suspected child abuse, yet from their perspective their concerns are often either not taken seriously or rejected outright by PCSAs. They relayed several examples of this situation, including:

- Child presented with loop marks from a belt or cord that were significant enough to cause the doctor concern, however the PCSA would not accept the referral because, it said, the injuries were not new. (The physician went to the worker's supervisor and they did ultimately accept the case).

- Children are seen with head injuries or burns that aren't life-threatening, and where the explanation given might be plausible but either there is no corroboration or the person who brings the child in is different from the one who was there when the injury occurred. Physician, wanting some corroboration, calls CSB and is told that the agency will only take the referral if the doctor says that the injury is "really suspicious."

- A physician contacted CSB to report a child seen with genital warts. CSB refused to take it because the physician was unable to say unequivocally that it was sexually transmitted. Only after the doctor was able to say that was the agency willing to take the case. As one doctor put it, "For us it's a lot of gray, but CSB won't take it unless it's black and white."

- Child seen with severe injuries. Physicians, concerned about the safety of child's four-year-old sibling, contacted CSB, however the agency never communicated or investigated the case until the injured child died.

- Child was permanently removed from parents' care due to severe injuries from shaken baby syndrome. Parents had another baby, and were not bringing this child in for check ups. Physician contacted CSB, which refused to take the referral.

- Physician observed repeated injuries to a child over time, and made repeated calls to the agency, however agency did not intervene until several months had passed.

Cases such as these can leave medical professionals feeling confused as to exactly what constitutes reportable physical abuse. Physicians believe that, as particularly knowledgeable professionals, their referrals should be given considerable weight, however the perception is that if they don't have a personal connection with someone at the PCSA their concerns are often minimized or ignored. PCSAs, on the other hand, express frustration because in their view some mandated reporters want agencies to drop everything and respond to situations that do not appropriately fall within the mandate of the PCSA, and which take their time and attention away from truly dangerous situations.

This "disconnect" between these professions may stem, in part, from conflicting definitions of the level of injury to a child that warrants reporting and investigation. The American Academy of Pediatrics defines child abuse as "Any injury (bruise, burn, fracture, abdominal or head injury) that cannot be explained." Its stance on bruises is that "because a bruise indicates that body tissue has been damaged and blood vessels have broken, any discipline method that leaves bruises is not appropriate."[12] If an agency has a policy that more is required than bruising, this sets up a conflict situation. A few counties reported that positive collaborative relationships have been forged between these two groups, who meet regularly to discuss problems and develop solutions. But for the most part the primary feeling was frustration on both sides.

The ambiguity in the abuse laws also contributes to confusion and dissatisfaction among other mandatory reporters as well as permissive reporters. The vast majority – approximately 90%, according to the estimate of one PCSA director—of reports agencies receive do not rise to the level of abuse under any standard. Yet this same ambiguity makes it difficult for agencies to draw the line between calls that truly warrant investigation and those that do not. It makes agencies more susceptible to community pressure to investigate every call, even those that clearly do not constitute abuse. The time and energy expended on such unwarranted calls are a serious drain on agency resources, and siphon attention away from situations in which children are truly at risk of harm. At the same time it may tempt some agencies to screen out cases that do in fact rise to the level of abuse.

Comments

The current confusion and dissension regarding what constitutes physical abuse seriously inhibits the inter-agency collaboration that is required for optimum child protection services. It forces PCSAs to focus inordinate attention on situations involving nothing more than parental discipline, thus robbing children who are actually at risk of the services they need. It also permits some PCSAs to screen out referrals that best practice would indicate should be investigated further. The entire system will benefit

from a streamlined, more user-friendly legal definition of physical abuse, and the implementation—and enforcement—of statewide policies and procedures regarding the screening and investigation of allegations of physical abuse of children.

Possible Recommendations

- Locate all statutory definitions and requirements related to physical abuse of children in one place;
- Stop using the criminal definition of endangerment to define abuse and create a civil definition.
- Define physical abuse in a way that can be understood and used by various professions and potential reporters
- Define physical abuse in a way that more accurately reflects actual best child welfare practice
- ODJFS develop a state-wide screening manual providing clear examples of situations that do warrant screening in and those that do not (the CAPMIS Pilot Project Screening Committee document is an excellent example of what such a manual might look like);
- Intensive multidisciplinary training throughout the state aimed at getting various professionals on the same page with regard to what constitutes physical abuse and improving inter-agency collaboration on behalf of at-risk children;
- Address the issue of non-accidental injury that occurs as a result of appropriate discipline;
- Define (and quantify) the standard of proof to be utilized in CSB investigations

4B Sexual Abuse Synthesis

SEXUAL ABUSE

Current Law

§ 2151.031. As used in this chapter, an "abused child" includes any child who:

A) Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child…

§ 2907.01. Definitions. As used in sections 2907.01 to 2907.37 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

C) "Sexual activity" means sexual conduct or sexual contact, or both.

§ 2907.04. Unlawful sexual conduct with minor.

(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.
(1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree.

(2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree.

(4) If the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code, unlawful sexual conduct with a minor is a felony of the second degree.

§ 2907.05. Gross sexual imposition

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

Inconsistencies

The ambiguities of Ohio's child sexual abuse laws contribute to inconsistencies from agency to agency in terms of which situations should be investigated and which should not. Individual practitioners also differ significantly in terms of which behaviors constitute sexual abuse and which do not. Respondents shared examples of practitioners within the same agency defining, investigating, and disposing of similar sexual abuse cases quite differently. What one court routinely finds to constitute sex abuse, another will routinely dismiss. What one prosecutor finds sufficient to justify initiating an action in juvenile court another does not. As with other areas of Ohio's child welfare laws, these ambiguities also contribute to confusion and dissension among these various constituencies.

Problem

Ohio's child abuse statute uses the criminal definitions of sexual activity to define child sexual abuse. Those definitions are unnecessarily vague and complex, often preclude PCSAs from protecting children who need protection, and force them to intervene in situations that may not involve child protection concerns.

Practical Considerations

Ohio's reliance upon the criminal code (specifically §2907) to define the legal parameters of sexual abuse of children causes significant confusion among PCSA investigators, and another "disconnect" between child welfare agencies and the courts.[12]

Section 2907 defines illegal sexual activity as *touching* or *penetration* in various forms. From the child welfare perspective, other behaviors such as inappropriate sexual talk, voyeurism and "grooming" [12] are also sexually abusive behaviors, from which children need to be protected. However, a strict reading of the criminal definition seems to preclude PCSA intervention in such situations. As one PCSA supervisor put it:

> *"The way it is now, if it's not a criminal offense it's not sexual abuse. If an agency doesn't have an aggressive prosecutor or a sympathetic judge they're out of luck [in terms of being able to protect children who are victims of such behavior]."*[12]

PCSA practitioners also expressed concern about cases of documented sexual abuse being reduced to neglect or dependency in court, and about perpetrators not being charged criminally for engaging in sexual activity with a child. One caseworker recalled a case of a child who was removed from her home after her father sexually abused her and her mother failed to believe or protect the child. The father offered, and was permitted, to admit the abuse in juvenile court in exchange for dismissal of his criminal case. Another worker recounted a situation in which a man with a lifelong history of sexual molestation of children was caught following a school bus two days in a row. Although the man was currently on parole, the criminal prosecutor decided that under current law this behavior was insufficient to justify prosecution.

While agencies tend to feel that the laws impede their efforts to protect children from sexual abuse,[12] we also heard concerns from prosecutors and defense attorneys alike that investigators often inappropriately designate as sexual abuse situations and behaviors that fall outside the parameters of ORC §2907. One prosecutor stated:

> *"Workers are making findings based on what they've been taught about sex abuse. It's not that they're ignoring the statute, they just don't understand it. They may learn about the statutes, and read them once in trainings, but they don't really ever go back to it. They don't look at the legal definitions. They make up their own definitions of sex abuse. Their definitions include some similarities to the statute, but they go well beyond the statutory definition."*

This confusion has led to the inappropriate labeling of individuals as sex offenders. According to another prosecutor:

> "*A few years ago when ODJFS started providing for appeals of agency decisions, people started showing up with attorneys to protest the agency's substantiation of sexual abuse in their case. We started hearing all these stories. When you took the facts involving an allegation and then looked at the law, there often wasn't a match. We had to "unsubstantiate" many of them. There may have been inappropriate conduct, but it just didn't rise to the level of a statutory violation. In some rural counties, where parents don't have access to attorneys, who knows how many parents are being victimized by this practice?"* [12]

On the other hand, there are situations which under §2907 qualify as illegal sexual activity but which many professionals believe should not be treated as sexual abuse cases warranting PCSA intervention. Some of the anomalies mentioned include:

- In cases involving sexual abuse of a child by a stranger or an individual who no longer has access to the child, agencies are currently required to conduct an investigation of the child's family—including an in-depth risk assessment requiring interviews with every family member and a great deal of paperwork—even where there is no question of wrongdoing on the part of the family. Several

of the practitioners with whom we spoke consider this an unnecessary and unfair intrusion in the life of a family that has already been victimized by the assault on their child.

- The current age differentiations of §2907.04 do not outlaw sexual activity between a 40-year-old and a 16-year-old or between a father and his 17 year old daughter, but technically categorize sex between a 15 year old girl and her 20 year-old-boyfriend as sexual abuse.[12]

- Currently, when agencies receive referrals involving children perpetrating on other children they can be forced to label a child as a perpetrator of sexual abuse. Many find this problematic in that children who perpetrate quite often do so because they themselves have been victimized, and it seems counter-productive to burden a young child with this label.

- In cases involving date rape between teens or inappropriate sexual activity between a stranger (i.e. someone who has no ongoing access) and a child, agencies are sometimes improperly used to provide a law enforcement function. Under 2907 agencies can be forced to investigate situations involving storeowners who display pornographic magazines for children to view as they walk into the store. Although such situations would certainly qualify as criminal activity, some argue that they are not child protection matters warranting PCSA involvement and that they, again, siphon time and energy from cases that do warrant their involvement.

The ambiguity of the laws also contribute to inconsistencies from county to county in terms of what constitutes sexual abuse. For example, 61% of our survey respondents indicated that they would screen in a report of a 15 year old girl having sex with her 19 year old boyfriend, while 39% would not.[12] Some agencies screen in virtually all reports containing allegations of inappropriate sexual contact while others screen out situations involving young children perpetrators, sexual activity between adolescents, or sex play between children. One caseworker told us that her agency had her investigate a referral concerning two 16-year-olds hiding and having sex, when the county which had previously employed this worker would routinely have screened out such a case.

Comments

The current laws pertaining to child sexual abuse in Ohio are unnecessarily complex and ambiguous, making it difficult for child welfare practitioners to understand or use them. They rely upon the criminal code for their definitions of sexual abuse, which are different from those utilized as best practice in the child welfare field. They prevent PCSAs from intervening in situations which may not rise to the level of criminal behavior but which do put children at substantial risk of serious physical and/or emotional harm. At the same time, they require PCSAs to devote significant resources to situations that do involve sexual activity but do not involve child protection issues warranting PCSA involvement. As one judge stated: “Whether you make social workers conform to the

law and make their findings fit the law or change the law to mirror social work practice, I don't care. But it has to be one or the other."

Possible Recommendations

- Create a civil law definition of sex abuse that reconciles the differences between criminal, social work, and juvenile court definitions of child sexual abuse
- Enumerate factors to consider in determining whether to identify a child as an alleged perpetrator. E.g., the child's developmental capability to determine right and wrong and the consequences of his/her actions; the age of both children; the pattern (if any) of behaviors; extenuating circumstances…;
- Exclude children under a certain age (e.g. 10) from being labeled as "perpetrators". They tend to be victims of sexual abuse themselves, and require protective services, not prosecution.
- Exclude so-called "stranger danger" cases in which the alleged perpetrator is not a family member, has no sanctioned or continued access and is not involved in the daily or regular care of the child. Such situations do not raise child protection issues and should be investigated and prosecuted by law enforcement, not PCSAs.
- Explicitly excluding situations such as sexual experimentation between children of the same developmental stage and other situations in which no child protection issues are present. (In appropriate situations, such cases might be investigated as lack of supervision/neglect cases).
- Exclude date rape between children—again, a law enforcement issue.
- Currently agencies can be required to investigate in cases that occurred 15 years ago, when there is no current child "protection" concern. Set a "statute of limitations" for PCSA involvement.
- Provide additional (standardized) training to assist agencies, courts and other practitioners in appropriately identifying sexual abuse of children. [12]

4C Emotional Abuse Synthesis

EMOTIONAL ABUSE

Current Law

O.R.C. § 2151.031. Abused child defined.

As used in this chapter, an "abused child" includes any child who…:

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare

O.R.C. § 2151.03. Neglected child defined.

(A) As used in this chapter, "neglected child" includes any child…:

(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

O.R.C. § 2151.011. Definitions

(A) As used in the Revised Code:

(22) "Mental injury" means any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in section 2919.22 of the Revised Code and is committed by the parent or other person responsible for the child's care.

O.R.C. § 2919.22. Endangering children

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.

(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

(1) Abuse the child

(2) Torture or cruelly abuse the child;

(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment,

discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child…;

4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

Problem

A major problem in this area is the absence of a definitive law proscribing and describing parental acts and omissions that harm their children "behaviorally, cognitively, emotionally, or mentally." Instead, practitioners must refer to several different statutes which allude to this problem almost as an afterthought, in nebulous terms. [12] As with many of Ohio's child welfare laws, these ambiguities lend themselves to significant confusion regarding what types of parental behaviors constitute emotional abuse, and what is meant by "mental injury" to children. Current language makes it extremely difficult, often impossible, to prove legally that a child is being "emotionally abused", although it is well established that this is a very real problem which has long-term mental health and criminal repercussions.

Inconsistencies

As is true of many of Ohio's child welfare laws, the current laws regarding emotional maltreatment of children lend themselves to inconsistencies in the ways in which caseworkers, agencies, and courts view, define, and dispose of allegations of emotional maltreatment of children. What one agency routinely substantiates as "emotional abuse" another routinely screens out. Some courts require proof of a diagnosable mental health condition to find "mental injury," while others do not.

Practical Considerations

Current Ohio laws on this subject speak of mental injury, a term that social workers do not use. They think in terms of, investigate, and substantiate allegations of "emotional abuse".[12] One PCSA administrator told us, "[This agency] has had a category of 'emotional maltreatment' forever, and we can use it as a disposition for the central registry. But there is no such thing as "emotional maltreatment" under Ohio law." One prosecutor said: "I wish we would use the term "emotional abuse or maltreatment" but give it the definition we use for mental injury. It's an archaic term."

Not only do agencies and courts utilize different terminology, they also use very different approaches to analyzing cases. Courts tend to think in linear terms, looking for a specific cause and a specific effect, while caseworkers think more circularly. Specifically, many courts interpret the laws as requiring a showing of a *specific* parental act or omission that causes harm to the child. Child welfare practitioners know that it is

often impossible to point to any single incident as causing the harm. They think more in terms of a *pattern of treatment* that, if not properly addressed, can result in harm to a child over a period of time. As one caseworker put it, "We know that kids will suffer emotional injury eventually, but not in the 30 days we have to investigate." [12]

They also differ in their thresholds of what constitutes "mental injury". Many courts interpret the law as requiring a showing of an *existing* behavioral, cognitive, emotional or mental disorder. Some take it even further, requiring a showing of a *diagnosable* DSM IV condition.[12] This is very frustrating to caseworkers who know that emotional harm to a child as a result of a pattern of parental maltreatment generally occurs long before any diagnosable condition exists. One prosecutor commented,

> *"Demonstration of actual mental injury may be an unattainable burden of proof." The law should require only the <u>risk</u> of mental injury. It may be impossible to establish mental injury in a given case, but expert testimony can be presented regarding studies that show that children who, e.g., witness violence, etc. in general suffer mental injury.*

One survey respondent stated:

> *"I'm not sure that [our PCSA] will ever be able to meet our burden of proof to substantiate or indicate Emotional Maltreatment given that the law states that there must be 'evidence' of the emotional abuse. Even a doctor's statement has to state that the incident as it occurred is the only reason why the child is either acting out, depressed, or suffering from PTSD. No doctor is willing to put their license on the line to say that the incident is 'the only reason'."* [12]

Practitioners repeatedly expressed confusion about what evidence is necessary and sufficient to prove mental injury. One stated: "We need guidance about how to prove mental injury. How do you prove a 2 year old who sees mommy and daddy fight as having mental injury? Do you need an expert opinion? Or a therapist who can say this is how the child was before the incident, this is how she is now?"

The ambiguities in the laws leave much to the interpretation of individual caseworkers and agencies as to what constitutes emotional abuse warranting PCSA intervention. One practitioner stated: "People will contact CSB, and because there are no guidelines regarding what emotional abuse is, it depends on the individual worker and the agency's policy. Because there are no real standards it's all real discretionary." [12]

The issue of domestic violence is a focal point of the debate within the field as to what constitutes mental injury/emotional abuse and when PCSA involvement is warranted. Our survey and interview participants fell along a continuum of viewpoints, those at one end believing that domestic violence should be handled only by police as a criminal matter, those on the other believing that children should be *removed* from homes in which domestic violence occurs.

Some participants who expressed the view that any child who sees or hears domestic violence is being emotionally injured and needs the protection of the State. Proponents of this view point to research indicating that children who live in homes troubled by domestic violence tend to have higher incidences of mental health issues such as Post Traumatic Stress Disorder and debilitating anxiety.[12] While some felt that PCSA involvement is warranted only when a child has seen or heard the violence, others felt that even when children do not witness the violence the dynamics of abuse pervade their homes and ultimately cause mental injury, thus warranting State intervention.[12] Some pointed out that domestic violence between adults is often an indication, or at least a precursor, of child abuse in the home as well.[12] It is interesting to note that 89% of our survey respondents indicated that they would screen in a report of a child witnessing domestic violence between his parents.

On the other hand, concern was also expressed that some PCSAs are being utilized as "domestic violence police" who are called upon to investigate every incident of domestic violence. With over 100,000 reports of domestic violence received each year in Ohio[12] the concern is that this practice stretches the limited resources of PCSAs too thin.

> *"This is politically something that my agency has tried to steer clear of. Because domestic violence advocates want us to go out on every single thing—even a six-year-old beating up his four-year-old sibling. Some say any time there's a domestic violence incident in the family system we need to be investigating. They want to use us to investigate things that are outside our boundaries—i.e. to do the work of the police."*[12]

Those who believed that a line should be drawn drew it in different places. As previously mentioned, some felt that PCSA intervention should be limited to situations in which a child had actually witnessed the violence. Some thought that the frequency of incidents should be considered—i.e. that it should take more than one incident of domestic violence to trigger PCSA involvement. Others felt that to be screened in a report must contain some indication that the child is being negatively affected by the violence. As one caseworker stated: "We don't want to take every call of domestic violence within a family. There must be a cause and effect relationship that it's somehow affecting the kids. There has to be a protection issue for us to get involved. "[12] Still others felt that PCSAs should become involved only in the most serious incidents of domestic violence. "When people are running through the house with weapons, or if Dad's going to kill the dog or is chasing his spouse through the house, those are the kinds of situations where we should get involved."[12]

There was concern by some that parents involved in domestic violence are being unfairly lumped in with parents who have physically abused their children. One prosecutor told us: "My concern is labeling the parents as child abusers when they haven't actually abused them. No one specifies the kind of abuse in the central registry. Sex abuse cases are no different than parents who had domestic violence with an infant in the house." Another expressed concern that in her county:

"They were substantiating emotional maltreatment [in domestic violence cases] even if the kid hadn't observed anything. In 2003 there were 1500 domestic violence cases in our county. There is a rabid contingent of people arguing for removal no matter what. For a while we were substantiating emotional maltreatment in every one of those cases."

The ambiguities in the laws also make PCSAs vulnerable to the opinions of those in their community as to when they should become involved. Reports regularly received by agencies include concerns about fights between siblings, parents not spending enough time with their children, children "not being treated properly." It is not uncommon for callers to become very upset with the agency when such reports are screened out.

Comments

There is no question that emotional abuse/neglect of children is a very real problem, with devastating short- and long-term consequences for its victims and for society. The Field Guide to Child Welfare states: "The dynamics of emotional abuse can be extremely complicated and destructive. Many of the most serious psychological and behavioral dysfunctions in adults have their roots in the emotional harm resulting from child abuse and neglect."[12]

This concern was echoed by a number of respondents. One judge recounted several cases of serious delinquencies that might have been prevented by early intervention by the PCSA or some other agency. This judge stated:

"I recall a case involving an adolescent boy who killed a college student…When we checked the history we found a long history of problems. But no one did anything about them. This child had missed 60 days of school in second grade, and there were many other indications of trouble along the way. No one intervened. If we had flagged this child, we could have predicted that he'd end up exactly where he was. We need to intervene on the front end."

There seems to be general agreement in the field that the problem of emotional abuse needs to be better addressed in Ohio law. The disagreement centers around the issue of the extent to which PCSAs should serve a *preventive* role, given the finite funds and resources allocated to them. Agencies across the state are currently making this decision individually, taking widely varying approaches. There is a great need for establishment of parameters and priorities in this area. Guidance is also needed for both courts and agencies regarding what constitutes emotional abuse of children. The issue of domestic violence as a child welfare matter needs particular attention—when

does it constitute emotional abuse of children and what should be the role of PCSAs in dealing with this problem?

Possible Recommendations

- Add the category of "emotional abuse" to the statutory scheme. Consider dividing this category into two components—emotional abuse and emotional neglect.

- Provide a clear definition of emotional abuse/neglect. The Ohio State University Fact Sheet[12] for example, provides the following definitions:

  > Emotional abuse: chronic attitudes or acts which interfere with the psychological and social development of a child. It is not a one time act, but consistent and chronic behavior.
  >
  > Emotional neglect: failure to provide the support or affection necessary to a child's psychological and social development. This would include the failure to provide the praise, nurturing, love, and security essential to the child's development of a sound and healthy personality.

The Field Guide to Child Welfare may also provide some direction in this regard. It lists several factors suggestive of emotional abuse that increase the risk of emotional harm to a child:

- The unpredictability of parental responses
- Extreme, frequent belittling;
- Verbal denigration of a child's personal worth; and
- Parental indifference[12]

- Clarify what is meant by "Mental injury" of children. Specify behavioral indicators, and remove language that permits insistence upon a diagnosable mental health "disorder." Possible language: "displays behaviors consistent with a diagnosable mental health disorder."
- Provide specificity regarding what actions/omissions of parent constitute emotional abuse/neglect.
- Specify factors for courts to consider in determining whether a "pattern" of behavior exists
- Require consideration of factors such as the "seriousness" of the violence (i.e. instrument used), the number and frequency of incidents, age of children, whether children witness the violence, etc.

4D Neglect Synthesis

NEGLECT

Current Law

§ 2151.03. Neglected child defined; failure to provide medical care for religious reasons

(A) As used in this chapter, "neglected child" includes any child:

(1) Who is abandoned by the child's parents, guardian, or custodian;

(2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;

(3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;

(4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;

(5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;

(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

(7) Who is subjected to out-of-home care child neglect.

(B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person's responsibility under section 2151.421 [2151.42.1] of the Revised Code to report known or suspected child abuse, known or suspected child neglect, and children who are known to face or are suspected of facing a threat of suffering abuse or neglect and does not preclude any exercise of the authority of the state, any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.

§ 2151.05. Child without proper parental care

Under sections 2151.01 to 2151.54 of the Revised Code, a child whose home is filthy and unsanitary; whose parents, stepparents, guardian, or custodian permit him to become dependent, neglected, abused, or delinquent; whose parents, stepparents, guardian, or custodian, when able, refuse or neglect to provide him with necessary care, support, medical attention, and educational facilities; or whose parents, stepparents, guardian, or custodian fail to subject such child to necessary discipline is without proper parental care or guardianship.

§ 2151.011 Definitions…

(B) As used in this chapter…

(1) "Adequate parental care" means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs" [emphasis added]."

C) For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.

Problem

The language of the neglect statutes is extremely ambiguous. The laws are silent as what types of parental omissions qualify as neglect. In addition, the word "neglect" is used to define neglect and the word "adequate" to define adequate. They are rife with subjective terms such as "necessary," "proper," "adequate", "fault", "morals", and "well-being," all of which mean different things to different people. This ambiguity lends itself to confusion in those who investigate and substantiate neglect (or not) and tension between agencies and mandated reporters who most often report neglect—particularly educators. It exacerbates a problem that is particularly endemic in neglect cases—the tendency to impose one's own values and standards in evaluating the behavior of others..

Inconsistencies

We found inconsistencies from county to county in the frequency with which the neglect designation is used. Some use this designation freely, reporting relatively high numbers of neglect cases. Others use it sparingly, preferring the abuse and dependency designations.[12] Parental omissions that are substantiated as neglect by one agency are unsubstantiated or screened out by another.

We found significant inconsistencies from practitioner to practitioner as well. We asked our survey respondents to identify factors which, standing alone, would be sufficient to warrant a disposition of substantiated neglect. Their responses indicated a significant split on most of the factors.[12]

Factor	Would Substantiate	Would Not Substantiate
No running water[12]	21.1%	79.9%
No indoor plumbing	21.1%	79.9%
No electricity	22.3%	77.7%

No gas	17.9%	82.1%
Cockroach infestation	38.7%	61.3%
Mice infestation[12]	38.5%	61.5%
Dog/cat feces basement floor	32.3%	67.7%
Extensive clutter	22.3%	77.7%
10 people/2 bedroom apartment:	23.8%	77.2%
Children on dirty, unsheeted mattresses on floor	29.5%	70.5%
Child, 10 home alone 2 hours several evenings	16.4%	83.6%
Child, 12, in charge of siblings, 1 and 3 in the evening	20.1%	79.9%
Child, 2 wandering outside, unclothed , mom not home	99.5%	.5%
Children, 13 and 16 home alone, 2 weeks, parents vacation[12]	58.6%	41.4%

Practical Considerations

Three issues were mentioned most frequently with regard to problems caused or exacerbated by current neglect law:

- Parental substance abuse;
- School-PCSA relationships; and
- Parents refusing to care for their unruly/delinquent teens.

1. Parental Substance Abuse

Parental substance abuse is an issue that came up often in the context of neglect. Agencies are all over the board in terms of their approach to this issue.[12] Many struggle with where to draw the line.[12] In some counties agencies automatically intervene when the mother tests positive for drugs, even if the baby hasn't been tested, or doesn't test positive. Of these counties, some see a positive test result as an opportunity to offer services to the family. Others actively seek removal of the child.[12] In one county, we were told, a special team of investigators "tracks pregnant women so that they can take the baby if mom tests positive." In another, the hospitals call to report parents who test positive before the baby is born. One prosecutor told us that between 1999 and 2001 "the county commissioners ordered the PCSA to remove all children whose mothers were on drugs. We were removing 500 kids a month until they stopped that practice."

Respondents from some counties expressed concern about removing a child, or even offering services, in the absence of a showing of *harm* to the child related to parental substance abuse. Some counties require a positive drug test, a diagnosis of fetal alcohol syndrome, or some other indication to warrant intervention. One prosecutor stated:

"Mom's smoking pot every day? So what? Give me a nexus. What's

the negative impact on the kids? There has to be some connection between her behavior and harm to the child. Agencies are intervening without a showing of connection between mom's drug use and baby's well being."

Another stated:

"I think that 2151.03(A)(2) is sometimes applied unfairly to some parents —this is the provision that is often cited in cases involving substance abuse or domestic violence, but it seems unfair to apply it to cases in which the primary caregiver/parent is suffering from the 'disease' of alcoholism or drug addition. Society is moving toward a greater recognition of substance abuse as an illness, but the neglect statute still treats it as something that is within the parent's control."

One respondent expressed concern about poor parents being unfairly singled out for drug testing, stating: *"If you are private-pay you don't get drug tested. If you get Medicaid you will be tested. That's why a disproportionate number of poor people test positive for drugs."*

Several expressed concern about the unfairness of the timelines in cases involving parental addictions. One public defender stated:

"The 12/22 rule is unfair to parents. When you're dealing with a parent who's a crack addict, that's not reasonable. It's a real problem for parents. If you accept the premise that treatment/recovery is a two-year process, unless they have family supports they're going to lose that child."

Another stated:

"It's very hard for clients who are addicted to get assessment until 6-8 months in, because of the addiction process. They may not be ready for treatment when we remove the child. And if the client has mental health issues as well as addictions, they get into issues of which do you treat first. Meanwhile parents are just hanging out there waiting. No one is trying to pull them in. We get permanent custody of more kids than ever before this way. "

2. PCSA - School Relations

The ambiguity of Ohio's neglect laws also causes confusion about what types of situations should be reported to PCSAs and what should be investigated. In cases of suspected neglect, PCSAs interface quite frequently with school professionals, who are mandated reporters under Ohio law. We heard a lot about tension between these two professions surrounding the reporting, receipt, and investigation of neglect concerns.

The school personnel that we interviewed expressed great frustration because on the one hand they are required by law to report suspected child neglect [12] yet from their perspective their concerns are often either not taken seriously or are rejected outright by PCSAs. Among the examples that were cited:

- Child came to school for the 7th time with head lice. School had been calling CSB since the 3rd time, however were told it was not neglect, but was rather "a health department issue."

- Children came to school "dirty/filthy, and out of control" and had many behavior problems. "This family needed help, but the agency refused to get involved."

- A "lower functioning" child came to school with a huge bedsore caused by bedwetting. CSB was contacted but refused to become involved. It was not until mom beat the child for the bedwetting and the school nurse "called CSB and said I was afraid to send him home" that the agency became involved.

- Children weren't being fed breakfast, were very malnourished, very thin—"even our cooks were concerned," however the PCSA failed to respond to several reports.

- A 17 year old was left alone for a lengthy period of time with a mentally challenged younger child. The school contacted CSB, which refused to become involved, stating that the children were 'o.k.' because the older child's girlfriend's mother looked in on them periodically. "But they were *not* o.k." from the school's perspective.

One educator commented:

> *"Many neglected children fall through the cracks because CSB is unwilling to get involved. Some educators stop reporting because they know nothing will happen, and because sometimes reporting does more harm than good—*
> *children get mistrustful and stop talking, because we say we'll help then CSB does nothing or leaves a card. And the parents get mad at us and tell their kids to stop talking to school officials."*

PCSA practitioners, on the other hand, expressed frustration about what they perceive to be the schools' inappropriate referrals. As one PCSA director stated:

> "*Educational neglect is a dumping ground, through which schools inappropriately transfer their problems to county child welfare agencies. Schools try to send cases to child welfare agencies under such circumstances as truancy, parents not transporting their children to school, parents not appearing at school meetings, and children with head lice. These are not child protection issues."*

Differences between these two professions seemed to center around the following major issues:

- **Lice .** Schools tend to view children repeatedly coming to school with head lice as a neglect issue. They send children with lice home to prevent spreading to the other children, the parents do nothing and the children either come back to school with lice or remain out of school. Educators expressed frustration over PCSAs' apparent lack of concern about this. Many agencies, on the other hand, consider head lice to be outside the purview of their responsibilities. Some parents try to get rid of the lice but cannot afford the necessary lice shampoo or insecticide bombs. Others do get rid of the lice but don't pick the dead nits out of their children's hair. As one caseworker stated: "Anyone can get lice, it's not a neglect issue. The dead nits indicate that somebody is trying. But the schools don't accept that."

- **Behavior Problems**. Schools' sometimes see children's behavior problems at school as indicative of parental neglect, and refer such cases to the PCSA. Many agencies, however, see most behavior problems alone as outside their boundary. As one worker stated: *"Schools call us to refer parents whose kids are bad. Even facilities serving sbh [severely behaviorally handicapped] kids do this, when that's what they're there for. Those cases aren't appropriate for referral, but some PCSAs take them because of the view in their community."*

- **Truancy.** Schools often view truancy as occurring with the tacit approval of the child parents and as appropriate for PCSA referral. Many agencies, on the other hand believe that truancy is primarily an educational or delinquency issue, which generally should be dealt with by the school or juvenile court. Interestingly, 52% of survey respondents felt that a report about a child missing 25 days of school should be screened in, while 42% felt it should be screened out.

- **Dirty Clothes/Hygiene.** School often contact PCSAs with concerns children coming to school dirty and smelling. Concerned about the emotional and social repercussions that such conditions has on children, many educators take it upon themselves to purchase or wash clothing, buy toothbrushes and other items, make provisions for showers, etc., before contacting the PCSA to report child neglect. Some agencies argue that dirty clothes and poor hygiene alone are generally not child protections matters, that if they are forced to deal with such concerns they will be hampered in their efforts to deal with situations involving real danger to children.

Some communities have made collaboration between PCSA and schools a priority, and have worked hard to build relationships and consensus as to what types of situations are appropriate for referral. A PCSA director from such a community stated:

> *"We have done a lot of training with our mandated reporters. When I*

first came here they were making really inappropriate referrals—lice, not wearing a coat, etc. Over 7 years we've trained them and shared our screening guidelines. The quality of our referrals has gotten a lot better."

A school official from a collaborative community stated:

"Collaboration is extremely important, and will have to accompany any changes in the laws. In our community [the schools and the agency] have meetings. We send counselors out with caseworkers. [We] used to have unreasonable expectations, but that kind of thing helps. So now we say, if CSB won't do it, what can <u>we</u> do?"[12]

For others, however, relations are strained at best and counter-productive at worst. Unfortunately, it is the children who suffer the consequences of this dissension and mistrust.

The ambiguity also creates problems for agencies in terms of the types of referrals received from other members of their communities, and the expectations of those communities as to the appropriate extent of PCSA involvement. One caseworker stated:

"We [the PCSAs] are really dealing with minimum standards of parenting, when the community often has higher standards. It is especially difficult getting lawyers and GALs to understand that. The law needs to specify more clearly that child welfare's job is to deal with kids in "imminent risk," so when people call, the screeners can say "Sorry, that's not within our scope."

3. Parents Refusing To Care For Their Unruly/Delinquent Teens

Reportedly, a significant number of parents in Ohio, when their children become unruly or delinquent teenagers, kick them out, or refuse to accept them back home following detention center placement or to work a PCSA case plan for reunification. This was frequently mentioned by PCSA staff as a source of frustration. As one administrator put it: "Parents should be held accountable for raising their kids instead of passing them off and saying they don't want to raise them. Especially teens. I'd like to file neglect on those families. You don't just walk away if you're a parent." [12]

Reportedly, the PPLA is often used to justify placements of these children with PCSAs. These parents do not wish to have their parental rights terminated, but they do want the state to care for their children during the difficult adolescent years. One agency director stated:

"Can we please make PPLA go away? It's a catch-all for teenagers. We've done a terrible disservice for kids by having it available. Judges use it for 5 and 6

year old kids. We're still paying a price for those young kids being in that status—it's ridiculous! Many courts disregard the stiffer requirements for PPLA. If you do away with PPLA, then parents are forced to do something about that child. They aren't going to want to permanently terminate their parental rights. They want us to raise their kids and fix them then let them come back home when they turn 18."

4. Additional Concerns

Our respondents mentioned several additional concerns relative to the neglect statutes, albeit less frequently than the three primary issues already discussed. Briefly, these are:

Children left unattended *"We need clearer guidelines about when it's ok to leave kids alone, considering factors such as time of day, child's age, maturity, and knowledge of safety, responsibility for younger children…"*

Role of absent parents in abandonment cases: *"The way that 'abandonment' is currently defined presumes an intact family unit where both parents act in concert. [This] is rarely the case in abuse, neglect, and dependency cases. Clarifying the definition of 'abandonment' should take into account 'real world' experience, where oftentimes there is one parent who is not involved and does not want to be involved. Being able to terminate that parent from the 'reasonable efforts' requirements of 2151.419 would assist PCSAs in doing their work."*[12]

Parents failing to pay child support. *"I think that the neglect statute should specifically include a separate subparagraph basing neglect on the failure to establish paternity and support, visit or communicate with the child when able to do so."*

Inadequate home schooling. *"There is no real follow-up or accountability in home schooling. Most parents do great, but some use it as an opportunity to totally drop the ball when it comes to educating their kids. This is educational neglect and should be dealt with by law."*

Drunk driving with child in car. *"Drunk driving with a kid in the car should be automatically treated as neglect."*

Child in vicinity of meth-amphetamine lab. *"There is so much danger of blowing the place up in a meth-amphetamine lab, any parent who has a child in such a place is exposing that child to serious risk of harm. Include this as abuse or neglect."*

Comments

The real danger in the ambiguities of the neglect laws lies in the tendency of people to evaluate the behavior of others in light of their own circumstances, beliefs and values. A significant number of the respondents to whom we spoke mentioned that neglect cases in reality often have more to do with poverty than with neglect. One caseworker stated:

> *"A 'neglected child' is someone without adequate parenting, but this often seems to just require what a 'middle class' person would want (i.e. this kid needs braces). We need to do better to make sure that we know what is really basic care."*

One judge opined that if agencies would take the money that they pay to foster parents and use it to provide supports for the child's parents, there would be fewer "neglect" cases" :

> *"There's a small county in Minnesota where next to no children are in custody. There isn't even an ongoing children services agency. All of their money goes to family preservation. One of their main things is that when there's a concern about a child at risk someone actually moves in with the family to assist with ever conceivable thing the family or child would need to deal with. Most families tend to be ok, but when not, people really know for sure that it's the right thing to separate. No question about the appropriateness of breaking up the family."*

Several respondents expressed the view that a disproportionate number of black children are brought into care, and that this also is a reflection of the subjectivity with which neglect assessments are made. One respondent stated:

> *"You'll see differences depending on which area of the state you're in, and whether it's a small rural area or a large urban area. Even within our own agency there are discrepancies; we see that in terms of who comes under care—black families are disproportionately represented because they have different values than the people investigating them."*[12]

One respondent observed that many PCSA clients are relatively uneducated, and that this can weigh against them in investigations. She stated: 'Some people haven't developed a value around education, and we're very punitive about that."

Tightening up the neglect laws will, hopefully, diminish the "window of opportunity" for professionals and citizens to interject their own cultural norms and expectations in assessing the behavior of their neighbors and clients, and prevent the unfair labeling of parents who are merely different as "neglectful."

Possible Recommendations

- Articulate the specific “parental cares” (duties) which, if omitted, constitute neglect

- Articulate factors to be considered in determining whether a parental omission is neglectful: e.g. the nature of the omission, intent/reason, chronicity, age/constitution/ temperament of child, etc;

- Specify whether, and the extent to which, harm to the child is required to establish neglect

- Avoid words such as “adequate,” “necessary,” “proper,” “morals,” “well-being,” etc. that lend themselves to individual interpretation; To the extent possible, replace them with *quantifiable* terms

- Add provisions specifying conditions (if any) under which the following will be considered neglect:

    Parental substance abuse
    Failure to establish paternity/pay child support
    Children left unattended
    Parents refusing to care for their unruly/delinquent children

- Clarify the role of the absent parent in abandonment cases, and reconcile the singular/ plural discrepancies in the statutes

- Require additional training for judges, magistrates, lawyers, and PCSA staff regarding substance abuse dynamics and issues (Several survey respondents requested training on this subject).

4E Dependency Synthesis

DEPENDENCY

Current Law

2151.04. As used in this chapter, "dependent child" means any child:

(A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;

(B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

(D) To whom both of the following apply:

(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

Inconsistencies

There is a wide range of interpretations across the state as to what types of situations fall within the definition of dependency. Counties also differ significantly in their reasons for using the dependency designation and the frequency with which they use it.

Problems

2151.04 uses archaic and imprecise terminology ("destitute", "guardianship", "State"). The statute itself is overbroad and overused. 2151.04 (C) is referred to in the field as the "*catch-all provision,"* because its language is broad enough to permit State intervention in pretty much any family situation, for whatever reasons deemed appropriate by the court or PCSA. In our survey, 41.2% of the PCSA Administrators who responded[12] said that Ohio's dependency laws are not clear and understandable (as opposed to very or somewhat clear and understandable.

Practical Considerations

The dependency statute was enacted to provide an alternative for situations in which children lacked adequate care through no fault of their caretaker. Over time it has come to be used by judges and magistrates, attorneys on both sides, and PCSAs in a wide range of situations to accomplish various objectives that have little to do with the original intent of the statute.

The statute is frequently used in abuse and neglect cases as a vehicle for settlement. Parents are more willing to agree to a designation that does not imply parental fault like the words "abuse" and "neglect" do.[12] Attorneys on both sides like the bargaining power that the statute gives them. Courts with overcrowded dockets appreciate out-of-court settlements made possible by the statute. It seems probable that many more cases would go to trial without this ability to reduce abuse and neglect cases to dependency. One PCSA administrator told us: "When there is an overloaded docket, we will do the expedient thing to keep the child safe because there aren't enough judges or attorneys available to handle the case in a timely manner. Judges will water down the charge for expediency. It could take a year to litigate the case." [12]

The statute is often used to take advantage of the less stringent requirements that the law imposes in dependency cases as opposed to abuse or neglect cases. [12] Also, ODJFS rules regarding timelines, interviews, and paperwork are more relaxed for dependency than abuse and neglect. Risk assessments, for example, are not required in dependencies.[12] For understaffed and overburdened PCSA Intake departments the temptation to indiscriminately label cases as dependencies is therefore great.[12]

The statute is also used to permit PCSA involvement in situations that otherwise might not fall within the court's jurisdiction or the scope of the PCSA's duties. It is used by both in cases where there is a "gut feeling" that something is wrong but insufficient evidence to meet the standard of proof for abuse or neglect. One juvenile court judge stated:

> *"The catch-all provision gives juvenile judges discretion when a case just doesn't smell right, but you can't prove it's more serious. 2151.04(C) gives judges huge latitude in such cases. I wouldn't favor eliminating that discretion."*

Agencies use its broad language to allow them to provide services to families who need them but would not otherwise qualify for them.[12] Courts use it to give PCSAs physical and/or financial responsibility for children who are unruly or delinquent but not abused, neglected or dependent.[12] Parents with emotionally or physically ill children who cannot afford to pay the associated expenses sometimes resort to turning their children over to the State as dependent children in order to obtain needed treatment.[12]

Some agencies use dependency to avoid labeling and stigmatizing clients who have done nothing wrong. Under current rules, when a report is received the agency must,

before beginning their investigation, immediately assign a designation, whether abuse, neglect, dependency, or some other word or phrase (varies across the state). If they designate the report as abuse or neglect, even if upon investigation the report turns out to be totally unfounded, these words must appear in the disposition that is sent to the central registry, and in the letter to the client closing the case, which is very disturbing and threatening to people. Designating it as dependency or "other" avoids this problem.

Comments

There are indeed children in Ohio who are dependent upon the State through no fault of their parents, guardians or custodians. Examples include children whose parents are overwhelmed or incapable of providing for their *basic* needs due to events such as house fires, layoffs, incarceration, the parent's mental or physical incapacity, or the special needs of the child.[12] There is need of a category to cover situations such as these. Also, the system does benefit from having some leeway and leverage to encourage out-of-court settlements in borderline cases. Reducing a tenuous abuse or neglect case to a dependency to permit continued involvement is not an inappropriate use of the statute. However, the overbroad language of 2151.04 (C) and the resulting use of the dependency designation in situations that do not fall within a narrow definition of dependency cause significant problems in practice.

First, it creates problems in Ohio's federally mandated child welfare data collection efforts. As one respondent stated:

> *"ORC Sec. 2151.04 "Dependent Child" definition is overbroad, including neglected,*
> *abused, delinquent, and unruly children within the definition of "dependent child."*
> *This causes confusion as to proper identification of abused and neglected children.*
> *Ohio's child welfare data collection efforts are rendered useless by the "dependent*
> *child" definition because large numbers of abused and neglected children are instead adjudicated as dependent children. So data on abused and neglected children*
> *(which Ohio is required to collect under the Child Abuse Prevention and Treatment*
> *Act, 42 U.S.C. Sec 5104) cannot be accurately determined."*

Second, it causes tension and frustration between PCSAs and the legal system. Caseworkers who have documented child abuse or neglect in the course of an investigation find it difficult to understand or accept a finding of dependency for what they consider to be the sake of expediency.
Legal professionals, in turn, are impatient with the lack of understanding by the child welfare professionals about the need for, and benefits of, out-of-court settlements.

Third, it can deprive parents of the therapeutic value of an honest appraisal of their behavior and of
case plans that relate logically to the problems that brought them to the State's attention in the first place.[12] Child welfare is built upon the premise that its purpose is to protect children, not to punish parents. Much emphasis is placed upon developing a trusting, respectful casework relationship as a vehicle for change. Some believe that using the dependency designation rather than the words "abuse" or "neglect" avoids the parental defensiveness and fear that are engendered by the latter terms, and facilitates the development of a therapeutic relationship. Others believe that a truly therapeutic relationship requires honesty, and that meaningful change cannot occur if parents who have harmed their children are told that there is no fault and thus permitted to minimize the seriousness of their acts or omissions. Also, savvy defense attorneys often use an adjudication of dependency to argue against putting requirements into the case plan designed to address abuse or neglect issues, on the grounds that there was no adjudication of either. This fails to address the real issues and ultimately does a disservice to the children as well as their parents. As one PCSA director stated:

> *"When the true facts of child maltreatment (e.g., severe physical abuse) are not legally established at adjudication the parent may feel that they don't have to accept services addressing that issue, such as anger management. This may mean that*
> *the case plan won't include essential services."*[12]

Inappropriate use of the dependency designation can make it more difficult for PCSAs to establish grounds for permanent termination of parental rights down the road in appropriate cases. A petition for permanent custody that is based upon a history of dependencies does not have as strong a foundation, particularly if (as often happens) the court has not included in its previous adjudications specific findings of fact to preserve the presence of abuse and or neglect for the record. One PCSA director stated:

> *"In our county, prosecutors will accurately verbally describe to the judge what really happened, but they will give it the label of dependency. The attorneys will negotiate the dismissal of the abuse complaint. The problem, however, is that there is no written finding by the judge establishing the truth of the facts as recited by the prosecutor."*[12]

Finally, and perhaps most importantly, overuse of the dependency statute has contributed to the blurring of the lines between what falls within the scope of child welfare and what does not. This blurring causes great confusion and dissension within the child welfare system and between this system and others such as education, medicine, etc. There are 88 different counties and 88 different ways of differentiating between abuse, neglect, and dependency and none-of-the-above. Eighty-eight ways of determining what falls within the purview of PCSA responsibilities and what does not. Estimates in the field indicate that no more than 10 – 20 % of reports made to PCSAs

are actually related to abuse, neglect, or dependency (as traditionally defined) of children. Yet many agencies feel required to investigate every referral due to pressure from the community and the media, and the fear of lawsuits. As one PCSA director commented:

> "*Some local governments really want the agency to intervene in a broad range of problems. The question is, what is the mandate of our agency? Is it supposed to do something about really minor situations such as kids tipping over garbage or other minor family problems?*[12]

Others, however, voiced concerns about the consequences of this approach, as reflected in this comment by a PCSA administrator:

> *"No one screens at the beginning so there's so much coming through that there's not enough time. Agencies are afraid of liability. Some Agencies say we accept all calls, but the level of service a case gets is very variable. They call everything "service", even if the only service was calling the complainant back and saying this is not an acceptable child welfare issue. Or checking past histories—some call that "service" as well."*

The agency practice of using dependency as a way to permit them to provide needed services to families who wouldn't otherwise qualify is laudable, however it also raises certain red flags. First, it may permit intrusion into the lives of families who do not wish to receive such services and who should not be forced to receive them unless the State can prove by clear and convincing evidence that the parents are failing to provide their children with "the minimum level of care that the community will accept." As one respondent said "There is no law against being a bad parent," and using dependency as a way to intervene in the lives of families that do not rise to the required level is considered by some to be a dangerous practice.[12]

In addition, the blurring of lines reflected by these examples strains the PCSAs' already limited resources and may prevent them from spending adequate time and resources on situations in which children are truly at risk of serious harm. As one director stated: How can we do things well if we have to do everything?"

If we want the PCSAs to provide services to needy families who would not otherwise qualify the legislature needs to explicitly articulate this as falling within the scope of their duties. If we want them to assume the care, custody and support of unruly and delinquent children who are not abused, neglected, or dependent, we need to say so and provide them with the resources to train and equip foster parents and caseworkers to deal with these children. If we want the PCSAs to do preventive work with the families of at-risk children in order to forestall future unruliness, delinquency, or mental health issues we need to make this an explicit duty, and, again, allocate the resources with which to carry it out. Similarly, if PCSAs are to be responsible for assuming

medical bills for parents who can't afford to pay them, again this should be specifically delineated as falling within the scope of their duties.

Possible Recommendations

- Do away with the dependency designation entirely, and replace it with something like "family in need of services."
- Keep dependency but add "family in need of services" as a fourth category
- Clarify parameters regarding what does and does not constitute "dependency" (or whatever designation replaces it).
- Close loopholes that allow misuse of the statute to save money, time, paperwork, etc.
- Provide specific examples in the statute of the types of situations that would qualify and those that would not.
- Provide clear guidance to the PCSAs, courts, schools, other mandated reporters, and our communities as to what these parameters are.
- Specifically exclude (or include) unruly/delinquent children with no presenting problems of abuse, neglect, or dependency.
- Specifically exclude (or include) children whose parents can't afford to pay medical expenses.
- Specifically exclude (or include) families/children who could benefit from services but do not fall within the definitions of abuse, neglect or dependency.
- Require judges/magistrates to make specific findings of fact indicating abusive or neglectful behavior by the parents, if any, in dependency cases.
- Require case plans to directly address the actual behaviors, problems, of the parents, rather than merely the legal label that is placed upon them.
- Require consent decrees to reflect and address issues of abuse or neglect as a condition of accepting the plea.
- Delete the word "destitute" in Section A (substitute another word?).
- Delete 2151.04(C).
- Move section D to the abuse and neglect statutes, perhaps creating a new category such as "high risk of abuse" or "neglect").
- In 2151(D) drop the language "…the child is residing in a household in which a parent…committed an act…etc. (Often the sibling that has been adjudicated is not residing in the household. Also the child who is allegedly dependent often hasn't gone home from the hospital and therefore doesn't reside in the household).
- Change the OAC rules regarding assigning a designation of a/n/or d based solely upon the report received (to address the central registry problem) (Howard says this is going away?)
- Need to define what is meant by "the mental or physical condition of the child's parents, etc." in section (B). As currently written it is extremely overbroad and unclear what is meant.

- Require the same timelines, interviews, paperwork in dependency cases as are required in abuse and neglect cases.

Appendix 5 Ohio Case Review Chart

Case Name	Cite	Court	Date	
City of Akron v. Fowler	2003 Ohio App. LEXIS 2563	CAOH, 9, Summit County	6/4/03	child endangerment conviction; D created substantial risk of harm to child's health and safety by ordering him to walk alone to dangerous, high crime area to purchase drugs for her from drug dealers;
City of Cleveland Heights v. Johnson	2001 Ohio App. LEXIS 2077	CAOH, 8, Cuyahoga County	5/10/01	D guilty of domestic violence per 2919.25(A); whipping w/a leather belt for F's on report card, administered in the heat of anger and sufficient to cause bleeding of the mouth and swollen face, not punishment that is proper and reasonable under circumstances
City of Galion v. Martin	1991 Ohio App. LEXIS 6092	CAOH, 3, Crawford County	12/12/91	domestic violence conviction; not child endangerment, no evidence that D slapped child as form of corporal punishment; striking a child in anger not same as disciplining unruly child
City of Mason v. Rasmussen	2001 Ohio App. LEXIS 1416	CAOH, 12, Warren County	3/26/01	child endangerment conviction; sufficient evidence to establish D created substantial risk to young child by leaving him alone and unattended; act of leaving a 3 1/2-year old home along creates substantial risk of harm to child, children of such young age not competent to take care of themselves, either under ordinary circumstances or in emergency situations, regardless of whether home is well-kept or not; actual harm to child is not an element of offense
Clark v. Clark	114 Ohio App. 3d 558	CAOH, 12, Butler County	9/23/96	corporal punishment doesn't create substantial risk of serious physical harm when no evidence it resulted in permanent incapacity or disfigurement, substantial suffering, or substantial risk of death
Couch v. Harrison	2001 Ohio App. LEXIS 651	CAOH, 12, Clermont County	2/12/01	mother had affirmative duty to protect children from substantial harm; beatings caused substantial welts and bruising, no one seriously contended man's punishment not excessive; since mother failed to act to protect her daughter from excessive punishment, she committed an act that resulted in the abuse of her child; mother committed domestic violence against child for failing to exercise her duty to protect

Gallagher v. Gallagher	115 Ohio App. 453	CAOH, 3, Henry County	3/21/62	abandonment finding requires failure to provide for child coupled with ability to maintain and provide for that child; mother's placement of children in orphanage not abandonment because she did so only while she was financially unable to care for them
In re Alizah	2003 Ohio App. LEXIS 2006	CAOH, 6, Lucas County	4/25/03	complaint in dependent, neglect and abuse re infant girl; sufficient evidence for dependency finding--at time of hearing parents already had lost permanent custody of at least one child due to failure to substantially comply with case plan requirements; infant also in danger of being abused or neglected "because of the circumstances surrounding the abuse, neglect, or dependency of sibling or other child and other conditions" in child's household
In re Anthony	2003 Ohio App. LEXIS 5075	CAOH, 11, Ashtabula County	10/24/03	abuse and neglect adjudication; uncontroverted expert testimony that child's injury was inflicted rather than accidental--injury was at variance with history given by dad; dependency finding doesn't require parental fault
In re Artler	1976 Ohio App. LEXIS 7161	CAOH, 8, Cuyahoga County	7/15/76	evidence supported conclusion that child's mother either inflicted abuse on child herself, or neglected to prevent such abuse from occurring at hand of third person; alleged mother neglects or refuses to provide child with proper care or subsistence or other care necessary for his health or well-being
In re Baby Boy Blackshear	90 Ohio St. 3d 197	Ohio Supreme Court	10/25/00	*per se* abused child: newborn child's toxicology screen yields positive result for illegal drug due to prenatal maternal drug abuse
In re Baby Girl Baxter	17 Ohio St. 3d 229	Ohio Supreme Court	6/12/85	dependency case filed against father day child was born--failed to provide any prenatal care and had serious concerns about his ability to care for the child due to removal of another child from household; record shows despite numerous agency opportunities to help appellant remedy problems responsible for removal, he consistently and continually failed to put forth his best efforts; father failed to provide basic necessity of safe, stable environment for child and shows no signs of being able to adequately care for child, much less child w/special needs

In re Baby Girl Elliott	2004 Ohio App. LEXIS 3213	CAOH, 1, Hamilton County	7/6/04	complaint alleged dependency filed against mother day child was born; mother failed to follow through w/case plan, failed to obtain parental care, and had another child removed from her home few years prior; circumstances surrounding prior termination of parent's rights are highly relevant in termination hearing re: same parent and different child
In re Banas	1976 Ohio App. LEXIS 8169	CAOH, 10, Franklin County	12/16/76	children adjudicated dependent; police had to intervene in fight between parents where mother was beating up father who had physical limitations; disabled father unable to care for children; mother experienced severe emotional instability triggered by own extreme jealousy of father, evidence that children suffered mentally and emotionally, resulting in nervousness, nightmares, and regression in toilet training; both parents admit emotional disturbances have been allowed to erupt in fisticuffs and such fights have been witnessed by children--evidence that fights are often precipitated by drinking of alcoholic beverages
In re Barker	2003 Ohio App. LEXIS 5758	CAOH, 5, Stark County	11/24/03	5-month old adjudicated dependent; mother appeared mentally delayed, lost custody of two other children, had history of homelessness and/or poor home conditions, history of lack of case plan compliance, an inability to care for two young children she had lost in previous case
In re Barnhart	2002 Ohio App. LEXIS 5856	CAOH, 4, Athens County	10/30/02	father failed to substantially remedy conditions that led to child's removal, continued to have problems controlling his anger, continued to experience violent outbursts and failed to obtain independent housing--by not obtaining such housing, father shows unwillingness to provide adequate permanent home for child

In re Barrett	1998 Ohio App. LEXIS 950	CAOH, 1, Hamilton County	3/13/98	child endangerment conviction requires showing of child abuse; state law allows parental punishment of child so long as punishment did not exceed bounds of reasonableness and noted cases analogous on facts to one at issue in which convictions for abuse has been reversed; in reversing conviction, court noted that harm to child was temporary and slight, and that when child was examined at hospital, he was released without medication or orders to return for checkup
In re Barzak; Davis v. Trumbull County Children Services Board	24 Ohio App. 3d 180	CAOH, 11, Trumbull County	6/24/85	agency may not seize person's child and then be sole judge of how much of evidence in respect to agency's conduct it will refuse to divulge
In re Beasley	2003 Ohio App. LEXIS 3207	CAOH, 4, Scioto County	6/25/03	mother abandoned child when she refused to cooperate with children services or to participate in reunification efforts; evidence shows child has history of committing sex offenses against other children and mother adamantly refuses to allow child to return to her home, absent "written guarantee" that he will not re-offend
In re Bibb	70 Ohio App. 2d 117	CAOH, 1, Hamilton County	10/15/80	dependency adjudication; no evidence of instability and impoverished conditions of mother's life, none of the failure to support or care for the children required to prove dependency; mother had emotional difficulty causing repeated hospitalizations, but as she became aware of onset of problem, she managed to place children in safe place--she managed to make some provision for the children each time, but she was nonetheless physically unable to care for them while in the hospital; welfare dept did not rebut clear suggestion that recently it had exacerbated situation, unknowingly but inevitably
In re Boone/Staton Children	1997 Ohio App. LEXIS 5358	CAOH, 5, Stark County	11/3/97	permanent custody proceeding; father left bruise of hand print on child, children alleged physical and sexual abuse; evidence parents continuously refused to cooperate with counselors re: sexual abuse issue
In re Bretz	1990 Ohio App. LEXIS 5685	CAOH, 5, Holmes County	12/12/90	abuse and dependency proceeding; striking child w/belt is not *per se* abusive, need to consider circumstances--child's age, response to non-corporal punishment in past, behavior being punished

In re Brown	60 Ohio App. 3d 136	CAOH, 1, Hamilton County	12/20/89	dependent child: evidence demonstrated not only that mother had mental incapacity but also that child lacked "proper care" because of mental incapacity
In re Browne Children	2003 Ohio App. LEXIS 3293	CAOH, 5, Stark County	7/7/03	neglect proceeding; it's mother duty to provide for children, she can't ignore help from public assistance based on help received from friends and relatives
In re Burrell	58 Ohio St. 2d 37	Ohio Supreme Court	4/25/79	in dependency proceeding, mother's conduct irrelevant except as to how it formed part of children's environment; conduct only significant upon demonstration of adverse impact upon child sufficient to warrant state intervention; impact must be demonstrated in clear and convincing manner, not merely inferred
In re Burton	2004 Ohio App. LEXIS 3652	CAOH, 3, Mercer County	8/2/04	neglected and dependent child; diagnosed w/possible hearing deficiency, mother failed to seek proper medical attention for him; mother left child w/relative without providing any financial or medical means of caring for him, did not provide caregiver with way to contact her
In re Campbell	138 Ohio App. 3d 786	CAOH, 10, Franklin County	6/8/00	mother unable to provide stable environment, failed to obtain stable housing or employment; lack of commitment to case plan and reunification w/son, as well as inability to meet child's needs for secure environment through employment and housing stability; fact mother had 2 years to find suitable living and employment arrangements but did not do so until week of hearing further demonstrates lack of stability and failure to fulfill case plan; mother failed to take advantage of many opportunities offered, thereby failing to remedy problems that led to child's being placed in alternative custody permanent custody proceeding; mother abandoned child in shopping center bookstore; mother is chronic drug and alcohol abuser, has never completed any type of substance abuse counseling program
In re Cass	1995 Ohio App. LEXIS 4790	CAOH, 12, Preble County	10/30/95	

In re Christian	2004 Ohio App. LEXIS 2773	CAOH, 4, Athens County	6/15/04	infant daughter adjudicated dependent; mom denied marijuana use, but father and family smoked it in her presence day baby born--behavior reveals mom's unwillingness to remove herself and child from harmful situation, as well as dad's continued drug use and failure to protect child; parents lost custody of older children because of substance abuse, housing instability, lack of employment, and parents' unwillingness to rectify these problems
In re Clendenen	1997 Ohio App. LEXIS 840	CAOH, 12, Butler County	3/10/97	permanent custody proceeding; truly disturbing picture of two young children who were repeatedly found to be lice-ridden and dirty, ill-fed, unattended to, homeless or living in squalid, vermin-infested conditions, also evidence that both children physically and sexually abused; in light of benign neglect and apparent laziness by both parents, it would have been irrational to conclude that their actions were those of parents who were going to be able to care for their children in any reasonable amount of time
In re Coia	2002 Ohio App. LEXIS 2630	CAOH, 2, Miami County	5/31/02	child endangerment conviction; evidence D knew man she lived with was violent person, that he mistreated her daughter in D's presence, and that daughter suffered numerous fractures while in his care
In re Collins	1995 Ohio App. LEXIS 5149	CAOH, 9, Summit County	11/22/95	dependency proceeding; mother found not guilty by reason of insanity in death of son; dangers presented to children due to risk of recurrence of mother's psychotic features constituted condition or environment that warranted state intervention on their behalf, diagnosed with postpartum depression with psychotic features
In re Culver	1999 Ohio App. LEXIS 2972	CAOH, 9, Summit County	6/23/99	permanent custody proceeding; mother's substance abuse prevented her from providing adequate permanent home for children;
In re Cunningham	59 Ohio St. 2d 100	Ohio Supreme Court	7/18/79	no requirement that judge make separate finding of parental unfitness before awarding permanent custody to another permanent custody proceeding; 6 or 7 two-hour visits over 12-month time period militated against establishing strong and health relationship between mother and children, especially when she had opportunity to visit more regularly and chose not to do so
In re D.B.	2003 Ohio App. LEXIS 2105	CAOH, 8, Cuyahoga County	5/8/03	

In re D.R.	153 Ohio App. 3d 156	CAOH, 9, Summit County	6/4/03	dependency adjudication implies parental unfitness, requires clear and convincing evidence
In re Darst	117 Ohio App. 374	CAOH, 10, Franklin County	1/8/63	dependency proceeding; father left children w/maternal grandmother, had regular contact with them; dependency determination based on evidence as to conditions at time of hearing; no basis for dependency finding when children have excellent home and care; state's interest under 2151.04 arises only if there's no one meeting parent's obligations of care, support and custody
In re Davon B.	1997 Ohio App. LEXIS 1828	CAOH, 6, Lucas County	5/9/97	permanent custody proceeding; supported by clear and convincing evidence that children could not be placed with mother in reasonable time due to gambling and drug problems; mother consistently refused to engage in long term counseling and treatment programs offered
In re Day	2003 Ohio App. LEXIS 3253	CAOH, 12, Clermont County	7/7/03	dependency proceeding; daughter complained having problems maintaining relationship w/mother, evidence established unstable home environment that was not improving, and evidence of physical and mental abuse; court emphasized not assigning blame in conflict, but whoever's version is correct, present home situation not working, best remedy to keep daughter out of home situation and arrange counseling and visitation between parents and child
In re Demetrius H.	2001 Ohio App. LEXIS 1012	CAOH, 6, Lucas County	3/9/01	termination proceeding; finding alone that parents' rights to their other children had recently been terminated enough to support decision; court permitted to consider parents' ongoing volatile relationship as factor in making determination; dependency complaint alleged while in mother's care, child exposed to ongoing physical and verbal fighting between parents and lived in grandparents' home which exposed him to further violence, alcohol abuse and unstable housing
In re Denzel M.	2004 Ohio App. LEXIS 3620	CAOH, 6, Lucas County	7/30/04	dependency and neglect alleged due to mom's substance abuse problems and fact she left them w/elderly grandmother who was unable to care for them;

In re Dorst	1976 Ohio App. LEXIS 6572	CAOH, 10, Franklin County	8/12/76	dependency proceeding; father failed to commit himself to job training, was not able to support himself and his son, failed to demonstrate his ability to provide care for his child, child's mother shows no further interest in, and contact with, child; "although record is filled with words and platitudes indicating a desire on the part of appellant, we find that actions speak much louder than words and that here the record is more than clear and convincing that there is a lack of capacity or motivation on the part of the appellant to provide home and proper parental care for" child
In re Dustin, Destiny and Diamond Glenn	139 Ohio App. 3d 105	CAOH, 8, Cuyahoga County	10/19/00	children adjudicated dependent; mother continues to have relationship with father even after completing domestic violence program; evidence that parents maintained continuing and abusive relationship, children could be expected to be emotionally and psychologically damaged as result of parents' actions
In re Dylan C.	121 Ohio App. 3d 115	CAOH, 6, Lucas County	6/27/97	dependency and neglect proceeding; alleged child in danger due to mother's repeated presentation of him for unnecessary medical care with symptoms fabricated by mother;
In re East	32 Ohio Misc. 65	CP, Juv Div, Highland County	7/27/72	dependency proceeding; child dependency is not necessarily related to parental fault--the child's condition or environment is the crux of dependency; not necessary to find mother unfit to care for child before finding child dependent because his condition/environment warranted state guardianship; mother unit because her emotional instability, financial irresponsibility and lack of support, direction, or control by her parents has resulted in her moral and social impoverishment; unnecessary that mother first be given opportunity to prove that she could properly care for child--child's present condition and environment is determinative, not expected or anticipated behavior of unsuitability or unfitness of mother; mother is 16-year-old unwed mother is sexually promiscuous, incorrigible child w/no visible means to support herself or her infant;

In re Gales	2003 Ohio LEXIS 5646	CAOH, 10, Franklin County	11/25/03	separate unsuitability finding not required--although dependency doesn't involve fault, dependency adjudication necessarily encompasses consideration of parental fitness
In re Goff	2003 Ohio App. LEXIS 1663	CAOH, 11, Ashtabula County	4/4/03	neglect dependency; child diagnosed w/failure to thrive, mother failed to follow medical orders; home unsanitary and not safe; child developed and thrived while in foster care, gaining weight and on track w/development; most compelling evidence supporting neglect finding is difference in child's condition before her removal and afterwards; mother and grandmother resistant to advice and assistance, medical and otherwise, mother didn't receive any prenatal care before child's birth
In re Hardy	2004 Ohio App. LEXIS 4139	CAOH, 7, Mahoning County	8/23/04	permanent custody proceeding; clear evidence father abandoned children, no evidence mother also abandoned them; being in temporary custody of CSB for 12 out of a consecutive 22 months does not constitute abandonment
In re Heintz	2002 Ohio App. LEXIS 4200	CAOH, 3, Logan County	8/7/02	children found dependent and neglected; because of detrimental effect of mother's failure to address and ameliorate her problems with alcohol despite multiple court orders, her continued placement of alcohol and other desires above her children's basic needs, and her inability to maintain non-abusive environment for children; mother is aware, yet ignores, as evidenced by her continued relations with boyfriend, that he is primary source of anxiety in children's life, making them afraid to live with her
In re Henry	2002 Ohio App. LEXIS 4652	CAOH, 11, Lake County	8/30/02	no clear and convincing evidence child neglected by mother; mother left child w/father for few weeks while she recovered from car accident; not sufficient evidence that child lacked adequate parental care due to mother's fault
In re Hess	2003 Ohio App. LEXIS 1343	CAOH, 7, Jefferson County	3/21/03	per 2151.031(B), child is abused if he/she is endangered under 2919.22, even if there's no conviction

In re Holycross	1999 Ohio App. LEXIS 957	CAOH, 3, Seneca County	2/24/99	court determined mother abandoned her child and had not been actively involved in his life; "unable to discipline and has not shown sufficient interest in her child so he can mature even minimally under her care … she was contractually trying to relinquish custody of the child or abandon the child"
In re Hurst	2003 Ohio App. LEXIS 4923	CAOH, 3, Seneca County	10/14/03	dependency proceeding; mother's failure to follow treatment plan for depression affected her parenting skills, evidence that children lacked adequate parental care by reason of mother's mental condition; children's environment, including witnessing their mother become victim of domestic violence, warranted state assuming guardianship; as result of witnessing abuse and suffering verbal abuse, child has begun to repeat abusive behaviors, demonstrating "conduct and language that is consistent with and reflects aggressive, demeaning and abusive action toward his mother and sister"
In re Hurt	2003 Ohio App. LEXIS 1611	CAOH, 5, Richland County	4/1/03	permanent custody proceeding; mother's chronic mental and emotional illness so severe she's unable to provide adequate permanent home for children
In re J.S.	157 Ohio App. 3d 127	CAOH, 8, Cuyahoga County	5/6/04	permanent custody proceeding; evidence established mother made very little effort to comply with case plan, mom in denial about child's emotional and mental condition; in light of mother's repeated failure to utilize opportunities presented by agency, termination of rights in child's best interest; mother is unable to unwilling to provide for child's special needs, fails to provide adequate supervision, frequently leaves child alone, has two younger children committed to father's legal custody
In re James	2001 WL 1634654	CAOH, 9, Summit County	12/19/01	dependency and neglect proceeding; evidence that children lacked adequate shelter to ensure their health and physical safety due to parents' faults or habits, CSB's mistake to wait one day before taking children out of home does not negate the fact the home was a hazard to children's health and well-being

In re Jandrew	1997 Ohio App. LEXIS 5999	CAOH, 4, Washington County	12/29/97	mother's method of administering corporal punishment and evidence of previous injury to child warrants dependency finding; mother's action's did not arise to abuse per 2151.031, child adjudicated dependent per 2151.35(A); caseworker discovered bruising on child, mother and boyfriend attributed to corporal punishment administered to child by hickory switch; mother refused to cooperate with caseworker's attempts to implement any plan to control child's punishment; child's mother has firm position that she is unable to control child by means of medication or passive discipline and that use of corporal punishment is necessary; conditions and environment surrounding child's home life exposed him to sufficient amount of injury to warrant state intervention; court need not experiment wiht child's environment to determine whether parent will harm child in future; no child should be made to suffer severe bruising or injury to various parts of his body as result of corporal punishment
In re Janoch	1989 Ohio App. LEXIS 82	CAOH, 11, Geauga County	1/13/89	unruly child conviction; although mooning in some circumstances might be considered foolish but innocuous, under case's specific facts it was calculated to convey same message of harassment as obscenities; D acted in manner harmful to health and morals of himself and others; unruly child statute designed to control harmful behavior which has not quite risen to level of criminal activity; while mooning per se is not sufficient conduct to support unruliness finding, in this instance it constituted form of harassment and when measured by common understanding and practice, person of ordinary intelligence would find such conduct to be detrimental to morals and health of all involved parties
In re Jay I.	1995 Ohio App. LEXIS 4532	CAOH, 6, Wood County	10/13/95	juvenile court lacks jurisdiction to adjudicate person over 21 years of age a delinquent child, even if charged for actions committed before person was 18

In re Jeffrey D.	1997 Ohio App. LEXIS 4386	CAOH, 6, Lucas County	9/30/97	father's infant child dependent and neglected; mother failed to provide adequate home for child due to severe mental illness and drug abuse; both parents "demonstrated an unwillingness to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering neglect"; both parents "demonstrated lack of commitment toward the child by failing to regularly visit or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate home for the child"
In re Jehosephat	2002 WL 31270290	CAOH, 6, Lucas County	10/11/02	dependency and neglect proceeding; child's siblings were adjudicated dependent because of both parents' acts, circumstances surrounding this abuse still in existence and so similar they place subject child in danger of same abuse by mother
In re Jenkins	1979 Ohio App. LEXIS 11145	CAOH, 4, Pike County	10/12/79	dependency proceeding; dependency determined as of date complaint filed; mother unable to now or in foreseeable future provide home for children, father incarcerated and could not provide home or support children, temporary custody existed for over year w/no substantial change of circumstances
In re Johns	2003 WL 21540772	CAOH, 5, Stark County	7/7/03	permanent custody proceeding; child alleged dependent, neglected and abused--born cocaine positive; trial court can't predicate decision on mom's past failures without affording her the time to attempt to successfully complete case plan
In re Johnson	1995 Ohio App. LEXIS 1365	CAOH, 4, Ross County	3/29/95	dependency proceeding; 2151 statutory scheme re neglect and dependency incorporates concept only unsuitable parents should be deprived of their children; child residing in household in which parent, or other household member abused or neglected sibling of child and because of circumstances surrounding bused or neglected sibling; finding of unsuitability not required before custody awarded to nonparent

In re Jones	2001 WL 1654091	CAOH, 10, Franklin County	12/27/01	permanent custody proceeding; mother continually refused to cooperate with counselors, provided false information to counselors, and refused to remain with any one counselor long enough to make any significant progress in addressing her mental health problems; fact that mother has place to live, standing alone, doesn't constitute substantial compliance w/case plan, she ignores fact she has not made any progress in treating for her own mental health issues, has chronically failed to keep regular appointments with her caseworkers, has failed to submit to all drug testing, has failed to end her abusive relationship with child's father, has failed to secure employment
In re Jones Children	2002 Ohio App. LEXIS 1692	CAOH, 9, Summit County	4/17/02	juvenile court did find that children cannot and should not be placed with either parent within reasonable time--finding mandated by determination that mother was convicted of child endangering; mother failed continuously and repeatedly to substantially remedy conditions causing children to be placed outside their home--specifically her failure to utilize social and rehabilitative services made available to her, namely counseling and sexual offender treatment program; juvenile court gave consideration to evidence of mother's extensive past involvement with the criminal justice system, failure to recognize boyfriend as threat to her children and her williingness to introduce him into their lives, failure to remove him from lives of her children after she knew or had reason to suspect that he might have been physically abusive and/or sexually inappropriate with children, her failure to seek recommended counseling to address her poor decision making skills and inappropriate behaviors, her failure to participate in sexual offender treatment program in which she would learn to identify and deal with problems in her home that led to sexual abuse of her children and sexually inappropriate behaviors in her home and concerns as to whether mother is capable of providing children with legally secure placement which would ensure that children receive ongoing therapy needed

In re Jordan	2002 WL 121211	CAOH, 9, Summit County	1/30/02	neglect proceeding; mother admitted to using cocaine, entered counseling, failed to consistently comply w/treatment, relapsed and failed to complete intensive outpatient program, is three months behind in rent and in process of being evicted, was convicted of child endangering for striking oldest son, son has been tardy or missed several days of school while in care of mother, mother failed to fill prescription to treat son's tooth infection; mother also suffers from depressive disorder; throughout mother's involvement with CSB, primary focus has been on relationship w/one child's father--classic example of codependency
In re Jordan	2003 WL 22681603	CAOH, 2, Clark County	11/14/03	dependency proceeding; evidence insufficient to prove--court relied heavily on mom's deficiencies, record has to show parent suffers from chronic mental illness or mental retardation "so severe that it makes the parent unable to provide an adequate permanent home for the child"; conditions which led to son being taken away from mother occurred after mom's sister unexpectedly left 3 young children w/mom for week, mom charged with child endangerment
In re Joshua B.	2003 Ohio App. LEXIS 2797	CAOH, 6, Sandusky County	6/13/03	ample evidence that mother's homelessness and unstable relationships reflected pattern of behavior that she is either unwilling or is unable to correct
In re Julia G.	2003 Ohio App. LEXIS 5570	CAOH, 6, Sandusky County	11/12/03	adjudication of neglect and dependency; protective supervision requested for all children based on filthy condition of home and fact mother was smoking crack cocaine and marijuana in front of children
In re Justice	59 Ohio App. 2d 78	CAOH, 12, Clinton County	3/22/78	child found dependent per 2151.04; evidence showed mother had three husbands and ten children, all of whom in state custody at one time or another and currently living in unsuitable conditions
In re Katrina T. and Kaylee T.	2004 Ohio App. LEXIS 2860	CAOH, 6, Sandusky County	6/18/04	mother had no contact with children for over 90 days, court found she abandoned them under 2151.011(C)
In re Kelley	2000 WL 1154938	CAOH, 3, Marion County	8/15/00	permanent custody proceeding; child found neglected and dependent after being removed from mother's home during drug raid; mother failed to seek treatment for alcohol problem, was arrested for DUI w/three children in car, including subject

In re Kent	2001 Ohio App. LEXIS 432	CAOH, 5, Stark County	2/5/01	D's two children unruly by habitual truancy; mother's failed to ensure her children were awake, dressed, and in school every day, violation of 2919.24
In re Kerns	1985 Ohio App. LEXIS 7085	CAOH, 3, Marion County	3/29/85	infant born to mother dependent child; mother 13-year-old minor, child resulted from statutory rape; no evidence of parental environment that would furnish sufficient and satisfactory care for child; environment necessarily encompasses personnel who will be cast of characters surrounding child and responsible for its care and development;
In re King	2004 Ohio App. LEXIS 341	CAOH, 11, Lake County	1/27/04	clear and convincing evidence of abandonment; because mother could not stay out of jail long enough to establish relationship w/child, and biological father did not contact him; mother failed to avail herself of necessary services and full visitation opportunities, did not provide adequate home for child in past and is incapable of doing so for foreseeable future due to drug addiction, she failed continuously and repeatedly to remedy her chemical dependency even though she made some futile attempts
In re Kirk	1997 Ohio App. LEXIS 141	CAOH, 12, Butler County	1/21/97	permanent custody; child adjudicated abused, neglected and dependent; mother physically and mentally impaired and unable to provide proper parental care; mother's mental health symptoms read like laundry list of problematic behaviors, almost all of which impact upon her ability to provide parental care in powerfully negative fashion
In re Kristiana B.	2003 WL 22272068	CAOH, 6, Lucas County	10/3/03	parents had history of not providing adequate care, complaint cited domestic violence between father and other woman witnessed by children as well as threats against children in parents' battle with each other; conditions which brought family to attention of children services included home was unfit, no food in house, and child had injuries for which father was identified as perpetrator; mother testified she didn't see any reason child could not be with her, she did not understand any of her case plan...she admitted she elected to stop her counseling on her own, she did not make any other counseling appointments, she missed parenting classes for several weeks but stated absences due to illness

In re L.A.B.	2003 WL 22966171	CAOH, 8, Cuyahoga County	12/18/03	dependency proceeding; parents demonstrated lack of commitment toward children by failing to regularly support, visit, or communicate with children when able to do so, parents' continual failure to substantially remedy conditions causing children to be placed outside home; "clear that, although children are not abandoned or orphaned, the longstanding problems coupled with a lack of stable, suitable housing, demonstrate an inability to provide the children with a home environment that would be in their best interests"
In re L.A.T. A.	2003 WL 22093456	CAOH, 9, Summit County	9/10/03	permanent custody proceeding; deaf mother has had difficulty in providing children w/safe, stable home environment
In re L.D.	2004 Ohio App. LEXIS 3655	CAOH, 12, Clinton County	8/2/04	abandoned child; parents had not visited with or sent cards or gifts to the child for 15 months he was in agency's temporary care; child first adjudicated dependent based on parents "initial reluctance to comply with recommendations of various medical professionals regarding best care for" child; parents left state w/child, remained out of state while child returned to agency's care
In re Lannom	1997 Ohio App. LEXIS 5493	CAOH, 2, Clark County	12/12/97	daughter found dependent per 2105.04; although parents' mental illnesses were not their fault, an environment had been created that would cause reasonable person to pause before allowing the parents unfettered control over welfare of their small infant; one could question whether mother was able to distinguish between reality and illusion and to act in child's best interest; although termination of mother's parental rights over one child does not mean she is incapable of providing safe and healthy environment for second child, court ruled some information from those proceedings may well have been relevant; trial court's findings regarding mother were that she suffered from personality disorder and was not currently capable of providing for needs of child

In re Legg	2002 Ohio App. LEXIS 4703	CAOH, 8, Cuyahoga County	9/5/02	parents convicted of child endangerment, stemming from father's lighting one of children's hands on fire and parents not getting medical assistance; testimony and evidence presented at trial indicated parents repeatedly failed to provide adequate home for children, failed to provide basic necessities, children often dirty and unkempt, home lacked food and was often in disarray
In re Lewis	1997 Ohio App. LEXIS 1816	CAOH, 4, Athens County	4/30/97	complaint alleged all six children abused, neglected and dependent; mother attempted to run father over with car in which children were riding; frequent occurrences of domestic violence documented between two, alcohol frequently factor in disputes, children have had recurring episodes of head lice causing them to miss numerous days from school; evidence showed neither parent remedied conditions which initially caused children to be removed from home; evidence also indicates lack of commitment toward children by failing to regularly visit and communicate with children
In re Lippitt	1978 Ohio App. LEXIS 9867	CAOH, 8, Cuyahoga County	3/9/78	parents charged with civil neglect for failure to send children to school per 3321.18; parents claimed religious reasons for failing to send children to private or public school, yet they failed to demonstrate how such education would undermine their religious values, neither did they establish that they belonged to an accepted religious group which offered well-structured alternative to school education
In re Lyons Children	2004 Ohio App. LEXIS 4343	CAOH, 5, Fairfield County	9/7/04	parental termination proceeding; children alleged neglected--mother resisted working w/various help agencies, failed to provide adequate supervision, failed to keep home free of physical hazards, failed to protect children; evidence of history of assaultive behavior in home, concerns about mother's intellectual and psychological impairment and her parenting skills
In re Malone	2003 Ohio App. LEXIS 6479	CAOH, 10, Franklin County	12/30/03	dependency proceeding; child's condition and environment unstable: mother mentally regarded/developmentally disabled, did not have transportation, did not shop for herself, unable to handle money on her own

In re Masteller	1978 Ohio App. LEXIS 9624	CAOH, 5, Delaware County	6/29/78	insufficient evidence to support dependency finding; child not previously declared dependent, was receiving and had received adequate food, clothing, and care from legal custodians (grandparents)
In re Masters	165 Ohio St. 503	Ohio Supreme Court	10/24/56	parent confined to mental hospital for two years, without funds and without even certain knowledge of children's whereabouts, can not be guilty of willful neglect of those children; only refusal was mother's to give up her children when she did learn whereabouts
In re McKim	1984 Ohio App. LEXIS 11512	CAOH, 5, Guernsey County	11/1/84	children found dependent and neglected; lengthy record demonstrated frequent contact with juvenile court attempting to provide judicial supervision of reunification efforts; home situation inadequate, inconsistent, and traumatic, and during latest reunification, older child was injured; record presented classic case of child neglect and abuse, which amounted to dependency because parents could not provide proper parental care
In re Meador	1999 Ohio App. LEXIS 1589	CAOH, 9, Summit County	3/31/99	dependency proceeding; court found father's chronic mental illness prevented him form providing adequate permanent home for children; he was unwilling to provide basic necessities for children, failed to prevent children from suffering physical, emotion and sexual abuse while in his house; father engaged in child-life behavior, had disorganized thoughts, engaged in inappropriate sexual activities; children's mental health and aggravation of mental health while in father's custody were relevant factors; father had no interest in using "medical, psychiatric, psychological, and other social and rehabilitative services and material resources" made available to him to change his conduct and allow him to retain custody of children

In re Meyer; In re Martin	98 Ohio App. 3d 189	CAOH, 3, Defiance County	10/25/94	condition of children and home, and fact that parents were unable to follow case plan were clear and convincing evidence that permanent custody is in children's best interest, that they could not be placed w/parents within reasonable time and that children were neglected per 2151.03(A); clear and convincing evidence that parents demonstrated poor child-care skills, as documented by their inability to maintain their home in clean and hazard-free manner, constant filth of children, and inability to supervise six children
In re N.B.	2003 Ohio App. LEXIS 3295	CAOH, 8, Cuyahoga County	7/10/03	mother did not abandon or abuse children; no evidence mother ever withheld medical treatment or food from children; pertinent factors include mother substantially remedied problems that initially caused children's removal from home, mother demonstrated genuine commitment toward children by regularly visiting or communicating w/children when able to do so, mother has not been repeatedly incarcerated, mother has expressed and shown desire to provide food, clothing, shelter and other basic necessities for children
In re Osberry	2003 WL 22336115	CAOH, 3, Allen County	10/14/03	dependency and neglect proceeding; court not required to determine father's unsuitability as parent before awarding legal custody to child's aunt
In re Overbay	1997 Ohio App. LEXIS 726	CAOH, 12, Butler County	3/3/97	children found abused and dependent; possible to conclude girls living in household where household member abused one of their siblings and they were in danger of being abused by that household member; evidence presented at trial not sufficient to support determination that girls meet definition of abused children--while their testimony indicates they were unhappy living at father's house, there is no evidence of physical or mental injury that is or would be harmful to their health or welfare
In re Parrott	2001 WL 1497180	CAOH, 10, Franklin County	11/27/01	dependency proceeding; baby removed from home two weeks after birth, law doesn't required court to sit idly by and experiment with child's welfare

In re Patterson	1997 Ohio App. LEXIS 4966	CAOH, 5, Licking County	10/23/97	infant child found dependent; child removed from parents' care after father indicted for murder in death of daughter and mother indicted for felony child endangering; re: child's death: no evidence that she died of accidental injury, extensive evidence she was sick for period of time before medical treatment was sought, father primary suspect in child's death, extensive evidence presented concerning his propensity to violence
In re Payne	2002 WL 1063361	CAOH, 12, Clinton County	5/28/02	dependency proceeding; standards are conditions and environment into which mother thrust child into--she was intoxicated, chose to remove her child from place she left him while visiting bar, chose to walk outside at night w/child during early hours while engaging in physical confrontation w/boyfriend, who got close enough to child to leave blood on him
In re Phillips	1997 Ohio App. LEXIS 1152	CAOH, 3, Marion County	3/13/97	dependency proceeding; court focused on physical and psychological environment of home; father beat mother in front of daughter, despite physical abuse, mother states unable to keep herself away from him or end relationship; parents failed on numerous occasions to fulfill court orders children found neglected and/or abused; evidence that parents uncooperative with caseworkers from children's services agency reflects adversely on parents' ability to care for children since parents are fully aware that failure to abide by agency's guidelines could result in termination of their rights
In re Pieper Children	74 Ohio App. 3d 714	CAOH, 12, Preble County	7/8/91	
In re Pieper Children	85 Ohio App. 3d 318	CAOH, 12, Preble County	3/8/93	matters concerning parent's alleged neglect before initial dependency determination can't be used to find neglect in subsequent proceeding, but other parent's abuse and neglect adjudication in separate proceeding can be considered; state need not subject child to potentially detrimental environment where court has made prospective finding of dependency; prospective finding appropriate when children aren't in parent's care but circumstances demonstrate that to give custody to that parent would threaten their health and safety

In re R.S.	2003 WL 1689595	CAOH, 9, Summit County	3/31/03	dependency proceeding; mother admitted to use marijuana, but in absence of evidence showing detrimental impact on children, mother's marijuana use doesn't warrant state in removing children from her custody; evidence presented about children's home environment suggested there were no basic problems w/mother's parenting
In re Redrick Children	2001 Ohio App. LEXIS 1737	CAOH, 5, Stark County	4/9/01	mother's children placed in temporary custody on finding mother neglected them and boyfriends abused them; proper to consider boyfriends' gang affiliations as relevant to conditions placed on supervision of mother; mother continued to deny responsibility for the happenings in her home and didn't place the children's needs before her own; evidence that mother continues to associate w/known gang members, continues to date known gang member who is a minor, drug and other criminal activity is practiced by these gangs, the safety of the children is compromised by this behavior, mother unable to insure children's safety
In re Reese	4 Ohio App. 3d 59	CAOH, 10, Franklin County	2/23/82	minor child found dependent because mother was arrested for using drugs and allegedly attempted to sell child
In re Richardson	2003 Ohio App. LEXIS 4667	CAOH, 5, Guernsey County	9/26/03	children removed from parents due to neglect and abandonment; parents made little, if any, progress with dealing with their own mental health issues, refused services, missed more than 1/3 of scheduled visitations due to other commitments, and failed to establish residence for children
In re Riddle	79 Ohio St. 3d 259	Ohio Supreme Court	7/23/97	dependency inquiry per 2151.04(A) doesn't involve fault (parental or otherwise), exclusive focus on child's situation; child receiving proper care pursuant to arrangement by parent not dependent; voluntary act of parent of temporary placement for child is proper parental care; neglect inquiry per 2151.03(A)(2) does consider caregiver's "faults and habits"
In re Riddle	1996 Ohio App. LEXIS 2054	CAOH, 5, Guernsey County	4/11/96	child found dependent; just because child was safe in grandparents' or foster home didn't negate finding child was neglected because of acts or omissions of parents;

In re Riley	2003 Ohio App. LEXIS 3657	CAOH, 4, Washington County	7/25/03	child alleged neglected and dependent; department ultimately removed child from home based on parents' inability to maintain proper living arrangement; "cannot advocate spending any more time trying to reunify a child with his parents when the service providers work harder at reunification than the parents"
In re Robinson	1997 Ohio App. LEXIS 4316	CAOH, 4, Scioto County	9/15/97	record contained sufficient evidence that father's alcohol problems prevented him from providing an adequate home for his child; father knew mother was pregnant and saw child shortly after his birth, took no steps to establish paternity or any relationship with child until after court established paternity--actions of father are abandonment of not only the mother but also the child; father has extensive history of alcohol-related offenses; D refuses to seek alcohol treatment; father's chemical dependency is so severe that it makes him unable to provide an adequate permanent home
In re Rodgers	138 Ohio App. 3d 510	CAOH, 12, Preble County	6/5/00	child alleged neglected or dependent; at shelter care hearing, court found mother under influence of drugs or alcohol, unable to control speech; "drug dependency is so chronic and severe that it has rendered the mother unable to provide an adequate permanent home for the child ... mother and father have demonstrated lack of commitment towards the child by failing to regularly support, visit or communicate with child when able to do so"
In re Ross Children	1999 Ohio App. LEXIS 3995	CAOH, 12, Butler County	8/30/99	children alleged neglected and dependent--mother had severe substance abuse problem, especially with alcohol, and she would drive care while intoxicated w/children in her car; court ordered mother not to use or possess alcohol during case, ordered not to visit children at father's residence, to obtain substance abuse treatment

In re Rudolph	2001 Ohio App. LEXIS 2693	CAOH, 10, Franklin County	6/19/01	mother and father incarcerated for child abuse; before being imprisoned for child endangerment, mother failed to undergo psychological evaluation, failed to undergo alcohol and drug assessments, failed to submit to random drug screens and failed to participate in parenting classes and mental health counseling, with focus on anger and domestic violence issues; mother also failed to visit children when granted limited visitation
In re Ruiz	27 Ohio Misc. 2d 31	CP, Juv Div, Wood County	8/27/86	child abuse proceeding; mother's heroin addiction created substantial risk to unborn child per 2919.22(A)
In re Sadiku	139 Ohio App. 3d 263	CAOH, 9, Summit County	11/22/00	children dependent because 15-year-old mother arrested for shoplifting; when taken into custody children were clean, well-fed and well-cared for, nothing physically or emotionally wrong with them
In re Sarah S.	2003 Ohio App. LEXIS 4267	CAOH, 6, Erie County	8/11/03	complaint in dependency and neglect allege mother utilized children in criminal activities and then abandoned them at store; mother failed to complete any substance abuse treatment programs recommend by ECHS during 2 1/2 years children in temporary custody--she also tested positive for cocaine twice; very issues that mother exhibited and that necessitated court involvement in first place are still present and unresolved or explained
In re Schuerman	74 Ohio App. 3d 528	CAOH, 3, Paulding County	6/12/91	dependency finding for one child permits finding second child dependent: merely due to circumstances surrounding daughter's abuse, son is in danger of being abused or neglected; test: not finding instances of past abuse of allegedly dependent child, but danger of prospective punishment to that child rising to level of abuse to be drawn from circumstances surrounding prior abuse of another child in that environment

In re Scott	1997 Ohio App. LEXIS 4076	CAOH, 3, Marion County	8/22/97	daughter placed w/CSB due to investigation into brother's death; parents' environment found unfit for daughter during their criminal investigation, trial court could determine unfitness of parents based on their history; court found daughter dependent child and parents to be unfit without first giving them opportunity to raise daughter; evidence that parents suffered from alcohol problems, refused to attend treatment, and failed to attend counseling sessions; parents saw no reason to change environment to protect their daughter
In re Sessoms	2003 Ohio App. LEXIS 4775	CAOH, 12, Butler County	10/6/03	children adjudicated dependent; evidence of multiple incidents of abusive conduct, anger management problems from the father, and ineffective parenting by the father; both parents found to minimize the abusive incidents in family; father consistently maintained that parenting style is biblically oriented and justified; father has extensive criminal record which includes multiple charges on alcohol-related offenses and charges involving physical violence, including domestic violence and assault; in spite of their participation in counseling and therapy, the parents continued to deny the existence of any domestic violence issues, prompting concern that neither would be able to adequately protect and care for children; court found mother easily overwhelmed when charged with the care of all children, and that father is primarily responsible for maintaining order
In re Sherron J.	2000 WL 864468	CAOH, 6, Lucas County	6/30/00	permanent custody proceeding; mother left 4-year-old child in care of others for several days at a time without informing caregivers of whereabouts; mother could not effectively parent children because she could not apply lessons from her parenting classes to her real life, she was unable to protect herself from domestic abuse at hands of husband, she failed to follow through with counseling and her house had no heat in 10/98 due to outstanding balance on account

In re Sink	1988 Ohio App. LEXIS 1680	CAOH, 3, Auglaize County	4/26/88	court found mother completely devoid of parenting skills and mother was completely devoid of parenting skills and court held there was evidence in record to support that finding, particularly fact that child had been poorly educated and had not been trained in social behavior or achieved proper self-control of his emotions--these deficiencies can never be rectified by either parent based upon their demonstrated past conduct
In re Skeen	1994 Ohio App. LEXIS 2746	CAOH, 10, Franklin County	6/23/94	neglect per 2151.03(A) established where mother's children lacked proper care because of bad habits or fault of parent; dependency per 2151.04 focused instead on child's condition or environment; mother's leaving loaded gun where it was accessible to virtually unattended children constituted competent, credible evidence that mother acted in manner as to leave children without adequate parental care; as a result of mother not properly supervising children, they were exposed to dangerous situation where one child was shot in neck, compounded by fact mother asked daughter, who was previously found to be irresponsible, to babysit and yet neglected to ensure she was awake and physically up and babysitting;
In re Starkey	150 Ohio App. 3d 612	CAOH, 7, Mahoning County	12/11/02	statutory presumption of abandonment: mother failed to visit children for more than 90 days two different times
In re T.M., III	2004 Ohio App. LEXIS 4753	CAOH, 8, Cuyahoga County	9/30/04	permanent custody proceeding; mother had substance abuse problem, left children w/inappropriate care givers who physically and verbally abused them, did not have stable housing, moved children from school to school, causing them to miss numerous days of school; evidence D not committed to completing case plan and didn't believe she or her family had any issues that required professional intervention

In re Waldrop	2004 Ohio App. LEXIS 4868	CAOH, 4, Athens County	9/30/04	4-year-old child found to be abused, neglected and dependent, 3 other children found dependent; record contains competent, credible evidence to support finding parents did not provide daughter w/necessary and proper medical care; household environment warranted state assuming children's guardianship: evidence father sexually abused daughter, while other children at home, and that child's caregivers chose to ignore indicators of sexual abuse and her physical pain;
In re Wilkinson	2004 Ohio App. LEXIS 3747	CAOH, 1, Hamilton County	8/6/04	children adjudicated dependent; custodial grandmother let father, known sex offender, care for children; mother paranoid schizophrenic substance abuser w/long criminal history; social worker re: grandmother: "I don't believe that Ms. Brown fully understands what sexual abuse is. I think that she becomes focused on her other issues. And I don't think that she could provide the care needed for these children"; older 3 children have severe psychological issues due to past abuse, and parents and grandmother unable to acknowledge or appropriately deal with children's issues
In re Wright	2004 Ohio App. LEXIS 960	CAOH, 5, Stark County	3/8/04	father argued trial court erred in finding child abandoned due to lack of visitation during father's period of incarceration
In re Yeager	2004 Ohio App. LEXIS 1393	CAOH, 5, Fairfield County	3/25/04	permanent custody proceeding; parents' relationship shown to be volatile, leading to violence by dad against mom; evidence dad doesn't protect children from emotional or physical mistreatment by mom
In re Zeiser	133 Ohio App. 3d 338	CAOH, 11, Lake County	3/26/99	neglect *per se* = leaving 6-year-old child alone for 2 entire days every week on regular basis and/or regularly left under supervision of 8-year-old sibling; neglect: parental supervision not expressly mentioned in definition of adequate parental care; test: does behavior unreasonably expose children to undue risk to their health or safety?
In re Zorns	2003 Ohio App. LEXIS 5020	CAOH, 10, Franklin County	10/23/03	mother unable to protect either child from abuse due to inability to support daughter or address own history of sexual abuse; mom testified repeatedly she doesn't believe child was abused

In the Matter of Ament	142 Ohio App. 3d 302	CAOH, 12, Clermont County	4/23/01	children adjudicated dependent; mother pled guilty to child endangering; no evidence that grandmother's efforts to provide care for child resulted from agreement or arrangement between mother and grandmother--mother also did not have permanent place of her or her children to live
Louck v. Louck	2003 Ohio App. LEXIS 5328	CAOH, 3, Marion County	11/10/03	father's complaint against mother for dependency and neglect insufficient--alleged only children not functioning at appropriate level
Reynolds v. Goll	1994 Ohio App. LEXIS 2262	CAOH, 9, Lorain County	5/25/94	court found father unsuitable due to abandonment; while initial placement of daughter w/others not abandonment, evidence supports determination that father's course of conduct over five years she was with couple did = abandonment finding of unsuitability requires preponderance of evidence showing parent abandoned child, parent contractually relinquished custody of child, parent become totally incapable of support or caring for child, or award of custody to parent is detrimental to child
Reynolds v. Goll	80 Ohio App. 3d 494	CAOH, 9, Lorain County	5/13/92	
Reynolds v. White	1999 Ohio App. LEXIS 4454	CAOH, 8, Cuyahoga County	9/23/99	evidence not sufficient to establish "abused" child to find "domestic violence" per 3113.31(A)(1)(c), sufficient to permit finding D caused bodily injury per 3113.31(A)(1)(a) and/or placed child in reasonable fear of imminent serious physical harm per 3113.31(A)(1)(b); intake officer investigated abuse allegations but took no further action because couldn't substantiate discipline administered, although excessive, was part of pattern of abuse; D's conduct clearly caused bodily injury--his instruction to V she not tell anyone about her injury reflects conscious awareness that D acted in disregard of risk that conduct would result in bodily injury
State v. Allen	140 Ohio App. 3d 322	CAOH, 1, Hamilton County	11/24/00	endangerment: recklessly = with heedless indifference to consequences, person perversely disregards known risk that conduct is likely to cause certain result or is likely to be of certain nature
State v. Aller	82 Ohio App. 3d 9	CAOH, 6, Lucas County	8/7/92	not unruly: D's mere presence at party where others were consuming alcohol didn't indicate moral depravity, nor did it indicate any conduct which endangered his health or health of others

State v. Artis	46 Ohio App. 3d 25	CAOH, 1, Hamilton County	3/8/89	child endangerment conviction; child suffered severe bruising to her buttocks and red marks from rope used to tie arms and legs, although D's act didn't result in permanent injury, did result in severe bruising and difficulty in sitting; evidence that D administered physical disciplinary measures and physically restrained child in cruel manner, discipline and restraint were excessive under circumstances, and created substantial risk of serious physical harm per 2919.22(B)(3)
State v. Barton	71 Ohio App. 3d 455	CAOH, 1, Hamilton County	3/6/91	child endangering is not lesser included offense of felonious assault; both share elements of causation and resultant physical harm; endangerment needs proof D acted recklessly, proof of knowledge can prove recklessness, but proof of recklessness insufficient to prove knowledge; endangerment doesn't always result in act of felonious assault
State v. Batton	1997 Ohio App. LEXIS 4259	CAOH, 9, Lorain County	9/17/97	child endangerment conviction w/physical harm specification; D's three minor children regularly refused food and punished for sneaking food, D present at meals and when much of physical abuse occurred, each child testified that D actively participated in binding, gagging and beating and in depriving him of food
State v. Bennett	1995 Ohio App. LEXIS 2940	CAOH, 8, Cuyahoga County	7/13/95	minor children alleged neglected and dependent, filed after 6 children taken into custody when police found them home alone while mother was at work; mother made very little progress with regard to supervision issues, had sporadic employment history, had difficulty in maintaining housing appropriate for children, and medical care became an issue when children didn't receive their immunizations, mother had history of using marijuana
State v. Boone	1996 Ohio App. LEXIS 3387	CAOH, 1, Hamilton County	8/14/96	child endangerment conviction reversed; while D's method of disciplining child was questionable, actions didn't create substantial risk to child's health and safety as matter of law

State v. Brooks	2000 WL 337600	CAOH, 8, Cuyahoga County	3/30/00	child endangerment conviction; child's injuries likely caused by trauma, most likely result of having been severely shaken--significant amount of force would be required to cause injury suffered by child; evidence D grandmother knew something was wrong w/child but instead of seeking medical attention decided to take baby to someone else; behavior was reckless because failure to provide prompt medical attention exacerbated severity of injuries as baby's brain swelled; unbelievable series of explanations given by D grandmother in response to inquiries as to how injuries happened undercut any notion D grandmother didn't realize baby was badly hurt but showed that she chose to attempt to cover-up crime instead of helping baby
State v. Brooks	2001 WL 1117464	CAOH, 10, Franklin County	9/25/01	child endangerment conviction; evidence that child suffered trauma that caused subdural hematoma and retinal hemorrhages which may have occurred while child in her care; injuries did not result from accident or other non-accidental cause; evidence D had too many children under her care for adequate supervision, and D left children unattended for at least 10 m minutes at time
State v. Burdine-Justice	125 Ohio App. 3d 707	CAOH, 12, Clermont County	3/30/98	child endangerment conviction; complaint that mother cruelly abused child by administering physical punishment which was excessive under circumstances, creating risk of physical harm to child; amount of corporal punishment unnecessary and unwarranted;
State v. Butts	2004 Ohio App. LEXIS 962	CAOH, 10, Franklin County	3/11/04	child endangerment conviction; D alone with child but claimed child fell in bathtub week earlier--child died of head injury believed to be shaken baby syndrome; evidence injuries would have been immediately incapacitating
State v. Caton	137 Ohio App. 3d 742	CAOH, 1, Hamilton County	5/19/00	endangerment: charges can arise for any person with "custody and control" of child, which gives rise to duty of care, protection and support; grandparent in loco parents responsible under law to discharge duties of parent's care and protection; absence of contagious disease not dispositive, it's the risk, not the actuality of injury

State v. Cheney-Shaw	2000 WL 1231552	CAOH, 8, Cuyahoga County	8/31/00	child endangerment conviction; autistic child w/seizure disorder removed from custody of mother and stepfather after he suffered injuries suspected to result from child abuse; injuries incurred by child not common to children w/autism; mother admitted environment in which son lived was abusive but she failed to remedy circumstances; evidence presented shows time and time again child suffered inflicted injury not consistent w/explanations offered by either mother or stepfather, evidence demonstrates these caregivers failed to remedy circumstances surrounding infliction of injuries; with heedless indifference to consequences, both Ds perversely disregarded known risk of injury to child, endangering him by their failure to protect him from serious harm as to injuries which were inflicted upon him
State v. Collins	2004 Ohio App. LEXIS 2022	CAOH, 1, Hamilton County	5/7/04	child endangerment conviction; D's 2-month-old baby had severe brain and visual injuries and broken bones after D took care of him for fist time; evidence baby's injuries couldn't have occurred as reported by D and mother;
State v. Cooper	147 Ohio App. 3d 116	CAOH, 12, Butler County	2/19/02	endangerment: sufficient that D disregarded known risk that conduct would lead to abuse in form of mental or physical harm to child, not required to know that conduct could lead to brain damage or shaken baby syndrome
State v. Cortner	76 Ohio App. 3d 648	CAOH, 3, Seneca County	3/9/92	as matter of law, teacher's holding student's arm behind his back, under case's circumstances; does not rise to level of recklessness per 2901.2(C)--could not reasonably be found that mother acted "with heedless indifference to consequences" or perversely disregarded known risk that her conduct was likely to cause certain result; record contains nothing from which it could be found that teacher's conduct constituted unreasonable restraint which was not used to quell disturbance that threatened physical injury to other students in classroom as well as to teacher and her aide; nothing in record indicates teacher restrained student in cruel manner or for prolonged period which was excessive and created substantial risk of serious physical harm to him

State v. Craig	2002 WL 1666225	CAOH, 4, Gallia County	3/26/02	child endangerment conviction; child stated stepfather beat him w/belt and bloodied his nose; evidence that D severely whipped boys routinely relevant to show D acted recklessly and to show resulting bruises were not sustained by accident
State v. Craun	158 Ohio App. 3d 389	CAOH, 3, Shelby County	8/23/04	domestic violence conviction; mother attempted to discipline daughter by spanking w/wooden paddle, daughter struck in wrist when she resisted; law permits parent to use reasonable and proper measures to discipline child
State v. Cudgel	2000 WL 256181	CAOH, 10, Franklin County	3/9/00	child endangerment conviction; injuries typical of shaken baby/impact syndrome; when D asked why he didn't take child to hospital, he responded "the hospital would in turn contact Children Services, they would be in his business and there's possibility of they would remove the child from him"; based on severity of injuries, the child would have displayed symptoms of neurological deficit almost immediately; D's delay of six hours or more in seeking medical treatment for son violated a duty of care and protection and created substantial risk to child's health or safety
State v. Curry	2000 WL 141014	CAOH, 9, Summit County	2/2/00	child endangerment conviction; grandmother locked children in room w/boarded-up windows and no overhead lights, forcing them to remain in room after they defecated in it, beating younger child repeatedly with strap or paddle, overmedicating children, exposing children to pornography and having sexual relations in children's presence
State v. Daniels	61 Ohio St. 2d 220	Ohio Supreme Court	2/13/80	2919.22(A) governs conduct that may endanger children, doesn't seek to regulate expression or right of assembly in any respect
State v. Elliott	104 Ohio App. 3d 812	CAOH, 10, Franklin County	6/22/95	serious physical harm includes purely mental injury of such gravity as would normally require hospitalization or prolonged psychiatric treatment; failure to act may = felonious assault where child suffers serious physical harm as result of parent "knowingly", rather than "recklessly", failing to act in accordance with his/her legal duty to child

State v. Evans	93 Ohio App. 3d 121	CAOH, 9, Summit County	2/9/94	endangerment with physical harm specification: child suffered excruciating pain, high temperature, vomiting, diarrhea, and distended and bloated stomach, and wasn't eating or moving around
State v. Garcia	2004 WL 557343	CAOH, 10, Franklin County	3/23/04	child endangerment conviction; only plausible explanation of baby's injuries was vigorous shaking with impact, type of shaking that reasonable observer would realize is dangerous and could result in injury
State v. Gibbs	2001 Ohio App. LEXIS 5260	CAOH, 10, Franklin County	11/26/01	child endangerment conviction; father seriously beat 2-year-old son, child treated for broken right leg and had noticeable bruising on his head and abdomen
State v. Glover	2002 WL 31647905	CAOH, 12, Clermont County	11/25/02	child endangerment conviction; D indicated he likely caused his children's injuries by picking them up too roughly on several occasions--in moments of frustration, he had grabbed infants by their chests and yanked them out of their bassinet; evidence children's injuries were result of non-accidental trauma--no good explanation for injuries, fractures were at different stages of healing, indicating they occurred at different times; evidence presented indicating D aware his conduct would probably result in serious harm to children; D, w/heedless indifference to consequences, perversely disregarded known risk that he was torturing or cruelly abusing his children when he picked them up too roughly
State v. Gray	62 Ohio St. 3d 514	Ohio Supreme Court	2/12/92	2919.22(A) does not create statutory duty that was breached when parent used cocaine prior to child's birth--court held statute contemplated prosecuting mothers, who could not become mothers until the child's actual birth; statute doesn't apply when mother abuses drugs during pregnancy
State v. Hobbs	113 Ohio App. 3d 396	CAOH, 12, Butler County	8/12/96	endangerment: substantial risk to child's health or safety results when child subject to drug trafficking and grandmother's instruction to remove contraband from residence during police search

State v. Hoover	5 Ohio App. 3d 207	CAOH, 6, Ottawa County	3/12/82	proper standard to be applied in determining whether corporal punishment permitted by 3319.41 was reasonable under circumstances was to consider factors set forth in 2919.22(B), enumerating certain things person could not do in conjunction with administering corporal punishment to child
State v. Irwin	2004 Ohio App. LEXIS 997	CAOH, 4, Hocking County	3/9/04	conviction for felony murder predicated on offenses of felonious assault and child endangering; evidence sufficient to prove D knowingly struck child on head, causing death and he recklessly abused her by severely shaking her, causing her death
State v. Ivey	98 Ohio App. 3d 249	CAOH, 8, Cuyahoga County	10/3/94	endangerment: insufficient evidence that whipping resulted in serious physical harm or could have resulted in substantial risk of serious physical or mental harm to child--resulting harm temporary and slight, didn't require medical attention, didn't result in hospitalization, substantial risk of death, permanent incapacity, disfigurement, substantial pain or suffering; state should only intervene when serious risk of physical or mental harm to child is clear from evidence
State v. Jackson	2004 Ohio App. LEXIS 2072	CAOH, 8, Cuyahoga County	5/6/04	child endangerment conviction; D whipped young daughters w/extension cord for not properly cleaning house, did not seek immediate medical treatment--such failure cost daughter sight in one eye
State v. James	2000 WL 1843196	CAOH, 12, Brown County	12/18/00	dependency and neglect proceeding; compliance with case plan gives mom opportunity to demonstrate her commitment and ability to meet son's needs for permanency through her achieving stable employment and adequate housing in secure, drug-free environment; mom's admitted misrepresentation regarding employment supports finding that she lacked credibility; evidence establishes mom failed to demonstrate substantial compliance with case plan and thereby demonstrate she could provide stable, secure, permanent home for son
State v. Johnson	2003 Ohio App. LEXIS 3465	CAOH, 6, Lucas County	7/18/03	child endangering conviction; witnesses saw D repeatedly hit child, evidence child could have easily sustained more serious injuries as result of being hit w/shoe

State v. Johnson	1997 Ohio App. LEXIS 5198	CAOH, 8, Cuyahoga County	11/20/97	child endangerment conviction; 2-month-old infant D was babysitting dead from apparent head injury
State v. Jones	1997 Ohio App. LEXIS 4749	CAOH, 9, Summit County	10/29/97	felonious child endangerment conviction; 7-month-old child's hand burn looked as if entire hand was immersed in hot liquid
State v. Krull	154 Ohio App. 3d 219	CAOH, 12, Butler County	9/2/03	child endangerment conviction, w/serious physical harm specification; child suffered bruising and marks on buttocks and thighs that caused pain that likely lasted several days after being inflicted, bruises were severe enough for social worker to remove him from his mother's care and to take him to emergency room
State v. Lloyd	2001 Ohio App. LEXIS 4906	CAOH, 8, Cuyahoga County	11/1/01	D convicted of child endangering; beat 5-year-old about head, back and stomach w/tape-covered switch, held child up against wall in choking position, held child's head under water--mother had to intervene
State v. Lott	135 Ohio App. 3d 198	CAOH, 11, Ashtabula County	10/29/99	endangerment: child's parent has proactive duty to care for, protect and support child
State v. Martin	134 Ohio App. 3d 41	CAOH, 1, Hamilton County	6/11/99	child endangerment conviction; D gave more than one version of events related to child's injuries, D retracted his explanation about bathing incident and admitted to shaking child after he realized child's injuries inconsistent with his earlier version of events
State v. Martin	2004 Ohio App. LEXIS 3911	CAOH, 12, Brown County	8/16/04	no recklessness when child not injured and state failed to prove beyond reasonable doubt strong possibility he would have been injured
State v. Marzetti	2004 Ohio App. LEXIS 3002	CAOH, 10, Franklin County	6/29/04	child endangerment conviction; children home along, oven being used to heat kitchen, exposed red hot heating element; fact children might have been able to escape fire not persuasive--actual harm was not required to establish child endangering, only circumstances that created substantial risk of harm
State v. Massey	128 Ohio App. 3d 438	CAOH, 1, Hamilton County	6/19/98	endangerment: mother's concern about child's welfare, while erroneously believing her child could die from slight injury, doesn't transform slight injury into physical harm with substantial risk of death
State v. McGee	79 Ohio St. 3d 193	Ohio Supreme Court	7/16/97	recklessness essential element of child endangering

State v. Melvin	2003 Ohio App. LEXIS 1410	CAOH, 9, Summit County	3/26/03	child endangerment conviction; evidence mother left child unattended, knowing child had tendency to escape and wander off; prior conviction for attempted child endangering relevant in showing mom left her child unattended and alone outside home
State v. Miley	114 Ohio App. 3d 738	CAOH, 4, Ross County	9/30/96	recklessness: either know of abuse or do nothing or be reckless in not discovering abuse
State v. Morton	138 Ohio App. 3d 309	CAOH, 1, Hamilton County	6/23/00	endangerment: parent can create substantial risk of harm to child even if child doesn't require further medical attention
State v. Parks	2004 Ohio App. LEXIS 3642	CAOH, 3, Van Wert County	8/2/04	child endangerment conviction; credible evidence that injury occurred on date when child was in D's care; to establish D endangered child, state also required to show D engaged in affirmative act of abuse
State v. Pauer	1980 Ohio App. LEXIS 12725	CAOH, 11, Geauga County	10/14/80	illegal habits flaunted in front of children create environment justifying dependency finding; child is dependent if it is proven that child is living in detrimental environment that has adverse impact on child; court agreed with parents that allegations regarding emotions, hostility, and asocial habits did not support contention of dependency, but allegations regarding marijuana in presence of children did; sufficient evidence to justify temporary removal of children from parents' custody
State v. Perrine	2002 Ohio App. LEXIS 2937	CAOH, 5, Stark County	6/10/02	child endangerment conviction; 5-year-old found crying and wandering in street in early morning hours, two babysitters asleep and door wide open; no substantial risk created by mother's decision to leave son with babysitters in dangerous neighborhood
State v. Potter	2003 Ohio App. LEXIS 1269	CAOH, 8, Cuyahoga County	3/20/03	convicted for endangering children by torture or cruel abuse; act of shaking 7-month-old child was clearly knowingly and recklessly committed; reasonable degree of medical certainty, it was unlikely that victim's injuries were result of father's description of events, experts said cause of victim's injuries was result of child being violently shaken or similar trauma
State v. Powe	2002 Ohio App. LEXIS 5859	CAOH, 9, Summit County	11/6/02	child endangerment conviction; separate animus due to endangerment of child victim, conscious disregard for 5 hours for his welfare, lost opportunity for medical intervention that would have saved his life

State v. Prosen	2000 WL 522234	CAOH, 11, Portage County	3/31/00	child endangerment conviction; failure to seek immediate medical attention demonstrates that D, with heedless indifference to consequences, disregarded substantial risk to baby's health
State v. Reed	1991 Ohio App. LEXIS 2496	CAOH, 11, Lake County	5/31/91	D convicted of involuntary manslaughter and child endangerment re: death of stepson; under 2919.22 stepmother, who was at least acting as babysitter, had statutory duty of care to child
State v. Robinson	2003 WL 1689611	CAOH, 12, Clinton County	3/31/03	D convicted of felonious assault and child endangering; records reflects that D shook child and then put him down, child struggled to breathe after shaking so D shook him even harder second time--D further acknowledged that she had shaken child in past "pretty hard, but not hard enough to break his neck"
State v. Rockwell	80 Ohio App. 3d 157	CAOH, 10, Franklin County	5/19/92	stepfather found guilty of child endangerment re: infant stepdaughters; serious physical harm proved by extent of child's bruises, especially those on her head, along w/testimony indicating that child had not been receiving enough food for significant period of time; due to child's preexisting health problems which make her more susceptible to serious injuries to brain, extent of bruises supports serious physical harm finding--also, her weight indicates she had not been fed properly over significant period of time and provides further support for finding serious physical harm
State v. Sammons	58 Ohio St. 2d 460	Ohio Supreme Court	6/27/79	duty of care, protection or support per 2919.22(A) intended to embrace only those duties of parent toward his child as imposed by law; breach of duty punished when it results in substantial risk to child's health or safety
State v. Schaffer	127 Ohio App. 3d 501	CAOH, 11, Trumbull County	5/1/98	D found guilty of child endangerment; mother lost sight of 2-year-old child for at least 5 and maybe as long as 10 minutes--considering proximity of mother's home to pond and intersection of two frequently traveled streets, absence of child for significant length of time could have resulted in tragedy
State v. Schultz	8 Ohio App. 3d 352	CAOH, 8, Cuyahoga County	12/23/82	mother breached duty to protect her child whether she administered fatal corporal punishment to her child or whether she allowed her boyfriend to do so

State v. Simon	2000 WL 688728	CAOH, 11, Lake County	5/26/00	child endangerment conviction; whether D was motivated by malevolent hart when repeatedly administering corporal punishment and other forms of discipline to victim is irrelevant--what matters is that D allowed her overzealous desire to discipline a 6-year-old child overcome any semblance of reasoned judgment
State v. Smathers	2000 WL 1675041	CAOH, 9, Summit County	11/8/00	conviction for felony child endangering; if mother was on notice child was victim of abuse, she was obliged to protect her from that abuse; felony child endangerment if child exposed to further abuse that caused her death
State v. Wardlow	20 Ohio App. 3d 1	CAOH, 1, Hamilton County	3/20/85	child endangerment conviction; mother created substantial risk to child's safety by failing to remove either alcoholic boyfriend or daughter from residence after allegations of abuse of child
State v. Williams	21 Ohio App. 3d 12	CAOH, 9, Summit County	5/23/84	child endangerment: requisite mental state is recklessness
State v. Wright	31 Ohio App. 3d 232	CAOH, 10, Franklin County	5/13/86	child endangerment conviction; D acted recklessly with heedless indifference to consequences in perverse disregard of known risk when she left baby on bedroom floor where hot iron was plugged in and standing on edge on dresser when she knew baby was able to scoot around to pull cord

Appendix 6 National Literature Review Annotated Bibliography

Appendix 6
National Literature Review
Annotated Bibliography

The following annotated bibliography is an overview, rather than an exhaustive list, of sources consulted in the course of completing the national literature review.

Baird, C., Ereth, J., & Wagner, D. (1999). ***Research-based risk assessment: Adding equity to CPS decision making.*** **Madison, WI: Children's Research Center.**

This paper explores the question of whether actuarial risk assessment tools may be racially biased as a result of their reliance on particular predictive factors that are more prevalent in the African American community. The researchers find, however, that the use of actuarial risk assessment tools in reality leads to more equitable decision-making by CPS caseworkers and minimizes the presence of racial bias in risk assessment.

Children's Research Center. (n.d.). ***SDM: Structured decisions made in child welfare.*** **Retrieved 11/15/2004, from http://www.nccd-crc.org/crc/c_sdm_about.html**

This webpage outlines the principles behind the Children's Research Center's "Structured Decision Making" model for child welfare agencies and describes the practice components of this best practice model. Components include tools to aid child welfare caseworkers in making reliable and accurate decisions with regard to screening of referrals, response priority, safety assessment, risk assessment, child and family needs and strengths assessment, case planning and service standards, and case reassessment.

Children's Research Center. (1999). ***The improvement of child protective services with structured decision making: the CRC model.*** **Madison, WI: Children's Research Center.**

This report explains in detail the principles behind the "Structured Decision Making" model as well as the various tools and components of SDM. The report also highlights successful implementations of SDM and describes research that has been done regarding the outcomes of SDM for children and families.

Forrest, Ted. (2005, September 9). Telephone Interview.

NCALP conducted an extensive telephone interview with Ted Forrest, Manager of the Child Protective Services Division of the Michigan State Department of Human Services. The telephone interview covered the "life" of a child protection case in Michigan from initial report through assignment to one of their five dispositional categories. Subsequent review of the case and potential paths for re-assignment of dispositional categories was also covered. In addition, Michigan's implementation of the Structured Decision Making Model was discussed in-depth, including Michigan's SDM risk and safety assessment tools.

Gambrill, E. & Shlonskly, A. (2000). Risk assessment in context. ***Children and Youth***

***Services Review,* 22 (11-12), 813-837.**
The authors of this article give an overview of the benefits and challenges of various types of risk assessment instruments and discuss contextual factors that influence caseworker assessment of risk. Gambrill and Shlonsky highlight some of the limitations of actuarial risk assessment instruments in accurately predicting the probability of future maltreatment. In particular, the authors mention vague and inconsistent definitions of abuse and neglect as a limiting factor in developing and testing accurate risk prediction models.

Gambrill, E. & Shlonsky, A. (2001). The need for comprehensive risk management systems in child welfare. *Children and Youth Services Review, 23 (1), 79-107.*
In this article, the authors expand the discussion related to the reduction of risk for children from a narrow focus on pure risk assessment to a strategy for comprehensive "risk management" in child welfare. Gambrill and Shlonsky stress that child welfare agencies need to reduce the risks posed by poor assessment skills and instruments, inadequate service linkages (either because services don't exist or because they are ineffective), and agency cultures that are "reactive rather than proactive." Of particular interest, is the authors' discussion surrounding the effective assessment of families and children in making abuse and neglect determinations and, subsequently, in creating service plans.

Goldman, J., Salus, M., Wolcott, D., & Kennedy, K. (2003). *A coordinated response to child abuse and neglect: The foundation for practice.* Washington, D.C.: U. S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect.
This publication, intended as a "user manual" for child welfare professionals and others who may have an opportunity to identify child maltreatment, is an educational tool to provide a foundation for understanding child maltreatment and its prevention, identification, assessment, investigation, and treatment. Commonalities among state definitions of abuse and neglect are highlighted as well as possible abuse/neglect indicators.

Johnson, Carole. (2005, September 20). Telephone Interview.
NCALP conducted an extensive telephone interview with Carole Johnson, Child Protection Response Consultant with the Minnesota Department of Human Services. Ms. Johnson oversees the statewide implementation of Minnesota's alternative response project. The telephone interview covered the "life" of an alternative response case as compared with a case tracked for investigation, Minnesota's use of the Structured Decision Making Model, Minnesota's screening protocol for tracking of cases, SACWIS interface with the alternative response model, challenges and lessons they have learned in the implementation and evaluation of their alternative response system.

Loman, Anthony L. and Siegel, G. (2004). *Minnesota Alternative Response Evaluation: Final Report.* St. Louis, Missouri: Institute of Applied Research.

This report documents the results of a three-year longitudinal impact study with data from fourteen counties participating in Minnesota's alternative response pilot project. The study, conducted by the Institute of Applied Research, enumerates the positive outcomes of the alternative response project with regard to child safety, family satisfaction with services, non-recurrence of maltreatment, and the satisfaction of agency personnel with the alternative response approach. The report also contains a cost analysis of Minnesota's alternative response system as compared to the traditional investigative system.

Loman, Anthony L. and Siegel, G. (2004). ***Differential Response in Missouri after Five Years: Final Report.*** **St. Louis, Missouri: Institute of Applied Research.**

This report summarizes the results of three separate but related research studies, conducted by the Institute of Applied Research, evaluating the effectiveness of Missouri's differential response program. These studies were conducted both during the pilot phase of the differential response project and following statewide implementation of the differential response system. This report also contains outcome data related to Missouri's use of the Structured Decision Making model in its implementation of differential response. The report findings state that the differential response system produced positive outcomes with regard to non-recurrence of child maltreatment and greater family and agency personnel satisfaction with services and interactions provided through the differential response system.

Loman, Anthony L. and Siegel, G. (2005). ***State of Mississippi Title IV-E Child Welfare Demonstration Project, Final Evaluation Report.*** **St. Louis, Missouri: Institute of Applied Research.**

This report documents the results of a forty-two month study of Mississippi's pilot alternative response project by the Institute of Applied Research. While the study was initially scheduled to run for 60 months, the project was cut short due to funding issues. Despite the abbreviated schedule, the results documented in the study showed positive outcomes relative to the alternative response system.

National Clearinghouse on Child Abuse and Neglect Information. (2002). ***Emerging practices in the prevention of child abuse and neglect.*** **Retrieved 4/13/2004, from http://nccanch.acf.hhs.gov/topics/prevention/emerging/report/maltreatment.cfm**

This report gives an overview of child maltreatment trends in the United States. The study indicates potential risk factors for child maltreatment as well as child and family protective factors. The report discusses the existing models for child maltreatment prevention, including primary, secondary, and tertiary models, and highlights emerging practice models for prevention. Of particular interest are the emerging tertiary models that may be used as a post-screening "alternative response" to investigation.

Public Children Services Association of Ohio. (1996, revised 2002). ***Child protection services standards for effective practice.*** **Columbus, Ohio. Retrieved 11/10/04, from http://www.pcsao.org/standards.htm**

This document outlines standards for practice, including standards for intake,

assessment, and investigation within Ohio's public children's services agencies. Relevant to our study, standards are outlined for the referral of potential cases of abuse and neglect, screening and prioritizing cases, conducting intake assessments and interviews, assessing family strengths and needs, and creating safety plans.

Rycus, J. S., & Hughes, R.C. (2003). ***Issues in risk assessment in child protective services: A policy white paper.*** **Columbus, Ohio: North American Resource Center for Child Welfare, Center for Child Welfare Policy.**

The authors provide a summary and analysis of current problems in child welfare risk assessment, including ambiguity and inconsistency in language among risk assessment models, improperly designed risk assessment tools that are neither reliable nor valid, improper use of valid and reliable tools, and legal and ethical concerns. The paper includes recommendations to address these problem areas in policy and practice.

Schene, Patricia. (2001). Meeting Each Family's Needs Using Differential Response in Reports of Child Abuse and Neglect. ***Best Practice Next Practice: Family-Centered Child Welfare.*** **Washington, D.C.: National Child Welfare Resource Center for Family-Centered Practice.**

This article summarizes the basic philosophies behind alternative or differential response, variations among differential response systems, advantages of the differential response approach, and requirements to create a successful differential response system. The article also includes profiles of systems in eight differential response states.

Schwalbe, C. (2004). Re-visioning risk assessment for human service decision making. ***Children and Youth Services Review,*** **26 (6), 561-576.**

Schwalbe explores the reasons that actuarial risk assessment instruments are underutilized in day-to-day, "real world" child welfare decision-making, despite the fact that the literature has continued to promote the potential benefits of using such tools. Schwalbe describes changes in the theoretical underpinnings of risk assessment instruments that could render them more useful to everyday practitioners. He also emphasizes the need for additional research and comparative analysis of the impact and effectiveness of various risk assessment tools.

Shlonsky A., & Wagner D. (in press). The next step: Integrating actuarial risk assessment and clinical judgment into an evidence-based practice framework in CPS case management. ***Children and Youth Services Review.***

Shlonsky and Wagner support the use of the "Structured Decision Making" model in child welfare practice that incorporates the use of both validated actuarial risk assessment tools and thorough and objective clinical assessment of family functioning. The authors discuss the benefits of using actuarial risk assessment tools in child welfare practice and also identify many of the same problems with risk assessment as Rycus and Hughes (cited above). The California Family Risk Assessment and the California Family Strengths and Needs Assessment are cited as model tools for combining the use of actuarial risk assessment and objective clinical assessment of family functioning in case planning.

U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (2003). ***Decision-making in unsubstantiated child Protective services cases.*** **Washington, D.C.**

This report outlines the findings of three studies related to unsubstantiated cases of child maltreatment. The studies explored factors that influenced caseworkers' decisions to deem cases either 'substantiated' or 'unsubstantiated' and the impact of those decisions on services and outcomes (re-referrals) for children. The studies have particular implications regarding caseworkers' use of risk assessment strategies to predict the likelihood of future harm and their impact on the decision to substantiate or unsubstantiate cases.

U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (2003). ***Research to practice: Reducing re-referral in unsubstantiated child protective services cases.*** **Washington, D.C.**

This report offers practice suggestions for improving outcomes (reducing re-referrals) for children in unsubstantiated cases of abuse and neglect. The suggestions in this report were prepared by the National Clearinghouse on Child Abuse and Neglect Information and were based on the findings of three studies related to unsubstantiated cases of child maltreatment. Some of the practice recommendations outlined include using risk assessment instruments to assess risk more effectively, assessing risk throughout the life of a case rather than during investigation only, creating an agency "risk specialist" to provide ongoing caseworker training and review of high risk cases, and developing an alternative response model to provide lower-risk cases with a more "service-oriented" approach rather than a more traditional investigative process.

U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, & Office of the Assistant Secretary for Planning and Evaluation. (2003). ***National Study of Child Protective Services Systems and Reform Efforts.*** **Washington, D.C.**

This report outlines in detail the results of a two-year national study of child protection services in the United States. The study included a comprehensive literature review, a review and analysis of state child protective services policies in all fifty states, a survey of agency practices among randomly selected local child protection agencies, and site visits to agencies engaging in innovative practice measures. Some of the topics and emerging practice areas discussed include screening and triage, investigation, collaboration with law enforcement, alternatives to investigation, and collaboration with other community agencies and service providers (particularly substance abuse and domestic violence services).

U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (2003). ***School-based child maltreatment programs: Synthesis of lessons learned.*** **Washington, D.C.**

This report summarizes the findings from eleven pilot projects designed to enhance collaborations between child welfare agencies and school systems. Each of the projects was focused on child abuse/neglect identification, prevention, and treatment in coordinated efforts between local agencies (both government and non-profit) and school systems. Services provided included primary prevention services, child maltreatment intervention-related services, and services to strengthen school personnel's ability to identify child maltreatment. Multiple sources in child welfare literature identify the development of collaborations among child welfare agencies and other local service providers as a high priority for improving practice and outcomes for children. Creating and strengthening collaborations among local agencies and service providers can be a highly effective strategy for improving systems for the identification of child maltreatment and provision of services to at-risk families.

Virginia Department of Social Services. (2004). ***Evaluation of the Differential Response System*** **. Richmond, Virginia.**

This report is the fifth annual report summarizing the ongoing evaluation of Virginia's differential response system. Virginia Polytechnic Institute and State University (Virginia Tech) has been contracted to conduct the project evaluation for the Virginia Department of Social Services. To date, the differential response data gathered reflects a positive impact, including greater satisfaction by families, caseworkers and mandated reporters with the overall functioning of Virginia's child welfare system.

Waldfogel, Jane. (1998). Rethinking the Paradigm for Child Protection. ***The Future of Children: Protecting Children from Abuse and Neglect, Vol.8 (1), 104-119.***

This article explores the merits of a differential or alternative response approach to child welfare practice. The article advocates for reform that emphasizes differentiated child protection responses based on each family's individualized needs and risk factors. Such an approach enables agencies to engage families in a more collaborative, less-threatening relationship, thereby helping to strengthen families and keep children safer. The article also promotes strong community partnerships among child protection agencies and other community services providers. Such partnerships can allow child protection agencies to create referral networks for lower-risk cases and focus their own resources on the highest risk cases.

Appendix 7 Field Interview Notes

Appendix 7—Field Interview Notes

Interview With Group of Assistant Prosecuting Attorneys

5/18/05

1. How (if at all) do Ohio's child maltreatment statutes affect actual practice at PCSAs?

The statutes dictate what legal action a PCSA is required to take in certain circumstances [see, e.g., R.C. 2151.413(D)], and also defines permissible action that may be taken by a PCSA.

90-day rule creates problems because of service issues; results in too many refilings.

Some feel that, with regard to the GAL/assigned counsel statute/rule, that if a conflict arises the GAL should not be made to assume the role of attorney and that a new attorney should be appointed instead of a new GAL. **Dissenting view:** Because a dually appointed GAL/attorney is subject to the attorney/client privilege, the attorney cannot then remain on the case as GAL if his/her views differ from the wishes of the child. He/she would then be advocating against the child's wishes after having been privy to confidential communications in violation of the attorney/client privilege.

12 of 22 months provision: cannot file for PC on this basis before annual review.

Dependency statute: Subsection D should be moved to either abuse or neglect statute since it involves parental fault.

Social workers are making legal conclusions about A/N/D in staffings, decide filing is appropriate.

2. What effect, if any, does the statutory language have on the adjudication process and outcome?

Other than setting the parameters for the legal action, I=m not sure how much effect it has on the actual process and outcome. It certainly has been rare in the past to achieve the statutory time frames for adjudication and disposition (30 days after filing and 30 days after adjudication, respectively). Although the situation has improved of late, there have been many cases in the past in which multiple re-filings have been necessary due to motions for dismissal of cases that have not been resolved within ninety days [R.C. 2151.35(B)(1)]. This result has in the past had the unintended effect of drawing out the process for a child rather than expediting it.

Instead of parents, definitional statutes should read parent(s) or primary caregiver so that one need not prove that both parents abused or neglected a child. Affects possibility of agreement.

R.C. 2151.031(C): the word death should be removed. If a child dies, we do not file a complaint for that child.

The categories are seen in terms of degrees, e.g., abuse worse than neglect, which is worse than dependency. The particular category chosen when the complaint is filed can affect the potential for an agreement. While focus should be on child, focus is on parents.

3. Can you give examples of cases in which the wording of a child maltreatment statute led to an undesirable (from your perspective) result?

The best interest factor listed at R.C. 2151.414(D)(4) requires the trial court to consider the "child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency". Although a trial court is only required to consider the best interest factors and no one factor is to be automatically given more weight than the others, some courts have held that where this factor cannot be conclusively proven, PC must be denied. See, e.g., *In re Schaefer*, Geauga App. No. 2004-G-2594, 2005-Ohio-1258 at &42-43. I would be surprised to find any child who is not in need of a legally secure permanent placement, and the fact that non-PC alternatives are available (or simply potentially available, as in *Schaefer*, supra) does not necessarily make them in the child's best interest (as opposed to the parents' best interest). As such, I believe that R.C. 2151.414(D)(4) may be unnecessary and actually harmful to the rationale underlying the best interest determination. Perhaps it should be removed from the statute.

R.C. 2151.031: corporal punishment creates an exception to abuse definition that is not well-defined; has been interpreted differently in different courts. *Ivey* case: Juvenile court found abuse, criminal court ruled acceptable corporal punishment.

R.C. 2151.04(D): adds fault to a no-fault statute; should be moved to abuse statute.

R.C. 2151.04(C): Catch-all phrase requires that the state must assume the child=s guardianship. Cannot use this when only protective supervision is requested. Sometimes custody or protective supervision is necessary due to the child=s behaviors but none of the other possible code sections fit. Even (A) requires Awithout adequate parental care@, which may not be true. Subsection (C) should read “...assuming the child’s custody or supervision.”

4. What (if any) problems do you see with the current distinctions (abuse, neglect, dependency)?

I don't see any glaring problems with the current distinctions. The various labels may provide some indication as to the severity of the situation, although this is arguably of minimal benefit since a case of extreme neglect can be as severe, if not more so, than a given case of abuse. Additionally, if cases are resolved by agreement rather than by contested trial, the various distinctions are (rightly or wrongly) often used as bargaining chips for purposes of resolution.

5. Do these distinctions affect the children's parents in terms of willingness to cooperate?

I think a parent is generally less likely to admit to a finding of abuse as opposed to neglect or dependency, but that does not necessarily justify a change in the statutes.

Most parents will not admit to an abuse complaint and these are the cases that usually go to trial. Social workers are more willing to amend a neglect complaint to dependency, but stand firm on an abuse complaint. Chance of agreement reduced; increased time to get case resolved; more re-filings

Creates degree of parental fault. However, ownership of responsibility for actions provides a history for court and agency.

Parents seem more willing to do services when lesser adjudication is agreed to (but opposite occurs too - I never abused my kids).

6. What would the potential benefits and drawbacks of discarding these distinctions and creating one category: children in need of service?

One might argue that a benefit of changing the terminology would be a resulting reduction in any stigma associated with being labeled an abused or neglected child. I'm not sure such a claim is all that legitimate since the substitution of one label for another does nothing to change the factual circumstances which lead to the label in the first place. On the contrary, a child who has been physically abused by a parent could possibly be offended that he/she is merely labeled as a child in need of service as opposed to Aabused, since this might be perceived as an effort to minimize the responsibility of the adult offender for creation of the situation or the severity of the situation itself. If such a change were instituted, a severely abused child would bear the same label as a child who has suffered educational neglect by failing to attend school. While educational neglect is certainly not a situation to be ignored, it can hardly be equated with a case of prolonged severe physical abuse of a child at the hands of a parent. By eliminating the current terms (abuse, neglect and dependency) in favor of Achildren in need of service@, there may also be a danger of characterizing the issue as the child=s problem rather than recognizing the role of an adult in creating the situation for the child.

It may minimize the severity of the allegations, but may increase the number of agreements due to removal of the stigma attached to the labels abuse and neglect; therefore, decreased refilings, quicker introduction of services.
Children in need of service focuses only on the child - not the parents or family. Many times the parents need services, not the child.

7. In general, what (if any) ambiguities or inconsistencies would you like to see change in Ohio's child maltreatment statutes? Why?

I'd like to see the issue of admissibility regarding hearsay addressed. Currently, the way the statutes and the Rules of Juvenile Procedure are written, hearsay is admissible at the dispositional hearing for a complaint in which permanent custody is requested, yet it is not admissible at a dispositional hearing for a motion to modify temporary custody to permanent custody. While there appears to be no logical reason for such a distinction, Juv.R. 34 clearly creates such an inconsistency. See *In re D.W.*, This App. No. 84547, 2005-Ohio-1867 at &27-28.

I would also like to see some distinction included within the statutes and juvenile rules regarding the right of a child to counsel. I believe the current language contemplated that all children subject to delinquency proceedings be afforded counsel, but am not sure that it was intended that all children alleged to be abused/neglected/dependent be appointed counsel. While it is obvious that a very young child will not be facing delinquency proceedings, even newborns are subject to A/N/D proceedings. A very young child (and especially a newborn) cannot be considered to be sufficiently mature to either benefit from or assist legal counsel. Such a child cannot express wishes sufficient to apprise an appointed attorney of which legal position to advocate. This puts the assigned attorney in a difficult position ethically. How can an attorney represent the wishes of a client who cannot express such wishes? I believe that R.C. 2151.352 and Juv.R. 4(A), which have been interpreted to require the appointment of counsel to all parties including very young children [see *In re Clark* (2001), 141 Ohio App.3d 55, 749 N.E.2d 833], should be amended/clarified to indicate that such young children need not be automatically appointed counsel, and that such a need should be determined by the trial court on a case-by-case basis. Recent case law has essentially followed this logic regarding the appointment of independent counsel (See, e.g., *In re M.W.*, This App. No. 83390, 2005-Ohio-1302 at &15), but perhaps the statute should be amended so that even a dual appointment is unnecessary unless the trial court determines otherwise.

With regard to R.C. 2151.414(E)(11), I'd like to see the statutory language amended to include language such as Aor any similar statute as enacted by any state legislature. As the statute presently reads, prior orders involving involuntary termination of parental rights satisfy this factor only if the termination was ordered pursuant to Ohio statute, which is specifically referenced by code section. Therefore, a parent who has had parental rights terminated just across state lines (or across the country, for that matter)

pursuant to the statutes of another state is not subject to the presumption of unfitness created by this subsection.

With regard to R.C.2151.353(A)(4), I'd like to see the statutory language amended. Said statute, which deals with permissible dispositional requests pursuant to a complaint with request for original disposition, allows for an order of permanent custody only after a finding that a child cannot or should not be placed with either parent pursuant to R.C. 2151.414(E) and a best interest finding pursuant to R.C. 2151.414(D). There are, however, situations which require the filing of a complaint for permanent custody as opposed to a motion to modify. For example, a child who has been in agency custody for a lengthy period of time and has been recently reunified under an order of protective supervision cannot be the subject of a motion to modify protective supervision to permanent custody. The statute as it exists presently does not permit the trial court to proceed under R.C. 2151.414(B)(1)(d) when addressing a complaint regardless of the custodial history of a child. However, such an approach is required under a motion to modify disposition if a child has been in agency custody for at least twelve months of a consecutive twenty-two month period. [See R.C. 2151.414(B)(1).] This disparity in treatment of children who may otherwise be identically situated may not have been the intended result of the legislature. Substituting for the present language of the statute something such as in accordance with divisions (B) and (D) of section 2151.414" would provide for equal treatment of all children for whom a disposition of permanent custody is being sought.

R.C. 2151.04(C): the state does not take custody, the county does. Also, the agency takes custody, not guardianship.

Failure of one parent to care/support child not adequately reflected in the statutes (e.g., alleged fathers.).

R.C. 2151.03: Include in neglect statutes a separate subparagraph basing neglect on the failure to establish paternity and support, visit or communicate with a child when able to do so.

8. What (if any) specific problems do you see with the statutory definitions of abuse, neglect, and dependency?

While maybe not a problem, R.C. 2151.03(A)(3) and (4) contain some language which is altogether useless. They state, in part, that a neglected child is a child [w]hose parents, guardian or custodian neglects the child or ... and then lists specific examples of neglect. To say that a child is neglected when its parents neglect the child adds nothing to the definition of neglect. Perhaps Aneglects the child or should be deleted so that the sections include only the specific examples of neglect included therein. A catchall phrase can be added to the effect that neglect includes evidence that the parents, guardian or custodian has either committed the specific actions listed or is

responsible for any other act or omission which results in a lack of adequate care for the child.

R.C. 2151.031(C): any physical or mental injury, except acceptable corporal punishment, or accidental means. Too subjective, especially mental injury. Should require only risk of mental injury, since may be impossible to establish mental injury in a given case, although expert testimony can be presented regarding studies that show mental injury in general, e.g., to children who witness violence, etc. Demonstration of actual mental injury may be unattainable burden of proof.

R.C. 2151.03: should include fails to ensure or provide along with refuses.

R.C. 2151.03: While neglect statute speaks of Aadequate parental care, R.C. 2151.05 is entitled "Child without proper parental care". Title should be changed to indicate "adequate" rather than proper.

9. Are there any laws whose wording consistently lead to unfair results for parents? For children? For the PCSA?

I think that R.C. 2151.414(E) should be considered for amendment. R.C. 2151.414(E) presently requires that, if any of the sixteen factors listed therein are proven by clear and convincing evidence, then "the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent[.]" In other words, if the prosecutor is able to establish certain facts involving past behavior, regardless of the recency of such behavior, the trial court is required to make a finding that the child presently subject of the court's jurisdiction cannot or should not be placed with either parent within a reasonable time. Consideration should be given to the possibility of including language such as "unless sufficiently rebutted by clear and convincing evidence following the above-cited statutory language." Under the statute as it presently reads, there is no opportunity for a parent to rebut the presumption of unfitness inherent in such a required finding. For example, if a parent to a pending permanent custody action had lost a child to permanent custody ten years earlier [R.C. 2151.414(E)(11)] or had failed without justification to maintain contact with the child at any time in the past for at least ninety days [R.C. 2151.011(C) and 2151.414(E)(10)], the trial court must issue a finding that the child cannot or should not be placed with the parent, irrespective of any remedial measures taken by the parent subsequent to such behavior. In other words, a parent could possibly (however unlikely it might seem) be a model parent at the time of trial and the trial court could still be required to find that the child cannot or should not be placed with the parent. Such a result may well be unconstitutional. [Cf. *In re D.W.* (IL S. Ct.), Docket Nos. 97292 & 98896, 2005 WL 674886.] The United States Supreme Court, in the case of *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208 (1972), noted as follows: Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks

running roughshod over the important interests of both parent and child. It therefore cannot stand. Id., 405 U.S. at 656-657. If the rebuttal language were included in the Ohio statute, the evidence mentioned above would still give rise to a presumption of unfitness. The burden of proof would then shift to the defending parent, who would be affirmatively required to overcome the presumption in order to avoid the finding based solely on what could possibly have been remote and isolated behavior.

With regard to R.C.2151.353(A)(4), I'd like to see the statutory language amended. Said statute, which deals with permissible dispositional requests pursuant to a complaint with request for original disposition, allows for an order of permanent custody only after a finding that a child cannot or should not be placed with either parent pursuant to R.C. 2151.414(E) and a best interest finding pursuant to R.C. 2151.414(D). There are, however, situations which require the filing of a complaint for permanent custody as opposed to a motion to modify. For example, a child who has been in agency custody for a lengthy period of time and has been recently reunified under an order of protective supervision cannot be the subject of a motion to modify protective supervision to permanent custody. The statute as it exists presently does not permit the trial court to proceed under R.C. 2151.414(B)(1)(d) when addressing a complaint regardless of the custodial history of a child. However, such an approach is required under a motion to modify disposition if a child has been in agency custody for at least twelve months of a consecutive twenty-two month period. [See R.C. 2151.414(B)(1).] This disparity in treatment of children who may otherwise be identically situated may not have been the intended result of the legislature. Substituting for the present language of the statute something such as Ain accordance with divisions (B) and (D) of section 2151.414" would provide for equal treatment of all children for whom a disposition of permanent custody is being sought.

No statutes addressing the transfer of custody to another PCSA across state lines.

Child abuse registry: reports all referrals of abuse and neglect; should not be done if unsubstantiated.

R.C. 2151.352: right to counsel; assigned counsel given in almost all cases regardless of parents= income.

R.C. 2151.3516 - Deserted child statute: should include PCSA as an option for place to leave a child; also should permit filing for PC instead of only TC.

Need statute (perhaps under Complaints statute - R.C. 2151.27), permitting a cause of action to compel production of a child for interview/investigation when child may be at risk of harm.

Statute should explicitly indicate that protective supervision timeline starts when PS granted.

GAL statute: should differentiate between roles of GAL for child and GAL for parent, since different responsibilities at trial, etc.

PPLA is too limited; many times PC is not in the child=s best interest, but child does not meet the three criteria. [**Dissent**: don't want to revert back to system where PPLA is a catch-all dumping ground. If parties agree to PPLA, and nobody appeals, then can do it despite statutory requirements if all believe it is best solution. Does not require amendment of statute which will create problems in contested cases.] Can also get around bright-line test in subsection (c) regarding minimum age of sixteen years by including thereafter language that reads or is otherwise amenable to a PPLA, with specific reasoning required. Such language puts the burden on those arguing PPLA to justify deviation from bright-line rule, and also requires more work by trial court, which might dissuade the frequent use of such a provision.

Interview With Group of PCSA and ODJFS Staff

5/24/05

ABUSE 2151.031

Sexual activity 2907…

2907 has absolutely every sexual crime in Ohio in it, including a storeowner having pornographic magazines out for a kid to view as they walk into store. Trying to look at differences of what is protection and what is law enforcement?

Consensual sex between teens
Date rape
Stranger rape
16 and 20 year olds
Young children who may not be appropriate called perpetrators

Forces us to investigate when there aren't child protection issues

When is it o.k. to id child as a perpetrator, when can they face criminal charges

Law needs to define what a perpetrator is

17 year old daughter having sex with dad. Prosecutor couldn't find a law to make that illegal.

Some behaviors are sex abuse from our perspective but not covered in the law. Case: clothes off, parents took pictures but because parents were in the picture it wasn't technically abuse.

Way it is now if it was not a criminal offense it's not sex abuse.

Grooming behaviors—nowhere does it say we should take those.

Those folks are allowed to continue in their place of employment.

So much of the actions we're allowed to take depends on what the criminal code says. Weighs a lot on what we are able to do. If you don't have an aggressive prosecutor, you're out of luck.

Child attempted stranger abduction is only a misdemeanor crime. We're roped into dealing with that kind of case. Guy had lifelong history of this, on parole, followed school bus two days in a row. Not enough to prosecute. We need to be to strengthen the criminal laws

Flip side of that: we have to investigate everything in my county. 16 year old boy picks up a 15 year old girl and forces her to touch him. I didn't want to call him a perpetrator. Didn't feel that was the intent of child welfare and central registry.

O.k. to label cases based on call IF the central registry is only going to be used for child protection purposes. It's supposed to be the only reason it's used, but it's not. Intent 20 years ago was that. To protect kids from repeat offenders. Child welfare only. Over time because of the way its written, it's being used for screening purposes. Adoption process: agencies tell adoptive couples to write in and ask if they're on the registry. Foster care and day use it that way too.

Prior to house bill 11 we used to share this info freely because it was a way to protect kids. On the other hand they could perhaps be still allowed to have kids. HB 11 says can give list of substantiated and unsubstantiated cases. Currently only allowed to have results from own county. Will become statewide when SACWIS kicks in. if ever named anywhere it's in there. not fair to anyone.

Example:; screening: what x county calls abuse, y county doesn't. The issue becomes due process, fairness, equity.

16 yr old w/ 15 year old we wouldn't have even taken where they would have.
Years ago sex abuse was incest, nothing else.

Root of the problem: idea of protection vs. prosecution. No effort to parcel out protection issues. PCSA's getting hit on both ends. Being asked to do things that don't involve protection, and not allowed to do things that do involve protection. This is the most blatant example. We're being expected to be involved in the prosecution of perpetrators, a lot of times that 's our role in terms of interviews, etc. need to take that away from us. There should be an entire different set of investigation rules for sex abuse vs. neglect vs. physical abuse etc. using us to build the criminal case. In many cases. Required to interview the perpetrator, though cops are saying they don't want

us talking to that guy,,, we need to focus just on the kid. Law enforcement needs to handle the stuff relative to the prosecution.

Suggestions:

Take prosecution away from PCSAs
Address kids under 10. in past a 7 year old who perps was probably also abused. Take young kids out of being allowed to be named. They need services, but they need protection, not prosecution or labeling as sex offender.
Exclude young kids as perpetrators
Exclude cases where *parent* hasn't done anything. Determine exactly what is a protection issue. If perpetrator is out of home and it's not a child protection issue stay out of it.
Set a time limit of when we should get involved. Not in a case that happened 15 years ago.

Dad sexually abused daughter, mom didn't support daughter, child removed; didn't have criminal case, dad agreed to admit in juvenile court if they didn't prosecute him criminally.

Child endangering

Very ambiguous

Can be kids not in car seats, dirty house, anything.

Cops filed on a mom for fleas in the home, because tired of being called out there every night re loud kids. Mom had mental health issues. Didn't have an attorney, pled guilty, now convicted of child endangering. They wanted us to get inv—for fleas in the home?

Police report calls it endangering, as a PCSA it doesn't fit but our administration makes us take it because of the label police have given it.

Huge gap between misdemeanor child endangerment and felony child ending. No in-between.

Endangering has grown to include all sorts of stuff (like dependency().someone calls and says mom doesn't have kids in child safety seats and cops start, it could be child endangerment. Way too broad to help with screening decisions.

If there are criminal charges pending in a situation, we may not be able to have our adjudication till that trial is done, may not be able to have folks testify…

Separate criminal from protective.

OAC: Definition says exhibits evidence of any physical injury inflicted other than by accidental means. Contradicts itself when it cites ORC. Need clarity re what they mean

about corporal punishment. OAC and ORC conflict. ORC says “corporal punishment, and serious risk of physical harm…contradiction.

Section c. allows prosecutor not to take the case in severe bruises because not serious physical harm.

Some counties say if you leave any mark it’s physical abuse.

Out of home care (2) needs to be gone. Use of restraint procedures that cause injury or pain. ORC 2151.01.1. needs to be gone. With the problems kids have today it’s just not practical. Kid flails around, gets rug burn—under this statute caregiver should be charged with abuse. Using when using appropriate restraints and happen to leave a mark. Repeated in OAC.

Suggestions for corporal pun: be specific about how serious a injury needs to be. Nice def of excessive and when disc becomes excessive, in a specific book (ODJFS will give us).

In control or out of control, purpose, location, age of child etc.

Not “any physical injury” 2151.031C,vs. endangering 2919.22 contradicts one another.

2151.421 reporting statute: talks about what people have to report: “suffered or faces a threat of suffering, any mental or physical wound, injury…” these three need to be reconciled.

GALs and CASAs need to be mandated reporters. Shouldn’t be able to go into court and say something they haven’t s reported to agency.

Law enforcement isn’t there either. Because the mandated reporter law says call CSB or law enforcement. Make them a mandated reporter.

Internal reporting procedures within schools. Huge issues with schools, e.g., not reporting. Teacher will tell guidance counselor, who tells principle, who may report to CSB

Individual schools have internal policies. We get calls from teachers say principal said don’t call. They should have to call us personally.

Mental injury.

Almost has to be diagnosed as such to let us act on it. We say that to screen in if a child exhibits symptoms that’s enough. Currently there has to be an injury. Not appropriate to require that for us to screen it in or to call it abuse. The mental injury is an outcome, but we have to have it before we begin.

We've had a category of emotional maltreatment forever, can use it as a disposition for central registry. But emotional maltreatment has never been defined.

Hard to take such a case to juvenile court for adjudication when this is first or second referral, or mom is scapegoating, child has low self esteem, but may over the years to develop an actual injury.

The only category that involves a formal diagnosis by an outside party.

Suggestion: there must be some indication of what could formally be diagnosis as a mental health problem. As opposed to an interpretation by caller that child is being emotionally abused.

It's hard to attach a safety threat to mental injury. Reporters get emotional about it, values judgment.

Domestic violence is part of emotional maltreatment, where kids aren't in phys danger but listening to mom being attacked.

Domestic violence isn't mentioned. We don't want to take every call of dv within family. Must be a cause and effect relationship that it's somehow affecting the kids. There must be a protection issue. For us to get involved.

Suggestion: when people are running through the house with weapons that's big. Dad's going to kill the dog, or chasing spouse.

Whose doing the fighting? Need to define when it becomes a child protection issue.

Need to add that the victim of dv can't be held responsible for what goes on in the home.

Back to mental injury

People who are creating reactive attachment disorder because of way they treat their kids. Or will threaten kids that they won't live with them anymore. When parents kick their kids out and expect taxpayers to pay there should be some consequences for that. Criminal consequences. Court gives those kids to us. It's almost acceptable.

Same happens with adoption situations. Families go overseas and adopt, kids hit teen years, parents give them back.

Mental injury needs to be defined behaviorally. Behaviors the child exhibits. Not just limited to DSM IV. Displays behaviors consistent with a diagnosable mental health

disorder. Avoid moral interpretations. Need to be more specific on the actions of the parent and the behaviors of the child. Don't rely on the dx, but the behavior.

There are times when parents contribute to the behavior that result in mental injury. But also times when its just the kid and parents are doing everything in their power.

Calls from relatives or schools who say "child isn't being treated properly." Require a specific showing of parent's behavior and child's behavior.

Stop short of a formal dx but not be so vague as to take in the "not being treated properly" .

Define perpetrator across all of these areas.

There have been issues in practice, alleged child victim as a role—certain things you have to do. , then talks about interviewing all kids in the household, even if not alleged child victims.

Families, households, caretakers, alleged child victims, all children in the household, at different places in the statutes these terms are used, causing confusion. Family and household mean diff things to differ counties.

Use of word "abuse to define abuse, and "neglect" to define neglect.

Legislation needs to allow us to talk to kids at school. If specific safety issues are identified for the child. Afraid to talk at home, we have identified a specific safety issue, child says afraid to go home, we'll interview at school, then follow up immediately with parents. An immediate safety issue for the child.

Some agencies have to interview kids in a neutral setting , away from the alleged perp.

Some schools wont allow CSB to come on their ground. Others require someone within the school to sit in on the interview. Whole issue of confidentiality. Diff between private and public schools. Some agencies have school personnel sign a document saying they understand they could be called as witnesses, become a party, must keep confidential, etc.

OAC requires an interview separate and apart from perp if possible.

Codes should reflect that during the course of an investigation of a and n we should have access to certain records. Some hospitals won't release child records w/o the consent of the family, really slows down the process. Records pertaining to the child. E.g. by a pediatrician.

Must have some concrete definition of what constitutes corporal punishment. See CAPMIS guidelines

Young child, 5-7 years old, playing with dad's tools, left them in the yard. Dad got extremely upset, took a board to kid's behind, child had solid bruises all around the butt (nowhere else). As black as my key. And in the middle of his cheek he had open, bleeding wounds. Court refused to call it abuse. Recommended to dad that he not discipline the kid like that, but that was it.

NEGLECT

Abandonment

What does abandonment mean? Unclear

Issues of medical treatment, enrolling kids in school,, agencies have to file for dependency to get those things, but can't file under neglect/abandonment. Sometimes interferes with ability to make parents accountable.

Is this really neglect?

Ensuring permanency and stability for kids

Adequate parental care: What does adequate mean? Needs to be defined.

2151.011 defines adequate. Uses adequate to define adequate. Next provision uses "proper" meaning is unclear.
All of those words: "unnecessary", "appropriate", "adequate", "proper", so subjective…
Define fault or habit

Making definitions clearer and more consistent will do away with a lot of the inconsistencies across the state.

Add "resulting in child harm or the likelihood of harm…"

#4 under neglected: use of the word "morals" "well being", subjective and ambiguous.

After 3 and 4 "resulting in harm or the likelihood of harm to the child. Cause and effect must be shown. Impact on child's health or safety.

Define educational neglect.

school needs to intervene first, due diligence.

parent can get jail time for kids truancy, because that goes through juv court. But not for sex abuse, etc.

PCSAs get dumped on, schools not doing their part…

when does it become a protection issue?

Spell out effect on the child

Age is a factor (we do kids under 6th grade)

If we weren't expected to be all things to all people, we could be of help to kids who really need us.

Lice issue: kids were missing school because of lice, but we don't get involved in lice issues.

#5 of Neglect Statute: clarify what that is supposed to mean.

#6 "Omission" = redundant. Combine 2 and 6?

Substance abuse

Statutes aren't adequate in this area. Doesn't address substance abuse.

Need to define what it is, when it is neglect/abuse, what harm to the kid, etc. meth labs—even w/ no showing of harm (yet)

Drinking and driving--ORC says dui with kids is an abused child

Leaving kids unattended: need clearer guidelines about when it's ok: age, time, age, maturity, knowledge of safety, responsibility for younger children…

DEPENDENCY

C is too broad. Can apply to any case. When you get a call from a referral source, dependency gets muted. In court it's used to plea..

I don't mind using dependency to get a case through court and get services into a home where we couldn't prove neglect. I do mind agencies using it to avoid paperwork. More paperwork and different time frames, disposition requirement, more documentation in a/n cases.

Abuse and neglect numbers in Ohio have plummeted, because we're calling everything dependent.

Requiring same timelines and interviews in dependency cases as are required in abuse and neglect—would discourage agencies calling it dependency just to avoid paperwork..

if go with FINS, court needs to make findings of fact. But In some counties that's part of the bargaining, defense attorney says drop certain facts. E.g. drop fact that she had bruises on entire body…

Using legal terminology to determine if a child is dependent.

5153.16a13: PCSA shall conduct an investing. Of child a/n/or d.

OAC 5153.16A1 a/n/d 2151.421 a and n only

OAC is silent re dependency

Abolish dependency and go to child in need of protection

do away with "destitute"--archaic

GENERAL

Juvenile court needs to pay when it sends unruly kids to us. It was created so courts could provide notice to agencies that they were a possible disposition to the court. Courts now interpret it as meaning they can send everything to us.

Mental health should also be a possible disposition for courts. Not just CSB. Also MRDD. And clearly define court's continued legal responsibility, so we don't become probation officers.

We can be a disposition for the court IF there are a/n/d elements. We want to include the other agencies or exclude ourselves.

Some larger counties have special units to deal with these unruly kids. Smaller ones aren't equipped to do deal with delinquent kids. This happens quite a bit.

We devote a lot of resources for cases that have nothing to do with protection.

If we had our hands out of so many pieces of pie we'd be able to do a better job.

PREVENTION

"Dual response"

If prevention were put somewhere else, other than PCSA (still “baby snatchers”) it would be great. Would reduce later cases. Stigma makes people less cooperative. And receptive to those preventive services.

Until 4 years ago we were 80% voluntary, but now we have more work and less money to do it. Now have to deal with Juvenile Court kids, 3 X as many kids under care, preventive cases go out the window—don’t have the people to do prevention.

Would require additional funding and a paradigm shift. Financial resources are there to allow this type of system. Need more law enforcement.

Needs to be clear guidelines about what agency can do in a prevention case.

PROCEDURAL PROBLEMS

Getting permanent custody timely is a problem. Expectation that we place child permanently for adoption within 24 months after removal is unrealistic. Court delays. When you file for pc there are no time frames to complete a court hearing and decides whether or not pc is or is not granted. There might be hearing schedule 4 months but a week before the hearing some attorney files for continuance, goes another 6 weeks, then set for 2 days when you need 4…

We’ve also had to wait as long as 6 months for the termination of parental rights order. Then have to wait 45 days from that in case parents appeal. If they do, that’s another 6-8 mos.

On the other hand, To meet time frames the whole process is rushed. Families are being filed on 6 months after they entered the agency. Families aren’t being given a chance to demonstrate changed behavior due to lack of services. Can’t expect anyone to change in 6 mos., they’ve been sick for 20 years. There are agencies that begin the filing for tpr process within 6 months, thinking “in order to get permanency for the kid we need to get started on this.” Unintended consequence. On other hand, it you wait too long you’re not getting permanence for children.

Once we get to pc we counter all the progress we made due to adjudication and disposition timelines.

Families don’t have a fair shot. The rule says to do a case plan you have 30-60 days to do a case plan. If I file within 6 mos., the parents get 4 mos., which means four visits with their kids.

The whole game of screening, the agency goes out on an “other”, can I help you, then takes their kids. Because if I make enough home visits I’ll find something.

To meet the directive, agencies are labeling as abuse or neglect cases that aren't either.

A lot of situations can be called any of a/n/d. the categories need to be more discreet. One act is either abuse or neglect. E.g. drunk driving, leaving kids in car.

We treat poor parents differently.

Child welfare needs to be more of a profession

People think of us as Susie do-gooders. No credibility. Volunteer has more sway (gal/casa) in court

Good to require certification, but hard to get attorneys to serve parents anyway, this would make it more difficult.

Sex abuse is such a taboo subject that people don't understand anything about it. Leads to unwillingness to take it on because people don't have knowledge.

No training for workers about investigating safety. Have to have more qualifications to do the end work than the beginning. Spend way more time placing special needs kids, being certified than we do on who we should screen in , etc.

Many agencies place their least experienced, newest, incompetent workers to Intake. Because with experience they leave to go to foster care or adoption, etc.

Not enough training at the entry level. 2 tiers of training for adoption, no tier for determining if parent can parent.

Needs to more training specifically about screening and investigation.

Mentoring, observing us, videotaping and critique, peer mentor (buddy), shadowing, classes, role plays, etc., limited class size. Haven't seen it offered again. Lot of time commitment. Very, very helpful. Ohio training program needs to go more in this direction.

It's an entry level position even though not entry level work. Very young, inexperienced, leave ASAP. We train and then they bail.

MULTIDISCIPLINARY

Quality of relationships in some counties are excellent. Directors of all these agencies meet once a year for lunch. A level of commitment by the agencies. A sense of collaboration.

All about leadership. And training. And communication. E.g. committees to meet once a month to talk about good things, bad things, etc. many conflict things going on, the more they come tog and brainstorm about how they're going to work together the better. It's not just CSB's problem, all the agencies have a responsibility.

Training for judges would be very helpful, but would have to be mandatory.

Child welfare is see as something everyone can do. The state, courts, etc. when people have no clue about the system and then are in decisions about the system.

Directors range from GED's to high school diploma, to MBA/JDs. when you have that kind of variance… what do we want.

To teach you need a certificate, but not to do child welfare. There need to be minimum criteria at all levels, not just entry levels of child welfare.

Needs to be more mentoring of supervisors than just business and management of a business. Needs to more about managing workers in a child welfare system—the stress, etc. transfer of learning, all that is very different than in a business setting.

Rule review needs to be taught. The federal review found that the supervisory function didn't include clinical oversight in the manager's work. They weren't the clinically skilled who could tell worker how do I get mom to let me in.

DOMESTIC VIOLENCE

It's never mentioned in the ORC. Needs to be in the child protection statute. Has a direct impact on kids. We don't want to take every single domestic. We tried to set the guidelines. Require a showing of cause and effect or long history.

Circumstances surrounding it: serious threats, gun involved, etc.

Needs to be addressed in the law.

Also important not to blame the victim. Differentiate between a and n. at what point does the victim become responsible for the harm to the kids.

Also politically something that agency has tried to steer clear of. Because dv advocates want us to go out on every single thing. Even a six year old beating up four year old sib. Some say any time there's a dv in the family system it needs to be investigating. They say it is a precursor, and child is at risk. .
The dv statute itself is very confusing and misleading. What constitutes law enforcement is vague. One jurisdiction may charge, another wouldn't for the same offense.

We don't want it to be in there saying we're going to be the dv police.

Instead of using the term dv, focus on the behavior of the parents and the harm to the child.

On other hand, dv advocates will point to lots of research that male batterer of female is more likely to abuse a child.

Plays out 88 diff ways by diff law enforcement . often what is not dv is called dv.

A lot of it really comes down to good definitions.

If you can't define the term (excessive discipline), we went the alternative of defining what things the person needs to look at to see if it means that criteria. Factors that need to considered in making that decision.

Out of home "injury" isn't good language.

Interview With Juvenile Court Magistrate
5/2/05

How, if at all, do Ohio's child welfare laws cause problems in actual practice at PCSAs?

One problem is the time frame we have to work with , particularly the 90 day rule for disposition. Lots of re-filings. Better now because our agency does business differently now. The agency is using a different risk assessment process now, so they don't remove as many kids as they used to. This has made a big difference in terms of our docket. But we still have huge struggles to get those cases resolved within 90 days. Often agency doesn't know who the father is, or there are multiple dads; the rules regarding serving these fathers are stringent. If we don't have good information about the address of an alleged father we have to serve by publication. That takes time. (Must publish for 21 days in newspaper of general circulation. As if anyone reads those besides lawyers).

We also have problems with attorneys appearing in a timely fashion. We use assigned counsel and GALs, all attorneys. In [another] county many GALs are public defenders. Our attorneys are often overbooked because the fees we pay in this county are woefully low. Other counties pay much better. Summit pays $1000, Franklin also has a $1000 limit, our county has limit of $250.00. Our commissioners don't think what we do is very important. [Other] County has more magistrates than hearing rooms. We don't.

We also have huge problems with service providers. Wonderful to identify what the problems may be in a family, but often the wait for services is so long, not much

happens from one review to the next. E.g, a parenting class lasts 16 weeks; we look for substantial compliance in, say, 12 weeks. If you remove the kids, and the parents don't get referred to the class until 8 weeks after removal, we don't have enough time to get a good idea of the parents' progress. Families often have many problems, so they need, and are required to obtain, drug treatment, domestic violence counseling, jobs skills programs, etc. Unfortunately, there simply aren't enough services to go around, and it takes lots of time to get in and get the needed services. Need more money to provide more service providers. That would be better than extending deadlines.

We're trying to become a model court. As part of that we're working to improve the way we do things. For example, we haven't been real good at getting attorneys to come on time to hearings. But we don't have a lot of attorneys doing this work, and those we have are very busy. We're working to change the culture.

Our facility is a problem. We're in three buildings. Attorneys must scramble around trying to get from building to building. Our commissioners finally realized we really do need a new building, but are trying to put our new building 5 miles away. Very difficult for attorneys to get here. This is not a small issue, although our newspaper is vilifying us for wanting to be closer to where our attorneys practice.

Another problem: Attorneys think these are event-driven cases. Often they haven't met with their clients until a hearing is coming—then they scramble. We get requests for extraordinary fees but can't pay—not in budget.

Statutory Definitions

I don't have a problem with the current statutory definitions of a/n/d. It's not a problem for me, probably not for the attorneys. Nor is it important to the families; After adjudication they lose sight of whether we called it neglect or dependency. Abuse has a different connotation, which is why we try to get around it by calling it neglect or dependency.

I don't care whether you call it a/n/d or chins. What I care about is what services do we provide.

Ambiguities/Inconsistencies

ORC is written by legislatures , 30% of whom have high school diplomas. So of course there are ambiguities.

July 1, 1995, Juvenile Rule 5 and ORC were both amended to remove the term referee and use magistrate. 2151.16 still makes reference to referees, although we haven't had referees for 10 years.

Many laws are poorly written. Sex offender registration laws are a huge quagmire. Senate Bill 3 is a mess. No reason it has to be so difficult. Senate Bill 5 amended 3, supposedly to correct the problem, but it is no easier to understand.

PCSAs have rules that relate to what they look for in investigations. So if someone makes a hotline call, agency has specific things they must look for. There are conflicts between what social workers look for as opposed what we look for. What they may think is abuse may not be abuse under Ohio law. They may remove a child, then come to adjudication and can't meet the burden. The standard of proof for emergency custody is probable cause. The standard at adjudication is clear and convincing. What the social worker thought was an emergency situation for a child may not be provable by clear and convincing evidence. So the child is out of the home unnecessarily, in foster care setting where he doesn't know anyone. Practice needs to reflect the law/ law needs to reflect practice.

This County PCSA has done something to try and reduce removals. Used to hear 10-20 emergency temporary cases a day. The numbers are very much reduced today because the agency is looking much more closely at removals.

Dependency Statute

The law doesn't require appointment of a GAL in a dependency case. So if we have a neglect case and call it dependent we don't have to appoint a GAL, deal with his schedule in addition to everyone else's, etc. Also, parents are more willing to cooperate in dependency. It's easier to palate having a dependent child, because it's no fault of the parent. If you can knock it down to dependency you can resolve the case more quickly.

I care more about having services available and getting them started than what you call it. If it's serious you're not going to remove abuse or neglect from the complaint. If you have pictures and/or statements showing abuse, and parent won't agree to a finding of abuse, then you go to trial. I'm always prepared to do that. But the bottom line for me is, call it whatever you want to call it, just get it [the needed services] done.

Another problem: Often social workers aren't prepared. This is a huge problem. Either they don't come to court, and send someone else in the unit, or when they do come they aren't prepared. Supervisor goes instead of worker. Supervisor can't possibly keep track of all the cases under his/her supervision. This doesn't help the case. Sometimes it's due to high caseloads, sometimes due to incompetence.

If I were monarch I'd like to see more and better services so people wouldn't have to wait as long. Also, front-load the system so you don't have to remove children. In Cook County, Illinois 40,000 kids were removed. They began working to serve families before removal, and there have been huge reductions in the number of kids under care. But that requires money. The state will have to allocate it—our count commissioners won't.

Interview with Group of **PCSA Directors**
5/5/05

Educational neglect. Educational neglect is a dumping ground, through which schools inappropriate transfer their problem to county child welfare agencies. Schools try to send cases to child welfare agencies under such circumstances as truancy, parents not transporting their children to school, parents not appearing at school meetings, and children with head lice.

Caseworkers feel that by referring such cases to them, the schools aren't taking care of their own problems. At least, workers feel, schools should do their job before the cases come to the child welfare agency.

For example, workers ask why schools aren't filing their own cases in court. Teachers have that authority in some counties.

Delinquency: The term dependency is so broad and vague, it allows the agency to be a dumping ground for unruly youth, because they don't want a delinquency adjudication.

Varying interpretations of the law.

Several people commented that, because the laws defining abuse, neglect, and dependency, taken together, are so broad different counties interpret them in different ways. The same law should have similar responses.

"Because of the broad and vague dependency definitions, people in one county might lose their kids just for being different."

Another point of view was that, "Clarification of laws would help, but there would still be a lot of differences based on the philosophies in the counties and different local cultures. It wouldn't change practice that much.

Different individual workers handle children's cases differently and would give them different classifications for the purpose of the Center registry.

Inexperienced workers of less experience might substantiate a dirty house case will reach different conclusions. The boss of a county office may not know of the wide range of different handling of similar cases within the same office. One person will say a quarter sized bruise is abuse and another not.

Training can help, but clarification in the law or policy could also help.

Pressures not to intervene when needed. There are a lot of letters threatening to sue, by persons aware that the child welfare agency has contacted them. This seems to be in part based on information in certain websites opposed to state intervention in child welfare cases. Those letters may inhibit some actually necessary intervention. In some cases, this prevents families needing help from cooperating when the agency would just be offering services. In other cases, their refusal to cooperate might prevent the agency from uncovering abuse and neglect.

They are dealing with people blocking access to their homes. There is something on the web about that by a home school association.

When families refuse to cooperate during visits in which they want to provide services, the agency probably doesn't have the legal grounds to push the family hard enough to get them to let the agency into the house. Generally, the agency can't even come up with enough information go to court to compel the family to cooperate with an investigation.

For example, this is not possible when the child abuse or neglect report or "referral" was vague. Question: Shouldn't those be screened out in the first place? Answer: Someone might just recommend to the agency to just offer services or to try to help someone. Shouldn't the agency be able to do that?

Another problem blocking some needed intervention is the home school law. That law is very permissive. It prevents information from coming to light that would be known if the children were in school.

Pressure to intervene in broad categories of cases. Some local governments really want the agency to intervene in a broad range of problems. The question is what is the mandate of the agency? Is it supposed to do something about really minor situations such as kids tipping over garbage cans or minor family problems?

Another point of view: Dependency is too broad, but it gives the agencies the leeway to intervene whenever they need to. It allows them to get into court where they might not be able to prove abuse or neglect.

"The agencies often live in a world of gray."

Technical glitches in definitions. The definition of neglect uses the term neglect; i.e., it circular. It also refers to morals, which is broad and inclusive.

Risk assessments and definitional disconnects: Workers are trained thoroughly on the risk assessment. After making a social work judgment based on the terminology and format of their risk assessments they go to the lawyer who may then make a different decision. "Legal definitions governing the courts and risk assessment definitions should be more consistent."

There is a required risk assessment statewide. They don't now but will in the future use the same risk assessment instruments.

1. What problems, if any, does current law cause in terms of the *adjudication* process and outcome?

Plea bargains and accountability. Prosecutors and agency lawyers very often enter into inappropriate plea bargains in order to adjudicate the case without having to contest it. Plea bargains are of two types (or a combination of both): (a) what really is abuse or neglect is adjudicated as dependency; and (b) allegations that reflect the true nature of the abuse or neglect are not included in the judge's findings.

The result of plea bargains resulting in findings that do not accurately reflect the nature of the child maltreatment it that watered down findings often make it difficult to gain the cooperation of the parent or later, if the parent doesn't cooperate or successfully make improvements, to terminate parental rights.

When there is a plea bargain, the judge has the same dispositional options but the content of the findings can affect the case plan or later accountability for fulfilling the case plan.

For example:

- When the true facts of child maltreatment (e.g., severe physical abuse) are not legally established at adjudication the parent may feel that they don't have to accept services addressing that issue, such as anger management. This may mean that the case plan won't include essential services.
- But even if the case plan is part of the bargain and it includes appropriate services, it may be difficult to enforce the case plan. That is, it is "easy to plea down to dependency but hard to get compliance with the same case plan that would have been possible were there no plea bargain. The parent may feel less pressure to comply with parts of the plan when there is no court finding to show there committed maltreatment related to an allegation that never was proved.
- Even if the parent can be made to follow the case plan, the parent might comply with the case plan only superficially, by participating in services but not showing any improvements of behavior. If this happens, it may later prove difficult to refuse to return the child (or to terminate parental rights) because the parent didn't change, when the underlying abuse was never proved.

It's also a psychological dynamic. "If the judge said I didn't abuse my child I don't have to change how I discipline my child."

Some points of view:

- "If clients don't accept responsibility, the chances of successful treatment are greatly diminished."
- "I disagree, in that the judge has the same dispositional alternatives. In our county we aren't left helpless. It will give us some empowerment to work with the family. But [I admit] we have the same arguments about whether to plead things down. But at least we can put everything into the case plan. Still, there will be a different dynamic in terms of working with the family."
- When there is an overloaded docket, we will do the expedient thing to keep the child safe because there aren't enough judges or attorneys available to handle the case in a timely manner. Judges will water down the charge for expediency. It could take a year to litigate the case.
- "When (parents) are court ordered to follow the case plan, we can seek TPR based on failure to follow the case plan."
- "In some (but not all) cases not getting the right findings can make it harder to terminate parental rights. It also can create a greater risk of a case being overturned on appeal."

Plea bargains and criminal charges. Another problem that occurs in connection with plea bargains that that parents' attorneys refuse to agree to allegations that may establish criminal liability. "No attorney will plead to hard allegations if criminal charges are pending." This also applies for kids who commit bad acts that are pleaded down.

Different prosecutors take different approaches to plea bargains. Some will refuse to water down specific facts in the findings, but they will change the label from abuse to dependency. They feel that that is harmless so long as the facts are established.

In one county, prosecutors they will accurately verbally describe what really happened to the judge but they will give it the label of dependency. The attorneys will negotiate the dismissal of the abuse complaint. The problem, however, is that there is no written finding by the judge establishing the truth of the facts as recited by the prosecutor.

In still another county, they have a pre-hearing meeting at which the social workers are not allowed to participate. At that meeting, they enter into plea bargains that the agency would prefer to avoid.

Time limits. Time limits are set for the courts but the courts do not follow their own rules. "This is a major problem." They violate the 90-day adjudication rule a lot. If there is any basis for continuances, my judge grants continuances. Meanwhile the family isn't cooperating with services because there hasn't been an adjudication.

Indecisiveness. Sometimes judges drag cases on when they are faced with a hard decision. They will take a case on advisement for months, so the costs and the waiting is going on and on. This sometimes will even last for a year. The court will prepare and order saying that it is all right to do that. This doesn't happen all the time but it is often.

Categories of findings: "We need a services to children needed" category between neglect and dependency.

Breadth and lack of clarity in definitions of abuse, neglect, and dependency. We get thousands of cases reported, few being adjudicated, even fewer being prosecuted. This makes no sense.

The law and the administrative code have inconsistent definitions of some kinds of child maltreatment. Lawyers exploit that.

Endangering children definition in the criminal statute is too narrow. Feels that the criminal definition of child abuse is too narrow. Yet that is the only place where there are descriptive words.

"Be careful that if we broaden it we aren't being asked to do too much. Should every quarter sized bruise require a petition?"

Local prosecutors – in certain courts, abuse (criminally) requires hospitalization of the child. In some, civil "abuse" can also be overly strict.

"It's OK to have a stricter definition for criminal compared to civil. But the law should give clearer authority to intervene in certain types of cases. Some agencies call everything abuse or neglect and others calling nearly everything dependency."

Breadth of intervention – what are the agencies' legal responsibilities? "In our county, our government expects us always to send a worker out when there is a report or just a request. If it isn't maltreatment, we and call it prevention or help. That's because our county says that we have given you a levy to do that. So there may not have been an actual report. But how can we do things well if we have to do everything."

We get moral calls – a kid came to school with dog manure on his shoes. Mother has six kids and multiple fathers. Question: Should counties child welfare agencies respond to these?

Judge doesn't know how to give custody to a father who is an illegal alien but the children are citizens. Don't know how to handle immigration cases. But this requires a federal solution.

Illegal aliens. We don't know how we are supposed to handle cases involving illegal aliens. What is your duty when the child is an illegal alien? Do you give the child back to the country of origin if that country doesn't have good protections for the child? What standard do you apply to the parents?

Legal representation of agencies. Problems with legal representation of agencies can impede the success of agencies in protection of children. Poor (or overly busy)

prosecutors won't take the time to answer questions. Prosecutors are poorly informed about this area of the law. Some workers have to whisper instructions to the prosecutors. Only a fraction of counties can pay for the extra help that they need.

Confidentiality. The confidentiality provisions of the OAC say what information goes to whom. There needs to be better guidance about what the agencies have to tell attorneys. There should be more guidance on what to share.

Attorneys can get access to the full agency record for criminal cases. They have broader access to information through criminal discovery compared to discovery in a civil case, [Note: This seems to be agencies' understanding under the OAC. If true, this is odd.]

Continuances. There need to be restrictions about whether you can grant them – and how.

Witnessing DV. The law should be more clear about when witnessing DV is or is not abuse or neglect.

Corporal punishment. Would like the law to be more clear about what types of corporal punishment are and are not abuse.

Circular language in the definitions: The law uses the word neglect in the definition of neglect and the word abuse in the definition of abuse.

Sex abuse. Sex abuse has clearer definitions than other areas. It has ages of children, ages of consent (or no consent) and descriptions of prohibited behavior.

Interview with PCSA Director

4/29/05

The laws negatively impact us because so many are at cross purposes. Conflict, e.g., in the ages under which we serve MRDD kids. It's 22 for MRDD and 18 for us. We have a number of their kids in our system. End up bearing the freight for MRDD clients.

A disconnect because they don't meet their responsibilities.

Court follows ORC, agencies follow OAC.

We must teach caseworkers that OAC isn't the law.

Courts interpret law differently than we do sometimes. That happens more often than the other. E.g. permanency laws. ASFA has created interesting interpretation conflicts between the two systems.

Real issue it's the training of magistrates. Court doesn't have an organization philosophy regarding permanency. Court hasn't articulated one, so magistrates frame it as they go, which causes problems. Our workers bump up against that. One magistrate rules one way, another completely differently on the same facts.

Always problems regarding deadlines between court and agency.

There's been so much slippage in court and agency—in the system—that it doesn't mean anything anymore until there's an audit (CSFR). Everyone ends up working a different way because they're working according to their own community standard. Here 45 days from filing, there 45 days from removal. No ongoing monitoring.

90 day disposition rule very inconsistently implemented. Isn't unless magis. Gets mad.

No specific provisions I have problems with. For awhile they were putting things in adoption orders that weren't provided for in the law. Making us identify adoptive parents at the time of p.c. request. They would put language that child was "unadoptable" where we are concerned no child is unadoptable. Putting names of prospective adoptive parents into court order. Verges on being illegal.

One of the big problems we have is a brand new judge and one who has been on bench for a number of years. Level of training is very different. Judges who participate in their associations, ongoing training, staying on top of their game—we have judges who haven't done that. So much of the practice has passed them by. How does the court require them to stay on top of their game? To impose consequences. With new judges there needs to be ongoing, continuous in service training.

Attorneys' bread and butter. Requires heart. How do we assess the people who come into this system before they get here and get tenured into the system so we can't get them out. Supreme Court should develop areas of specialty.

Reducing abuse and neglect to dependency—This is a problem

If we were a "family in need of service" system I wouldn't have a problem because parents would volunteer to receive services, wouldn't see it as punitive.

With us, court thinks if we call it dependency they'll be less resentful and resistant, but that's not what happens. We need the hammer of a/n to get us in there. When we dismiss a/n when we've got enough to prove it, we're doing a disservice. Then we don't have a good sense of what we're dealing with. What is the level of severity?

Things get amended at bar, don't take into account what the caseworkers know. Then problems occur. Lose the quality of service for the kids. We can say we don't agree,

but a real problem is that the county prosecutor's office represents the PCSAs. That would be ok except prosecutors also represent the criminal side.

Child who is abused and delinquent, the same office investigates the delinquency and serves the child in the protective side. Real conflict of interest. Our kids don't get the best level of representation from prosecutor's office. There are times when prosecutors demand we turn over the child. A real glitch in my view.

Some prosecutors in juvenile division handle protective, others in same division handle juvenile. Same supervisor for both. We end up being ordered to do things that we would never do if our kids had private counsel. You'd better do it or we'll file contempt.

They're not there because they want to be there. fresh out of law school, have no idea how to practice. They learn here and rotate out 6 to 12 months later to "real court." The statute allows for us to have in-house counsel, but by law the prosecutor must agree. Some prosecutors won't agree.

Training magistrates is important. Can't train too much. The field changes. Plus, it's not just a legal job. Understanding family dynamics, etc., is so important, yet some come thinking they don't need that information.

A few years ago our Supreme Court gave an opinion on our judges being able to participate on community organizations. Said that was in violation of judicial code to serve on Family and Children First Councils. It's a community council and judges can't participate in community activities. New Orleans , Kentucky judges who are involved in the community are good judges;, they interact, so their rulings are rich and informed. Our judges took the Supreme Court ruling as meaning they can't get out there into the community. They're making decisions in a vacuum. Some radical judges get around it. They call it "observing" but really participate.

I want us to get away from indicated, substantiated and unsubstantiated. Doesn't get us what we need. I like "children in need of service". Something's going on this household and how can we help you. Perceived not so much as the investigator/enforcer, but as a helper. Connecticut.

We'd go and investigate, if we found abuse you'd proceed as we do now through the court, we just wouldn't label it abuse/neglect. People see us as having police power. Would make all the difference re how parents view us and how workers see themselves.

Dictation would still include your observations, interactions would be documented. Would be more assessment than investigative.

Records maintained by the workers will be key. The level of record-keeping on the child welfare side wouldn't change much. That's what gets you pc—the documentation. You don't lose anything. Just takes away the punitive air.

Today if cases are "indicated" they get closed. Just the substantiated ones stay open. But the indicated cases need services too. That's how we began to move to all these cases with dependency, more voluntary cooperation.

Interview With Juvenile Court Judge
5/19/05

In the pursuit of protecting the constitutional rights of kids and their parents, we've over-complicated the system so that we're looking at protecting everyone's rights than dealing with the practical issues of how do we make sure kids are ok.

While these statutes and rules specifically describe what we are to do to protect kids, they're put tog in a manner that is extremely hare to understand, and extremely legalese.

These things could be written much simpler and consistent with one another.

Need an elementary textbook about what happens when a complaint is made, these are the following steps that must be taken. Instead we have all these crazy references to other sections, etc.

Have to hopscotch through the rules and 2151,

The reasonable efforts statute requires you to be a PhD in psychochemistry to figure out what they're saying. Must be made simpler.

Juvenile rule about removing child deals with detention and shelter care. There should be a rule that deals with detention, and another for shelter care. Maybe could still use the same standards, since feds say you're removing kid from parents in both cases.

Juvenile rule 7: detention and shelter care.

Juvenile rule 13: also talks about the kinds of things we do at the shelter care.

And the same rules are re-stated in the statutes: 2151. Gets very confusing, especially when the legislature changes the statute and the Supreme Court doesn't timely change the rule, which leads to inconsistent statement.

2151.33 also talks about temporary care and emergency medical care. 2151.314 talks about shelter care.

Let's not make so complicated. Time is of the essence in many of these cases. Want to make the right decision for the child, yet . if we decide to take a child out of home and place in temporary custody. of PCSA, and we think we're following statutory law and rules, spending a lot of time reading both, and the bottom line is that it was not in the child's best interests because it disrupted his emotional health more than if we'd left him at home and provided lots of services.

Overly complex for situations that require immediate decisions.

I don't' want to unnecessarily remove a child. Have to believe if a agency wants to remove there's got to be a reason.

"Juvenile Court Rules for Dummies".

Abuse statute

Whenever a complaint is filed alleging abuse, there's also a concurrent allegation of dependency and/or neglect. Don't think I've ever had just an allegation of abuse. In just about every case I've had, most are sex abuse cases and there's not too much of an evidentiary problem.

Different definitions of sex abuse by law and PCSA doesn't come up for us. We've set up a team of workers, prosecutors, and others and they've gotten training on sex abuse cases. Someone on the team, the PCSA worker usually, is in that case. They know very clearly the statutory definition. Sex abuse squad: prosecutor, PCSA worker, victims of crime representative, law enforcement, . anytime a sex abuse comes in they're the ones assigned. Makes it easier and more efficient. On the other hand, it could lead to over-filing of charges. Example: very bad case that just ended . 2 parents, 5 children, initially dependency and neglect because homeless. Transient. Had been investigated elsewhere, but moved. Came here. We placed the kids in relative's care, and relative said I cant do this and so we placed in foster care. Discovered each kid had been sexually abused repeatedly. Parents confessed, doing time. Agency got permanent custody Prosecutor in filing against the parents initially, filed a charge for each time they committed an offense—50-60 indictments.

Physical abuse/corporal discipline

One of the evidentiary problems that arise. Case, unexplained injuries, ability to get the doctor. to testify and be firm in their testimony was difficult. Very hard to get an emergency room dr. to come to court—say "take my deposition." But we're delaying with timelines here—time is of the essence. We have time frames within which we have to complete these cases.

We have to be sensitive to dr's schedule. Who's going to pay for the deposition. That's one of the reasons why the prosecutor often takes dependency—can't get the doctor to come in.

Pros could subpoena them and they'd be compelled to come in, but pros don't want to go that route, so get an admission to a dependency complaint, acc the same objective, won't have to go through proving abuse. Not often.

Sometimes doctors on the stand might not be apt to say I believe kids' injury is intentional and due to act of violence.

Dependency statute

The catch-all. It gives juvenile judges discretion when a case just doesn't smell right but can't prove more serious. Statute (c) gives judges huge latitude in such cases. Wouldn't favor eliminating discretion. I'm comfortable with the wording of this statute. You can document in the case record.

The offer to admit dependency and w/draw abuse is contingent on parent agreeing, e.g. to work on anger issues.

Doesn't present a problem for me in terms of history. The initial involvement/complaint doesn't matter to me when it comes to granting pc. The key to pc is separately set forth by statute. Tells me I should be looking to a variety of factors that may/may not be related to the original removal.

E.g. mom single parent, dad whereabouts unknown. Mom having difficult times, lost job, little family support, in and out of shelters with child, at her wits end. PCSA comes in to provide voluntary assistance. Finally complaint filed because voluntary isn't working. That's a dependency. Over course of next 6 months Moms' personal situation worsens. Becoming involved with drugs, drug people. Now her addition is extremely adversely affecting her ability to be a parent, CSB is saying she hasn't completed drug rehab program, we want to file pc. By the time of hearing mom has not overcome the addiction. That's a condition that arose after the filing of the complaint. Didn't have anything to do with a dependency. That's why you del with the statute that articulates the factors. And those factors may not have anything to do with the original problem. 2151.413-414.

Every juvenile judge in Ohio believes the permanent custody provisions , the authority given to juvenile judges to terminate parental rights, is the death penalty of juvenile justice. The most serious section of the juvenile law. We take that very, very seriously. Understanding that, when I look at 413 , 414, and sections that say when agency must file for pc, it's a complex statute, and then cases make it even more complex. When we're dealing with something so severe, it ought to be clear and easier to understand for judges, PCSA prosecutors, caseworkers. Many don't have a good grasp of what factors we're all looking for when it comes to pc.

I presented a seminar to PCSA workers, prosecutors, law enforcement, GALs, about the kinds of things I like to have presented as facts. If you're going to do it please make sure it's done consistent with the statute and consistent with presenting evidence. Use camera, don't rely on hearsay…

Neglect

Rarest used section of the code in our county. Seems like one extreme (abuse) or another (dependency). Seems like our workers would rather file an allegation of dependency. Using the term neglect implies parental fault—which there is. But they believe let's not start out on a bad foot.

CHINS

This is a term that dates back to the 19th century, early child welfare. They called it chins or pins (person in need…). Benefits: not trying to make a judicial determination or imply one that the parents have created the problem for the child. Typical reaction by most parents, I didn't do anything wrong, why are you trying to take my child?

Physical discipline—if we call it CHINS it may make it easier for them to acknowledge that they have some problems and need some help. Mom gets a complaint saying her child is "an alleged abused child", I know how I'd react. Thy don't understand that we're here to deal with the child, not to make a finding that you're guilty of abuse. There's merit to do rephrasing how we characterize the children. May have a more receptive parent to accept services. There will be parents who won't accept services, but court can still order it. We're going to determine if your kid needs services and if they do we're going to require those. Not changing services. Just changing label.

Still a blurring of lines regarding unruly. Example: 10 year old child doesn't want to go to school, resists going, somewhat rebellious. We don't need an unruly complaint filed against that child. But that's a child and family in need of services. Instead of getting criminal services involved, let's get social services involved to deal with the crux of the matter.

Timelines

Are a problem at times. Sometimes aren't practical. You want to be fair to parents and kids and the prosecutor, agency, etc. and protect their rights to fair trial, and to do that sometimes people need additional time to prepare. Sometimes that takes more than 90 days. In rural counties they don't have a public defenders office. You can't just go and get a public defender. In many cases the parents are unmarried so must find another attorney to represent the other parent. They must come from a big city. If it's an abuse case I must appoint GAL for child. Now I have 3 attorneys, and must coordinate 3 attorneys' schedules and the court's schedule and do it all within 90 days.

Dismiss and refile must start over. I tell folks if you're not ready to go in 90 days and you're going to dismiss I want you to stipulate to all previous facts. Not going to back and re-hear all those. If they didn't we'd have to go back and re-prove. New case number.

Suggestion: for good cause shown the case couldn't be held within the 90 days, grant another 30-60 days. Should require a specific finding of good cause.

Complex nature of permanency findings. If you find this and this but not this…like a mathematical formula, just not clear.

Agencies collaborate to come up with a plan to help the family. Family and Children First councils, a very controversial council now because the statute designates the juvenile judge as a member of the council. The Ohio Supreme Court says you can't serve—it's an ethical conflict to serve on this. That's one' problem that has to be cleared up.
Another problem: There's only so many dollars in the pot in a county to take care of needs of troubled families. Agencies need to get together, discuss how you're going to pool resources, work together to make sure they get those services.

Family and Children First councils were set up to deal with serious problems that are beyond the normal probation/mental health counseling. Require additional intensive services.

When that happens an agency (court, PCSA, MMRD, etc) may present to the council: We've got a problem, need the council to convene and discuss and come up with a plan.

People come to Family and Children first councils with their own agendas and to take care of their own pocketbooks. Best interests of child is secondary to pocketbook. The collaboration is good, but the governance structure needs to change. Make sure not only do people come together to make a decision in best interests of kid, (e.g. kid needs to be placed in long term drug rehab or residential treatment and intensive therapy for parent…). That's the solution but we don't have money to do that. There is money. Let's put it on the table and say "how much have you got?"

It becomes a question of money. Idea is good in concept, but need to deal with the money issue. Need a better structure.

The statute allows for this problem to occur. It's under 51 I think. Look in code under Ohio family and children first council.

Each agency could put a portion of money into the pot up front and over the course of the year it will be used.

ASFA, requires reasonable efforts. What is reasonable efforts? Pretty open ended. I'd like a little guidance. To help families and PCSA workers to understand what the expectations are the statute should give a little more guidance. There have been times when we conclude a case review hearing. Parents haven't been totally committed to working the plan, so we're continuing. It ask parent do you understand what you have to do? Make them repeat for me what the court has ordered. Ought to put that requirement in the statute. Parents don't understand. Need to help them understand. Like asking kid do you understand? Yes. When they really have no idea.

Torn between getting too detailed in legislation, telling judges what to do, need discretion. But in cases where parents are losing their kids there needs to add "Court shall make a specific finding that the parents understand the terms of the reunification plan. Could even have them sign a piece of paper.

Interview With Juvenile Court Judge (retired)

4/27/05

Earlier Identification of At-Risk Children

If you look at the serious felonies that we adjudicate in Juvenile court, these kids had a history of truancy from an early age. So early truancy is directly related to later crime. When a child isn't going to school in first second third grade its usually because parent is homeless, has mental health or addiction issues, is illiterate, etc.

So often we say "Why didn't somebody do something?"

I recall a case involving an adolescent boy who killed a University undergraduate student. I had to decide whether to bind him over. When we checked the history we found a long history of problems. But no one did anything about them. This child had missed 60 days of school in second grade, and there were many other indications of trouble along the way. No one intervened. If we had flagged this child, we could have

predicted that he'd end up exactly where he was. I blasted the school system, it made the front page. We need to intervene on the *front* end.

You go to any school and ask the teachers, and they can identify at an early age those kids who will get in trouble. Why aren't we intervening at that point?

People will contact CSB, and because there are no guidelines regarding what substantiated and non-substantiated mean, it depends on the individual caseworker. Because there are no real standards it's all real discretionary. People get discouraged and stop calling.

Teachers call, never hear back, nothing changes for child, so they say "Why bother?"

I tried to get the PCSA to do this and it wouldn't. Many kids are transient, moving from school to school. They get lost in the shuffle. In our county, Intake caseworkers are assigned by zip code. Let's assign caseworkers not by zip codes but by school district, by neighborhood. If teachers have any concerns they go directly to this caseworker, who can check and follow up. Follow-up is the biggest problem. This worker can set up a designated time to meet with the other professionals, so do away with phone tag. And relationships form—partnerships. Kids aren't just nameless faces. Our PCSA wouldn't put caseworkers in the schools—said it was too intrusive. I'm not saying have workers meet with kids, but meet with the teachers/school officials. You could get a real sense of what's happening with that child. It wouldn't cost more money; it would be a matter of re-allocating. Forming relationships, which is so important in this field, would be easier because of proximity. Relationship is such an important tool, but all too often it falls by the wayside.

Under this arrangement, the professionals would develop that sense of collaboration and accountability that no system can impose.

Redundancies In The System

You'll never hear me say that child welfare needs more money. The real problem is redundancies in the system. E.g. PCSAs have four levels of supervisors. We don't treat college degree professionals with the respect they deserve. They have to go through four levels to get anything done. Give them guidelines and let them do their work.

The mountains of paperwork is another redundancy. We spend so much time doing paperwork and this takes away time with the family/child—all because of our fear of the media and potential lawsuits. We've created a monster.

Another redundancy: Even if no one has reason to believe a family doesn't need it, CSB has to come out anyway. Everyone has to go through the same process,

regardless. So even if a family is cooperative, e.g., they have to go out, interview all the kids, do a 12 page report/assessment, etc.

"Families In Need of Service"

I think it would be fabulous to create a "Family in Need of Service" category.

In cases not rising to the level of abuse or neglect, CSB, upon investigation, could send them to other agencies, and wouldn't have to do their full fledged investigation. But my concern would be who would be screening those cases. The devil would be in the details. If every referral that came in was called a "family in need of services". I would be concerned about creating more ambiguity, because I think it's too discretionary now. With worker investigating and calling it only child in need of service, what would get to court? How would we funnel them? Would we find a way to screen out these cases? Without some definition of what invokes CSB support, I'm uncomfortable. That broad category would be great for CSB, though, because it would take away their public image of being an agency who takes kids away.

Courts see delinquent kids in court, must send them to CSB to get them services. Commissioners say those kids, to get the help they need, must go through Children's Services. So CSB workers are dealing with kids they aren't equipped to deal with. This "Family/child In Need of Service" category would allow services for these kids that don't fit neatly into the child welfare system, without CSB having to conduct a full scale investigation which isn't needed.

Having a category of "Family/child in Need of Services" would help parents whose kids need psychiatric or medical services that the parent's can't afford; they wouldn't have to relinquish custody to get help [referring to recent Dispatch article re this issue]. You'd have to be careful with this category that you didn't become another welfare office. People could just call and say this child doesn't have food so we give them a food voucher. But we should look for those families who if they get a little support they could make it.

Misuse of 90 Day Disposition Deadline

The law requires cases to be dismissed without prejudice if disposition hasn't occurred within 90 days. In some cases there may be four or five "dismiss and re-files". That just elongates the time period. Either get rid of the 90 days or allow the court to extend the time period if there's good progress being made or if the court's docket requires.

Court dockets are overburdened. One reason for this is that right now all juvenile cases come together in the same docket. So delinquencies get priority because of 10 day limit—more delays for a/n/d kids. Need to separate the dockets, an a/n/d docket and a delinquency docket.

Expediting Permanency

While c a/n/d cases are supposed to have priority they don't, cases are lingering too long. The Supreme Court doesn't have authority to hold judges accountable.. if you want to see reform, you have people running for Juvenile/Family court judge who have no interest in this area or experience in the system.

Currently there are no consequences for not meeting deadlines in child protective actions. Until judges run again and people decide not to re-elect them.. We need to give the Supreme Court the authority to enforce the guidelines and hold judges accountable. Impose clear consequences for not meeting those guidelines. Every time we run for judge we talk about how much we care about kids, but once elected no one's paying attention.

Also, most cases are decided by non-elected magistrates. Judges only see cases on objections. If we're happy with that system, fine, but then magistrates should be elected, not appointed. They were meant to help, not supplant the court.

There ought to be some offenses for which you don't have to drag people in from prison. When a parent kills a child, that should per se mean permanent termination of their rights to the other kids. Currently, if we want to go for permanent custody of kids whose parents killed a sibling we have to bring parents back from prison. We have to pay for counsel for them, go through a full trial, appellate review, etc., about whether they should lose permanent custody of the other five kids. We shouldn't have to go through the lengthy, expensive process.

We need to find a way to expedite appeals. I had a Mom who was a CSB child herself, with significant mental health issues. She had lost two children permanently when they were older. When she gave birth to a third child I ordered the infant into permanent custody. Mom's defense attorney said he had to appeal, but that meant child was delayed adoption. We have to print the transcript, which costs several thousand dollars. Then it sits in the Court of Appeals for 4-6 months. Then a court-appointed attorney files with the Supreme Court when we *know* they aren't even going to take it.

Problems With Defense Counsel/GALs

But defense counsel, even though they know that this will be the final result, and that the child's adoption will be unnecessarily delayed, respond: "That's not what my client wants. My job is to appeal."

Often, court-appointed attorneys appeal when they know it's not in the best interests of the child. They could sit down with Mom, say "There's not much of a chance at all of prevailing on appeal. Why don't you consider dropping it here so that the child can get an adoptive home." But they don't know their clients, there's no real relationship there. They took the case in the first place because it's how they make their money.

Judges don't really need more training. But lawyers do. New lawyers get court-appointed. They see it as "bread and butter" money. They think this area of law is "easy", doesn't require much knowledge/skill. We need to require attorneys to get "child welfare certified"

The GAL system is also a problem. Attorney GALs don't do their job for these kids. They treat them as a client, rather than what's best for the kid. That's why I'm all for CASA. In one case, parents who had killed their two kids were in prison for several years. The GAL said the surviving kids didn't want to be adopted. When I questioned him he acknowledged that he hadn't seen the children in five months—before their parents had been convicted of murdering their siblings. So I had to order him to see and talk to those kids—another unnecessary delay.

Every day while waiting for the case to be heard the attorneys gather outside the courtroom. The prosecutor goes to the caseworker and asks what's happening, and the worker tells him. Then the defense lawyer and GAL each also ask the worker what's going on . Every one of them then come into court and parrot what the worker has said. No one is going out to see the family, interview the child. etc. If you have a great social worker, fine. But many are overworked, and haven't seen the children either. No wonder kids feel lost. No one comes to see them.

I can't think of any ways in which the current laws lead to unfair results for parents. We take so much care with parents' rights, at the expense of the kids. We should protect parents' rights, but there comes a point where we have to say what about these kids' rights to have a safe and permanent family. Like the mom with 10 kids who had lost 9 previously. We have to find a way to protect kids without trampling on parents' who are poor.

But agency practice is sometimes unfair to parents.

Currently casework is about checking boxes. Workers aren't required to really sit down with families and really get to know them.

Workers impose unrealistic case plans. I'm married and have plenty of supports, and often *I* couldn't complete the case plan. Workers don't take into account who these parents are. E.g., a 24-year-old mom with 3 kids. Working retail. Agency required counseling and other actions. But they didn't offer transportation, and they didn't care that she would have lost her job had she done all that they required. Overburdened caseworkers are just trying to meet their own internal case deadlines. They can't look at the mom as a person who's made some bad choices but isn't an intrinsically bad person.

Another example: 17-year-old mom was really taking care of business. They put her into an apartment. She wrote me a letter saying she refused to live there because it was bug-infested. The worker said exterminators were coming to use pesticide. Mom

said “Would you put your infant there?” The worker responded “That’s not the point.” Then she held Mom’s behavior/attitude against her. She could do no right.

Instead of thinking how can I get this case off my caseload, ask how can I best serve this family. A parenting class won’t take away generations of parenting. Especially classes that are not culturally sensitive, e.g. that say don’t spank. (In the black community, a parent might take such a class and decide not to spank her kids. But they’ll get so much resistance and criticism from their families, community—“Whip that child’s behind!”).

We are removing too many kids from parents without offering services that could keep them at home. A mom once said to me “You pay foster parents $6,000 a month to take care of my 6 kids. Give me $6,000 and I promise I’ll take good care of my kids.”

Allegheny County (Pittsburgh) has greatly decreased the numbers of kids removed.
We need to be able to look at the system, look at what other communities are doing well, without feeling threatened.

E.g. Family Drug Court. There was so much resistance when we first introduced this. But it’s working. We get parent into rehab. But you must report every week. If you relapse you go to jail—simple as that. Addicts only change when they determine it’s in their best interests to do so. Family Drug Court is designed to get them to rock bottom much more quickly. Jail for them is their rock bottom.

Telling them you’re going to take their kids might not be enough incentive. I had a woman in prison once tell me “You’re dealing with me as if I was you. If someone took your kids, you’d move heaven and earth to get them back. But that’s not me. All I could think about was where to get my next crack. Threatening to take my kids away wouldn’t be enough to shape me up. But if you threaten me with jail, now you’ve got my attention.” More chance of compliance when threatened with jail.

Burnout

People get burned out at all levels of the system. If you care this work takes away a piece of your heart. For prosecutors, caseworkers, judges, it just becomes a job—it’s a survival thing. But when you see kids as just part of your job, and not as individuals, you can’t do them justice.

CSB workers/supervisors are so governed by time frames, pushing paper, staying in jobs when they’ve long since lost the passion to do them. It’s tough work. We need to find ways to keep their fires burning. The really good ones—and there are excellent caseworkers who do great work—burn out and leave.

I loved being a judge, but I couldn't do it any longer. Nine years of seeing people at their worst. A sense of hopelessness starts to take over, a sense of just running through the routine. Sometimes you just feel like you're neck-deep in mud.

Conclusion

A/N/D cases don't fit well into a legal framework. They're *social work* cases. You have to have a social worker's heart. All the legal requirements, notice, motions, appellate processes, don't really address the family's needs. Get rid of all the legal rules and requirements. These are *human* issues—not legal ones.

Get rid of the laws and deadlines. Get rid of 4 layers of supervisors. We don't need 4 layers if we just hold the *directors* accountable.

Interview With GAL Administrator
5/2/05

How, if at all, do Ohio's child welfare laws cause problems in actual practice at PCSAs?

In large counties like ours, caseload is so large. Shrinking but still huge. Laws regarding deadlines aren't crafted with the huge disparities in numbers between large urban counties and small rural counties in terms of numbers, caseloads. To get a case disposed of in 90 days is pretty tough in this county. Problem: not prompt resolution. Have a child who could have been taken by emergency custody. And there's been no adjudication. He could have been home.

There's no teeth to the 30 day (fallback/extension = 60) rule re adjudication. So we all defer to 90 day disposition. There's always the fallback of dismissing and re-filing after 90days. Hurts everyone. Kids, court, family. Some cases dismissed and refilled 5 or 6 times. 90 day rule is good—forces people to try to fit within. But giving them an out isn't good. Dismiss and re-file just adds to the work, the docket time, etc.

In your experience, how well do caseworkers understand/use the laws?

They don't. Mere filing of a case plan. It took a very long time and is still happening where workers don't even file the initial case plan. Court has to send them away till they file a case plan. There go your 90 days if you get to the first hearing w/o a case plan.

Bigger problem: case plan amendments. They are never served on the GAL. they have to be filed and served. They aren't. So there are substantive changes to the case plan the GAL is not notified. Probably not parents or defense counsel either. Biggest problem. We have to keep up with our wards. Had a child go from residential treatment

to specialized foster care back to residential treatment without ever being told. Found out by accident. Horrendous.

Caseworkers don't' understand even the basics of the law. Even the term "case number." They don't know why a case number is important. I get inquiries about GALs—they give me their agency's internal number, thinking it will help. No concept that what I need is the court case number.

Some do use the statutory definitions to determine a/n/d. Most though know their agency's policy and that's what they use. (Even those who do know the law don't send amendments to case plan.) They cite agency policy when making decisions—don't know the law.

Workers go to staffings where it is decided whether to file. They do what they're told rather than have any understanding.

Example: family, mom and dad. Agency filed complaint seeking custody of the kids by alleging dad didn't have custody of his other children. The reason was divorce, agreement between the parties. That really wasn't an allegation that would involve a/n/ or d.

Service by Publication

We have a problem with John Doe fathers. Example: mom with 6 kids. Named different fathers for all 6 children. Only one child and one father were actually matched. None of the others matched in paternity tests. Mom kept coming back saying "this person could be the father…" The need to publish when dad is unknown delays things. If there's a dad out there we would like to know. But the putative father law doesn't work in practice.

What I would like to see happen: Not suggesting we stop publication. There's a statute requiring dads to come forward, but in juvenile court even though they haven't done that we keep publishing and publishing. Make the service by publication (juvenile rule/statute) statute reliant on the putative father requirement.

ORC and Juvenile Court rules both require that a GAL be appointed. But they aren't always consistent. Often don't say the same thing. May lead to different interpretations. E.g. 2151.281 and Juvenile rule: Juv. rule isn't as specific.

A lot is changing for GALS due to the Supreme Court task force on GALs.

Relationship between workers and GALs is overall pretty good. Tension when worker doesn't understand that GAL represents what's in the best interests of the child. Workers think it means they're advocating for mom or dad, when it's just that GAL thinks it's in child's best interest to be with mom or dad.

Cross training is a good thing.

No specific concerns about the wording of the laws. There's a reason for each category. In practice it leads to negotiation. People don't agree so you work through it. Those labels help.

Don't like the FINS or CHINS. Parents wouldn't take responsibility and we have enough trouble with that anyway. Would encourage that. I'd equate chins with dependency. If that's all there is, why does there need to be a court case?—just provide them with service.

Don't like idea of referring serious cases to criminal court. There are cases where the agency hasn't been too efficient with offering the services, parents are willing. But that may be the reason it's being filed in court. Why should that family go to criminal court when they just need some special help.

When it comes to taking kids no matter what you call it parents will be threatened by it. Sometimes they need to be threatened by it. Those labels are the least we have to worry about in the statute.

Re the statutes: even lawyers have trouble reading it, figure it out. We see so many cases on appeal re the 12/22 rule. Agencies calculate the 12 months anticipating that by the time of trial they would have met the 12 month deadline. Ohio Supreme court said they can't file before the 12 months has elapsed. Ambiguity in the wording of the statute?

Interview with PCSA Administrator

4/15/05

Back in the old days using dependency was good because we used good casework. Today caseworkers don't have the good training, and they're very punitive.

It's hard to service families because there are so many laws. So even if a parent wants help the attorney tells them to deny everything—they make it into a legal thing instead of a service provision because the laws are so powerful.

Mandated reporting law, counselors don't have to report anything but child abuse. This discourages parents from seeking help. Can't say I hit my kids and I want to stop, because counselor must report.

Collaboration among agencies/professionals was much better in the past. Professionals used to reach out to other professionals. It was more teamwork then. Why? More

confidentiality now. Now professionals won't give their opinion about whether parent is ready to have their child back. Now they don't want to stick their necks. There are many power issues. When you have so many licenses people want to maintain the integrity of their profession. So everyone's trying to outdo the other.

Used to be the health department would go out on lice cases. Now they won't. Today workers don't call collaterals. They don't have anyone to back them up in their decision about whether to remove. Why don't they call? No training, no time.

There's no connecting today. There's an emptiness in the relationship between the worker and the parents. There's a lot of generational difference. No connectional force.

Continuances have the potential to be either good or bad. A continuance may allow parent time to get housing—that could be either good or bad. The up side is that a parent who is mentally unhealthy can't keep up the façade forever, and a continuance may allow time for their true colors to show.

No one is assessing the situations. Lawyers want a black/white, yes/no law. Caseworkers do too. Because then they don't have to do any assessment. But flexibility is necessary. That's why they call it "family" court. If PCSAs were using good casework, if judges were making good decisions, you wouldn't need black and white.

E.g. if caller doesn't give an address we won't go out, flat. Even if it's possible to deduce the address, even if there's a baby at great risk. They can get rid of a case—one less to service—even though good practice would require them to go out.

When universities went to weekend master's programs, the quality of graduates went way down.

When I was doing casework the law didn't enter into my assessment in intake. It was more assessment/casework skills. We'd present something to the *court* and they'd tell us if we had enough. Today, the workers go to the *legal dept*. and they tell them whether they have a case. If the legal dept says we don' have a case then they don't present it. Some cases need to be presented even if we can't prevail in court.

No one screens at the beginning so there's so much coming through that there's not enough time. Agencies are afraid of liability. Some Agencies say we accept all calls, but the level of service a case gets is very variable. They call everything "service", even if the only service was calling the complainant back and saying this is not an acceptable child welfare issue. Or checking past histories—some call that "service" as well.

Also, there's a screening unit where they don't open it as a referral; the worker does all this work on it but it's not a case. They do this to try and get around some form or regulation.

I think they take permanent custody way too soon. It takes people a lot longer to change then 6 months or one year. Current practice is based on deadlines rather than where they are in the process. By the time parents get it together they've lost permanent custody. Kids in care used to have parents visit them, even if they couldn't have them at home. Now they don't even have that. Parents may have not been the best, but they were there. There used to be a unit at CSB where they'd go out and find birth parents after p.c., after child had languished in limbo for a long time. That needs to be re-instated.

I don't think the court always looks at the best interest of the child. They follow the law to the letter, and politics also are a factor. The same is true of higher-up administrators.

Out of home care abuse rule is another example. No one wants to assess the whether foster parent was abusive or just trying to save a kid's life. They use a blanket rule instead of taking the time and the skill to do an appropriate assessment.

Now PCSAs don't have anyone with any longevity. It takes time and experience to develop the skills. But they're making young caseworkers supervisors way too early, because turnover is so high.

Right now the county is taking more and more away from the caseworkers and the mid-level managers/supervisors. Cutting benefits. Not letting them have overtime or comp time. Etc. Not great working conditions, so higher turnover.

About the idea of discarding the distinctions and using one category, I don't think that would be a good idea. You'd miss a lot of identifying info. It might dilute the services that you'd be able to give. It would just homogenize everything. You respond quicker to abuse and severe neglect. And the distinctions give important information. For awhile the court wouldn't allow us to include any history in the court summary. The only relevant evidence was what was happening at the present time. That was a real handicap in our efforts to protect kids. Not sure if still doing that. Prosecutors would look a case and decide whether to present it. Magistrates wouldn't even look at it.

Interview With Court Services Director

5/2/05

How, if at all, do Ohio's child welfare laws cause problems in actual practice at PCSAs?

Was part of hundreds of cases in the late 80s and most of 90s as a GAL. indirectly with thousands running the GAL project. I never felt there were any significant or daunting inconsistencies or errors statutorily that detracted from serving the best interest of children.

Statutory Distinctions

Except for two things. Never understood the separate distinctions of a/n/d. because the same dispositions and case plans and range of services are made available. Having these different distinctions affects a parent's approach to what's taking place. Affects the approach of the defense bar. Impairs someone like a GAL or even a judge; they draw conclusions by what is being asserted in the case rather than what is actually adjudicated.

On a very practical level, prosecutors have to spend more time than is necessary to make their assertions in the complaint. Is this a/ or n or a combination? Why require them to do more work that isn't going to change the ultimate outcome?

When case is filed at Juvenile Court, having to select from a menu of three different potential categories takes time. If there was only one category less time would be required of very busy people. The more data that has to be entered the more possibility for data entry mistakes. Would streamline things.

The last two things are rather minor, but worth mentioning.

I think it would be way more beneficial in terms of efficiency and everyone's psych and helping people focus on families if we had "children in need of service." Better yet, "families in need of services."

Our child protection system and society in general would improve dramatically if we started to dismantle some of the system's approach of rescuing children. It's more about serving families. Or should be. To more ably care for their children.

Sometimes I'm dumfounded by the adversarial nature of child protective actions. The 88 agencies are directed by law to follow up with any call that comes in make sure that child is safe, and do what they can to keep the family together. Engage family, provide services. Put all those things together, they collide. That's why the GAL was so significant, because they gave some balance to the scenario before the court.

How can a social worker walk into the family, do what's asked of them without being in internal conflict about things? On a very fundamental level there's not a particular problem with the verbiage of the laws. It's the whole set-up—adversarial, anti-parent, save- the-kids mentality.

So I like the idea of the "CHINS" or better yet, FINS.

Timelines

The other specific flaw in the law is, if things are going to remain the same and if we want to maximize what we get from what the law currently says, and maximize the potential of the law to make sure kids are o.k , things have to be done in a timely fashion. Many of the time frames are unmanageable and don't make sense.

Examples: Sound judges want to do what's in the best interest of children. Very often a case is presented in which child could be returned home if family does what is necessary. We're not challenged by the law but by all the other pieces and parts. Never enough services, never enough funding for services. Takes time to put things in place for the child. Judges are aware of that and want to give families a chance. But those same judges want to do right in terms of case management; the Supreme Court mandates e.g. various timeframes.

Very difficult for judges to reconcile some of these colliding things. Want to be legally correct and comply with what the Supreme Court has said they must do, but are aware of the realities that 90 days and other threshold time frames are impractical and utterly unmanageable.

Our real challenge is there are too many holes in the child protection system. Not the law, but not enough service providers who can rapidly and completely respond to a family's or child's needs. There's haggling over the budget every year, which make s me believe our county doesn't have the political will to either prevent removal or get kids back with their families or have other things in place so that permanent outcomes happen as quickly as possible.

Attorneys

Sometimes our dockets get a little sluggish because we don't have enough attorneys available to represent parents and kids. Because the fees we pay are so dismally low, no one who has to make a living can accept many of these cases. So we have much too small group of attorneys who are handling a pretty vast caseload. So they're less available to come to hearings we'd like to docket more quickly than we presently are.

We've asked our commissioners for years to increase funding for assigned counsel fees, but have never prevailed, which is yet another example of the political will necessary to make the whole circle of the child protection system really work.

Permanence

Another thing, in our county we have many, many children in custody. Maybe many wouldn't need to be in custody if there was a different philosophy and more resources available to do much more at the front end rather than middle or end.

Although the code indicates agencies must make reasonable efforts, that's unbelievably vague—what does that really mean? In our county there are so many things they can do, so many services, so much funding available for those front end services. If the law about reasonable efforts were beefed up, requiring counties to provide dollars, specified various services and anything that need to be done prior to removing kids form their caregivers we'd be more better off. More families would remain together. Once a child

is removed the odds are already stacked against the child in terms of being returned and families getting their acts together.

Our caseload would be all the more manageable and we could provide the quality time that jurists should provide these cases, which right now we can't—only so many judges, magistrates. We try to provide best practices, are working with national; council of juvenile and family court judges to become a model for dependency courts. Will be a challenge though because we in our county have a significant number of kids in custody (fortunately, fewer than a short time ago). Our hearing officers would be able to give the kind of focus they should.

In short, the law should be changed to give a lot more teeth and more direction about things that hat a county/society should do before breaking up a family. Everyone would be far, far, far better off.

Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases. Put out by the National Council of Juvenile and Family Court Judges. Excellent—we're using it and incorporating some of the things as we try to become a "model court." As I read it I was struck again that our jobs could be so easy and these things could so readily happen if kids and families were really the priority they should be.

E.g. what are all the things you should cover at the various hearings in the case? Great stuff. Also says how long each hearing should be to accomplish those things. But there are so many cases, we can't get additional money to hire more magistrates or elect more judges. Very, very huge challenge to get these things done. We shouldn't have to beg. If there were more directives requiring more things to do before removing kids we could do more of the things in the book.

I keep coming back to this: You can change the wording of the laws but unless you put money where it should be what's the point. The law is the icing on the cake. We haven't even baked the cake yet.

One other legal thing. In this county we have juvenile, domestic and probate courts separate. It would be beneficial if we had more of a family court model and if the law provided for that. We could reach permanency for kids more quickly and in a better way if the same court that dealt with adoptions (main thing) there are ways that custody could change through guardianship better than temporary custody, but that doesn't happen because it's another court. We would have better judges and better judicial decisions if they had responsibility for all three areas—more well rounded.
Foster families get stipends. Why don't we give money to the biological family? Might that not make a real difference? Or put the money toward direct *services* for them.

If you just think about it, we remove a child and make sure they're getting what they need. Say to the parent you have to do all these things to get your kid back. But they're in an artificial environment. How are they going to learn and how will we get a

true picture while they are apart? It's so *not* like what the situation will be if they are reunited. Much more effective to teach mom and dad and have their kid be part of it. Not just hypothetically (parenting classes) but really doing it.

There's a small county in Minnesota where next to no children are in custody. There isn't even an ongoing children services agency. All of their money goes to family preservation. One of their main things is that when there's a concern about a child at risk someone actually moves in with the family to assist with ever conceivable thing the family or child would need to deal with. Most families tend to be ok, but when not, people really know for sure that it's the right thing to separate. No question about the appropriateness of breaking up the family.

One or the other: give us more time in terms of deadlines, or more money so we can meet the current deadlines.

Interview With Group of Assistant Prosecutors

5/20/05

1. How (if at all) do Ohio's child maltreatment statutes affect actual practice at PCSAs?

The polestar of the statutes should lead to a result that is consistent with the child's best interests. The current statutory scheme is sufficient to obtain a legal result consistent with the child's social and familial realities including emphasis on her best interests.

There are some inconsistencies and ambiguities in the statutes that must be navigated on a daily basis. One example would be the 90 day rule. Some judges and magistrates think that the case must be dismissed at the 90th day and others will only dismiss if a party requests it. Others think the rule cannot be waived if all parties have not yet been served.

On the whole we believe the statutes are sufficiently written to protect the best interests of the children. Changes and clarifications to a few of the statutes would clarify how we should practice.

2. What effect, if any, does the statutory language have on the adjudication process and outcome?

Again, the current statutory language regarding adjudication is sufficient to protect children.

3. Can you give examples of cases in which the wording of a child maltreatment statute led to an undesirable (from your perspective) result?

No one could think of a specific case or any truly undesirable result. Concerns expressed centered mainly around the amount of time the cases take to reach disposition due to the 90 day rule and re-filings.

4. What (if any) problems do you see with the current distinctions (abuse, neglect, dependency)?

We see no significant problems with the distinctions.

The "Dependent Child" definition is often misinterpreted by defense counsel and judges. Many view "dependency" as a "no fault" statute. Only subsection (A) gives any mention to fault and subsection (B) can be construed as no fault.

5. Do these distinctions affect the children's parents in terms of willingness to cooperate?

This question is worthy of study. Anecdotal evidence indicates that there is a correlation between an honest label as provided by current law and the parents' willingness to cooperate. Conversely, parents took their familial dysfunction less seriously in cases where there was actual parental fault but, for reasons of legal expediency or other reasons, settled as dependency.

The answer depends on the whether one is examining the parents' willingness to cooperate with the adjudication process or to participate in case plan services. Parents are often willing to admit to a finding of dependency if they believe they are not at fault. However, there is merit to the argument that parents are more cooperative with case plan services when they recognize they have a problem.

6. What would the potential benefits and drawbacks of discarding these distinctions and creating one category: children in need of service?

As a practical matter, dependency is frequently misunderstood. One category, children in need of service, would create the same confusion. There is therapeutic value to accurately and honestly naming problems. The name "children in need of service" is politically correct language whose only aim can be to remove the stigma for parents who find themselves before the court. Stigma can be a great motivator to instigate meaningful change. Removing the label, and the distinctions, may impair the parents' prognosis and spoil the potential for repair.

By creating one category, children in need of services, parents would be more likely to cooperate in the adjudicatory process. Parents would more readily admit that their children need help, rather than they (the parents) have issues that need to be addressed. A huge drawback is that parents can deny responsibility for their actions. The first step to change is admitting there is a problem. If parents are able to admit their faults, then they are more likely to be amenable to change.
Perhaps creating one category, with subcategories that place the appropriate responsibility with the parent would be useful.

The current distinctions of abuse, neglect and dependency are generally sufficient. Creating one category would label every case the same. It is important to distinguish between the different levels of abuse and neglect. Establishing one category may create an excessively subjective system which could lead to inconsistent results.

Another drawback to discarding the distinctions would that 2151.414(E)(15) would no longer be applicable as it requires a finding of abuse or neglect and a likelihood of recurrence of abuse or neglect. The elimination of this factor could change the ability to protect the child at a subsequent dispositional hearing for permanent custody.

7. In general, what (if any) ambiguities or inconsistencies would you like to see changed in Ohio's child maltreatment statutes? Why?

There are ambiguities in the 90 day rule. It is unclear whether the court, sua sponte, must dismiss the case if there is a failure to hold the dispositional hearing within 90 days.

There are inconsistencies regarding hearsay in the statutes. Hearsay is permitted on any disposition on a complaint, but not on a motion for permanent custody. Although the statutes permit hearsay on a disposition for a complaint requesting permanent custody most judges do not make the distinction and do not permit it.

Another inconsistency is the "12 out of 22" rule. If a child has been in custody for 12 of the past 22 months the court does not need to find that the child cannot or should not be returned to either parent. The best interest of the child is the only determinitive factor. However, this is not the case if a child has been in the emergency custody of the agency for 12 out of 22 months and the case has had to be re-filed several times.

8. What (if any) specific problems do you see with the statutory definitions of abuse, neglect, and dependency?

Accurately defining a problem and embracing the fact that it is a parental problem are both prerequisites to authentic behavior change. Anything short of the above is a form of dishonesty and denial and will cultivate the continuing undesirable behavior.

Clearly, the current scheme encourages honesty on the part of the parties which in turn will best ensure the greatest number of potential successes. Additionally, the parents' "court experience" is sacrosanct. Standing before strangers in a court of law and verbally stating that their children are abused or neglected has potential for meaningful transformation. This theory is corroborated by the proven success of the Alcoholic's Anonymous model. When asked, social workers indicated that they noticed a correlation between parental commitment to case planning services and those parents who made open admissions in court.

In our opinion, creating one category could substantially lower the quality of representation for parents at adjudicatory hearings because parties currently don't take dependency findings seriously. More cases would settle if there was no stigma involved, which might be expedient in the short run. However, it would hurt families in the long term because, as discussed above, stigma is an appropriate and natural part of repairing familial dysfunction.

The term "children in need of service" may be more appropriate for "Unruly Child" status. This label change, removing the stigma associated with such finding, could have a beneficial effect on a child without harming anyone. However, for abuse, neglect, and dependency cases, this label change would at best help enable parents and would unintentionally hurt children by contributing to the likely permanent disruption of the family unit. In conclusion, there is both beauty and elegance in truth telling which in these cases are key to transformation and permanent behavior change.

9. Are there any laws whose wording consistently lead to unfair results for parents? For children? For the PCSA?

The "speedy trial" statute, R.C. 2151.35(B)(1), is a problem because it does not consider whether dismissal would be in the best interests of the child. It is primarily, solely in the parents' best interests as it empowers them to delay the disposition in the matter. As applied, the rule is now serving the exact opposite purpose as originally intended. Of utmost importance, yet not considered, is the child's perspective. Often an additional 90, 180, or 270, etc. days have elapsed since the time of first removal. The new court file creates a fiction of speed which does not coincide with the child's experience. One recommendation would be that the court have discretion to grant or deny a dismissal request conditioned upon the child's best interests determination considering the agency's good faith efforts to bring the case to trial within the 90 days.

Another possible solution would be to start the 90 days AFTER the parties have been served. The court does not have personal jurisdiction on the parties until they have been served and it seems logical that the 90 days would start after jurisdiction has been established.

The Planned Permanent Living Arrangement statute narrowly tailors the use of the disposition. In practice, it is too narrow. The most glaring example occurs for 12-15

year old children who do not desire adoption. The current wording of the statute does not allow for their placement in a planned permanent living arrangement if the statute is construed according to its plain meaning. Strict adherence to the statute often prohibits social workers from requesting a disposition of Planned Permanent Living Arrangement when it is in the child's best interests. This could result in another dispositional order that is contrary to the child's best interests.

Another problem with the protection statutes is the ambiguity of allowing hearsay. The statutes should be more clearly written, and hopefully, would allow for the statements of children, alleged to be abused, to be readily introduced.

Interview With Assistant Prosecutor
3/24/05

1. How (if at all) do Ohio's child maltreatment statutes affect actual practice at PCSAs?

I think they have a great impact on the PCSA's practice. Many times a SW will want to do something and is told that it is not legally feasible, even though the worker may believe it is in the best interest of the child. I also believe that the statutes attempt to get permanency for children faster, however often times they are not followed are the PCSA is caught in the middle of the law and the actual courtroom practices.

2. What effect, if any, does the statutory language have on the adjudication process and outcome?

I believe the statutory language is fairly clear with regard to adjudications. It seems to help everyone have a general idea or standard as to what is expected.

3. Can you give examples of cases in which the wording of a child maltreatment statute led to an undesirable (from your perspective) result?

I always have trouble with the cases of newborn children, who have several other siblings in custody and have been adjudicated and committed to permanent custody because of the mother's substance abuse problems, being found dependent. If the child does not test positive at the time of birth, there's no abuse and the mother has not parented this particular child, so there's no neglect. However, it seems that dependency does not do justice to the situation.

4. What (if any) problems do you see with the current distinctions (abuse, neglect, dependency)?

The distinctions seem clear.

5. Do these distinctions affect the children's parents in terms of willingness to cooperate?

I don't think that a lot of parents understand the distinctions, even when they are explained by an attorney. Certainly a parent is more willing to cooperate when there is a complaint for dependency, rather than neglect. I think that parents feel like they are getting something when a complaint is amended from neglect/abuse to dependency and they feel like the social worker is trying to give them a chance.

I also think that parents and even attorneys do not understand that the finding of abuse or neglect is with regard to the child and not necessarily with regard to the parent. For instance, when a child is abused by someone other than a parent, the child can sill be found to be abused.

6. What would the potential benefits and drawbacks of discarding these distinctions and creating one category: children in need of service?

The benefit would be that parents would not feel "labeled" as having abused their child or neglected their child and I think they would be much more receptive to agreements and possibly would be more willing to work with the social worker. The drawback would be that the parent is not being held responsible for his/her actions in abusing or neglecting the child and therefore, may not believe he/she did anything wrong, thereby preventing him/her from benefiting from services.

7. In general, what (if any) ambiguities or inconsistencies would you like to see change in Ohio's child maltreatment statutes? Why?

With regard to the abuse, neglect, dependency statutes, I don't see many issues. With regard to 2151 overall, I would like to see a number of changes to address the differences between permanent custody on a motion and permanent custody on a complaint. For example, we cannot argue 12/22 on the complaint like we can on the motion due to the wording of the statute. In addition, I would like to see the PC language changed to allow for a finding of 12/22 at the time of the hearing, not when the motion is filed, as the case law has required. When we need 12/22 at the time of the motion being filed, that means we would have had to ask for at least one extension prior to filing for PC. This is not consistent with the desire to seek permanency for children at the earliest possible stage.

8. What (if any) specific problems do you see with the statutory definitions of abuse, neglect, and dependency?

The only problem I see is with section D of the dependency statute. That section requires that a sibling of the child be adjudicated abused or neglected previously. Sometimes the child is removed at the same time as the sibling who was abused, but because the cases are heard together, this section is not applicable because the adjudications are happening at the same time. I am not sure that this is something that can be resolved, however, for due process reasons.

9. Are there any laws whose wording consistently lead to unfair results for parents? For children? For the PCSA?

The 90-day requirement consistently allows parents to "play" the system. Mothers come in and on the last day give names of new fathers and we are forced to start over because she will not waive 90-days and the Court is not inclined to find implied waivers. The theory behind the 90-day statute is good, but in practice, it is unworkable and usually results in further delays for children.

I also think, as discussed above, that the PC language when a complaint is filed which does not allow for a finding of 12/22 like the language does when a motion is filed improperly distinguishes between children in the same situations.

I would also like to see the age for children who are appropriate for PPLA changed to allow for children at younger ages to make decisions about whether they wish to be adopted. We often have requests for PPLA on kids who are 14 or 15, based solely on the fact that the kids do not want to be in PC and adopted, yet they do not fall within any of the statutory criteria. Having said this, I do not want to see the age limit dramatically reduced because I don't think that PPLA for younger kids is in their best interest.

I would also like to see something in the PC statute that would allow for open adoption in Ohio. I think this would serve the children and the parents and would help reduce the struggles that parents have when agreeing to PC.

Interview with Assistant Prosecutor

4/17/05

How, if at all, do Ohio's child maltreatment statutes affect actual practice at PCSAs?

It's as if they took one person to do the statutes and another to do the code and they never talked. They don't mesh. Two different ideas about abuse. Must make statutes and OAC work together.

Left hand doesn't know what right hand is doing. E.g., in order for PCSA to determine if a child has been abused they have to determine who did it. In court they don't have to. PCSAs if they can't pinpoint who did it, they must say "indicated", and Defense attorneys use that to argue no abuse occurred. Need to reconcile this difference.

Because of the bugaboos of the legislature, PCSAs must jump through certain hoops before recommending someone to have custody of a child. The law doesn't require. E.g., 12 year old kid has been raised by an uncle who has a drug conviction. PCSA can't/wont recommend uncle for custody. Court could. PCSAs should be able to make recommendations on basis of a home study, and even if the home study isn't passed because of, e.g., a prior drug conviction, based on best interests of the child.

The law should give leeway to allow the experts to make those recommendations.

What would be the potential benefits and drawbacks of discarding these distinctions and creating one category—children in need of service?

I like the way our child welfare statutes are written. I like the separation of categories. When you read a file, the way they've been adjudicated makes a difference. Just saying "child in need of services" will lead to people underplaying the situation.

Currently, abuse findings don't carry over into what disposition is. Some judges or magistrates find everyone dependent. Case plan must be based on why child is removed, not why adjudicated.

Currently, disposition often isn't based on what happened at adjudication. The evidence presented at adjudication could have been all about abuse, but some "rogue" judges and magistrates find everyone dependent, regardless. If a child has been horribly abused let's call it abuse. If willfully not sending child to school, let's call it neglect. Also, even if abuse is found, too often judges/magistrates start over fresh at disposition. What happens at disposition needs to be more connected to what happened at adjudication.

The current standard for changing custody is change of circumstances. Aunt can't get custody if parent's or child's circumstances haven't changed. But sometimes, the unchanged circumstances are still bad for kids. Should be changed to best interest standard.

Another problem: Between parent and non-parent, dad will win even if he's been uninvolved. As long as dad's got a job and isn't on drugs he'll win out over the stepparent, even if he's been uninvolved. There's a case before the Supreme Court now.

I like the current dispositional categories. PPLA, if ruled on appropriately, is a good option. In our County, PPLA Plan isn't put into place until after the PPLA's been granted—law says should be done before.

There are severely disturbed parents who should not have their kids taken away. Mom had a psychotic break, hospitalized for 2 ½ years. Shouldn't take her kids away permanently, though that's what the statute requires. We didn't follow the statute, did a PPLA. 2 /12 years later mom was doing o.k. we sent the kids back. It was a treatable mental illness. A little less clear cut if we're talking about an infant.

We don't use the court-ordered treatment rejection in our County. (never good to blindly follow the law)

A big problem is that there's nothing in the statutes that force the courts to enforce the statutory time limits, and a lot of courts don't. If the time limits aren't enforced the agencies won't follow them. Courts need to enforce.

In your experience, how well do caseworkers understand the laws?

Caseworkers don't understand the laws or the ramifications of what they're doing vis a vis the law. They do a lot of harm. Had a case where the worker was at a loss in terms of how to figure out what to do with mom so she asked for a psychological, which the court ordered. Mom did better, worker informally dropped requirement and never made the referral. Mom fell apart, agency went for p.c., defense used that worker had never made the referral. Workers don't understand that failure to do the paperwork means it doesn't exist.

One of the biggest issue for them is knowing when dad is legal father. So many changes in this area—need training.

Disconnect between their work and the legal case. Classic example: we must prove reasonable efforts. No attorneys ask worker how many times did you talk to this parent on the phone? Workers don't understand when to chime in and not to chime in, and prosecutor doesn't ask the question. That's another reason why agencies need own attorneys.

What effect, if any, does the statutory language have on the adjudication process?

If it's followed, it's a good system—e.g. clear and convincing standard of proof, time limits. But often the law isn't followed. E.g., the law currently says if a case isn't disposed of within 90 days it must be dismissed without prejudice. So if the deadline isn't met they just dismiss and re-file. That's not good. Parents' constitutional rights have been violated. Should change to dismissal with prejudice.

Also, adjudication is supposed to be separated from disposition. Adjudication should be completely dealt with before moving on to disposition. Sometimes lines are blurred.

Another thing I don't like, some of the hearings we do can be informal, where rules of evidence don't apply. Enforcement of that is different from magistrate to magistrate. The wording is that they "may" be held informally. It needs to be one way or the other. I favor informality (formality is too cumbersome). If I have to have a formal hearing, I have to bring in so many people to testify to mom's progress. If informal, I can bring in reports from those people. One colleague was preparing a custody case in front of one magistrate, was calling eight witnesses to testify. Case transferred, new magistrate said cancel and just get reports.

Get rid of "may" and put "shall."

Examples of cases in which the wording of a child maltreatment statute led to an undesirable result?

Are the current distinctions useful in your efforts to protect kids?

It's not the distinctions that I have a problem with, it's the court's blurring of them.

If child is abused in mom's home, then whether it's a finding of abuse or dependency the court doesn't usually carry that over to disposition. The court feels it's going to protect kids no matter which adjudication it gets.

Right now you can have a child adjudicated abused, and the disposition isn't related to that adjudication.

There should be carry over from what adjudication you get to the dispositional orders that the court makes in addition to t.c., ppla, etc.

PPLA statute needs to be mandatory. The way courts are interpreting it now, any child who is not adoptable should be placed in PPLA. That shouldn't enter in to the equation. Let's either do it or get off the pot.

Do these distinctions affect the children's parents in terms of willingness to cooperate?

Much more so with neglect. Parents much more likely to want it called dependency instead of neglect. Not so clear with abuse, because abuse is no fault in Ohio.

What, if any, ambiguities or inconsistencies would you like to see changed in Ohio's statutes?

Our law uses the same language for kids removed for a/n/d and for delinquent kids. E.g., the term "shelter care" is used for both. Need to use different language. The statute all reads for kids who are being called delinquent. Very hard to carry over into protective situations. It should allow for proceedings where children aren't technically removed, but placed with someone because of the situation.

Delinquency needs to have their own statute. We need to have our own shelter care statute. There needs to be something about whether the removal was proper and some provision for making interim placement of the children. The statute is so poorly written, the police could remove a kid and social worker could place him/her in detention. Current law doesn't make provision for temporary placement when it doesn't quite rise to the level of an emergency. E.g. parent on a crack binge. All counties do it differently. Some need emergency temporary custody, others say cop can remove.

No reason to remove child from care of parent in Jehovah's Witness case (where parents are refusing to provide child with needed medical treatment). But currently must do that in order to get a file going. There should be a way to provide service without removing kid. Currently have emergency removal, then changes of custody.

Parent drops kid off at aunt's, disappears for a couple of days. Currently, agency must file, no hearing for 10 days, unless they *remove* the child to initiate a shelter care hearing. Have to get a home study done before they can put kids back into aunt's home. Not good.

What, if any, specific problems do you see with the statutory definitions?

Dependency statute doesn't clearly state when child is dependent. If child is dependent because of no housing, and 90 days later parent has a house, is the child no longer dependent? Legislature should either say there has to be a pattern, or the issue is what is the situation at the time of the complaint or the hearing. Not clear at this time. If we changed that, then there wouldn't be such a blurring of lines between disposition and adjudication.

Currently, because of this ambiguity, the prosecutors want to get cases done as fast as possible. Defense attorneys want to take as much time as possible. Say child came under care because of housing. If defense counsel asks for continuances on the grounds that parent is getting housing, court will grant. Right now the upshot of this is that it takes too long for kids. We should change the law so that it is clear that you can't use dispositional issues when deciding a/n/d.

Are there any laws whose wording consistently lead to unfair results for parents? For children? For the PCSAs?

Our case plans are atrocious. Extremely hard to read. Not broken down into categories that an average person can understand. We train attorneys to read case plans.

Educated people can't read/understand them. How can we expect a drug addict high school dropout to read and understand?

Also, there's currently no good or consistent method to track the progress of the case plan through the court. Not until annual review. There's a long time when no one is looking at the situation. Agency doesn't look until right before annual review.

Even then the only question is what services has agency offered—not what progress has been made (by child, parents, whatever the issues are).

Currently, court is outcome-based, not progress-based. Case plan should be based on *progress,* not outcomes—the progress parents have made on the objectives of the case plan. E.g. drug addiction, mental health, unruly. Plans need to be progress-based and court needs to review those. Instead of saying to a parent that you will complete drug treatment, say in three months you will be in phase 1, in another three months, you'll be in phase 2. With drug addiction progress-based is better than outcome. Can't tell them they're not going to relapse, and shouldn't. This would better fit with what the PCSAs want. They're not probation officers. Also, if not a receptive judge, just because parent has completed requirements they get kid, even if not ready.

Semi annual reviews are held, but too mushy, not pushing to get things done. Currently parents don't have attorneys at semi-annual reviews. Parents are there against 10 people from PCSA. Even an ombudsman would be good. Or have it in front of judge, without an attorney.

The reasonable efforts bypass has potential to be unfair to a *new* parent in the family. Currently, if a child has been taken permanently because of the acts of dad, the agency doesn't have to make reasonable efforts to return kids or keep them at home. If mom remarries and has a another child, agency doesn't have to make reasonable efforts. Unfair to the new, capable parent.

Current laws about school lead to unfair results for kids: It takes 10 days to get entries out of our court. If a child is removed, they don't get to school for 10 days. Law should say that if enrollment is being done by PCSA, new school must take the child.

Also, law says school from district where child was removed must pay for child's education. So the new county has to go to the old one, get a psychologist from the old county to come to the new one to evaluate the kid. Cumbersome and ridiculous. The county in which the child currently lives should assume responsibility. Get rid of that section.

e.g., Child was placed in residential treatment in Indiana with severe behavior problems. Trotwood [Ohio] didn't approve the setting and refused to pay for the schooling. All mental health and medical professionals said that was where kid needed to be. But we

had to pull the kid out and find a different placement for her. School was making a mental health decision. Should be the school district where child is enrolled.

I'd love to have a diversion program in protective. First time neglect (probably not abuse). Through a mediator rather than a court. Program where they'd agree to adjudication, case plan, disposition, but if they completed the case plan the case would go away. New parents, no prior record. Benefit to the parents: if it comes up again, the agency would have to go through the entire process again. Court could monitor. Couldn't be violence based. Get new parents past that hump till they learn what they're doing. This would benefit the PCSA by avoiding the court process. Would also benefit certain parents.

One statute says If the basis of removal was drug/alcohol problem, the agency ***must*** make a referral within 90 days. This type of cause/effect wording should be in every statute. (this was embedded in h.b. 484).

It has been said that the legal definitions of a/n/d are different than the state/county definitions. Is that true?

Across Ohio, there are many inconsistencies in the ways in which cases are disposed of. For example, a situation that is considered abuse in one jurisdiction is considered dependency or nothing at all in another. How, if at all, could/should the laws be changed to create more consistent results from county to county?

It has been suggested that when an adult strikes another adult in the home it is considered criminal behavior (called domestic violence), but when an adult strikes a child it is called corporal discipline. Should striking a child be treated as domestic violence?

No, because of the new constitutional issues about unmarried people can be charged with domestic violence. But the law should provide that if there's repeated violence in the home that makes a child neglected *per se*

Many workers complain about the sway that GALs/CASAs hold in court, allegedly frequently preferred over social workers despite the fact that they often don't interview any of the parties before making their recommendation. How would you rate the performance of GALs, and are there any steps that you would recommend towards improving this service?

Currently there are no state requirements for GAL training. CASAs, on the other hand, need 34 hours to start, 12 ceus (or 6) continuing. CASAs are very good, know what they're talking about, higher level of und. Attorney GALs are poorly trained and don't spend the time needed on a case—they commit malpractice. I recommend mandatory training for GALs.

Scrap the GAL method of representing children. The ABA issued standards for representing children. They recommend appointing attorneys as *attorneys* (not gals) to represent the *best interests* of the child (not the child himself).

Currently GAL files report and is subject to cross examination. If they served as the child's attorney they wouldn't have to file a report and wouldn't be subject to cross. The attorney would still be required to do an investigation, would still file a report with the court, (just to prove that s/he was doing his/her job) but that report wouldn't be seen by anyone but court. They would then advocate like an attorney. Not making a social service decision. Do all their advocacy like an attorney—which they're trained to do. (Not trained to be gals). Make provisions in law that would allow them to talk to all the parties. Wouldn't have to do special training. If there was a CASA the attorney would just represent the CASA. The attorney wouldn't have to hold things back because trying to maintain relationships with all the parties. Can call witnesses.

We need clearer laws about when children are to be represented by attorneys. Supreme Court just ruled that a four-year-old needs to have an attorney for him because the child's wishes were different from the GALs—GAL didn't think that what the child wanted was in child's best interests. This isn't a good idea—the attorney should represent the child's best interests, not the child's wishes.

I could understand if a child is 10, s/he needs an attorney to represent her wishes. A four year old doesn't. The attorney should let the court know the wishes of the child, but should not have to advocate for the kids' wishes.

Currently, PCSA can only file a motion for pc if child is currently in foster care. So if a child is adjudicated abused, spends two years in foster care, is returned home and then abused again, agency can't request p.c. by making a motion (which would be easier). They must file a complaint and re-adjudicate the issue. This rule should be changed. Under these circumstances agency should be able to file a motion for permanent, or (if they don't want p.c., a motion for change of custody), without filing a complaint and first going through a second adjudication.

ANOMALIES

There are severely disturbed parents who should not have their kids taken away. Mom had a psychotic break, hospitalized for 2 ½ years. Shouldn't take her kids away permanently, though that's what the statute requires. We didn't follow the statute, did a PPLA. 2 /12 years later mom was doing o.k. we sent the kids back. It was a treatable mental illness. A little less clear cut if we're talking about an infant.

Because of the bugaboos of the legislature, PCSAs must jump through certain hoops before recommending someone to have custody of a child. The law doesn't require. E.g., 12 year old kid has been raised by an uncle who has a drug conviction. PCSA can't/wont recommend uncle for custody. Court could. PCSAs should be able to make

recommendations on basis of a home study, and even if the home study isn't passed because of, e.g., a prior drug conviction, based on best interests of the child.
The law should give leeway to allow the experts to make those recommendations.

Currently, disposition often isn't based on what happened at adjudication. The evidence presented at adjudication could have been all about abuse, but some "rogue" judges and magistrates find everyone dependent, regardless. If a child has been horribly abused let's call it abuse. If willfully not sending child to school, let's call it neglect. Also, even if abuse is found, too often judges/magistrates start over fresh at disposition. What happens at disposition needs to be more connected to what happened at adjudication.

Another problem: Between parent and non-parent, dad will win even if he's been uninvolved. As long as dad's got a job and isn't on drugs he'll win out over the stepparent, even if he's been uninvolved. There's a case before the Supreme Court currently.

No reason to remove child from care of parent in Jehovah's Witness case (where parents are refusing to provide child with needed medical treatment). But currently must do that in order to get a file going. There should be a way to provide service without removing kid. Currently have emergency removal, then changes of custody.

Parent drops kid off at aunt's, disappears for a couple of days. Currently, agency must file, no hearing for 10 days, unless they *remove* the child to initiate a shelter care hearing. Have to get a home study done before they can put kids back into aunt's home. Not good.

Interview with Public Defender Attorney

5/23/05

We rarely deal with parents directly.

One problem is the limited discovery that is available under the juvenile court rules.
Broader issue: difficulty getting access to CSB records relevant to rep the parents against allegations of a/n/d

CSB ran over parents, in collusion with court in one case. Lots of frustration and anger at CSB's and court's refusal to accept contrary evidence and ignoring evidence of sex abuse and violence committed by other relatives in the case.

Every county CSB has a different philosophy and different level of enthusiasm for removing kids from the home. Some always do, others never do (at extremes) and in between. Very inconsistent practices from one jurisdiction to another, especially re

when to remove. And degree to which they're willing to make reasonable efforts to reunify.

Domestic Violence

Many of us have spent years trying to educate courts that dv does have an impact on the kids and is relevant to custody. were fairly successful, but it's come back to bite us. E.g, in This county (most serious), they remove kids from care of battered mom on grounds that kid was abused by having to witness the dv. Routinely tell mom if you don't get a protection order or file charges we're going to yank your children. Can have a chilling effect on battered moms reaching out for help.

Same vein: Used to be, and some extent still is, CSB workers don't have good und of dv between adults/spousal abuse. May be one reason why some are so quick to remove kids, so insensitive to plight of battered mom.

There was a federal class action lawsuit in New York state, where federal dist court barred CSBs from removing kids on basis of dv between their parents. Ruled there must be a case specific assessment, notice and due process. Reason: NY had a written policy to remove kids in any dv situation. We haven't' brought similar suits here in Ohio, except perhaps the Ward case in Jackson county. There was no due process at all in the early 90s. Judge would remove kids without ever having had (or scheduled) a hearing. Mrs. W's husband came over and shot with a shotgun. Sheriff ended up arresting her. No hearing. She sued. Settled.

Hopefully no more Jackson county-type cases now.

Another issue: bias or prejudice against poor folks. By CSB and courts. Seem to assume the worst, and that you can't take care of the kids if not well off, and if have an opportunity to place kids with more affluent relatives or others they jump at it.

Some courts too quick to place the kids with grandparents and relatives who are better off. Lots of litigation in courts. Law says must first prove parents unsuitable (1977), but many times domestic relations judges place kids with grandparents without applying the suitability standard. They distinguish domestic relations cases from juvenile. But the underpinnings of this test derive from due process. Parents const rights should be same in domestic relations court as in juvenile court.

Split of auth among courts of appeals whether grandparents or other non-parents can be awarded visitation against parents' wishes. Troxel case. Some say court needs to consider parent's wishes as one factor. Others say unless there are extraordinary circs visitation can't be awarded unless parents consent. Still being worked out in the courts.

Statute on the books juvenile: say indigent parents entitled to appointed counsel. Generally courts follow that in a/n/d cases initiated by CSB, where there's a const right.

But the statute has been interpreted to mean that indigent parties are entitled to counsel in all cases, not just a/n/d: custody, paternity,

Gm raised child from birth to 13. Dad shows up out of nowhere and demanded kid. Court refused to appoint counsel for gm. We filed a mandamus action which said indigent parties have right to appointed counsel in all cases including custody and paternity. cases.

The current budget bill passed by the house (66) has language that would overturn the Asbury decision and would limit appointed counsel to a/n/d and delinquency cases. Eliminates right in child custody, support, parentage, permanent surrender cases. The sponsor of that language, Tony Coor, wanted to abolish the right to counsel even in a/n/d cases. Kent Markus intervened and stopped that.

Open adoption: clients who would have agreed to adoption if they knew they could have continued contact of some sort. At one point Ohio did change law that said ct could allow open adoption but not enforceable. Would like to bring real open adoption.

Interview with PCSA Caseworkers

4/29/05

Participants: 8 caseworkers, 1 Screening, 1 Ongoing, 6 Intake (one of those specializing in “out of home care abuse” situations. Most had more than 10 years of service, one had 1 year experience, one had two years here but several at another agency.

“Minute” Orders

Problem when we get interim temporary custody (at shelter care hearing) but don’t leave the court with anything like a court order. To try to get child in school, etc. without that paper is very difficult. May take 2 months. We need it sooner.

Or order saying that a relative has custody. no proof. In California we used to call it a “minute order”. So everyone is informed.

Even after adjudication we don’t get anything in writing. As soon as we get custody or relative does we need that piece of paper. If they expedite it it’s a month.

Visitation

Ongoing: when judge/magistrate says we’re going to give parents 15 hours of supervised visitation per week, it’s very unrealistic. Along with everything else we have to do. They don’t understand—think we sit there and have nothing to do. Honestly a lot of times it doesn’t happen because we just don’t have the time.

Magistrates are more legal. Don't understand the realms of social work in terms of what we can do, parents can do. They set social workers up as a bad guy. E.g. ordered 2 year old to agency for 2 four-hour visits per week. The only time we could do it for that amount of time was nap time. He slept in her arms, so tired and cranky. No facilities for him to lay down. Our agency doesn't have in place the things to do what the court wants us to do.

The younger the kid, the more visitation, etc. the better the bonding. Many parents are low-functioning. 4 hours is just too long.

Often we can't get a room for them to visit here at agency because they're all taken. Do we take the child out of school? We just want them to realize what we're dealing with.

Our magistrates can't hear us, other than the testimony we offer. Don't relate on a case by case basis. They're going to order more stringent stuff, we hate to go before them. They expect us to do more to return kids than they expect the parents to do.

Must coordinate with foster parents, who have other kids in the home, can't meet those time requirements either. Must either find transportation, or do it yourself.

Magistrates should work with us to know what we do over here. Should tailor their orders to the resources that we have.

At some point the parents need to be more responsible for initiating contact with the service providers in the community. We're supposed to make the appointment, take them, sit there, bring them home, etc. If they don't show we're still held accountable.

Magistrates, prosecutors don't understand we can only take a horse to water. If folks were as motivated to change as the courts think they are, they wouldn't be involved with us.

I think it would help to have the magistrates here on the agency grounds. Judges are in one building, magistrates in another. Would help to have us all in one location. Would save time, would let them see that our visitation is overrun, and at least spend some time with us.

Often they err on the sides of the parents rather than the agency.

Lowering standard of proof

Good idea. Cops saw mom do coke in front of kid, we had to spend three hours in court to prove neglect. Why?

If mom doesn't work the case plan, why do we still need to try? If they haven't complied with the court order, why do we have to work harder to help them do it?

At a permanent custody case, we understand. But this grilling starts at the very beginning. Parents stall, they know the system, know how many chances they get. "If I wait to the last minute, it will be o.k.—nothing will happen to me.

Parent completes the drug treatment ordered by the court. Don't know if it stuck, but she completed it. Don't have to show that anything has changed, that any progress has been made. That's why we get a lot of repeat clients. Court sends back home when nothing has changed, so they come back.

Caseworker-Court Relations

Often social worker feels like on trial—it's you, what have you done. Some magistrates delight in putting the caseworker down. In front of the clients. So demeaning. They need to be told don't do that again. They're there to help us, supposedly. Clients say ha ha. Ruins our relationship; caseworker has lost all credibility. The court may have had a few bad experiences, internalize it, becomes the rule.

Some workers don't do well in court. Intimidated, can't speak up. Court then assumes everyone is incompetent.

Plus they rotate our prosecutors out. Can have 3 or 4 prosecutors over the span of one case. Some are really good, some just don't want to be here. Some are very new, make us look stupid.

In [another] county they kept the same people. They knew the system. Everything was stable, consistent.

Magistrates beat up on the new prosecutors too. Often the social worker will pass notes to a new attorney telling him/her what to ask or say.
remember writing questions for the new attorney to ask.

All defense attorneys and prosecutors should be forced to get child-welfare certified.

Unruly/delinquent kids

We are very upset about it. We get custody because kids are unruly/del. Where's the abuse, neglect, dependency? Parent says I can't handle this child, want to give him up. Court says o.k. we'll give him to CSB. Then, when things calm down and parents want kids back magistrate will say no--put in foster care. So kid runs away, gets charged again with delinquency. Goes back to court, more charges. Parents say I thought you changed but you haven't. That's why PPLAs are so overused. Parents can just visit their teens during the difficult times, then when turn 18 parents say come back.

We even take kids whose parents bring them here to the agency. We've got so many bad situations we should be dealing with. Other counties don't take them. They tell parents to go home. It's dangerous to put these kids with other foster kids. Creates liability issues. Putting a delinquent child with a victim. We try to screen, but if you have kid who's a fire starter, using drugs, etc. we don't have foster parents trained to deal with these problems. They're trained to deal with a/n/d kids. It's much easier for court to send delinquent kids to us than for us to send our kids to court system for unruly/delnquent.

Kids just get slapped on wrist. Moms say won't call Juvenile Court because they wont do anything. They know and use the magic words: "Come get this kid before I hit him."

We should file abandonment charges on those parents. No consequences for dropping kid off and saying I don't want them during the difficult years. Even the threat of child support payments doesn't work. It's worth it to some parents.

In California they charge the parents with abandonment.

With chartered schools it's even more difficult to track kids. Used to be you'd just call public school and they'd tell you. Now you don't even know when to start.

Not enough services for kids. Mental health, limited space at Juvenile. Court, etc. Nowhere to go with this population. Why should kids not going to school come to us? That's an education issue. The schools need to deal with that. I had a case where mom was sent to jail for 30 days because her son was truant. Mom would take him, walk him into the school, he'd leave. If grandfather hadn't come forward that child would have been sent to foster care. It should be a juvenile court issue but it always comes back to us.

Never seen a good program to deal with the runaways. End up with us, put in foster home. Years and years. Same story, same issue. No end.

Discrepancies between ORC and OAC.

Relying on OAC we asked court to prosecute foster parents. Said no because it's not in ORC.

Medication. Foster parent doing respite, sent kid to school with his medication who gave it to friends. OAC says foster parents are responsible for keeping medication locked up and secured. But couldn't do anything criminally because nothing in ORC that would let you.

Physical Discipline. OAC says no foster parent shall be allowed to physically discipline. Also say fps must follow agency policies (which say no physical discipline.) But ORC says can physically discipline there's unless serious physical harm to the child.

Foster parent will physically discipline their biological kid, but can't with foster child. Yet OAC says you can't have two different standards of discipline at home.

Deadlines. OAC imposes many deadlines, ORC doesn't. So detectives delay giving us documentation because they only care about the ORC.

Even with other providers this is a problem. Dealing with a doctor, sent release of information for him to sign, delay after delay. Meanwhile my clock is ticking. Client finally gave me the information I needed.

We're the lowest on the totem pole. Others don't feel it necessary to respond to us, but they expect us to. They don't understand our role. We have a "memorandum of understanding" between various agencies, but no one reads it. Executives create it and it's good, but it doesn't trickle down. The line folks don't understand it.

If OAC is going to be followed and enforced, it must be reflected in ORC. They should come together.

No way to track Foster parents. One county refuses to license again, they just go somewhere else, don't have to share history, they re-license. No one checks.

Broaden the scope of child endangering. If you violate any section of the OAC see such and such of ORC.

ORC says a child who is MRDD is cared for until age 21. Kid wasn't going to school, losing weight. Falls between the cracks. Juvenile court has no jurisdiction, adult protective services can't intervene.

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Inconsistencies

It's very subjective. I wouldn't screen in any of those that the respondents were split on. Screening is such a value-based, experienced-based judgment.

We had a client where we removed child for dirty house. Mom moved to another county, had another child, tested positive for cocaine. Other county didn't want to remove the child from the hospital, because that child wasn't a or n.

We automatically screen in if mom tests positive for anything.

Reporters fish for what to say, especially schools know what to say. Johnny's missed 25 days of school, *and "he's hungry" when he does come*. The hunger part is not really a concern, but they add it just to make sure we have to go out.

Educators hate us. They do a lot of parenting (buy clothes, wash them, toothbrushes, etc.) want us to share that. Don't get that we're about a/n/or d.

Lice issue. Kids come to school with chronic head lice. School follows the required protocol, then call us. If child continues to miss school then they call us. Schools have the no nit policy. So kids can miss school because mom won't pick dead nits out of kids' head. Schools call us for that, shouldn't. Schools give them showers.etc.

It comes down to what do we as an agency do. E.g., we investigate, discover it's true, mom isn't hygienic. But parents can't afford lice shampoo, insecticide/bombs, so kid keeps going to school with lice. It's not a child welfare issue. Parents have tried everything to get rid of the lice. Not abuse or neglect. The dead nits indicate that somebody is trying. But the schools don't accept that.

Law need to specify more clearly that child welfare's job is to deal with kids in "imminent risk." So when people call the screeners can say "sorry, that's not within our scope."

Inconsistencies between counties.

Sex abuse 14 and 16 year old kids exploring each other, hiding. Another county called it lack of supervision, we wouldn't, but I still had to investigate.

Out-of-home abuse. We took a much higher number than other counties, so we got "dinged."

The things we take in this county we would never have taken in [the county I came from].

There's so much politically that determines what we're going to take. Depends on the community climate.

We take cases called "others." Having to deal with these other types of cases increases our caseloads tremendously. So when we do get a serious case they have to sit. Work stress, burnout,

One county provides services to certain families but they move and another county won't. No consistency in management about what you take and what you don't.

Decisions are also experienced based. How many dirty homes have you been in? Older workers don't get as upset as quickly.

We take 10 – 22 calls per day per worker in our County. 120 calls yesterday. Way overwhelming. Typically we'd take 4 cases each per day.

Only about 20% actually become cases.

Pros and cons of statewide system

Benefits: more consistent; what you screen in would have less to do with politics;

Cons: Wouldn't take into account resources of particular community (less sensitive to); not as responsive to the community.

Would have to streamline what we're taking and what we're not. Bleeding, broken bones, eyeballs hanging…

But what's going to happen to the rest of the families out there, who need help but aren't abusive or neglectful—yet?

Family in need of service category might work if we had a unit specifically designated to deal with that. Otherwise it would sit on the back burner. Only if that would happen would it work. Would free us up to handle the really serious cases.

Currently to serve these people I have to pass it on, because as an intake worker I don't have time to hook them up with all the resources they need.

Would have to hire people, clearly define it as necessary in OAC. There would have to be some specific criteria. Spell out: "A unit must be created in each agency…"

Concern: could turn us into another welfare agency.

Extending the time limits?

This is a problem, because you have cases where making contact is difficult.
Consensus: it should go to 45 days at least. At least for less serious cases.

CWLA recommends 15-17 cases. Ongoing workers here have more than 20.

In Intake, load can range from 5 cases to 28 at any one time. Different times of year it goes up. Cases pile up, can't get all the computer work done.

Computer work is a huge problem. Write up activity sheet in the field, have to come back to office e and do it again. Redundancy!

I just gave Intake a 5 page summary on the computer to take the place of the transfer summary, or closing summary. But you still have to go into the transfer and closing summary and say "see new form." Still have to sign those old forms.

Other examples of redundancy. We type our dictation sheets, then have to do it again on the closing or transfer or new assessment form. Because on that new form you still have to "explain your decision"

Have to go back and re-do date and time of the referral (which is already on the referral) and who was there.

One form is in Word; the other form you need is in Webfax, so you have to minimize one to use the other, go back and forth. If it sits for too long it automatically logs you out.

There's a lot on the clerical sheet that duplicates what I've already done. It asks for information that's already been done.

Abuse/Neglect Reduced to Dependency

It is an issue here.

Came in as abuse, they drop it to dependency. Keeps coming back in. Need to have the history. The attorneys are the ones who decide, then come back and tell us, "They're never going to agree to abuse, so we'd better drop it down"

Doesn't really reflect what happened. Plus parents say I don't have to do anything or work with you because it's not my fault.

Has an effect on p.c. hearings down the road. The history of what you were adjudicated as has an impact. Dependency makes it harder to get p.c.. Issue/concerns still remain but adjudication isn't there to back it up.

Attorneys do it to have a win in their "win column". Also treat it like civil or criminal court. It's not about who wins, who loses , it's about what's best for the kid. "I have to win this case and I can only do it if I drop it to dependency."

Prosecutors don't know how to present evidence for reasonable efforts exceptions.

We're losing kids through the cracks."

"Indicated"

We like the "Indicated" category. Used where you believe there's enough—I've got red flags all over the place, but not enough to prove. Many cases like that. I have to have so much to substantiate abuse or neglect.

Do not like "Unsubstantiated" category.

High number of unsubstantiated has to do with the number of “other” cases an agency has to /chooses to take. It’s a screening issue.

We go out on a high number of bogus cases. Takes so much of our time.

Referral sources need to know they can be prosecuted for malicious reporting. Prosecutor’s office needs to get involved. Blanket the community with letters about false reporting. Except we’re having enough trouble getting people to report.

Call comes in, police go out and find nothing. Caller calls back, angry. Police go back, investigate again, find nothing.

It’s so upsetting for the worker when we have to go out on bogus calls. Referral sources call in inappropriate cases that we don’t take. Then they figure out what the “magic words” are to get us to go out. Don’t care that they’re wrong to call. Want drama, excitement.

Another discrepancy: some counties take custody dispute referrals, others don’t.

Training

Social Workers

Screeners need to be well versed on OAC vs ORC. Supervisors need training about which applies.

They need to build in more time up front to shadow. We used to do that sort of thing, but we’ve gotten away from it. Needs to be a planned process. Right now it’s catch as catch can. Too much to think about for busy experienced workers. Sitting and reading stuff on a computer doesn’t help. I didn’t get too many cases at first. They expected me to know by reading. Didn’t feel like a lot of people were eager to have me shadow them.

On the other hand, some supervisors rely too much on workers to train their workers.

Intake: we don’t refer to the ORC statutes. We don’t know what they are. It hurts us when we don’t know the laws. We investigate, but rely on the prosecutors to tell us what to say. Knowing the laws is important. But we get no training, except core. And we’ve been here 10 years.

New worker: no one went with her to court the first time, she got yelled at by the magistrate.

Used to have a six month training unit, which was very helpful. Need to go back to that here. We have workers who have been here a year who can’t tell you what a shelter

care hearing is. May cost money, but better than workers who don't know what they're doing.

More training about the laws would be very helpful.. need to continue to hammer us about the laws. It helps us in investigations knowing what I'm looking for.

What the prosecutor is looking for when he's writing the complaint.

Definitely need updated training. One course about the law when you start just isn't enough.

Interview With Group of PCSA Supervisors
4/29/05

Juvenile court

12/22 rule; justice is blind, everyone concerned about parent's rights, right of appeals, children *grow up* under appeals

Different courts interpret whether there should be an extension or not. Some courts, if family hasn't worked on case plan, will give them an extension. Others won't.

Judge/magistrate will convey to agency through prosecutor "I'm not going to grant pc" so social worker wonders what to do—file anyway? Or not.

Drug affected babies. We follow ODJFS rules and open them as neglect. but but courts/prosecutors follow the ORC. ORC says for any drug affected child the filing should be dependency. OAC says it's neglect. In practice it's harder to make a permanent custody finding under dependency than abuse.

With repetitive situations it's harder to build case for pc when you've had a series of dependencies. Judges want agreement because they're swamped. Dependency is easier because it's no fault. But in a repetitive situation, if there's been no prior abuse finding you can't base your request for pc or any type of court intervention on previous findings of abuse. Prior dependencies don't have the "teeth" that abuse history does.

Magistrates often tell worker: if you don't have an adoptive home I'm not giving you pc. They want the child's foster parents to come in and say they'll adopt. But often foster parent doesn't want to come in and testify, and have their testimony be the reason for the termination or parental rights.

Courts feel lots of these kids have problems and aren't adoptable. We, on the other hand, believe every child is adoptable. This results in courts granting more PPLAs than pc's. It's easier to get PPLA, so again, it's a deal thing. With PPLA the child still

doesn't have to go home, but instead of permanency they're stuck lingering in the system.

At one point they were giving us PPLAs on four year olds. Also, if you have parents who haven't made significant changes, courts often use PPLAs to give them one more shot at getting it together.

Court doesn't understand our roles. Don't treat our staff as having any expertise. They treat our workers in a demeaning way. They'll do a conference with all of the attorneys to discuss the case and not let the caseworkers in.

Probation officers are listened to in delinquency actions, but caseworkers aren't in protective actions. Our caseworkers often feel like *they* are on trial. These are complex situations, difficult to testify. Attorneys try to rattle caseworkers. So testimony isn't as good. We expect that from opposing attorneys, but when it's the magistrate or judge, that shouldn't be..

Another problem is that it takes a long time to get written orders giving us custody or returning kids to parents. This delays us being able to get kids into school, get prescriptions filled, etc.

Courts have no respect for agency's/workers' time. Magistrate will order 20 hours of supervised visitation per week. Or order worker to do 5 home studies in a very brief time. Also make other unrealistic demands.

Deadlines: We are permitted to place a child with a parent with us having temporary custody for a maximum of 60 days. If we file a motion to return child to parent, our practice has been to return the child before the hearing. This creates problem because we still have custody until we have a time-stamped order. We can be in violation of ODJFS rules and agency policy.

ORC/OAC discrepancies

12/22

Our court's definition of abandonment : court won't grant us custody on 90 days alone; must be coupled with something else.

Often judicial rules also differ.

The rules court shows you or cites are different from the rules we follow.

Court interprets HB 484 differently than we do.

Court sees PPLA as a permanent plan and we don't.

Juvenile court rules require the court to consider adoptability in determining whether to grant permanent custody. Under 484 we don't have to do that anymore. We think all children are adoptable. They say if you don't have an adoptive parent lined up they won't give us pc because the child is not "adoptable."

Standard of proof

PC is the most severe filing. It a death sentence for the parent/child relationship. So in those cases clear and convincing is appropriate.

With regard to protective actions, history should be considered in determining the standard of proof. If a mom has had a15 year history of problems, lost other kids to the system because of abuse/neglect, just because at this moment mom isn't doing real bad shouldn't mean we can't intervene.

By the time we reach the point of going for pc, it's a mere formality. If the parents had done what was required we wouldn't be here. To make us go through the full process delays permanency for kids unnecessarily.

The Court's premise is that we aren't doing our job. They bend over backwards for parents because they think we don't do our job. Based on old history when our caseloads were astronomical and we couldn't get everything done.

We're all much more legalistic today. Public defenders, prosecutors really pull out all the stops pretty early on unless they can plea the case down to dependency. They file a lot of motions, use lots of stalling tactics that are perfectly legal. Judges say they don't want things stalled, but if they're going to err it's on the side of getting more information, while the clock keeps ticking for the child. Continuances is a real problem—kids just keep getting older and older.

Requiring lawyers to be lawyers child welfare-certified is a great idea. Many of them don't know the law, and their ignorance delays the process. Motions, continuances. So many attorneys in the room. Lose sight of the child and the family. There are cases where the parents never come to court but attorneys still pull out all the stops and argue so you have to go to court. Even though the parents clearly aren't even motivated enough to come to court.

Cultural differences between agency and court. Some folks aren't good at presenting themselves based on who they are. Sometimes the evidence must be higher because depending on who the parent is might not get a good shake.

CALs and CASAs need training. Their report weighs heavily in court's decision. Their recommendation consistently outweighs ours if we disagree.

Court wants a diagnosis, objective facts—not a worker's impression. If the parent completed their case plan the court says they're ready to have their kids back. But just because parent went through the motions doesn't mean the parent is ready to have kid home. The parent hasn't demonstrated true change, true recognition of the problems and willingness to change. We know that, but sometimes it's difficult for us to get our point across. That parent hasn't demonstrated change.

Sometimes magistrate wants to rule in our favor but we can't testify to give him what he needs. Workers need more training about what to expect, how to testify.

Who's representing the child welfare worker? The prosecutor's office represents the agency unless they defer to allow us to hire in-house counsel. Our prosecutor uses the agency/protective actions as a training ground. Puts new attorneys there, some of whom have no interest in child protection, some of whom haven't passed the bar. And the prosecutor keeps rotating them. Once they get some experience, they're on to other things. Often our experienced workers will pass them notes, help them try the case.

Some really like the work, do good for us. Others are slackers--focus on making deals, don't have the best interests of agency or child in mind. Sometimes they even refuse to put what we want in motions.

Prosecutors will tell us we can't file a case. Delay cases, make up their own rules. Don't want to go into court and change tactics because parent doesn't do what they should—"makes them look bad".

We have high caseworker and attorney turnover, easy to lose momentum on a case.

Unruly/delinquent kids

It's all about budget. Juvenile Court feels they can give us kids to save money going out of their court. Rationale: kids were neglected first and that's why they are delinquent.

Our court has a real good intervention center. A CSB worker goes there every day, checks out kids who have committed crimes. Before juv. Ct would call us and tell us to come get them. Now our worker goes to court, talks to relatives, when shelter care hearing comes we've been able to develop a plan.

We have partnerships where we share the cost with other agencies. This is good because it says no one owns this child. Juvenile Court, mental health, PCSA, we all own these kids.

One Juvenile Court got a grant. When they get dependent children they can keep them up to 7 days, gives the PCSA time to do an investigation and make a recommendation,

and sometimes find a placement. Gives parents a chance to cool off, or agency a chance to find parents who are whereabouts unknown. Time to locate and talk with relatives.

Courts want us to take kids who have committed serious felonies. We aren't quipped, our foster parents aren't trained to deal with these felons. Creates bad relationships between us and our foster parents, other counties, schools.

Often kid who has committed 3 or 4 offenses, court will drop them all so that they can call them dependent.

Everyone has tight budgets.

Putting caseworkers in schools would be great. But not enough resources, or money. That's one problem with family-centered neighborhood practice, often neighborhoods lack the resources the child/family needs.

Dependency

Also giving us kids where parents have run out of benefits. Gives them the right to give up on their child.

Dependency is a community situation—schools, mental health. Not just CSB.

18 -21 year olds who are MRDD fall through the cracks. Especially if we have pc.

Intake

Out of home situations we use the ORC on every disposition.

There's so much gray. Workers come to me and ask "is this abuse or not?"

OAC says we must find out who did the abuse, ORC doesn't require us to show who did it to find abuse.

Supreme Court doesn't agree (case law) with our definition of abuse. Wouldn't substantiate our findings of abuse in many cases. Under case law, discipline is exempted unless there is permanent injury(?) But under our policy we will substantiate abuse.

Workers don't look at ORC in investigations. This is a problem potentially because we have no leg to stand on in court if we can't show the case meets the definitions..

Workers think they've followed the law, but prosecutor will send them back to do it again because prosecutor says what they've found doesn't fit ORC.

31 police districts. Some tell workers they have right to remove kid. We give our workers a card to give police.

We used to take 5101 with us (2 pages). One manager: I test my workers every six months on the rules. So they know them.

We have 4 day law school here (training). Teach about testifying, evidence. Brown bag lunches once a month or so to discuss a topic. Can go to staff development and ask them to create a specific training for a worker/workers.

Prosecutors should have to go through the Ohio Child Welfare Training Program core classes.

GALs

In our county they have to take a training before they can be added to our list. They ought to be trained. CASAs invest a lot of time and try to do a good job. But they often operate on middle class standard, doesn't jive with our clients' cultures, values, etc..

GALs need to know what our workers do. They aren't held accountable like our workers are. Often don't see the kids. The court doesn't do anything to hold them accountable. GAL will call the worker and ask what do you think, then repeat that to the judge. Their investigation should be an independent one. It's good to work together, but each should care about and do a separate investigation into child's situation.

Differences in Screening/Investigation Criteria

Caused by differences in values, cultural differences, economic differences, perceptions…

Some people haven't developed a value around education, and we're very punitive about that.

You have to look at the areas. Small rural areas vs. large urban. Even within our own agency there's are discrepancies; we see that in terms of who comes under care—black families disproportionately represented. Different values, investigators vs. clients.

If you are private pay you don't get drug tested. If you get medicaid you will be tested. That's why disproportionate number of poor people test positive for drugs.

Disproportionate number of black children brought into care. Different values, from investigators.

Some agencies use clerical workers to screen—they take everything because can't discern appropriate vs inappropriate referrals. We use social workers, and don't go out on everything—although we do enter every referral into the computer.

Imposition of the law over social services isn't a perfect fit. There should be differences between community to community, culture to culture. Takes judgment to determine. That's social work, not laws.

Statewide Screening?

Sacwis wants to do that. Big problem because you're not humanizing that situation. Not taking into account all of the humanizing issues that we look at in individual cases.

No matter what, the counties can get around it.

I like the idea, because then we (Screening) wouldn't get complaints from intake asking "Why did you take this. "?

Cons of allowing inconsistencies among counties: People move from county to county. Different counties provide different services, have different resources, can offer different services. From county to county—we take things that they wouldn't take in other counties, and other counties take things we wouldn't take. We're intruding into people's lives where somewhere else they wouldn't. Families say it's unfair, because behavior that's considered neglect in one county isn't in another.

Consistency is more important the more restrictive you should be about inconsistencies. If I'm removing your child then inconsistency is a problem. If I'm offering voluntary services then inconsistency isn't a problem.

Redundancy:

Lot of our forms don't regenerate on other forms, require us to enter the information in several times. Need to cross.

Work done for casework purposes, but also we have to do what feds want. To achieve this, state and counties check and double and triple check.

We type in everything that is said. We type police reports, but also put the police reports in the file so we don't lose the hard copies.

We write our contacts in our dictation, our summaries, another form…

Discrepancies in substantiation matter if they're taking kids away from them.

Before we got so legalistic it didn't matter so much.

Number of substantiated cases too high?

I think mandated reporters in this county are trained so they are informed as to what to call in. I'd like to know if they are in every county.

Is that reporting from mandated reporters who have been trained better? Rate of unsubstantiated has grown significantly.

20% of our cases are substantiated. That's why assessment is so important. Mandated reporters aren't always as reliable as they want us to be. Add "panic" language to get us out there..

Even non-mandated reporters are more sophisticated.

"Indicated" disposition

Physical abuse where your gut says yes, but not enough proof. They like this category. Indicators but not confirmation. We're (within the agency) all over the place. Used to be certain criteria for looking at a case and determining whether a child is abused.

ODJFS/policies don't give guidance as to when discipline becomes abuse. Indicated lets us use our own judgment.

We should drop substantiated. Use either indicated or unsubstantiated, and let the criminal courts/system deal with serious cases.

We code things as assessments, Sometimes calling things emergencies is not always emergencies.

Family in Need of Service

Our agency, people think we're out to take their kids. FINS would be a little more positive.

Or should there be two different organizations. One to deal with "other" situations, another to investigate a/n/d. if someone in the neighborhood could handle it, we wouldn't have to.

The threshold of services changes as the resources expand and contract.

Used to be a program through family services called "Open Doors. Neighborhood based program. Neighbors could call and say this family needs help, trained social workers would go door to door and introduce selves and be available to help.

30 days is enough. The longer you give the longer they'll take. It becomes more than investigation. Better to say yay or nay.

One problem with this is amt of paperwork time, can't get kid in school, reports from doctor, police. Sit for two weeks before get them into foster care.

At the end of 45 days we must enter something whether we have something or not. Puts us into difficult situation. Might not have what we need from the criminal case. State says we can go back and change it. This is where 'indicated' comes in handy.

Interview With Group of Educators

When I need to make a referral on a child I get an intake person, they do talk with me, are accessible. But that's where things get worse. Follow-up is a real problem—very inconsistent. Just started getting a follow-up letter from the PCSA in the first of this year.

Last fall CSB came and talked with us about our responsibilities as mandated reporters.

Lots of emphasis on reporting, not much on follow through .

Educators are at school every day. We check back with them the next day, nothing has happened.

Counselor: I don't refer a lot any more, because nothing happens.

We refer abuse.

When neglect (head lice), they say it's not neglect. 7th time child came to school with lice, third time we called CSB, they do nothing.

Not been fed breakfast. Very thin. School's been working with the health department. Same two girls have missed 30 days of school because of head lice. We have mediation, went to court for mediation. Girls have now been lice free for 2 weeks, a record. Our truant officer just learned that these girls are under protective supervision of our county PCSA.

Don't call in: kids are dirty/filthy, out of control, lot of behavior problems. This family needs help, but it's denied.

Child with huge bedsore because he wet the bed/high school. CSB wasn't concerned about the bedsore, didn't get involved till mom beat the kid. Lower functioning. It wasn't til I called CSB and said I was afraid to send him home they

finally got involved. Had been going on for some time. Very malnourished, even our cooks were concerned.

Another case. Kids under-age, one child very slow, other 17. parents left. PCSA said the older boy's girlfriend's mother looks in on them so they're o.k. but they're no o.k.

We feel liable, kids come to school starving, filthy. We have nowhere else to go.

If we hear of a kid getting hit we report. If it's on the edge, though we've been taught better safe than sorry, we have to consider that parents will get angry, tell kid not to come talk to school counselor. If nothing good swill come, we won't report.

We have to tell kids CSB may not come right away, because sometimes they don't.

CSB has a tough job.

Beginning of this year we tried to collaborate. CSB came and went over what we should report—all these things we're concerned about. But what they say and what they do are different.

They don't say callus for lice, because they think it's a health dept. issue.
4 people living in the bed.

Schools, health department and CSB no one will take responsibility for head lice.

We even provide lice shampoo. We only refer when it's repeated over and over.

Abuse is more clear cut. Neglect is much more nebulous.

Should be a priority list created rather than tell us to refer everything.

I don't feel we have a good relationship with CSB, as far as sitting across the table. Caseworkers pretty constantly change. Face to face meetings would be helpful. We used to do that. Depends on the administration. School needs to know kids are getting services.

E.g. family needs someone to go in and help that family. Too much for gm to handle.

We'd like a suggestions from CSB re what we can do to help CSB and for the family.

No communication. We have to follow up or there will be no follow through. New letter is helpful.

Multidisciplinary training would be great.

To share frustrations, so we're not strangers.

School lacks training for the students about what is abuse. But CSB should be the ones to do that. they did come and teach a one hour program for our 4th graders about assault, bullying.

Even if we had a caseworker who worked with health dept. and with the school. One worker assigned to us.

We'd love to have a caseworker assigned at the school. Even having a health dept nurse here one day a week is great. We know a face, have someone to call. Even having a caseworker.

Even having workers assigned by school districts rather than by zip code or by whose the caseworker of the day.

There's a disconnect among the agencies. Sometimes there's redundancy—overlap.

We've said so often if this kid were in a different home he'd be doing so well.

The state needs to back up the agency.

30 day limit for investigations is unrealistic.

CSB will go out and leave a card. Which tips parent off and no one is there to protect the child when parents find the card.

Great need for partnering among agencies.

Resources is so important. Suburbs have a nurse at each school. Rural don't.

Truancy Mediation has worked great.

As we sit around the table: what is abuse, what is just discipline? When a kid discloses, how deep should I go? And when should I just call CSB? Guidelines needed.

We don't even refer emotional abuse.

Needs to be a state and national campaign—it's not a local problem

So much ambiguity in the laws re what is a/n.

Kids get mistrustful and stop talking because we say we'll help, then CSB does nothing or leaves a card. And parents tell the child to stop talking to school officials.

All agencies need to be sitting at the same table to get things done. Health dept, school, CSB, police, etc. could band together to advocate for kids. Coalitions.

Interview With Assistant Prosecuting Attorney

1.How (if at all) do Ohio's child maltreatment statutes affect actual practice at PCSAs?

As far as actual practice the statutes the spirit of the law is lost in the practice. More emphasis is put on "winning" than what is really in the best interest of the children and sometimes it seems to be left to the whims of the jurist who are not consistent with each other when it comes to applying the law

2. What effect, if any, does the statutory language have on the adjudication process and outcome?

Varying for reason stated above there are inconsistent results depending on the jurist.

3. Can you give examples of cases in which the wording of a child maltreatment statute led to an undesirable (from your perspective) result?

Just as an example; a case where the jurist stated that he found that the parents have not remedied the conditions which led to the removal of the children. However, he found it was in the children 's best interest to return them to their parents custody.

4. What (if any) problems do you see with the current distinctions abuse, neglect, dependency)?

The main problem is it is often crucial in settling or going to trial. I think the ultimate distinction should be made by the jurist based on the allegations whether admitted by way of a settlement or if denied resulting in a trial.

5. Do these distinctions affect the children's parents in terms of willingness to cooperate?

Definitely, if it is a dependence they often times settle. Otherwise there is usually a trial.

6. What would the potential benefits and drawbacks of discarding these distinctions and creating one category: children in need of service?

I think it would de- emphasis the "winning" aspect and serve the best interest of the children. I am not wild about the category name of "children in need of service". I feel we should call it what it is something like " child protection" or "children in need of protection". Further the specific acts of abuse or neglect can be handled in the allegations.

7. In general, what (if any) ambiguities or inconsistencies would you like to see change in Ohio's child maltreatment statutes? Why?

The time factors do not work in the best interest of the child. Particularly the 90 day requirement also service of alleged fathers is a problem I feel if they have not been registered in the Putative Fathers Registry then they need not be served and a "John Doe" should suffice.

8. What (if any) specific problems do you see with the statutory definitions of abuse, neglect, and dependency?

I don't see any specific problems with them but I do like the idea of one general heading.

9. Are there any laws whose wording consistently lead to unfair results for parents? For children? For PCSA?

I can't think of any that consistently lead to unfair results its more a problem of inconsistence between the jurist.

Interview With Group of Pediatricians

6/9/05

One of the issues we've discussed is the matter of who is a mandatory reporter and how is that process done.

The state reporting requiring is not in alignment with how most of us practice. For those of us who work in institutions there's a defined team that accepts consultations to evaluate kids for abuse. We have taken over the responsibilities for making reports that abuse may have occurred. So other hospital employees and caretakers are not reporting as the law requires them to do. We've created a better system for reporting, are we not following the law because we have the team make referrals rather than all employees? This increases the reporting at these institutions, so this practice is now common in hospital settings.

Medical perceptions regarding inconsistencies in criteria for accepting reports.

As a result of the inconsistencies of accepting referrals and in the dispositions creates frustrations for providers

This county—sometimes they won't take our report but they *will* note that it was made. One of the ways we've been able to connect with PCSA is to do a monthly review of all cases we've reported and have someone from PCSA/supervisor so if there are issues/concerns we discuss it. We have relationships and it is possible to build them that help us avoid the problems we used to have. They tell us what we need to do

My main concern is with those mandated reporters who don't know they're mandated reporters. Clergy, e.g. In many cases clergy may be aware of things that needs to be reported but don't know they're mandated reporters.

Suggestion: make mandated reporters aware of their consumer rights. So when I call and worker declines to accept because "it doesn't meet our criteria" I know where I can turn. People need to know that they can ask to talk to the supervisor.

Example: Child presented with loop marks from belt or cord, but the injuries were not new so PCSA wouldn't accept the case. We went through the consumer route (supervisor) and they did accept the case. Don't know what happened in that case because once they take it it's a big black box.

Another example: 16 year old has sex with adult, no force—very confusing for me. How many years difference matters, etc? CSB often, if it's a boy at school, won't pursue. No mechanism for the mandated reporter to engage law enforcement if we can't pass go with CSB we don't know where to go next.

Also, head injuries or burns that aren't life-threatening, where the presenting history might be plausible but no corroboration, or the person who brings child in is different from the one who was there when the injury occurred. We think that in such cases someone should go out and check it out. When we call CSB they say if you can't tell us it's really suspicious we can't take it. What *we're* looking for is some corroboration of the story we've been told, but CSB doesn't see that as their job.

Kid with genital warts, we referred CSB wouldn't take it because we couldn't say it was sexually transmitted. Until we could say that it was they wouldn't take it. For us it's a lot of gray, but CSB won't take it unless it's black and white.

Another case we had was a child who died. Child came in with injuries. We communicated the urgency of the injuries to CSB, we were concerned about safety of a 4 year old sibling. CSB never communicated or investigated the case until the child died.

Child who was removed due to severe injuries from being a shaken baby, was permanently removed.. Parents had another baby, weren't bringing child in for check ups. CSB wouldn't take the referral.

Cases of repeated injuries, took agency months to intervene despite repeated calls.

Many frustrations. If you don't have a connection with someone you often get no response.

5 week old admitted mid-May with severe head injuries, vertebrae fracture. Dad changed story several times. No arrest until two days ago. Difficult to get the cops to do what they need to do.

Joint investigation of CSB and law enforcement sometimes interferes with quick action.

Agencies and police in smaller communities aren't used to dealing with these situations.

Larger counties there is a lots of specialization. Some advantages. Only a few experienced/skilled workers are assigned to these cases. In smaller counties everyone does everything. Under-trained workers doing the investigations.

In This county we have specialization at the prosecutorial level. In smaller counties that doesn't happen. Police also have sub-specialized. They work very closely with the caseworkers. What I wonder is what happens in less specialized, generalized smaller communities.

Suggestion: make sub-specialists available as consultants to those who don't have the expertise. Either that or make agencies assign certain workers, or buddy them up with other workers.

High turnover, overworked, underpaid, great difference in skill and experience.

Law says we must report the suspicion of abuse. That threshold of suspicion varies widely. What constitutes the suspicion of abuse? That leads to the inconsistent response by PCSAs and law enforcement. Also varies among medical practitioners.

Teen may get beaten by father for some misdeed, have bruising and lacerations and dislocated fingers, that's not viewed consistently as abuse because child is misbehaving. In fact, it's not uncommon that the teen is the one arrested, despite their injuries.

It would be nice to be paid for evaluations of kids who are suspected victims of physical abuse. Very time consuming, cost us a lot of money. We don't get paid. Requested by lots of people. We don't get reimbursed, insurance doesn't have incentive to reimburse.

If you go to doctor for heart attack, chronic disease, your insurance will cover that. Many of these cases are not covered by insurance, or minimally so.

The patients we see are largely under- or uninsured. There is a bias, that physical abuse is more among the poor. Sex abuse is debatable, though my opinion is that it is also more among poor.

There is published data showing that kids who are hospitalized for abuse or neglect have a higher morbidity, mortality, cost more, and have more complex diagnoses.

Guidelines re what is abuse: most hospitals should have some document re what is abuse. How detailed that is may vary.

There are some statements from the American Pediatric Association that attempt to define abuse. 202, when skin injuries constitute abuse. There are some states that require mandated training for mandated reporters.

Cross training is nonexistent and needed.

Some reporters follow up with a writing.

Agencies would do well to consider the source of the information. If it comes from a doctor it should be given weight.

Some counties have rapid response teams who would provide guidance to investigators about what constitutes a and n. the line isn't easily drawn by inexperienced people.

Counties should seek expertise, second opinions where there's none available in their area.

Agencies need to learn about other forms of violence in the home. I can't prove that a particular parent is guilty of abuse just because they've committed domestic violence or assault. But it does raise the odds immensely. In the case of family violence a connection should be made. In the state there's an inconsistency.

In my county there's a high risk referral option, so if it doesn't meet the definition of abuse or neglect it can still be labeled "high risk." Many inconsistencies re these gray areas. E.g. history of domestic violence, nothing concrete to define risk for sex abuse but team as a whole has great concern for the well being of that child. Inconsistency re what information do they need to accept it, and what weight should they give to who is reporting?

Interview with State Attorney

3/2/05

Ambiguities in the definitional statutes is a root cause for the inconsistencies in practice among the 88 county PCSAs. When the structure is flawed, when standards are vague, you are going to get varying results, plain and simple.

There is a funding issue that also contributes to inconsistent practices. In Ohio child welfare funding is largely local. This contributes to a sense of independence by the counties. This has a statutory component, and practice would, in my opinion, be improved if that were changed. However, I don't see that happening in my lifetime. It's a political issue. The counties jealously guard their autonomy.

But changing the a/n/d statutes would go a long way toward standardizing intake/screening practices, and that is an achievable goal. Particularly with the current interest among various entities in Ohio, engendered in part by pressure from the feds.

Training would also help. It is my understanding that OCWTP offers a course on screening, but that it isn't mandatory. Making it mandatory would be a step in the right direction towards standardizing practices.

Although all of Ohio's maltreatment statutes need updating and strengthening, I see particular problems with Ohio's dependency statute. Most abused and neglected children in Ohio aren't called abused or neglected. They're called dependent. Agency attorneys like this because it makes it easier to protect children. E.g. when professionals know that something isn't quite right but don't have enough to prove abuse or neglect, dependency gives them the ability to protect the child. The problem is that by calling it dependency the agency is often precluded from including in the case plan requirements that could only be imposed in abuse or neglect situations. This is particularly true in counties where there are experienced, skilled, active defense attorneys who zealously represent their clients, the birth parents.

O.R.C. 2151.05, a very old statute that is never used anymore.

I favor what several states have gone to, which is to discard a/n/d definitions and instead use "child in need of service." This is simpler, has less stigma, and more effective. In her opinion, a/n/d distinctions serve no purpose. Except perhaps for statistical record-keeping, but the information could be preserved for the file yet not be necessary for court.

Interview with PCSA Director

4/21/05

How, if at all, do Ohio's child welfare laws cause problems in actual practice at PCSAs?

Social workers know enough about the definitions to know what charges we need to make at court. But the real problems come when it comes to bearing out the charges. Kids will fit the definitions of a/n/d. The problem isn't so much in the definitions, as it is in the way cases get prosecuted or cases get filed.

The code isn't confusing for us. Our biggest problem is how it gets implemented in the court system.

The whole dependency thing is our biggest problem. Our primary 2 categories of referrals are neglect and "other".

I wish the dependency classification would just go away. It becomes a dumping ground for the courts. I'd rather call a child abused or neglected, or say a family is in need of services. Just replace dependency with family in need of services.

Some directors are all for doing away with all distinctions and use "family in need of services." They say criminal court covers serious a/n cases, so don't need these distinctions in protective actions.

In our county we call abused kids abused. Occasionally police don't think they have enough to go for physical abuse and will go with neglect or dependency. Sometimes it's simply impossible to prove the seriousness on some cases, but we need to intervene so we use dependency—but in some counties that gets overdone.

We will go out on just about anything the community wants us to go out on. If mandated reporters call we often go out even knowing it's not appropriate. It's not fair to parents. But often we find much more serious circumstances than reported. So I'd hate for the statute to take away our ability to intervene in a non-threatening way with families. Which goes back to the family in need of service idea.

We have done a lot of training with our mandated reporters. When I first came here they were making really inappropriate referrals—lice, not wearing a coat. Over 7 years we've trained, shared our screening guidelines. The quality of our referrals have gotten a lot better. We've also started telling them "no", since now they should know what's appropriate.

Cases that don't rise to the level of the definitions are called "intake assessments". I've been uncomfortable with whether we should be out there intruding in parents' lives in those situations. CAPMIS is doing away with that in May—great idea. But only the pilot counties.

What problems, if any, does current law cause in terms of the adjudication process and outcome?

What happens is that we often can't prove an abuse or neglect so end up with a dependent child. It's a big problem all the way through the process.

Some of it has to do with the prosecutors. It's also hard to meet the burden of proof (clear & convincing), which lends itself to plea bargaining. Might not happen if we had clearer definitions.

Our prosecutor talks about "wins" and "losses", which we don't think in terms of. Our old prosecutor would rarely proceed on abuse, unless it was very serious. Otherwise, even for bruises or broken bone even, he'd call it neglect. His reason was we didn't have enough to support it. I didn't buy it. When this new guy came I said "no more—call abuse abuse and neglect neglect. This is very frustrating for the workers, and unfair for the child and family.

If you're calling something other than what it is the parent has permission to minimize their behavior. This is a real problem when kids have been harmed. I have a concern abut the terminology we use with families that allows them to minimize what they've done.

For the child, especially a child who is old enough to understand what happened to them, it could lead them to think the system didn't believe them or didn't care enough to call it what it is. Calling it what it is legitimizes it.

With family in need of service this description fits any case. Pro: allows you a less threatening entrance into the family. Takes away the stigma for the child and the family. Allows you to get involved with families you might not otherwise be able to get involved with.

Con: We'd be doing some kids some disservice. Those kids who have truly been a or n, their experience needs to be legitimized. Also, PCSA needs to have this in the history.

My vision: we reserve a and n designations for the most serious cases. Then specifically define what kinds of cases we intervene in for "family in need of services".

There are agencies who are opening cases where there is no issue but kids' mental health or parents' mental health. This would force other agencies (e.g. schools, courts) to do their work.

E.g., schools call us to refer parents whose kids are bad. Even facilities serving severely behaviorally handicapped (sbh) kids, when that's what they're there for. But some PCSAs would take such an inappropriate referral because of community view. (PCSAs need to work on educating our communities as well).

Courts do this too. In my dreams it would be great if court couldn't refer kids to us who are rightfully theirs. But until Ohio changes the policies about its judges it won't change.

Judge refers to us because he doesn't have enough money to provide appropriate services for those kids. So once they reach the end of their Juvenile Court program if mom and dad don't want the kids CSB gets them.

Another part of my dream-world is that parents would be held accountable for raising their kids instead of passing them off and saying they don't want to raise them. Especially teens. I'd like to file neglect on those families, but our judge doesn't think that's a good idea. You don't just walk away if you're a parent.

There aren't enough teeth in the laws that hold parents accountable for raising their kids. There's no way to technically hold parents accountable for their participation in the case plan except terminating their parental rights. But in the case of a teenager that's not appropriate. So parents wash their hands, kids spend three years under state care, then go back home. Something ought to happen with those parents. Some sort of juvenile court action. Right now all the only tool the court has is contempt. But so what—no penalty. Nor can you penalize them financially—many are just above poverty level. Plus, slapping them with a support order just makes them more adversarial. They think CSB is making them pay.

Can we please make PPLA go away? It's a catch-all for teenagers. We've done a terrible disservice for kids by having it available. Judges use it for 5 and 6 year old kids. We're still paying a price for those young kids being in that status—it's ridiculous!

Courts disregard the stiffer requirements for PPLA (not our county's court).

If you do away with PPLA, then parents are forced to do something about that child. They aren't going to want to permanently terminate their parental rights. They want us to raise their kids and fix them then let them come back home when they turn 18.

In addition to holding parents accountable, the PCSAs need to be allocated more money. And the courts. Courts need more community-based money. Need to be able to increase their reclaim money and be able to use it more creatively. Reclaim is the pot of money that is created when judges don't send kids to the Dept. of Youth Services (DYS). They're incentivized not to commit kids to DYS. While I believe that's the right thing to do, counties that do it well should be able to draw upon those reclaim dollars.

We have a lot of programs, but not enough money to serve, e.g., 6-year-olds who are delinquent. Some kids are just delinquent because of their special needs. Can't always blame the parents. Those are the kids that none of us can get to fast enough. These very young kids don't fall into any of our definitional categories. We all want to help them, but they don't fall within our categories. If I had a child in need of service

category we'd be able to team up with our community partners to serve these kids when they're young so we don't end up with really sick teens.

Other example, very young, inexperienced parents who just don't know what to do, and won't call us because they're afraid we'll just come and take the kids away. They haven't abused yet, but they could—they're at risk. I'd rather be able to intervene early rather than wait until the kid is harmed. Our funding doesn't allow us to be preventive. It would be interesting to see what would happen as far as what our funding would allow us to do and what would be required of us with this family in need of services category.

4-E is our primary source of funds, and they're tied to placement, not prevention.

At some point we'll have to discuss how changing our laws will impact our ability to utilize funds. Because child welfare financing is very categorical. There could be implications.

Our workers say "this isn't a dependency, it's abuse." They get very frustrated by that. Even with the most serious cases that are also in criminal court.

Would be interesting to compare criminal charges with actual disposition at Juvenile Court.

The language of the definitions don't create problems for workers. They aren't used every day by our casework staff. What matters to them is what is on the risk assessment or safety assessment form .

In our workers' minds the OAC is what matters. It tells us how we do our work. The OAC is like a procedural manual. So for counties who don't have their own procedures or aren't accredited, it's what they use.

Workers don't use the statutes to assess cases. They use the risk assessment. It's not about meeting the legal definition. They'd say that's up to the prosecutor.

Our prosecutor likes to say: "The OAC doesn't supersede the ORC". Workers are focused on the administrative code. "So what about the definitions", say the workers.

Are there any laws whose wording consistently lead to unfair results for parents? For children? For the PCSA?

Rehabilitation laws are a problem. We were unable to consider a grandfather who had an attempted gross sexual imposition 20 years ago as a placement for the child even though that best place. The OAC rules say we can't recommend placement if there was one of a long list of offenses. Some of them are very unrealistic. There are certain Administrative Code rules that stand in the way of our doing some of our best work in court.

They have an impact on what we can communicate to court. This worker in the grandfather case wanted to recommend this family because their home study was stellar. Her mistake was to say we couldn't recommend rather than just remain silent.

If we get a new category, our OAC rules won't match the intent of the law any longer.

Totally agrees that the ORD and OAC are incompatible.

Caseworkers could tell you about cases where the ORC and OAC don't match. Our workers erroneously believe that the timelines affect their ability to testify in court. They think if they miss a timeline they'll be considered bad.

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For group interviews let them give case examples.

The domestic violence laws help us protect kids. We have a domestic violence emergency response team. A swat team.

We go out on all domestic disputes, even if no physical violence. Lots of controversy in the field about this. But intervening when we do, very early, makes a difference. The kids haven't yet been victims. They've watched mom and/or dad do things they shouldn't, but they themselves haven't been harmed. Especially in emotional maltreatment. We go out, assess where the kid was at the time of the incident, the level of child's involvement, frequency, signs of emotional trouble as a result. In dv cases we assess risk and safety for the child.

Interview With Group of Juvenile Division Public Defenders

5/2/05

The way the statutes are set up is ridiculous. Have to flip back and forth to 33, 35, 16, 414. Would make more sense for the custody stuff to be in one section where you could go from emergency custody through adjudication/disposition/ permanent custody.

Child maltreatment statutes need to be separated from delinquency stuff. For readability purposes, if nothing else. The statutes are currently largely unreadable.

If you need more than a page for a statute it's too long. Some combine too many procedures. Especially in delinquency. But there are some in the custody area as well. Makes it hard for new lawyers—and there are so many of them in this field.

Unfair to Parents

The law (OAC) says that the case plan "shall" be done within 30 days, but there are no consequences for failing to meet that deadline. I've tried to use that, unsuccessfully.

The 90 day disposition rule is a problem. Service is a major problem. Almost impossible to adjudicate within 30-60 days because of service problem. If someone's needs a psychological, it's not doable within 90 days. The 90 day rule is no disadvantage to the agency. It all falls on the parents. If the agency isn't ready they just dismiss and refile. If parents aren't ready there's nothing they can do.

If my clients are already in drug treatment I'll waive. But if not I'll dismiss to buy some time for my client.

Social workers think that there should be no reunification until everything's been done. Not true. E.g., when parent is ordered to take a parenting class, it takes 3 months to make the referral, 3 months of parenting class. The rule is "substantially complied" with the case plan. Social workers don't think of it that way.

Example: Mom comes into system with drinking problem, that's why kids are removed. Case plan says mom must remedy her substance abuse issues. The way to do that means she must be assessed. Assessment says she needs intensive out-patient. She says she can't because she'll lose her job. I tell her to go to AA, etc.. She does, gets clean, worker won't agree because she hasn't done what the case plan says (get intensive out-patient), even though she has remedied the situation.

Prosecutor gets written up if he objects. It's social-worker driven. Prosecutor will be ok with dependency but social worker isn't. Even if social worker is ok she must go back to agency and check with her superiors.

Repeated staffings is another problem. The workers say I don't care (I'll agree with what you're asking) but I must go to my superiors."

Wasted court hearings. Used to be attorney-driven. No more.

Part of agency's motivation is the bad publicity.

The whole a/n/d distinctions are unfair to parents.

Though it says the child is neglected, parents still see it as them being blamed for abuse. Even if a client is abusing substances on weekends and child never saw it, they can be found abusive.

Supreme Court says if baby tests positive it's *per se* abuse. Ridiculous. Even if marijuana alcohol or cocaine. Generally nothing wrong with the baby. At least not immediately determinable. Different if it's heroin. Not to minimize substance abuse.

So how we deal with it is negotiate the charges to be more palatable to the parents. Reduce abuse to neglect and neglect to dependency whenever possible.

Would much prefer "CHINS". Would cut down on a lot of filing [motions].

If complaints were written more objectively, using just facts. Sometimes we have to go to trial just on the language of the complaint.

Used to be, everything was dependency. Then agency decided to just hear neglect cases and deal with dependency informally. The only thing that did was they started calling everything neglect.

It's much harder to change a neglect to dependency.

Also, the complaint often uses the client's own words against him/her. Clients self report. They say things to the agency reps, thinking that they're there to help. Then the worker uses this against them: testifies or says "Mom says she did abuse drugs, etc." For the parent it's embarrassing, ruins the relationship; there's a sense of betrayal. We think it's a violation of due process. But it's an administrative hearing (staffing), so can't use that argument. I tell the workers to just tell them that what they say an be used against them, but they won't. If we're lucky enough to have a client call we advise them to keep their mouth shut.

Suggested solution: let lawyers into the staffings/administrative meetings. Sometimes the agency tells parent to come to the meeting and bring the kids, then they take the kids after the staffing!

Agency won't let clients bring lawyers to staffings. They do let GALs in. At least tell them that what they say in here could end up in the complaint. Clients assume that what she says will be held confidential. Had she known she wouldn't have been as forthcoming.

The whole 12/22 rule is very unfair. Especially with a substance abuse client. First they have to get off the drug, then in treatment learn new coping techniques. Puts people in a horrible bind. Can't always do it in a year. Even though you have two extensions, you can't always get them (depending on the worker, etc.)

Another thing: If parent does comply within, say 6 months, no one rushes to move the annual review up. Workers think in terms of a year, where the annual review is set at disposition, and that's the date. It is possible to advance the annual review, but only the agency can do it in a timely fashion (rocket docket). But they don't even think about it. If we do it still takes three months.

Agency is more willing to do this after the year (they've gotten a extension, plan is complied with, agency will do a rocket docket.

Slows down the process.

Visitation

Terrible. The best our clients do is twice a month, a couple hours at a time. Even with an infant it's once a week for a couple of hours. If kid is with a relative parent can have unlimited access. But for most parents it's just not possible.

Agency delays overnight visits too long. Start with couple days a month, later unsupervised, still later overnights. For most families unsupervised visits are unnecessary. Then they delay the overnights, could do that a lot sooner. You can structure the situation so there's no danger to the child. Put in a parent aide, etc. the excuse is the transportation. They have to use vans to transport. Vans break down and drivers quit. Foster parents don't like to help with transportation.

Solution: have a visitation unit that focuses on having as much contact as possible. Have visits at community centers where there's' staff around. They use visitation as a carrot. You haven't gotten into drug treatment so we're going to restrict visitation until you do.

Visitation in child protection is so much more restrictive than domestic relations visitation. They even let sex offending parents see the child; it's supervised, but they never say no.

Permanent Custody

Agency says child need s permanency. Permanence is a state of mind. PPLA could be permanency. Many service providers, social workers, feel they have to have permanent custody to have permanence.

Agency tries to change PPLA to p.c.. I understand the concern about foster care drift, but there are certain cases where the child isn't adoptable. Who's kidding who? Why sever rights when you have a parent who wants to visit, does visit, if we know that the child won't be adopted?
How great is permanent custody? Adopted kids are always searching for biological parents. By cutting off the rights what have you really done for the kids. We get a fair

number of cases where the adoptive parents don't want the kids anymore. At least a handful of cases a year. The drive to permanence is not always what it seems.

Suggestion: an open adoption with teeth, so adoptive parents can't just cut off parent's rights. Most successful cases are where foster parents and biological parents work together. Actually incorporated into final order—even though we tell them it's not enforceable. Exchange pictures, grades, etc.

The reunifications that work best are where foster parents act as respite after reunification—very open.

Suggestion: Pre-permanent custody order. Get temporary custody, go a year, don't look like reunification is going to happen, mom hasn't gotten it together or child isn't adoptable. Have a pre-permanent custody status. Make orders, mom visits and pays child support (even a dollar a month). Measure it at the end of a year. If there's been no support, or visitation, you could then expedite permanency. Would greatly cut down on the permanent custody trials. But if it works, everyone is better off. It allows the parents to fail on their own rather than have it be a fact-finding thing. Kind of like an open adoption. Also helps the foster parent if they realize they can't do it—would allow them time to back out.

Don't like foster-to-adopt homes, where babies are put in foster homes with the understanding that if they become available the foster parents will adopt. Where the belief is that the parent has already lost kids. It causes custody battles with the foster parents, who have bonded with the child and fight like crazy to keep the child. Parent has gotten it together, perhaps a little delayed, but foster parents have bonded, and fight so hard. Good people, but misguided. Should be counseled that it's not permanent.

Article about foster parents taking in mom and child and mentoring them. To avoid permanent custody. There is a special foster parent agency that is branching out to do this.

Another social worker thing is that they are too judgmental: they often come across as uncaring taskmasters. Have a list of things that parents have to do, but don't do anything to help them do it. Some are very good, many are not. High caseloads. Have workers be social workers, not criminal justice or psychologists. Without a certain level of credentials, training, experience they shouldn't be called social workers—just caseworkers. Estimate only 10-20% of workers at PCSAs are licensed. Need more training.

Clients who speak up for themselves (a small minority—most are taught to not challenge "authority") all of a sudden are labeled "unworkable."

We know that social workers have a difficult job. If we could just talk to them directly, it would be better. But we can't talk to them without their attorney around. Prosecutors treat their social workers as a client, therefore won't let us talk to them alone. To be a client or an agent the social worker must have some say in the management of the case. They aren't. They're more like police officers. This leads to a total waste of time because the lawyers don't know anything. They have to check with the social worker and get back to me. Takes two days to get what I could get in two minutes.

GALS good and bad. Hate the ones who come in talk to the social worker and come into court pretending they've done the work. Ought to talk to the parents, the kids, observe more than one visit. Also, GALs don't show up—all hell breaks loose if we're (parents' attorneys) late. Nothing happens if they don't show. More continuances. Some consistently don't show up. Isn't a really good method. Need to get rid of the bad ones.

Delinquency attorneys serve by payback. They get called if bailiff knows they'll give to candidates' campaigns.

We'd like to set up a separate custody unit at the public defender's office. Very different skills required. Our administration not very receptive. Conservative in terms of trying things out.

Need to have a family court rather than a separate domestic relations court. There's too much territorial stuff going on. Having just one "family" court would decrease it.

Once the kid is taken away, parents can't get medical card, money, can't get low income housing. If they get jobs the low income jobs don't pay enough to pay rent. Good social workers will do stuff like that (help hook clients up with those things), others just sit back. Instead of paying the foster parent give the money to the parents. Or if that won't work put them with relatives, who currently don't get paid, and pay them.

We have beautiful stadiums, but no money for kids, families.

A drawback of CHINS is that it won't specifically address what is the situation. Suggestion: call it CHINS at temporary custody, and then if the agency wants to go for permanent custody they can use the abuse/neglect. Currently agency thinks they need to build a case. Also think might not be able to do appropriate case plan. If parents don't agree to the case you could still l have a trial. Many case plans are just boilerplate anyway, not specific enough.

Legal custody. Once legal custody is established it's much harder to get your kids back. Based on change of circumstances with the caretaker or child, not parent. The second determination is always based just on the child's interests. Came from ASFA. Had to do with money. We prefer temporary custody with placement with the relative over legal custody. Much easier for parent to get child back. Caretakers prefer this too because it

keeps the agency involved. Agency likes legal custody because it closes the book for them. If parent can't get it together in a couple of years, sometimes a relative is then willing to go legal custody. Then parent can't get child back unless custodian consents.

Interview w/ Group of Child Welfare Stakeholders (PCSA staff, counselors, educators, attorneys)

510/05

How, if at all, do Ohio's child welfare laws cause problems in actual practice at PCSAs?

Our county takes almost everything. In the old days we called everything abuse or neglect. Then, for a while, we called everything family assessments. Didn't do risk assessments, didn't call anything a or n. Right now we're adhering to a/n/d distinctions more closely. We have a category called child welfare assessments which encompasses a lot. We like to call it more kindly, because we know there are malicious complaints. Tried to get away from a or n labels, which make parents think of themselves as second class citizens.

Our triage system. The way we process cases, we go out on every case but have a triage committee, worker, supervisor, 3 other supervisors that meets and goes through a process. Look at various areas of their functioning. Make an assessment. Look at every case in the same way and determine which get ongoing services.

Schools sometimes make referrals of kids who have behavior or emotional problems, outside the realm of a or n. but because we try to be responsive we take them all even though no a or n.

Prevention is important. Allows us to prevent escalation to abuse or neglect

Doctors

We currently have to bring doctors in to testify. This is a burden on the whole process. Looking at 2 depositions. The timelines are unrealistic. Why can't we authenticate physicians' records w/o having them appear?

Dependency

Overuse of dependency category. Don't often see neglect adjudications in our county.

Our court is tough on abuse, but calls almost all neglect cases dependency.

Most of us, even 30 years, couldn't tell you what is in the Ohio Revised Code. Our (and the workers') knowledge of what the law says is through experience, not actual content.

Our system emanates out of what the law says in Ohio.

Abuse statute: talks about “cruelly torturing” and physical discipline only in cases of serious physical harm. Very difficult to prove. So many people call things abuse that don’t come near that statute. So counties make up other designations that better reflect what’s happening.

We identify as abuse what doesn’t rise to that level statutorily.

We do have a category of “blood and broken bones”, 8-10% of our cases.

Classifying Cases At Screening (before investigation)

Rule requires us to classify *before* we go out and investigate. Extremely frustrating. What may sound like abuse on the phone often on investigation is absolutely nothing.

Our state people say you have to do a risk assessment, do an investigation, and unsubstantiate it. Which requires 30 days. When not needed a different approach is required. Families know. We have to send a letter saying what it was classified and that it was unsubstantiated. Must send to central registry as “abuse, unsubstantiated.”

Example: 3 year old wandering the streets. Parents dropped kid of at grandparents. Communication error between grandparents. She thought he had the child, he thought she did. We had to classify it as neglect, because that’s what the phone referral sounded like. In our investigation it came out it was just a mistake, caused by miscommunication. But we had to send a letter to the grandfather as a “neglect perpetrator--unsubstantiated. Unfair to that family.

We were using what the referrant said to determine what we called it. That’s what ODJFS requires. We want to change their mind. When we see a serious-sounding referral, we charge out there—prioritize it as emergent. Go out within an hour, see nothing, then we want to be able to say we prioritized it as abuse, but didn’t call it abuse. Then based on our investigation we label it.

We can label up but not down. Can go from assessment to abuse, but not from abuse to assessment. “(Child Welfare Assessment” is a screening category created by this County CSB to avoid having to label cases a or n before they go out).

Safety net is that we categorize it based on the referral.we still have that protection but don’t have to call it abuse.

Reporting Laws

The reporting law defines abuse and neglect. Tells everyone to refer if you have a reasonable suspicion.

Everything is set up for the worst case scenario, w/ risk statement.

Teachers are educated that you have to refer “reasonable suspicion”. So they refer cases like lice, behavior problems, dirty clothes. Agencies think worst case scenario. If teachers did too, that would reduce our referrals by 75%.

Different definitions by educators and PCSAs as to what is appropriate for referral. We’ve worked hard to understand each other in this county, but for many there’s a lot of frustration

I tell my [school] counselors if you have a concern, call. Let PCSA tell us it’s not appropriate. Better safe than sorry.

Dependency

Lack of consistency across the state—88 counties.

No one knows what dependency means. Use words that have two different meanings.

In court it’s just a catch-all phrase. We have gut feeling something’s wrong, can’t put finger on it, or trying to get services into the family. It’s very comfortable for lawyers because it’s no fault.

Defense lawyers get upset with 2151.04(D) which lets us take the new baby in the family.

Families don’t understand what dependency means. Even when the case is over.

Calling a or n dependency causes problems when you have a sophisticated attorney who says then why are you involved with my client? Often we can get clients to accept services anyway. But if their attorney says they don’t need to cooperate or follow a case plan or sign releases of information, frequently they don’t.

As social workers we don’t want to label anyone anything. Until we’ve established a relationship. We’re trained that child welfare is supposed to be a non-punitive profession. You don’t ant to ruin relationship, which is the best resource the child has (the casework relationship) by calling it a or n.

I disagree—important to be up-front with them, can be therapeutic.

The language of the law doesn’t allow you a middle course.

If you reduce a neglect or abuse case to dependency, down the road it’s not a good thing because it won’t be part of the record, record doesn’t look that bad, so if later you want to go for pc it can be hampering.

We developed and use a magistrates' decision form that includes all the details so even if you just call it dependency it is known that abuse occurred.

Illegal Placements (neglect) statute: babies being traded in the hospital parking lot. It should be not tucked into the neglect statute. It should be on its own. Dangerous to tuck it away. Sets up lawyers to do inappropriate placements.

Statute doesn't give details. Making the statutes more specific would take a lot of the confusion out.

Health "morals' and well being. What is that?

19 agencies had 52 different, unrepeated categories. It's epidemic around the state, people trying to call it something other than a or n.

When we bring a child under foster care we have hundreds of rules, forms to fill out. But when a call comes into the agency there's no standardized form, no specific categories. They leave it open to interpretation.

I worked in KY, which has centralized screening. Frankfort calls the region, the region calls the county.. It went through so many different layers, got all convoluted.

State needs a standardized, front door approach. The same screening form, other forms, so everyone is using the same approach.

Community idiosyncrasies must be accounted for, what expectations are, etc.

Law is very ambiguous about transfers from one county to another. Conservative courts don't believe in transferring, others do. We transfer, receiving county closes it that day. Similarly, we have cases come to us, we accept it, then learn family has done everything on the case plan and close it.

It's like doing 88 interstates.

Home studies on families that live out of county. We refer out, some counties travel to other counties, do their own home study, then let home county know.

We have a great relationship with the schools. We go out on every referral. So many of them we can go out, provide services, prevent *future* problems. We haven't been challenged when we go out on non a/n/d cases—yet. The state tells us we have no right to be there, but our community expects us to do those things. Because of our community's expectations, parents don't say we're intruding.

We don't go out with a kick-but attitude.

I don't think the variations from county to county in terms of the kinds of referrals that are received are enormous. Discernable, mostly with regard to available resources. But similar-size agencies go out on similar cases. *The difference is in what people are calling them.*

Akron Beacon journal article tried to compare counties. Couldn't do it.
So much left open to interpretation.

Some folks say if you didn't focus on the other stuff (non-a or n) you'd have more resources.

Perhaps have a preventive category.

Needs to be a category called CHINS and have some language defining that, and giving clear statutory authority for agency to intervene in such situations.

Other counties label as abuse or neglect what we call "child welfare assessment". So their abuse/neglect "numbers" look higher. Makes it very hard to compare counties.

All counties need to use the same categories.

The cases we go out on are very important cases, they just don't rise to the level of abuse or neglect.

Drug case. Mom using drugs. Doesn't fit abuse or neglect. What do you call it so you can get out there and provide services? Other counties call it neglect, when it's not supported in the law. We call it child welfare assessment.

Those labels have an impact on the parent. Used against them down the road in a custody battle, for the rest of lives, they're labeled.

School referral: parents aren't giving child medication. We have no right to tell parent to give medication. Some might call it medical neglect.

Another example: Utilities turned off. Warm weather, is that neglect? Some say yes, no.

We (school) get lots of calls re educational neglect, another: discipline vs abuse. We err on the side of being overly cautious.

Collaboration is extremely important. Must accompany any changes in the laws. We have meetings. We send counselors out with caseworkers. We (schools) had unreasonable expectations. That kind of thing helps. So we say, if CSB won't do it, what can *we* do?

We're (the PCSA) really dealing with minimum standards of parenting, when the community often has higher standards. Especially difficult getting lawyers and GALs to understand that. Child protection has different standards/expectations from custody disputes.

"**Differential response approach**." Other states are doing it. Misssouri. Connecticut. Just doesn't' seem to have gotten attention at the state level. People are using different approaches, just keep reinforcing. Don't need to reinvent the wheel. Just have a system that incorporates that.

To have an absolute screening system across the state without changing the laws would be a *bad* approach. Folks would just think of ways around it. Right now there's room for flexibility. To take that away wouldn't solve the problem.
Of all the cases we investigate we close 80%. Often refer to other agencies, do crisis intervention, send homemaker, but still close the case. That's just good old fashioned social work.

Need a catch-all provision. Many agencies screen out many of these referrals.

We have no "dismiss and re-files" in our county. Our court will get it done within the required time frame, if we have to stay to 7:00.

Unfair To Parents

The 12/22 rule is unfair to parents. When you're dealing with a parent who's a crack addict, that's not reasonable. A real problem for parents. If you accept the premise that treatment/recovery is a two year process, unless they have family supports they're going to lose that child.

Leads to repeat babies because 12 months isn't enough to treat. Need more residential drug facilities. At least that could give the court confidence to let child stay with parent at the center.

Very hard for clients who are addicted to get assessment until 6-8 months in, because of the addiction process. They may not be ready for treatment when we remove the child. And if the client has mental health issues as well as addictions, they get into issues of which do you treat first.

Meanwhile parents are just hanging out there waiting. No one is trying to pull them in. We get permanent custody of more kids than ever before.

Our county uses a very strict interpretation of PPLA. 10 cases a year. Across the state, that is unusual.

If parents are being categorized as a or n when their behaviors don't match the legal definitions, that's not fair.

Need for dual system. Should parents who come in and ask for help be treated the same as parents who commit more severe abuse? Currently we have to treat them the same—do a complete risk assessment, etc.

Laws Unfair to Children

Interstate is unfair and cruel for kids. The time it takes. We can wait 6 – 9 months and still not have results. If there's one error they'll send the whole thing back. It's a bureaucratic nightmare.

Arkansas declared it unconstitutional. You have to contact a private social service agency to do a home study to even place the child in their state.

Our sister agencies often don't consider our urgent need their urgent need. We waited for two years for an interstate evaluation on an aunt of two kids, only to hear she has backed out. So those kids sat in limbo. Takes it out of our control.

No matter how close the relative in the other state is to our agency, still have to do an interstate. I live 3 miles from state line. I couldn't take custody of my nephew who lives 3.5 miles away, in PA, without going through the lengthy interstate process.

Takes us 30 days to do a risk assessment. How risky can it be if it takes us 30 days?

Unfair to Agencies

The evidentiary process is burdensome when you have to deal with other professionals. We have the luxury of a child advocacy center. But in counties where you have to depend on private physicians to come in to testify, that's a real problem.

Suggestion: Relax the hearsay rule where it comes to doctor's report. If they're willing to put their career on line do we need to haul them in so they can be cross examined. That means you have to bring in court reporter. Bottom line is there's no record if no court reporter.

Classification expectations

Risk assessment (the "fram") is too cumbersome. From a legal point of view it's a nightmare. Why did you choose a three rather than two? Overall amount of time and paperwork required is ridiculous. CAPMIS may address that.

Juvenile Court and PCSA are part of the same system. Not two systems. Judges need to be looking at the same play book.

Our magistrate developed a protective supervision order because it was nowhere defined. In many counties parents are allowed to move to another county while under Protective Supervision. Our magistrate says in our county you don't move until our order is terminated.

Also accountability and training is needed for judges. The Supreme Court needs to enforce.

Supreme Court also needs to do something about GALs. Recently the Supreme Court says kids are entitled to counsel as well as GAL. One category would be easier, but scary because you've taken away some of the proof issues. Would allow the state to become more intrusive.

Initial reaction: keep the abuse statute the way it is with the endangering language, make it real explicit. Then have another category that would cover most of the work PCSAs are doing day in and day out.

Would allow us to be more honest about a or n, but give us a kinder, gentler approach without labeling parents. More honest, more cooperative…

How would parent perceive chins? Would give them more power to reject our services. Allow them to minimize or refuse to respond.

Must create a system where you get accurate documentation. So six years from now we can know the history. So we still need the a/n categories but just more clearly defined and then used more consistently from place to place.

Our county uses several classifications: Abuse, neglect, dependency, sex abuse, discipline, child welfare assessment …

Interview With PCSA Intake/Screening Caseworkers and Supervisors
5/10/05

Confidentiality

Families want to know who made the referral. We can't disclose. If someone is going to take the time to refer they ought to have to share their names. Creates a barrier for the triage dept. We spend a lot of time talking about who made the referral, etc.

On the other hand, some wouldn't report if they knew their name would be out there. Also, sometimes we're working with criminals who could harm those who called. Or mentally ill.

Malicious Referrals

Catch 22. We often know it's a malicious call, but we're caught. So we take a conservative stance, which angers the families we're investigating, affects levies, votes, etc.

It's hard when you get anonymous referrals over and over when nothing is there. we have to keep going out. To cover our own rear end.

Should be a more efficient way to deal with malicious referrals. Can't remember the agency ever approaching prosecutors.

When cases come in and are classified a certain way you can't go back and change them. Either no substantiation or false complaint.

All of us who are busy with paperwork have risk assessments and all the mandated obligations, e.g. must see all the kids in the home. When you know clearly there's nothing to the referral you still have to comply with all those requirements.

This also causes a problem for families. If you classify as a or n, you have to enter into a registry. So even parents who aren't a or n 's names are in the system for some time. Not a good system. Unsubstantiated cases stay in 2 -3 years. If indicated it's 5, if substantiated it's 7 years. (double check these)

Referrals aren't always reliable.

The OAC rules speak to when it has to be purged from the central registry. Doesn't say what we're supposed to do on a county level. So if we get a call from another agency we have to say yes.

Definitions

The definition of abuse that we go by comes directly from the law. Says it's prolonged, severe, etc. Sometimes I see injuries that aren't severe but still problematic. Who determines what's severs? We have problems prosecuting those cases. Sometimes it's not prolonged. You can have one incident where kid is seriously injured, doesn't fit.

Different jurisdictions interpret it differently. As to what the law means.

What we think is abuse is different from what statute does. Physical discipline, how do you classify that. Lot of gray area.

Lot of mandated reporters have a misconception about what is abuse. E.g. they think if a child ‘s been hit with a belt it’s abuse, but from our perspective it’s not.’
We look at where they’re injured, such as liver, kidney. But often it could be the foot.

The vast majority of referrals we receive aren’t injuries, don’t fit the categories. We don’t have authority to serve the vast majority of referrals we get. Ties our hands from intervening with preventive services.

Technically parents don’t have to talk to us, let us in if no a or n, but often they need help. Still feel kids are at risk, and could benefit from preventive services. But there’s no other category that gives us authority to go out and do an investigation.

Create another category in addition to a/n/d. e.g. home isn’t deplorable but family still needs help.

Dependency has been so ill defined over the years that we have defined it one way, with county legal precedents, but not voluntary cases.

If you classify a case as anything other than abuse or neglect ODJFS says mandated reporters aren’t protected in reporting.

State offices come in and look at our files, say we’re not calling enough of them a or n. because we use a different system.. Other agencies call everything abuse or neglect—that’s the difference.

People have stigma attached to them because state says we have to list more abuse and dependency cases. So people stuck with stigma when it doesn’t rise to that level.

Definitions need to be clearer or really, really general and vague so you can throw whatever you want in there.

Could benefit from a preventive or chins category that give us authority to intervene in cases that don’t rise to level of abuse or neglect.

Problem is when ODJFS passes rules in OAC that are also inflexible. Has to be some give and take.

We’re doing it [intervening in non abuse/neglect cases] but if we get sued we’d be in trouble.
From a community perspective, another category like CHINS is important because it protects the family who is poor, mentally ill, low functioning who don’t know their rights. Don’t have an attorney. So often the haves walk away, the have-nots don’t. Would get you into more of the haves’ doors.

Also we feel intervention is needed, we go to court and in our complaint we allege abuse, neglect, or dependency. Have to get the law involved. But the allegations don't support that.

Our courts call everything dependency. Plea bargain to dependency. Hard to meet the standard of abuse. Hard to prove it.

Community reads facts, outraged because not enough done. Puts agency in a difficult position.

Pleading down parents are less cooperative. Don't want to work on case plan, think they're beyond it. If you have clients who are borderline we might go along with it, but otherwise it's not a good solution.

As long as you're in court they'll cooperate, but once court is over forget it.

Could also affect permanency planning. If you have a finding of a or n you have reasonable efforts exemptions, etc. with dependency you don't. ten kids lost, ten dependencies. Going after the 11th is tough if you have 10 prior dependencies. Can move quicker to find permanent home.

Parents are scared of being labeled a or n. The stigma undermines cooperation.

Sometimes you need a big stick, sometimes a little stick. Case by case situation.

Problem if child is very young. Sex abuse and physical. Prosecutor can't go forward.

Cases where we feel discipline is excessive, go to the prosecutor, they won't do anything.

Needs to be more consistency, clarity about what constitutes abuse.

E.g. if sibs beat each other up, is that abuse?

Neglect Classification

Cops reluctant to get involved in neglect cases. Problem for us if it's serious.

CSB workers go out and meet with schools, say if you're not sure err on the side of safety, call us and we'll determine if we should go out.

Years ago everything was abuse or neglect. 5 years ago everything was child welfare assessment. Now we're moving back toward the middle. It's because the definitions are so broad.

Juvenile Court Process

Timelines don't cause problem in practice.

Feds say you must finalize so many adoptions in 2 years or you won't get 4e money. The further in the system we get the harder it is to meet monitoring expectations, can lose money.

12/22 rule. Not always fair to parents. Not long enough for some parents. Law says we have to file. We don't. Other times we want to file but magistrate says no.

Problem getting court guidelines to jive with federal and ORC rules.

Not consistently unfair. But can be.

All very serious cases (sex abuse, dead kids, shaken baby , broken bones, where you know it's serious) go to our "Investigations" unit. All others go to the Triage dept, which does an assessment within 3-5 days. Triage meets and together decides whether to stay involved.

The 30 day rule only applies to abuse and neglect

Inconsistencies

There's no consistency between counties. When we call another county to make a referral they may not accept what we do, and vice versa. We have family who moves to another county and we try to refer and they won't accept them.

We do a lot more preventive work here. They won't get involved unless there's a crisis. They say "we don't do prevention."

I'll ask agencies in other counties to do courtesy home visits, to check up on a family that's moved, make sure kid is in school, has a house to live in, etc. They won't do it. Because if they don't have a referral alleging abuse or neglect they won't go out on it.

No Contact Orders

No contact orders from court when parents are accused of endangering. No disposition yet but parent isn't allowed to see kid. So you have to find some place to put kid.

Parent charged with drug abuse, drug activity in the home. Charged with drug offenses and endangering.. Court put on a no-contact order. So alternative arrangements had to be made. If single parent, kids have to be removed. But no indications kid is abused or neglected.

A referral that just says a parent is using drugs wouldn't cause us to necessarily see it as appropriate for us.

Babies who are born cocaine addicted we consider abuse.

Triage handles those cases, lack of supervision, etc. cases. So we do a and n too, but investigation would do the more serious ones.

Domestic violence between two children. Judge said mom couldn't have both kids in same home. One had to be sent to relatives.

Many domestic violence cases are pleaded down in criminal court because after two it's a felony.

Holding Parents Accountable

Parents violate court orders, nothing is done. We don't often ask for court to hold in contempt. Court does nothing. We have to say something should happen that they're violating, so we're asking…

Court order that parents do such and such. We went to court placed kids in legal custody of relatives. We notified court of where parents were because court had charged with contempt. They did nothing.

We have parents who shouldn't be around kids, police won't do anything about it. Won't arrest them, pick them up, etc. they don't have the manpower.

Case plan is technically a court order. If no progress in six months, what happens? Once it gets to the 12 months the magistrate will say to agency "now you can file." Even when we know parent won't change from beginning. Have to wait that 12 months.

Domestic Violence

Domestic violence between 17 year old boy and father, dad clearly the aggressor. He was arrested and bonded out. Muni court imposed a restraining order saying he must stay away from boy. I called the prosecuting attorney and told her my concerns that restraining orders needed to stay in place. Prosecutor was going to make certain recommendations to reflect my concerns. Sometimes that doesn't happen.

Interview With Assistant Prosecutor
5/2/05

How, if at all, do Ohio's child welfare laws cause problems in actual practice at PCSAs?

Social workers don't look at the statutes They don't have a clue. We were doing one page handouts for every page of the definitions.

In practice, workers have a real low threshold. When they do their investigations they don't have to use clear and convincing standard to declare abuse or neglect. Perhaps not even preponderance. So when they do their dispositions they're making findings of sex abuse that may have nothing to do with "sexual activity" as required under Ohio law.

E.g. grooming (forming relationship, buying gifts, taking to movies, setting up for kill) is often identified as sex abuse by agencies. But in the law it is not. The same goes for voyeurism. It's not sexual activity as required by the statute (which must be penetration or touching).

Until ODJFS finally passed the rule allowing appeals to investigative dispositions, there were no due process rights for perpetrators. No way to challenge an agency's finding of substantiated. There are thousands of people out there who have been listed as sex abusers in the central registry for ten years when they didn't even come close to sexual activity under the law.

Workers are making findings based on what they've been taught about sex abuse. It's not that they're ignoring the statute, they just don't understand it. Their Bible is the Ohio Administrative Code. They may read the statutes, see a few words, and don't really ever go back to it. They don't look at the legal definitions. They make up their own definitions of sex abuse. It includes some similarities to the statute, but they go beyond the statutory definition.

3 or 4 years ago ODJFS provided for appeals, people started showing up with attorneys. I start hearing this stuff. We had to "unsubstantiated" many of them. When you took the facts involving an allegation and then looked at the law, if there wasn't a match we had to unsubstantiate. It may be inappropriate conduct but not rise to the level of statutory violation.

There's no definition of sexual abuse in Ohio law. There needs to be. Criminal statute uses "sexual activity (conduct/contact).

Workers think verbal stuff (nasty talk), sexual harassment, grooming, constitutes abuse. Under the law it doesn't. They're trained to think "why do we have to wait until the child

is actually a victim? Why aren't we swooping in and protecting him before it gets to that point?"

I'm not saying that these behaviors shouldn't be considered abuse. Just put it in the law. In practice they're finding a lot of things sexual activity that aren't. In some rural counties, where parents don't have access to attorneys, who knows what how many parents are being victimized by this practice?

There needs to be a civil law definition of sex abuse. Practice is out of sync with the law. Whether you make social workers conform to the law and make their findings fit the law or change the law to mirror social work practice, I don't care. But it has to be one or the other. In terms of what they're taught what is sex abuse.

If that's what the law says it is the judge will have to follow the same definition. So there's no disconnect. Right now what social workers do isn't connected to what juvenile court and criminal court judges do.

Also, corporal punishment. We've had families where there was a mark or bruise labeled child abusers. Because the agency was using the medical model, under which any time there's a mark or bruise it's abuse. It may be the "social work model" as well.

Trainers tell caseworkers that leaving a mark or bruise is abuse. It is *not* abuse. It may look bad, it may be against their personal or agency philosophy, but it is not abuse. "You should never hit a child" may be the prevailing view but it is not the law.

So parents, mostly African American parents, are being wrongly labeled child abusers. I'm not trying to promote hitting kids, but until the legislature says otherwise it's not abuse. Not legally.

I had workers ignoring the second sentence of the third paragraph. "At variance with the history given of it, except…" They ignore that language—read around it. I had a case in which Mom grabbed her teen by the shirt, left a mark. The caseworker called it abuse and based on that deportation proceedings were initiated against her. She came back to us four years later, very close to being deported. I had worked with my workers in the interim, and my worker realized what a mistake she had made 4 years ago. So we sent a letter "unsubstantiating" the so-called abuse.

Workers don't understand the child endangering statute, or they ignore it. One child was disciplined by his parent, went to the e.r. with a black eye. Trial court said it was abuse, Court of Appeals said it wasn't abuse, that it didn't meet the legal definition of abuse. *Most* of the time there is no abuse when corporal punishment is being used.

Since PCSA investigations are different from juvenile court which is different from criminal court, abuse should be civil. So when workers are doing investigations they use a "preponderance" standard. Then they go to juvenile court where clear and

convincing is the standard, or criminal court where “beyond a reasonable doubt” applies, and get a very different result.

So the definitions of a/n/d need to match the nomenclature and training that social workers get. The words aren’t even the same as what social workers use.
Judges and magistrates know how to make the leap and understand theirs a huge leap, particularly in the physical abuse. But social workers are not lawyers or judges. They need to be trained so that the results of their investigations are more in line with the requirements of the law (or vice versa).

Take the definitions of physical abuse out of the criminal statute. Make it a *civil* definition. If you’re going to go after a parent for a crime you don’t need what happened in juvenile court anyway. They don’t need our definitions, so why are we using theirs? Everything we do is civil in nature; why not make it that way?

In criminal cases there’s never a charge of child abuse or neglect. The charges brought against parents don’t match. There’s a total disconnect. For new lawyers too.

Social work investigation leads to one result, juvenile court another, criminal court another. Yet we tell social workers to go to the criminal code.

Sex activity and endangering takes you right to the criminal code. What kind of help is that to a social worker?

Exhibits evidence of …mental injury. That’s a term that social workers don’t use. They substantiate emotional abuse. That’s not in Ohio law anywhere. So why use mental injury, when they’re substantiating emotional abuse. We’ve been doing a lot of illegal stuff to parents.

This applies to provision C of the abuse statute as well. (other than by accidental means…). Gives a corporal punishment exemption, except D. Then D takes you right back to physical abuse. Lot of workers look at that, see “except as in D”, say that doesn’t make sense. Double talk. D cancels out the corporal punishment exception in practice. Workers say you can have corporal punishment except as in d. d says …workers use d to prove abuse.

Paragraph c and d is so confusing. Basically say: “It’s abuse, it’s not abuse, it’s abuse, it’s abuse.” 2151.031c and d.

Again, the abuse statute refers you to criminal code three times. Bottom line: make the definitions civil definitions. Use the tem sex abuse—that’s what social workers are taught.

Need to define what the standard of proof is for CSB investigations. What is the standard of proof at the level of investigation by the social worker?

The "Indicated" Category.

Means have some evidence but not enough. It's a "heads up." I don't have a problem with this category at the investigation stage. Court can't do that, must either say it's there or not. So it's a good thing. Gives agency grounds to offer services, even when court wouldn't find abuse/neglect; the way it is now it's so confusing across the board.

The public is getting confused about why they can appeal the investigation's disposition but not the court decision. Very confusing for workers and parents.

Neglect statute

A1 abandonment. Which standard: intent to permanently sever (old definition) or 90 days (the new definition)? Which abandonment are we talking about? The forever abandonment or the 90 days or more?

"Adequate parental care" Statute used to say "proper". Are they the same? "Proper" invokes a higher standard. Invokes subjectivity. (I personally don't have a problem with a2).

Out of home care neglect. Schools were left out. So ODJFS came up with out- of-home care settings and put schools back in. It's been taken care of out of a separate definition of out .

90 Day Disposition Rule

Workers have 30 days to investigate, 45 days max. Often, because of all the re-filings you run out of time. The defense counsel won't waive the 90 days. They want the case dismissed so agency has to start all over again. But workers don't re-investigate for the new court case.

We also have multiple filings because we run out of time to adjudicate it. The 30 day adjudication Rule and 90 day disposition rules aren't practical.

Adjudication just doesn't happen in 30 days.

Re disposition. Some of our judges thought failure to dispose within 90 days was an automatic dismissal. But it's now interpreted as only if parent won't waive. This varies a lot across the state.

Difficult to get to permanency for kids. We'll keep kids under emergency temporary custody. There needs to be clarification that at the end of the 90 days, unless the party objects the case doesn't have to be automatically dismissed.

Dependency

Section (C) is the kitchen sink. Whose condition or environment… what the heck does that mean? It pretty much means that whenever a court wants to give the kid to the agency they use C. You can always find an excuse to take someone's kid. This is an abomination.

Anything can qualify. Kid beats up sibs, is unruly, delinquent…we could conceivably take any kid out there.

Do away with it completely.

The less we remove kids from their homes the better. Absent serious physical harm or real neglect.

Overly broad. Surprised some parents out there haven't brought a class action suit. (except they don't have any money).

Drug Exposed Infants

Workers want to take custody of babies when mom tests positive—even before baby is born! Hospitals used to call and report parents who test positive before the baby was born, without even testing the babies.

If a baby tests positive for drugs it's abuse (case law), but what if mom does and baby doesn't? How can you find neglect when the baby is a couple hours old, when there is no history.

Needs to be some way to deal with drug exposed infants in the statute. Currently agencies get involved even if baby doesn't test positive. I can see if there's prior history with other kids.

Needs to be some guidance on it.

Mom smoking pot every day? So what. Give me a nexis. What's the negative impact on the kids. Some connection between her behavior and harm to the child. Agencies are intervening without a showing of connection between mom's drug use and baby's well being.

Our SMART team tracks pregnant women so they can take the baby. Rarely test the baby. Drugs are to be concerned about, but needs to be guidance about when this rises to the level of abuse/neglect/dependency.

Fetal alcohol syndrome, or baby born harmed, what should we do about that? Needs to be spelled out.

1999-2001 the County Commissioners of one county ordered agency to remove all kids whose moms were on drugs. 500 kids a month. Later stopped.

Family in need of service

Down side: There may be a need to have a record that this child was abused. To assign parental fault. By just saying child in need of service how do you separate the child who just happened to be in the car without a seat belt on from the child who was raped. No way to track parental fault. How do you make a record? Also, not holding parents accountable. Adjudication is tied to the child, but when working the case plan you need to address the needs of the parents as well. Need to look at other states and how this has worked.

Up side: the current labels create resistance by parents to receiving services. Moving past "I don't want to submit to this" is difficult. Leads to plea bargains: I'll agree if you call it dependency."

If other states are finding that the concerns are far outweighed by serving the child and family, then let's do it. Look at are we really going to be helping or are we giving parents an "out."

If court didn't adjudicate abuse or neglect, the central registry would only specify child in need of service. Wouldn't be able to track perpetrators. Couldn't get findings about whether this kid was abused or neglected.

We're letting criminal court deal with serious cases; that may be o.k., as long as we understand that the safety net isn't going to be the remedy for most of these cases.

Could still mandate services, would have to build that in.

What would be the potential benefits and drawbacks of discarding these distinctions and creating one category—children in need of service?

When we turned to structured decision-making the number of kids removed went down. Because it didn't distinguish between safety and risk. Under "FRAM" (Family Risk Assessment Matrix) it was too subjective. Workers were focused on risk. You can find risk in every family. Must look at safety first. Risk means long term. Safety means immediate. Structured decision-making led to more objective, more consistent results, had to focus on safety.

Removal statute: 2151.31

Social workers use the term imminent risk. Ohio law says immediate or threatened danger of physical and emotional harm there's a difference. What do you mean

imminent risk? Imminent means it's going to happen. Immediate means it's going to happen now.

Some say imminent risk means an emergency. So say that in the statute.

Mental Injury

Also, no guidance about how to prove mental injury. Do you need an expert opinion? Or a therapist who can say this is how child was before the incident, this is how she is now? We don't use mental injury here any more. Because in cases of d.v. they were substantiating emotional maltreatment even if kid hadn't observed anything. In 2003 there were 1500 d.v. cases. There is a rabid contingent of people arguing for removal. In every one of those cases we were substantiating emotional maltreatment.

I wish we would use "emotional abuse or maltreatment" but give it the definition we use for mental injury. It's an archaic term. Just change the language. And give guidance as to how to prove this. How do you prove that a 2 year old who sees mommy and daddy fight as having mental injury?

My concern is labeling the parents. No one specifies the kind of abuse in the central registry. Even sex abuse cases are the same as parents getting d.v. with an infant in the house. We know that kids will suffer emotional injury eventually, but not in the 30 days we have to investigate.

What's the criteria for proving emotional abuse?

Mental injury is also used in worker's compensation. But nowhere is emotional abuse defined in Ohio. It's used lots in other states. They're aligned with social work practice, using the jargon that social workers use.

Mental injury takes you to the endangering statute. Has to be physical abuse or an underlying finding of abuse or neglect out of which arose mental injury.

Appendix 8 Interview Questionnaire

SUPREME COURT OF OHIO
SUBCOMMITTEE ON ABUSE, NEGLECT & DEPENDENCY

RESEARCH PROJECT QUESTIONNAIRE

The National Center For Adoption Law & Policy (NCALP) and the American Bar Association (ABA) are conducting a study pursuant to a grant by the Supreme Court of Ohio Subcommittee on Child Abuse, Neglect, and Dependency. Our charge is to study Ohio's child a/n/d laws (statutes, cases, regulations), identify areas in which these laws cause problems in child welfare practice, and make recommendations regarding changes to address these problems. As part of this study, we have completed a comprehensive survey of PCSA Screening and Investigation caseworkers and supervisors. We are also conducting individual and group interviews in order to gather in-depth anecdotal information, analysis, and commentary from child welfare practitioners, attorneys, judges and others who are particularly experienced and knowledgeable in the field. Your input is critical to this project.

We ask that you take a few moments today to complete the attached questionnaire by:

1. Highlighting any statutory language that you consider problematic

2. Identifying problems that the language causes in actual practice; and

3. Making any suggestions that you might have regarding needed changes in the law

Thank you! Your participation is invaluable and greatly appreciated!

2151.03 (A) As used in this chapter, "neglected child" includes any child:

(1) Who is abandoned by the child's parents, guardian, or custodian;

(2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;

(3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;

(4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;

(5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;

(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

(7) Who is subjected to out-of-home care child neglect.

(B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person's responsibility under section 2151.421 [2151.42.1] of the Revised Code to report known or suspected child abuse, known or suspected child neglect, and children who are known to face or are suspected of facing a threat of suffering abuse or neglect and does not preclude any exercise of the authority of the state, any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.

1.) Please highlight or circle any language that you consider to be problematic (ambiguous, inconsistent, etc.) in this statute.

2.) What problems does this language cause in actual practice?
3.) Do you have any suggestions for modifications to address these problems?

§ 2151.031. As used in this chapter, an "abused child" includes any child who:

(A) Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an
abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited
under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

(E) Is subjected to out-of-home care child abuse.

1.) Please highlight or circle any language that you consider to be problematic (ambiguous, inconsistent, etc.) in this statute.
2.) What problems does this language cause in actual practice?
3.) Do you have any suggestions for modifications to address these problems?

2151.04. As used in this chapter, "dependent child" means any child:

(A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;

(B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

(D) To whom both of the following apply:

(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.

(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

1.) Please highlight or circle any language that you consider to be problematic (ambiguous, inconsistent, etc.) in this statute.
2.) What problems does this language cause in actual practice?
3.) Do you have any suggestions for modifications to address these problems?

Appendix 9 ABA National Research Analysis and Conclusions

August 2005-- Draft

ABA Center on Children and the Law National Child Protection Law Analysis

Contents

1. Overall Structure of Definitions of Child Maltreatment as a Basis for Protective Intervention

Summary of Issue

Separate or single category of maltreatment. A key decision in defining child maltreatment is whether to have a single category of child maltreatment or to separate it into such broad categories as abuse, neglect, and dependency. One reason that has been put forward for dividing child maltreatment into categories (e.g., of diminishing parental culpability) is to allow for and encourage "plea bargains," or negotiations that allow government attorneys and judges to avoid the necessity of child maltreatment trials. As part of such negotiations, hopefully there will still be a case plan that addresses the real maltreatment that took place. For example, if a child is a victim of excessive corporal punishment, a government attorney may agree to a finding of "child neglect" to avoid a trial. However, the case plan may require the parent to learn and practice other forms of discipline.

A further factor encouraging parents and their attorneys to engage in such plea bargains is the sense that there is more blame or stigma attached to "abuse" compared to "neglect" and more stigma attached to "neglect" compared to "dependency". This makes such plea bargains feel similar to plea bargains in criminal proceedings.

The problem with such plea bargains (and it is a big one) is that they fail to provide a *court record* of what actually was done to the child. If the parent fails to comply with the case plan, it is more difficult to refuse to return the child home. It is even more difficult to terminate parental rights based on a failure to comply with a case plan when there were no original findings to support the need for the plan.

Of course, even without separate categories of abuse, neglect, and dependency, attorneys and parties may still negotiate findings of maltreatment. Eliminating the separate categories would reduce, but not eliminate, such negotiations and the resulting distortions in court findings.

A more profound reason to avoid separate categories of maltreatment such as abuse, neglect, and dependency is that the concepts *themselves* are not helpful. The degree of parental fault generally should not define or shape the nature of state intervention because, unlike criminal proceedings, the purpose of intervention is not punishment. Rather, how the state intervenes should be based on the *exact danger to the child* and what protection is needed. Further, the boundaries between abuse, neglect, and dependency are often not clear. For these reasons, most states have enacted a single category of child maltreatment.

Balance in breadth or narrowness of definitions. A key challenge in defining maltreatment is to achieve balance in the breadth and inclusiveness of the definitions. Vague definitions can lead to great inconsistencies in interpretation and tense relationships between the child welfare agency and community. Overbroad definitions can lead to needless interference with families, unnecessary trauma to children, and misallocation of scarce resources. On the other hand, overly restrictive definitions can endanger children, allowing continuing harm to children. Overly narrow definitions can make it difficult for agencies and their attorneys to prove their cases and can tie the hands of judges.

Harm to the child and parental misbehavior. Another key issue in defining child maltreatment is how much to focus on the harm to the child and how much to focus on parental behavior. Proponents of focusing on harm to the child argue that the only logical basis for intervention is the harm or risk of harm to the child. They argue that defining maltreatment in terms of harm to the child is a way to ensure that everyone will focus on the child's needs. An

additional argument for defining maltreatment in terms of harm to the child is that focusing on parental behavior leads to unnecessary intervention, such as where a parent is clearly behaving inappropriately but where the trauma to the child from state intervention would outweigh any benefits.

An argument for defining child maltreatment in terms of parental behavior (misbehavior) is that it is often easier to recognize and prove parental behavior as opposed to harm to a child. Proving harm, especially emotional harm, more frequently requires expert testimony. Further, expert testimony, particularly regarding emotional harm, may be indecisive.

Where child maltreatment is defined based on the harm to the child, this presents the further question of how serious or lasting the harm must be to justify state intervention. Theoretically, the answer may be different depending on the type of government intervention—reporting and investigation of abuse or neglect, establishing court jurisdiction (control) over the case, removal of the child from home, permanent loss of custody, or termination of parental rights.

In California, for example, stricter definitions of child maltreatment apply when the court must decide whether to remove the child from home, while broader definitions apply when the court must decide whether to establish jurisdiction, enabling the court to order the parents to provide better care and to order the agency to provide services.

In addition, California, like many other states, has adopted even stricter definitions authorizing the state in certain egregious cases not to make reasonable efforts to prevent placement or reunify the family, and to terminate parental rights.

Momentary or lasting harm. If state intervention is based on harm to a child, the harm should be more than transitory or momentary. But even if physical harm is only temporary in nature, the nature of the harm or the parent's behavior causing the temporary harm suggests a substantial risk that the harm will recur. In addition, physical harm that is only temporary may cause long-term emotional harm to a child, for example, because of extreme physical pain or because of the parent's cruelty and malice.

On the other hand, there are circumstances in which it should be unnecessary to prove that harm will be long-term. There are particular types of harm that are long lasting. Other types of harm suggest that there is extreme risk to the child of further harm. Accordingly, statutory definitions of child maltreatment should include certain types of harm that are, per se, bases of state intervention.

Risks to a child. All definitions of child maltreatment based on harm to a child encompass risks of harm as well as actual harm that already has occurred. It is not necessary to wait for a child's death, injury, or severe trauma before intervening.

One issue regarding risk is how much risk must be present to support state intervention. Life involves danger, so presumably a highly remote risk of harm does not justify state intervention. Some state laws have addressed this issue by requiring a "substantial" or "serious" risk of injury or harm. Other states, perhaps because the terms "substantial" and "serious" themselves are not specific, simply require a risk or danger. Still others indicate that both the degree of risk and the seriousness of the threatened harm should be taken into account.

Proposed Considerations in Revisions of the Law

1. Create a single category of child maltreatment (e.g., Child in Need of Care and Protection) that would contain an inclusive list of different types of maltreatment. Eliminate separate statutory categories of abuse, neglect, and dependency.
2. Consider additional or stricter criteria that must be met to allow the court to remove children from home, such as at dispositional hearings.
3. Establish criteria for intervention focusing on long-term or lasting harm to the child.
4. Establish criteria for intervention focusing on types of harm to children. These should be types of harm that are in themselves so long lasting or severe that there need be no additional proof that such harm is long-term or long lasting. Do not include general language or broad terms to describe such types of harm. Keep the list of such harms narrow.
5. Establish criteria for intervention that are types of parental behavior to children. These should be types of parental behavior that are so extreme or abnormal that they, in themselves, are highly likely to establish extreme risks to children. Do not include general language or broad terms to describe such behavior. Keep this list of such behaviors narrow.

Other Things to Consider

- Many laws confuse physical and emotional harm in defining the scope of state intervention. For example, the government often intervenes in cases of excessive corporal punishment because of the emotional trauma from such punishment rather than the risk of long-term physical harm. In other cases, excessive corporal punishment occurs in circumstances suggesting risk of extreme physical harm.
- In defining child maltreatment, it is important to keep in mind the risk of trauma to the child and disruption of family as well as the possible harm to the child from failing to intervene.

2. Basis for, and Labeling of, Child Protective Services Investigation Outcomes

Summary of Issue

Despite the fact that, currently, the categorization labels and evidentiary standards for those labels are most often in agency policy, not regulation, placing them within a statute itself can help assure more adherence to these legal requirements.

Investigative Labels. There are varying approaches states take to labeling the finding, and the amount of "evidence" they need to support that finding, in a child abuse or neglect investigation conducted by child protective services. Some states have these things specified in their statutes, others in agency written policies that are binding statewide.

The most common "labels" of investigative findings are "substantiated/unsubstantiated" or "founded/unfounded." These two sets of terms, as defined by the states, often have the same meanings. Some states mix these terms (e.g., "substantiated/unfounded"). Several other terms are used by some states that may have three or even more categories of case labels (e.g., true, confirmed, unconfirmed, inconclusive, undetermined, ruled out, unable to locate, verified, indicated, reason to believe, unable to determine, without merit, false, unsupported, and even a catch-all "other").

A few states have moved away from having *any* of these traditional categorizations. One state (MI) by policy, not statute, assigns each completed investigation to a *category* that is services or intervention focused, rather than simply a label (e.g., Category V- services not needed; Category II, child protective services required). "Services required/not required" is also how ND policy categorizes case outcomes. As states move toward including an "alternative response" substituting for investigation, outcomes may, like MN, not have labels assigned to them at all.

Level of Requisite Evidence. The "level of evidence" a worker needs to place a "substantiated" or similar label on a completed investigation also varies from state-to-state. The most common standards (again, some in statute, but often only in agency policy) are "preponderance" of evidence or any "credible" evidence that abuse or neglect occurred. Other standards for substantiation include: reasonable cause or reasonable evidence; probable cause; material evidence; and even clear and convincing evidence (which is a high standard that state courts must use in termination of parental rights cases). Some states do not have, in law or policy, any clear indication of what level of evidence is needed for a case substantiation. It is important to understand that the concept of "evidence" is generally one used by courts. Terms like "preponderance" are also legal terms that may be inappropriate for use by caseworkers unless they are clearly explained in lay terms.

Use of Investigative Outcome Labels. The most important consideration in deciding how to classify and label the results of investigations is how such classifications and labels will be used. If they will be used to determine what cases will be included in a state "central registry", then the next step is to consider who gets access to the central registry and for what purposes. If the central registry is mostly used, for example, to screen people who are applying for jobs with children or for volunteer positions with children, then we should consider which labels (and requirements for such labels) would best protect children without unnecessarily denying opportunities to many adults.

If, as we believe is currently planned, there will be no central registry, the labels of reports are far less important. This is because without a central registry, no one outside of the child welfare agencies will have access to the results of reports and investigations. In addition, without a central registry there is no need to expunge reports when investigations show that there is no evidence of child maltreatment.

Local child welfare agencies should have access to all reports and their investigative outcomes, and this information should never be expunged. When there is a report of child abuse or neglect, the child welfare agency needs to know about all past reports and the resulting

investigations. Past investigations that did not establish abuse or neglect can be useful for a number of reasons:

- They may show a past pattern of false and malicious reports by the same person making the current report, making it easier and simpler to resolve the report.
- They may show a past pattern of reports by a number of different individuals, possibly showing that the current report requires very careful investigation.
- Through descriptions of the former circumstances of the family, they may help explain what is currently happening in the home.

If the labels of investigation reports will not govern whether a report is expunged or retained, then what is the effect of such labels? There are several possible uses of investigation labels:

- They may be used for statistical purposes, to measure the incidence of actual abuse or neglect (and to meet state and federal reporting requirements).
- The labels may provide brief shorthand information to help caseworkers receiving future reports to efficiently review the past investigations, deciding what light, if any, prior reports and investigations shed on their current investigation.
- The labels may help discipline the investigation itself, inducing the investigator to sift through and summarize the evidence.
- If the local child welfare agency issues or approves licenses, such as for foster and adoptive parents, they may affect caseworkers' decisions whether to grant such licenses.

Final Observations. These several possible uses of investigation labels not only demonstrate the need to retain investigation labels, but also show that labels alone are insufficient. There should be a carefully designed format for reporting the results of investigation that guide workers in summarizing the relevant facts and in drawing conclusions to support the ultimate label of the investigation.

Regarding the labels themselves, there are several possibilities. First, a term such as substantiated should be retained, with a description of the burden of proof that is easy for caseworkers to understand. "More likely than not, based on the information available" is a simple and accurate description and is easier to understand than the phrase "preponderance of evidence."

Besides "substantiated" or "unsubstantiated," agency forms or guidelines should call for additional information. For example, the report filed by the investigator should specify what specific facts are established and which are not; if a child has been physically harmed, but the investigator could not determine which parent inflicted the harm, this should be stated. For example, assume that a worker cannot substantiate that a child has been assaulted but there are suspicious facts that are not fully explained. The investigation report should describe the suspicious facts and should explain why the investigation ultimately was inconclusive. For example, assume that a person filed the report maliciously. The investigation report should state that conclusion and list the facts supporting the conclusion. Overall, it should be easy to pull out such key information from investigation reports without reviewing the entire investigation file.

Statutory Models Considered

Arizona: ARIZ. ADMIN. CODE § R6-5-5501 (2005)
Colorado: COLO. REV. STAT. § 19-1-103 (2004)

Utah: UTAH CODE ANN. § 62A-4a-101 (2005)

Proposed Revisions of the Law

Based on our analyses of these laws as well as agency policy manuals and regulations, we recommend the following changes in the law:

1. That the investigative outcome labels in all child protection investigations, and the evidence standard for application of those labels, be clearly stated in statute.
2. That, other than in cases utilizing an alternative response assessment in lieu of investigation, all completed investigations be given one of the following labels:
    A. Substantiated
    B. Unsubstantiated
    C. Unable to locate child/family (which should be very rare)
3. That the evidentiary standard for a substantiated finding be, as specified in state policy and guidelines for practice, a preponderance of evidence, defined as there being more credible facts to indicate that child maltreatment occurred than to suggest it did not occur. Policy and guidelines should also list types of information that would, although not all-inclusive, support a substantiated finding (such as an admission of maltreatment by the person(s) responsible; a child's disclosure; a court adjudication related to the maltreatment; a caseworker or other professional witnessing the abuse; a medical diagnosis of maltreatment; other credible information from both witness statements and observations, as well as caseworker observations, concerning the maltreatment).
4. That investigative findings clearly indicate when a deliberately false report has been made in a specific case.
5. That separate from the investigative "label," the law should require child protective services to categorize every completed investigation and alternative response "assessment" with one of the following category labels:
    A. No services needed
    B. Referral made for voluntary community services
    C. Child protective services required
    D. Court petition required

Alternative Approaches Considered

1. Having additional case investigation outcome categories, such as an "indicated" case that would require lesser evidence than that needed for "substantiation" but still involve a concern that a child may have been maltreated or be at risk of maltreatment.
2. Having a separate set of labels that relate to whether a specific perpetrator of the maltreatment was identified.
3. Not requiring every completed investigation or assessment to have an *additional* label given related to services and interventions

Other Things to Consider

- Primary reasons for accurate child protection agency case investigation labeling include data collection/research, identifying outcomes on previous reports where children or families are re-reported, and justifying uses of this information for other child-protection related purposes.
- While some states include within their labeling of investigations a determination as to whether a perpetrator of the maltreatment has been identified, a "perpetrator data base" is a separate policy issue that is focused not on whether a child is "in need of care and protection" but rather on "who committed maltreatment" and how a record of that can be maintained. As discussed above, such perpetrator information should be included in report summaries.
- Our recommendations presuppose that no report, if accepted for investigation, will be closed out without at least one of the three labels we have proposed.
- The placement of certain cases in a "central registry" based on completed investigations/labels is beyond the scope of these recommendations. We are not addressing that issue because we understand that the state appears to be moving in the direction of not having a formal "registry" and not having information on "substantiated" cases available for use outside of any child protection agency.
- It will be very important for agency policy, and training, to support caseworker education about the new uniform ways of labeling investigation/assessment outcomes.

3. Defining Physical Maltreatment of Children as a Basis for Intervention

Summary of Issue

A key decision in defining physical maltreatment is whether to narrowly and specifically describe the types of physical harm to a child that justify state intervention. Some states have defined physical maltreatment broadly or vaguely by simply using terms such as "physical injury" or "harm to a child's health or safety." This broadens the discretion of prosecutors and judges. Other states have narrowed the definition, such as by specifying an exclusive list of physical symptoms or by requiring that harm be permanent or long-term. Still other states have created a list of physical symptoms to supplement, rather than narrow, a general definition.

Physical maltreatment may also be defined in terms of parental behaviors. That is, certain parental acts may be deemed as so dangerous or threatening to children that no further proof of harm is required (see discussion of Corporal Punishment, in Topic 4. below).

Other possible dimensions of a definition of physical maltreatment include what risk of harm is sufficient to establish maltreatment; the required intention of the parent or caretaker in connection with the maltreatment; and defining parental maltreatment that is extreme enough to constitute a ground for termination of parental rights and to justify not requiring reasonable efforts to preserve the family. A related issue is shifting the burden of proof when a parent or caretaker's explanation of injuries is inconsistent with the nature of the injuries.

Statutory Models Considered

Florida: FLA. STAT. ch. 39.01(2) (2005).
Hawaii: HAW. REV. STAT. ANN. § 350-1 (2004)
Nevada: NEV. REV. STAT. §§ 432B.020, 432B.090, 432B.150 (2004)
Washington: WASH. REV. CODE § 26.44.020(12) (2005)

Proposed Elements of the Law

1. Physical maltreatment should include physical harm that is caused by intentional acts of parents or caretakers, or negligent acts or omissions by parents or caretakers that present a substantial risk of future physical harm to a child. The incapacity of the parent or caretaker to care for the child should be no defense to an allegation of physical maltreatment.
2. Harm should always be considered sufficiently severe to justify intervention if it involves lasting disfigurement or impairment or interference with bodily functions. Harm to siblings should justify intervention on behalf of another child in the home, if the circumstances in which there was harm to the sibling also demonstrate that there is a risk to the child.
3. A degree of pain, discomfort, or humiliation severe enough to lead to lasting emotional harm should justify intervention, but that type of harm should be included in the definition of emotional maltreatment instead of the definition of physical maltreatment.
4. Generally, for the acts or omissions of a parent or caretaker to justify intervention based on a risk of harm, the acts or omissions should either have created a substantial risk of lasting harm to the child or a significant risk of death.
5. The statute should list examples of "per se" harm that do not require further proof that their impact will be lasting. Such a list should include, for example, asphyxiation, bone fractures, bleeding, burns or scalding, cartilage damage, brain or spinal cord damage, poisoning, sprain or dislocation, injury to internal organs, and unconsciousness. A list of such examples should be carefully and narrowly drawn because a showing of a likelihood of lasting harm would not be required.
6. The statute should also include a definition of very severe physical maltreatment that can be a specific ground for termination of parental rights, as well as for not requiring reasonable efforts to preserve and reunify that family. Such a definition should include, for example, a parent who has caused actual injury to a child or sibling that could have caused death if untreated; more than one act or omission to a child or sibling that has caused lasting harm; or more than one separate act or omission causing per se harm to child or sibling as listed, for example, in paragraph 5.
7. The statute should shift the burden of presenting evidence from the government to the parents or caretaker when the parents' or caretaker's explanations of a child's injury are inconsistent with the actual nature of the injury. That is, when parents offer an explanation of how an injury took place, and expert testimony shows that the injury could not have taken place as the parent described, the parents or caretaker will have the burden of proving that they are not responsible for the injury.

Alternative Approaches Considered

1. Overbroad or vague general definitions such as "the parent or guardian has caused injury to or harmed a child" without more narrowly defining terms like injury or harm.
2. Definitions that focus on the parents' intent to cause injury to the child rather than upon the injury itself.
3. Statutes saying that the poverty of the parent shall not [ever] be considered in determining whether a child has been abused or neglected.
4. Statutes with broad lists of parental behaviors related to physical maltreatment.
5. Statutes automatically giving the court jurisdiction when a parent's explanation of an injury is at variance with the medical evidence.
6. Statutes defining physical maltreatment in terms of the emotional impact on a child, as opposed to addressing such impact in the context of emotional maltreatment.

Other Things to Consider

- It is easy to confuse when state intervention is needed because of a *risk* of physical harm with when it is *required* because of a risk of emotional harm in connection with a parent or caretaker's physical acts toward a child. Statutes should separately address physical and emotional harm.
- A broad definition of physical maltreatment can give a prosecutor and judge the flexibility to intervene in a broad range of situations. But it may also allow inappropriate, unnecessary, or traumatic state intervention or cause scarce state resources to be used in low priority cases.
- The definition of corporal punishment (see Topic 4, below) can also be combined with an overall definition of physical maltreatment.
- Failure to meet a child's physical needs—such as by failing to provide food, nutrition or necessary medical care—is related to physical maltreatment. A separate statutory topical analysis memo (Topic 6, below) discusses how to define when the failure to meet a child's physical needs justifies state intervention.
- Definitions might be broader in reporting acts or when governing when the court should have jurisdiction (power) over a case, as opposed to when the court may order or approve the removal of a child from home.

4. Defining When Use of Corporal Punishment Rises to the Level of Child Abuse

Summary of Issue

Far too many states simply have their relevant child maltreatment statutes worded so as to indicate that parents may use "reasonable," "necessary," "appropriate," or "moderate" corporal punishment without it being labeled as child abuse. The vagueness of those terms has led to considerable confusion by child protective agencies, courts, and most importantly parents, regarding what acts of *discipline* can result in child protective intervention.

State appellate court decisions continue to provide both helpful and confusing guidance regarding the boundary between unlawful child physical abuse and "lawful" parental use of physical discipline. Many states are more explicit in defining this boundary, however, regarding: the type of punishment inflicted; the parental approach and state of mind during its infliction; and the level of injury required to establish the parental act as abusive. We suggest a comprehensive and explicit set of statutory bases for establishing when use of a corporal punishment "defense" to child maltreatment should not prevail.

Although we stress the importance of a self-contained definition of all types of child maltreatment within the civil child protection (juvenile court) law (rather than cross-referencing to criminal law provisions), we believe it is important for the "corporal punishment defense" to be similarly limited in the state's criminal law. This will enable real physical abuse of a child in the home to be more successfully prosecuted. Although we have identified, below, statutes in state criminal codes, it is important that corporal punishment be addressed identically within the civil child protection and criminal laws, even though some isolated acts of punishment-related but unintentionally inflicted abuse might be cause for child protective intervention, but not be appropriate for criminal prosecution.

Statutory Models Considered

Delaware: DEL. CODE ANN. tit. 11 § 468 (2005)
Florida: FLA. STAT. ch. 39.01(2), 39.01(30) (2005)
Minnesota: MINN. STAT. § 609.379 (2004)
Washington: WASH. REV. CODE § 9A.16.100 (2005)

Proposed Revision of the Law

Based upon language in these and other statutes, plus several areas not covered to date in any state laws, we suggest the following approach in law towards distinguishing legally permissible corporal punishment from unlawful physical abuse:

1. A parent, guardian, or legal custodian in the home who is responsible for that child may not use, for the purposes of correction or restraint of the child, any physical discipline, or corporal punishment, against the child that consists of any of the following: striking a child with a closed fist; shaking a child under age three; intentional burning of the child; twisting the arm of a child under age seven; throwing, kicking, cutting, or puncturing a child; smothering or otherwise interfering with a child's breathing; threatening a child with a deadly weapon; gross degradation of a child; prolonged deprivation of a child's sustenance or medication; or causing a child severe pain or extreme mental distress. [Note: some of these actions, and some of the injuries in 2. below, are also covered in the mental injury or physical maltreatment sections of our analyses]. These parental acts should not require proof of actual or lasting harm to a child for these to be a basis for child protective intervention.
2. Injuries inflicted upon a child by a parent, guardian, or legal custodian, during physical discipline or corporal punishment of the child, that may be construed as constituting physical abuse include but are not limited to adult acts that produce the following specific child injuries: sprains, dislocations, or cartilage damage; bone or skull fractures; brain or

spinal cord damage; cranial hemorrhage or injury to other internal organs; asphyxiation, suffocation or drowning; injury resulting from use of a deadly weapon; burns or scalding; cuts, lacerations, punctures, or bites; permanent or temporary disfigurement; death; permanent or temporary loss or impairment of a body part or function; and nontrivial injury or soft tissue swelling or skin bruising .

3. In construing whether an act of physical discipline or corporal punishment constitutes child abuse, the force used against the child should be considered with respect to: the size, age, and condition of the child; the location of the injury; the strength and duration of the force used by the adult; whether the adult's actions would be considered torture of, or extreme cruelty to, the child (that is, whether the acts of the parent would be considered so abnormal or sociopathic as to infer that continuing care by this person will lead to harm to the child); and whether the injuries to the child were caused recklessly or while the adult was angry and out of control, such as while being under the influence of alcohol or drugs.
4. A "corporal punishment" defense to a child protection intervention or criminal child abuse prosecution should only be available to a child's parent, legal guardian, or legal custodian.

Alternative Approaches Considered

1. Some state laws specifically authorize the legality of spanking. We have chosen not to do so, or to incorporate in our suggested statutory approach any specific allowable *forms* of corporal punishment. Rather, we have drawn the line separating corporal punishment or discipline from physical abuse.
2. Many states simply limit the permissible level of corporal punishment or discipline to that which is "reasonable and necessary," "or simply "not unwarranted" or "not excessive" (or some similar terms), but we have rejected that vague and broad approach.
3. Some states specifically prohibit a list of actions that a might parent take against a child, so as to clearly indicate that those acts would constitute abuse even when imposed in an act of purported corporal punishment or disciplinary correction of a child. We have incorporated these into our suggested statutory reforms.

Other Things to Consider

- We have intentionally not focused our statutory approach on broad and difficult to define terms like "moderate" or "excessive" punishment, "serious injury," or "serious harm." We have also not included language that we feel has no bearing on serious assaults against a child that may be done in the name of "corporal punishment," such as whether the acts were intended to "safeguard or promote the child's welfare," to "maintain discipline" or to address a child's refusal "to obey a lawful command".
- We have also not included statutory language, found is some states, that include as a factor for consideration the "child-rearing practices of the child's culture". Based on how we have defined acts that would be abusive, we do not accept an additional "cultural" defense to those acts.

- We have also intentionally restricted the use of corporal punishment in the home to parents, guardians, and legal custodians. Too many children are severely harmed by a parent's paramour who, without any legal responsibility toward the child, has taken on a role of child discipline and does so improperly and often with tragic results.
- By that limitation to parents, guardians, and legal custodians, there is also (implicitly) the intent that the authority to use corporal punishment against a child cannot be delegated to other children or adults in the home.
- Some forms of corporal punishment may not cross the line to become physical abuse, but still, in their chronicity and manner, cause serious mental injury to a child. They would be suitably considered appropriate for intervention.
- Since our focus is on intra-familial abuse, we have not addressed the question of whether foster parents can lawfully use corporal punishment against a foster child. This requires a separate inquiry that is beyond the scope of our work.
- Some state laws actually use the words "spanking," "switching," "paddling," etc. to include acts that are legally permitted. We have chosen not to use such terms.
- A most difficult issue here (or in any related law addressing corporal punishment) is in the very last part of 2. above (i.e., what to do about long-lasting red marks left on a child after corporal punishment, for example minor bruising on their bottom). We have limited intervention to "nontrivial" injuries.

5. Defining Sexual Abuse and Exploitation of Children as a Basis for Child Protective Intervention

Summary of Issue

Most states define acts that would constitute sexual abuse of a child by simply doing so within their *criminal codes*. Those laws generally point the child protection agency/juvenile court to the criminal law definitions when considering whether child sexual abuse is to be substantiated by the child protection agency, or to be the basis for juvenile court child protective jurisdiction. Many of those criminal laws are also focused on a broader range of child sexual abuse perpetrators, rather than simply addressing intra-familial abusers (i.e., offenses within the home), which should be the focus of civil child protection laws.

We are recommending an alternative statutory approach, in which child sexual abuse would be defined for purposes of child maltreatment reporting, investigative substantiation, and civil (juvenile court) child protective intervention by having family-focused language within the civil child protection law, rather than simply pointing to the criminal laws. However, it is important that the criminal statutes closely mirror what we have proposed as the scope/content of the civil statutes, so as to better assure coordination of civil and criminal intra-familial child sexual abuse cases.

Statutory Models Considered

Colorado: COLO. REV. STAT. § 19-1-103 (2004)

Florida: FLA. STAT. CH. 39.01 (2005)
Georgia: GA. CODE ANN. § 19-7-5 (2005)
Kentucky: KY. REV. STAT. ANN. § 600.020 (2004)

Proposed Revisions of the Law

Based principally on language of the Kentucky and Florida statutes, we suggest that "sexual abuse" should be:

1. Defined within the civil child protection law, without reference to the separate, existing set of criminal child sexual abuse laws.
2. Defined to include contacts or interactions in which a parent, guardian, or other adult having custodial control or supervision of the child or otherwise responsible for the child's welfare within their home commits, coerces, encourages, allows, permits, or fails to protect the child from any of a listed set (see 3.) of sexual acts against the child.
3. Prohibited sexual acts within the civil child sexual abuse laws should include:
    a) any penetration, however slight, of the vagina or anal opening of one person by the penis of another;
    b) any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person;
    c) any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, other than for a valid medical purpose;
    d) the intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this would not include acts that would be reasonably construed to be a normal caregiver responsibility, or showing of affection for a child, or have a valid medical purpose;
    e) the intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act in the presence of a child if such exposure is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;
    f) the sexual exploitation of a child, including allowing, encouraging, or forcing a child to solicit for or engage in prostitution or a commercial sexual act or performance, or to make a photographic record of any of the acts defined herein;
    g) forcing the child to watch pornography for the purpose of the adult's sexual arousal or gratification, child degradation, or other similar purpose;
    h) flagellation, torture, defecation or urination, or other sado-masochistic acts involving the child when for the purpose of the adult's sexual stimulation;
    i) facilitation of the statutory rape of the child, where the parent, guardian, or caretaker has knowledge of the child's unlawful sexual relationship.
4. Sexual abuse of a child by a teacher, day care provider, or other person with some level of responsibility to the child while the child is out of the home would not be covered by this definition, unless a parent knowingly encouraged, allowed, or permitted such acts.

5. Sexual acts between a minor child in the home (or another location) and the sexually victimized child would also *not* be covered here, unless the parent knowingly encouraged, allowed, or permitted such acts, or where a parent was extremely negligent in their supervising of a child and that was related to the child's sexual victimization by another child. Parental gross negligence in such supervision that results in an older child sexually abusing a younger child should be a basis for an agency substantiation and court finding that a child is in need of care and protection due to parental failure to supervise.

Alternative Approaches Considered

1. Using the more limited definition of "sexual abuse" found in the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. §5106g (2005). This is a very limited definition that does not clearly enumerate the many various forms of sexual maltreatment.
2. Having the civil child protection law definitions of "sexual abuse" simply mirror the criminal code provisions. It is important that child protection agencies and juvenile courts be able to intervene in intra-familial child sexual abuse cases without waiting for, or being bound by, the results of related criminal prosecution of the offender.
3. We have taken the most comprehensive, explicit, and family-pertinent state law definitions of intra-familial "sexual abuse" and incorporated them into our suggested revisions of the child sexual abuse civil protection statutes.

Other Things to Consider

- The above 3a)-i) definitions are meant as an improvement over the current Ohio criminal code definitions, by being more comprehensive and explicit.
- Our not cross-referencing the criminal code, even if it has different ways of defining sexual abuse, is intentional so as to make the basis for child protective intervention for sexual abuse completely self-contained within the child protection code.
- Creating a new "sexual abuse" definition in the child protection code will not solve the important policy/practice question of coordinating civil (juvenile court) sex abuse cases and criminal prosecutions of child sex offenders. Would our proposal result in the criminal case being more, or less, likely to be tried first because of *collateral estoppel* issues? How would this affect the perpetrator's discovery rights in the civil or criminal case?
- We believe, in both physical and sexual abuse cases, that the civil child protection case should be generally tried first: civil child protection cases generally move at a faster pace; to wait for the criminal case to be tried might delay permanency for the child. However, a criminal prosecution might be completed first if there will quickly be a "no reasonable efforts at family reunification needed" juvenile court finding and a termination of parental rights action filed shortly thereafter, or where there is no plan to possibly reunify the child with the perpetrator (e.g., a protective mother who wants the abuser boyfriend prosecuted and out of the home).

6. Failure to Provide Adequate Care and Supervision, and Abandonment

Summary of Issue

Child Neglect. Child maltreatment can encompass many different acts or omissions by a caretaker. Statutory drafters face the challenge of including enough specificity to provide guidance, while avoiding overly restrictive language that would limit the agency's ability to take action when necessary to protect a child. Many states define neglect very broadly, using terms such as "failure to provide basic care," without defining a basic level of care for which the caretaker should be responsible. Some states' definitions are not only broad, but circular in their logic, using the word "neglect" within the definition of neglect.

Most states choose to add specific types of care which must be provided by the parent. Typically included are adequate shelter, nutrition and supervision. (Lack of medical attention is covered below in Topic 7.)

The term "lack of supervision" is used in some states interchangeably with the term "neglect." For example, a lack of supervision is defined in some states as a failure to provide adequate care, food or shelter. In contrast, other states use the term "lack of supervision" to describe the situation where the child is not attended to properly. Using this more literal meaning of lack of supervision is clearer and avoids circular definitions. Lack of supervision in this narrower sense should be part of the more general concept of failure to provide care.

Many states also include in their definitions, in addition to the acts or omissions of the caretaker, a requirement that the act or omission have a negative effect on the child or risk of such an effect. For example, it might require that the act caused (or placed the child at substantial risk of) physical or emotional harm.

Acts constituting a lack of care can range from the relatively benign to egregious threats to the child's health and safety. In an attempt to clarify how to separate those that should be actionable, some states have added the "reasonable man standard" –that is, a standard of negligence based on what a reasonable parent or caregiver would have done under the circumstances. Such language does not remove the subjectivity from the determination of whether a particular act or failure to act justifies state intervention.

In order to provide clarity, some statutes say that the act must place the child at risk or harm, taking into account the child's age and abilities. This prevents the state from automatically defining an act or omission as neglect without full consideration of whether the behavior was reasonable under the circumstances. For example, the risk in leaving a relatively mature ten-year-old home alone requires different considerations than the situation where an infant is left home alone.

Some statutes require that the acts be continuous or that the caretaker show a pattern of such behavior. While patterns of behavior are relevant to determining risk, requiring the existence of a pattern would eliminate serious, but one-time acts from the definition of neglect. For example, leaving a small child home alone overnight is serious enough to warrant state intervention.

Some states have included an exception for parents who are financially unable to provide adequate care for their children. Such a provision is meant to eliminate cases where poverty is the sole cause of the lack of adequate care. However, such an exception should be narrowly drawn, as in many situations poverty and neglect co-exist, but the poverty is not the necessary cause of the neglect. Some states add that the parent has refused to gain access to appropriate programs or services. (Neglect due to parental poverty and incapacity of the parent is addressed below in Topic 11.)

Abandonment. "Abandonment" is a closely related issue. Many states fail to define or clarify the word "abandonment," which often leads to much confusion about its application.

States that have attempted to clarify "abandonment" have taken different approaches. The common law definition of abandonment of a child was based on case law referring to the abandonment of property, i.e., acts showing a settled and firm intention to forego all parental rights to the child. All states have broadened the concept of abandonment, but to widely varying degrees. For example, definitions of abandonment appearing in state law use such words as "conscious disregard of parental responsibility," "failure to maintain a normal parental relationship," "failure to provide adequate support and supervision" or "failure to visit or maintain contact."

Note that there can be overlap between abandonment and the lack of care as forms of maltreatment. Both involve a lack of care and attention. For example, under some statutes leaving a child home alone can be either lack of care or abandonment. Statutory definitions should clearly differentiate between lack of care and abandonment, which should refer to the situation where a parent has disappeared or refused to contribute to the care and development of the child.

Ohio currently uses a presumption that abandonment has occurred when the parent has failed to visit or maintain contact for more than 90 days. A few other states use specific periods of time, one as little as 14 days.

Failure to provide financial support is also included in the abandonment definition in several states. However, such a definition could be overly inclusive, including those who have failed to pay child support, for which the child support system is best equipped to address.

At least one state defines abandonment differently for custodial and non-custodial parents. Such different standards could lead to confusion, since in many cases, the parents may not have clear custody orders or the custody situation may be unclear.

Statutory Models Considered

Vermont: VT. STAT. ANN. TIT. 33 § 4912 (2004)
Minnesota: MINN. STAT. § 626.556 (2004)
Texas: TEX. FAM. CODE § 261.001 (2005)
Washington: WASH. REV. CODE § 26.44.020 (2005)
Louisiana: LA. CH. C. ART. 603 (2005)
West Virginia: W. VA. CODE § 49-1-3 (2005)

Proposed Revisions of the Law

Based on a review of the statutes, we recommend that the definition of child neglect include the following:

1. A failure to provide necessary care that includes failure to provide adequate shelter, nutrition, clothing, or supervision where such failures present a substantial risk of serious long-term physical or mental harm to the child.
2. Failure to provide care should also include leaving the child unattended under circumstances presenting a substantial risk of serious long-term physical or mental harm to the child. [Note: being grossly inattentive to the child already comes under 1. above.]
3. Abandonment should be defined to address the situation where the parent has left the child without making adequate provision for his care and has failed to maintain contact.
4. An exception where poverty is the only reason for the neglect should be included.
5. The act or omission should be analyzed in light of the child's age or ability.

Alternative Approaches Considered

1. Not requiring that the child be placed at risk of harm
2. Requiring a pattern of repeated behavior
3. Specifying a specific period of time to qualify an absence as abandonment
4. Not including an exception for financial ability to provide for the child's needs
5. Making poverty a complete defense to any state intervention
6. Defining neglect broadly and vaguely as "a lack of appropriate parental care."
7. Requiring gross negligence or recklessness for a finding of failure to care.

Other Things to Consider

Requiring willful or intended behavior on the part of the parent would make neglect overly difficult to prove. Implied within the term "neglect" is that the behavior may be careless rather than intentional.

It is impossible to list every situation that would constitute neglect; therefore, statutory drafting necessarily requires a balance between specificity and exclusion.

Abandonment is often a ground for termination of parental rights. The TPR definition and maltreatment definition should be kept separate and distinct. It is appropriate to define abandonment in termination cases as the desertion of a child or as extreme lack of interest in the child or lack of commitment to providing proper care. By contrast, a definition of abandonment as a form of maltreatment justifying state intervention should require only willful short-term failures to care for a child.

7. Parental Substance Abuse as Child Maltreatment

Summary of Issue

It is estimated that approximately 80% of child maltreatment cases involve drug or alcohol abuse. Therefore, it is not surprising that a majority of states have chosen to specifically address

substance abuse in their abuse/neglect definitions; however, they have chosen different areas of emphasis. There are two main categories:

1. Newborns and infants exposed to maternal substance use, and
2. Children affected by parental substance abuse or illegal drug activity. The latter category includes:

- Drug use by the caregiver that affects the safety of the child
- Manufacture of a controlled substance
- Selling, distributing or giving drugs to the child
- The child being present where drug-related chemicals or equipment are found
- Exposure to drug paraphernalia, criminal sale or distribution of drugs, or other drug-related activity

Knowing that crystal methamphetamine is a growing concern, we are recommending that the state's definition of child maltreatment include both the presence of the child where chemicals or equipment are found as well as manufacturing in the child's residence.
The definition should also include giving, encouraging, or permitting a child to use a controlled substance, and (the most common category) drug or alcohol abuse that impairs the parent's ability to provide adequate care.

Many states have dealt with substance abuse exposed babies through an alternate response system. What is referred to as "alternate response" varies by state, but generally this means the case is diverted from the formal child protective and court system for services; that is, providing voluntary help to families rather than progressing through an adversarial system (see Topic 16, below). Whether this is appropriate should depend on the level of danger to the child resulting from the parent's drug use.

Statutory Models Considered

Colorado: COLO. REV. STAT. § 19-1-103 (2004)
Montana: MONT. CODE ANN. § 41-3-102 (2004)
Texas: TEX. FAM. CODE Sec. 261.001 (2005)
Minnesota: MINN. STAT. § 626.556 (2004)
Iowa: IOWA CODE § 232.68 (2004)

Proposed Revisions of Law

Based on our statutory review, the definition of child maltreatment should include the following regarding parental substance abuse:

1. Use of alcohol or a controlled substance by a parent or person responsible for the care of the child that harms or causes a risk of harm to the child. Harm in this context should require a showing that the parental behavior connected with the substance abuse and the results of such behavior on the child would constitute maltreatment as otherwise defined in the law.
2. Exposing a child to the criminal distribution of dangerous drugs, the criminal production or manufacture of dangerous drugs, or the operation of an unlawful clandestine laboratory to which the child has access.

3. Causing, permitting, or encouraging a child to use a controlled substance except for controlled substances that are prescribed and dispensed to the child in accordance with the law
4. The presence of an illegal drug in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child, as well as a child born with fetal alcohol syndrome

Alternative Approaches Considered

1. Including a requirement that the parent have acted knowingly (in exposing the child to substance abuse or illegal drug activity). In defining maltreatment due to substance abuse, some states include the requirement that the parent acted "knowingly." Including a "knowingly" requirement could make these cases extremely difficult to prove in court, since most of these parents are abusing drugs, thereby impairing their ability to act knowingly.
2. For parental substance abuse, not including a requirement that the child be affected by the substance abuse. Child maltreatment should not encompass the situation where the parent abuses substances, but the child's needs are still met. Those cases could, however, be included in an alternate response system, whereby the parents are offered services, but are not reported, substantiated, or court-adjudicated as abusive or neglectful.
3. Narrowly defining which substances apply—some statutes attempt an almost scientific definition of substances such as methamphetamine. A narrow definition may unnecessarily preclude the agency from the ability to take action when other drugs, possibly equally as dangerous are involved.

Other Things to Consider

- In order to facilitate findings on crystal methamphetamine cases, the statute may provide that the child's presence near the substance or equipment constitutes prima facie evidence or a rebuttable presumption of maltreatment.
- In considering whether to divert cases involving parental substance abuse-exposed infants, the state will want to consider whether there are other "aggravating circumstances" present, such as other siblings in foster care due to parental substance abuse or whether the parent is otherwise maltreating the child as defined by law.
- Some states include exposing children to illegal drug activity in their criminal statutes. Care should be taken when considering the refinement of any criminal statutes in order to help assure coordination of law enforcement and child protection efforts.
- A 2003 amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA) requires that hospitals make a "referral" (the word "report" is not used) to CPS when a child is born who has been exposed to "illegal drugs" or is withdrawing from illegal drugs in their system. Although the federal law has not specifically defined this as child maltreatment, we have suggested that this condition of a newborn be defined as such if the condition is a foreseeable consequence of the acts or omissions of the person responsible for the care of the child. We have also included, which Congress did not, a

child born with fetal alcohol syndrome due to the severity of harm caused by this condition.

8. Intervention Due to Failure to Provide Children with Medical Treatment

Summary of Issue

There are several ways that state child protection laws describe "failure to provide medical care" of children as a basis for state intervention. Some laws authorize state intervention based upon a parent or guardian's "failure to" or "refusal to" seek, provide, or follow-through with a child's medical or surgical care, or medically indicated treatment. Other state laws require both the "failure" of the parent and the resulting "impact" on the health or potential health of the child. For example, some state laws limit intervention to situations where such parental failures prevent medical care that is deemed "necessary" for the child's health or well-being (for example, to cure, alleviate, or prevent substantial physical harm to the child). Some also allow intervention when there are failures to have a child treated for "mental injury" or a psychological or emotional impairment. Finally, some states limit intervention to situations when parental failures result in a child's life being endangered or when a child faces severe harm such as substantial risk of disfigurement or serious bodily injury. Intervention is a universal statutory option when a parent's failure or refusal to provide medical care threatens a child's life.

In many but not all states there is, a "religious exemption" that prevents a parent being labeled as a neglectful parent by a CPS agency or court (or, in some states, criminally prosecuted) where treatment is provided solely by spiritual means via prayer, in accordance with a recognized method of religious healing. It is important to note, however, that the federal Child Abuse Prevention and Treatment Act (CAPTA) requires that in such situations there be an ability of a court to order (over parental objection) treatment to a child in a life-threatening situation. Several state laws specifically address this ability of the courts to order treatment over parental objections.

A separate area of failure to provide medical care, addressed in CAPTA through what are called the "Baby Doe" provisions, address parental withholding of medically-indicated treatment from a disabled infant with life-threatening conditions (e.g., withholding appropriate nutrition, hydration, and medication which would, in a doctor's judgment, likely be effective in ameliorating or correcting those conditions). States have, pursuant to CAPTA, amended their medical neglect laws and/or agency policies to address such situations.

Some states also require that before an adjudication or agency finding of failure to provide medical care, it be clear that that the failure to provide such care was not based on a parent's financial inability to pay for care, or that the parent has first been offered financial help or other appropriate ways to have the costs of treatment covered.

Statutory Models Considered

Florida: FLA. STAT. CH. 39.01 (2005)

Kansas: KAN. STAT. ANN. §38-1502 (2005)
Missouri: MO. REV. STAT. § 210.115 (2005
New York: N.Y. SOC. SERV. LAW § 371 (2005)
Pennsylvania: 23 PA. CONS. STAT. § 6303 (2005)
South Carolina: S.C. CODE ANN. § 20-7-490 (2004) (Does not include religious exemption)
Texas: TEX. FAM. CODE § 261.001 (2005)

Proposed Revisions of the Law

Based on an analysis of these and other statutory "failure to provide medical care" statutes, we recommend the following changes in the law:

1. "Failure to provide medical care" be more clearly defined in the law to include the failure of a parent or legal guardian to supply a child with necessary medical, surgical, mental health (including psychiatric or psychological treatment), or other care required for a child's health. This should include, but not be limited to, parental failure to use resources made available to treat a diagnosed medical condition if such treatment may prevent the child's death, disfigurement, or serious impairment, or where such treatment is necessary to make a child substantially more comfortable, reduce the child's pain and suffering, or correct or substantially diminish a child's debilitating or crippling condition from worsening.
2. This should apply to children both who have become medically or emotionally impaired, as well as where the impairment would be imminent as a result of the failure to provide or consent to such care. It should also cover medical situations that endanger a child's life as well as those that endanger a child's development or impair a child's functioning.
3. The "religious exemption" issue should be handled as follows. We favor eliminating the religious exemption altogether from civil child protective intervention statutes. Instead, we suggest that child protective agencies through their practices and procedures exercise restraint in bringing court actions to simply label parents for "neglect" in non life-threatening situations where parents have chosen spiritual healing pursuant to the tenant of a recognized religion and by a faith healer certified by their denomination.
4. However, if the state chooses to retain any form of religious exemption, we propose the following provisions. First, that the law be clear that the "exemption" does not in any way negate the responsibility of mandated reporters to report all situations to child protective services involving parental failure to provide medical care. Second, that the child protective service agency, upon receipt of such reports, must quickly determine whether a parent's decisions are in the child's best interests or may be subjecting the child to serious harm or potential serious harm. If so, the agency should be clearly directed to file a juvenile court petition, including access to emergency relief, to have the child and family's situation brought to the attention of the court, with the judge empowered to order medical or other care over parental objections. The law should also clearly authorize physicians or hospitals to file such petitions.
5. Pursuant to CAPTA, the law should include provisions addressing the withholding of medically indicated treatment from disabled infants with life-threatening conditions, based on the language of that CAPTA provision.

6. The law should make it clear that, as a condition to intervention for parental failure to provide medical care, the parents either be financially able to pay for such care or have other reasonable means to access such care for their child.
7. The child welfare agency should not be required to take physical custody of a child in order to make medical decisions when authorized by the court.

Alternative Approaches Considered

1. Simply including as a type of child maltreatment the refusal of a parent to provide the child "medical or surgical care or treatment" without further defining, limiting, or expanding this.
2. Limiting interventions to only a child's life-threatening conditions that require medical treatment.
3. Limiting the "religious exemption" to any practice that is simply related to a parent's religious beliefs.
4. Not including mental health care, but only traditional medical and surgical care.

Other Things to Consider

- We use the term "failure to provide an medical care" rather than "medical neglect" to avoid the ill defined distinction between the terms abuse and neglect.
- Some states severely limit interventions to the most severe deprivations of medical care that endanger the child's life or increase the likelihood that a child will die if treatment is not provided. That is, in our view, too restrictive an approach.
- The inclusion of parental failure to provide or consent to treatment for a child's mental or emotional problems needs to be in sync with whatever language the state chooses to use for its emotional maltreatment law changes.
- New legislation giving juvenile court judges the authority to order treatment for a child over parental objections is something that should be available for many situations, not just those where a parent has rejected medical care for the child based on religious convictions.
- It is important to avoid unnecessarily taking a child into the agency's physical custody in order to assure medical treatment. This can be severely traumatizing to the child. Whenever its safe to do so, the child should remain in the home during the period that the agency is authorizing or supervising medical treatment for the child.

9. Jurisdiction Over Parents for Failure to Provide for a Child's Education

Summary of Issue

States disagree on whether state child abuse and neglect reporting laws should include "failure to provide an education" for a child, whether CPS involvement with families is appropriate in such cases, and whether and when the juvenile court should

become involved. Some state laws reflect the belief that this is an issue that should be handled exclusively through state truancy laws, excluding the traditional child protective system from such cases.

About half the states, however, have laws that provide for mandatory reporting, CPS involvement, and judicial child protection proceedings when parents fail to arrange for necessary education for their children.

It is important, in fashioning an appropriate statutory response to educational negligence on the part of parents, to recognize that the primary responsibilities for ensuring a child's school attendance are first with the parents but secondly with the school. Thus, any changes in law should reflect a requirement that the school itself make diligent efforts to help secure the child's regular school attendance.

It is also worth noting that frequent school absences and tardiness, and failures of parents to cooperate in their child's access to needed educational services, are common in families that are chronically neglectful of their children in other ways.

Statutory Models Considered

Arkansas: ARK. CODE ANN. § 12-12-503 (2005)
Minnesota: MINN. STAT. § 626.556 (2004)
New Jersey: N.J. STAT. ANN. § 9:6-8.9 (2005)
South Carolina: S.C. CODE ANN. § 20-7-490 (2004)
Utah: UTAH CODE ANN. § 62A-4a-101 (2005)

Proposed Revisions of the Law

Based on an analysis of the statutes, we recommend the following changes in the law:

1. That "failure to provide for a child's education" be a basis for child protective system reporting, investigation, intervention, and juvenile court involvement, but only for a child's chronic (as opposed to occasional) non-attendance or chronic substantial lateness in arriving at school, or for parental impediments to a child receiving needed educational services.
2. That the basis for intervention include not only the failure or refusal of a parent to secure the child's regular and timely school attendance (including tutoring and summer school, when educationally required) over an extended period of time, but also parental actions or failures to act that interfere with the provision of any needed educational services or individualized educational program for the child pursuant to the federal Individuals with Disabilities Education Act.
3. That a petition solely based on the parents' failure to provide their child with an education allege what efforts educational system personnel have made to bring about the child's regular and timely attendance, or the initiation of any needed special education program for the child, and whether the child's continued truancy, tardiness, or lack of necessary educational program is related to the parent's refusal to cooperate with school personnel. If educational system personnel have not made such efforts, the court may

join the schools, whether public or private, as parties to the case, but the school's efforts should not be a requirement for filing such a petition or proving the case.

4. That the parents either had the financial ability to provide the child with such legally-required education or services, or they had been given other reasonable means to so provide, including assistance with addressing any pre-enrollment conditions for the child's school attendance.
5. That "failure to provide for a child's education" be preferably handled through the state's alternative response family assessment process (see Topic 16, below), rather than through the traditional adversarial approach.
6. That "failure to provide for a child's education" intervention not be an appropriate allegation for a parent's refusal to provide their child with medications recommended by the school for addressing a child's in-school behavioral or attention problems. These actions should be the basis for intervention only when they represent failures to provide medical care.

Alternative Approaches Considered

1. Not including "failure to provide for a child's education" as a category in the child protection statutes.
2. Only addressing parental failures to have a child attend school, thus omitting chronic serious tardiness, and omitting the failure of a parent to participate in the special educational process resulting in a child being deprived of needed educational services or a necessary individualized educational program.
3. Not referring to the school system's responsibility to help secure the child's regular attendance.

Other Things to Consider

- We use the term "failure to provide for a child's education" rather than "educational neglect" to avoid the ill-defined distinction between the terms abuse and neglect.
- Whatever decision is made regarding the "failure to provide an education" law, it must be in sync with the state truancy and status offender laws.
- Parental failure to participate in the special education process when necessary can result in a withholding of needed special education services to a child. In part because this deprives a child of essential educational services, it is included as a suggested basis for intervention.
- Item 6. in our suggested changes in law, above, is based on at least one state's legislative recognition that school systems increasingly may be pressuring parents to have psychotropic medication prescribed for and taken by a child as an attendance condition improperly imposed by the school.
- A child's chronic failure to attend school is often related to other serious family and child problems, some of which may become the basis for child protective interventions that go well beyond the issue of securing the child's school attendance.
- While it is sometimes appropriate to invoke the court's authority to ensure that a child receives an appropriate education, it is seldom necessary to remove a child from home for

that purpose. Although the law need not explicitly say so, the overwhelmingly most common result of intervention based on failure to provide a child with an education should be court supervision rather than foster care.

- If the school system or a child's private school itself is chronically failing to take steps to ensure proper school attendance, it should be possible to make allegations to that effect and join them in the court proceedings.

10. Defining Mental Injury of Children as a Basis for Protective Intervention

Summary of Issue

It is not unusual for states to list "mental injury" to a child as a basis for child abuse and neglect agency substantiation and juvenile court child protective intervention. The federal Child Abuse Prevention and Treatment Act (CAPTA) requires that states, at a minimum, define child abuse and neglect to include "serious" emotional harm to a child based on a recent parental act or failure to act (42 U.S.C § 5106g). However, many states fail to clearly define this type of maltreatment of children, simply using terms like "mental injury" without any further statutory elaboration.

We are recommending that there be self-contained, within the civil child protection law (and without pointing toward any criminal law definition), a more expansive definition of mental injury so that caseworkers and judges will better understand what must be established in order to find that this has occurred. Combined in this definition should be the two most common areas of clarity in emotional maltreatment of children: 1) causing an impairment in a child's ability to function, and 2) the evidence required to establish the impact of the maltreatment on the child's behavior.

We also recognize that severe mental injury to children is, generally, poorly identified, extremely under-reported, and rarely alone the basis for child protective intervention. By a more expansive and explicit set of mental injury definitions, we believe caseworkers and judges, but just as important teachers, pediatricians, and mental health professionals, will better understand when to report and intervene to address such maltreatment.

Statutory Models Considered

Minnesota: MINN. STAT. § 626.556 (2004)
New York: N.Y. FAM. CT. ACT § 1012 (2005)
Pennsylvania: 23 PA. CONS. STAT. § 6303 (2005)

Proposed Revisions of the Law

Based on language used in these statutes, we suggest that there be a definition for "mental injury" as follows:

1. A deliberate infliction of mental harm on a child by a parent, guardian, or other person responsible for the child's care, that has an observable, sustained, and adverse effect on the child's physical, mental, emotional, or social development, or conduct towards the

child that is so severely humiliating and degrading that a sustained and adverse effect can be inferred.

2. Any injury inflicted by the above persons to the psychological capacity, emotional stability, or intellectual functioning of a child, as evidenced by a substantial and observable impairment in the child's ability to function within a child's normal range of performance, behavior, emotional response, or cognition based on their age and stage of development, with due regard to their culture. This would include, but not be limited to, a child's failure to thrive, control aggressive or self-destructive impulses, ability to think and reason, or severe acting-out behavior; however, such impairment must be shown to be clearly attributable to the unwillingness or inability of the adult to exercise a minimum degree of care toward the child.
3. Any act or failure to act by the above persons that causes a child's psychological condition as described above, including the adult's refusal of appropriate treatment of the child for this condition, when this renders the child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic, or in unreasonable fear that their life or safety is threatened.

Alternative Approaches Considered

1. We have avoided the terms, used in some other states, "emotional maltreatment," "emotional abuse," or "emotional injury" because we feel that "mental injury" as we have more thoroughly defined it, captures the whole of this form of child maltreatment.
2. A broader and more general (non-specific) definition of mental injury that is simply qualified to require some serious, observable injury or harm inflicted by the parent's emotional maltreatment of the child.
3. A focus on mental injuries that only lead to the substantial diminishment in a child's psychological ability to function.
4. A focus on mental injuries that are only provable by the child's behavioral symptoms.
5. Use of the term "psychological abuse" rather than "mental injury"
6. Having two separate categories, one for "psychological abuse" by a parent, and the other for a parent causing "mental injury" to a child.

Other Things to Consider

- Clearly, this is an area where child protective services will need to improve consultation with, and liaison to, mental health professionals. There will need to be considerable new training on this if a law similar to what is proposed becomes enacted.
- There are still going to be some forms of inflicted mental injuries to a child that are so severe as to also appropriately fall under a revised definition of criminal child endangerment. We propose that state criminal law also be changed to more closely parallel what is in suggested revisions 1.-3. above, but with an emphasis on severe and intentional acts or omissions that result in serious mental injury to a child.

11. Parental Incapacity as a Basis for Protective Intervention

Summary of Issue

Incapacity generally. It is important that state statutes do not generally suggest that parental incapacities automatically justify state intervention. Parental incapacity (e.g., physical disability, mental illness, mental retardation) should justify state intervention only when a child is in danger of specific serious types of harm due to that incapacity. To prove that, it should be necessary to show how a parent's specific incapacities make that parent unable to meet the specific needs of an individual child and how, in turn, that causes harm or danger to the child that is serious enough to justify state intervention.

Parental incapacity in itself generally should not be a reason for intervention. Rather, taking into account exactly what parents are unable to do for a child and the child's individual needs and condition, the question is whether the child is at risk of some type of harm serious enough to justify intervention.

On the other hand, proof of the parent's incapacity can help prove the degree of risk to the child. Such proof can be a basis for court findings that will help guide the court in deciding what type of intervention is required. Therefore, while parental incapacity need not be a separate basis for intervention, it is important that parental incapacity be pleaded and proved whenever it is relevant.

Special needs of child. Children who require special placement and services ("special needs" children) are more likely than other children to have been maltreated. In some cases, parents' frustrations in caring for children needing special treatment lead to abuse or neglect. In other cases, a parent's abuse or neglect may cause such severe harm to a child that the child then needs special care or treatment. In either case, the harm or danger to the child may be severe enough to fall within the general definitions of maltreatment.

On the other hand, some children need special full-time treatment that is so difficult or complicated that most parents would be unable to provide such care in the home. Such cases generally should not fall within the definition of maltreatment. Ideally, other laws and agencies should address these situations.

Realistically, however, desperate parents sometimes approach the child welfare agency, seeking help in arranging a special placement for the child. Too often, the only way that child welfare agencies have been able to help was by taking custody of the child and beginning permanent planning, as if the child had been abused or neglected. It is not appropriate for child welfare agencies to provide child maltreatment-related custodial services in such cases, and state law should make it clear that they are not to be called upon to do so. At the same time, state law should provide other means for such parents to get needed help for their children.

Hospitalization or other family emergencies. When a parent has been temporarily hospitalized or faces another emergency requiring temporary removal of a child from home, the state may need to arrange for foster placement. This should only occur when relatives, friends, or paid temporary caretakers are not available and another practical alternative is not available.

Although the child welfare agency should help in such situations, these circumstances should not be included within the definition of child maltreatment. Further, parents should not have to transfer custody, voluntarily or otherwise, to arrange for such temporary placements. It should

be enough that an agency receives "responsibility for placement and care," which enables the state to receive federal foster care matching funds. At the same time, states can amend their law to eliminate liability for decisions made by parents in such cases.

On the other hand, if a parent remains unable or unwilling to care for the child after the emergency passes, that situation should fall within the definition of child maltreatment. At this point, the agency should be able to bring the case to court and begin the process of permanent planning for the child.

Poverty. Sometimes parents lose their housing or face financial crises that prevent them from being able to care for their children. For example, parents who are victims of domestic violence may suddenly be forced to leave their homes without the financial means to secure other housing. Parents may be evicted from their homes due to long-term unemployment or be the victims of thefts.

In such cases, agencies other than child protective services should be available to help families get through their family emergencies. When these cases are brought to the attention of the child welfare agency, that agency should help the parents to link up with such agencies. The agency should make reasonable efforts to work with other agencies or should provide financial assistance itself before considering the possibility of placing the child outside the home.

If, however, the child welfare agency is unable to arrange for others to provide help or to provide financial help itself and if the economic situation is so severe that the child is at risk of lasting or serious harm, then, in rare cases, out of home placement may be necessary. When that is the case and the child has not otherwise been maltreated, the agency should place the child without transferring custody of the child from the parent.

On the other hand, if a parent faces repeated financial emergencies harming the child or placing the child in danger of serious harm, then that situation should fall within the definition of child maltreatment. At this point, the agency should be expected to bring the case to court and begin the process of permanent planning for the child. Similarly, if a child is maltreated for reasons other than the financial emergency, such as because the parent is addicted to alcohol or drugs, the agency should be able to bring the case to court and begin the process of permanent planning for the child.

Statutory Models Considered

California: CAL. WELF. & INST. CODE §§ 300(b), (c) (Deering 2005)
Colorado: COLO. REV. STAT. § 19-3-701 (2004)
Maryland: MD. CODE ANN., FAM. LAW § 5-525 (2004)

Proposed Elements of the Law

1. Include, within the definition of child maltreatment cases where parents are unable to care for their child at all after the child welfare agency has made reasonable efforts to help assist them in that care, or the parents have died.
2. Require that the petitioner in child maltreatment court proceedings plead and prove parental incapacity whenever relevant to allegations of child maltreatment. In the alternative, include within the definition of child maltreatment cases situations where,

due to a parents' inability to meet children's needs, children are subject to harm or risk of harm.

3. Include within the definition of child maltreatment cases where parents are unable or unwilling to meet children's special needs for treatment when (a) the parents could reasonably be expected to provide such care (e.g., because most families under similar financial circumstances could meet those needs with the child remaining in the home) and (b) the child would suffer harm, as defined by state law, if the care is not provided.
4. Prohibit the state from requiring a parent to relinquish custody in order to arrange out of home care of a child needing special care if there is no substantiated report of abuse or neglect. When the parents have maltreated the child, prohibit the child welfare agency from fully "diverting" the case to another agency, at least until the factors leading to the maltreatment no longer exist.
5. Include within the definition of child maltreatment cases where parents are temporarily hospitalized or face temporary emergencies and either (a) parents do not resume care of the child after the emergency passes or (b) the hospitalization or emergency is the result of a pattern of parental behavior that is likely to recur. But prohibit the state from requiring a parent to relinquish custody to place a child in foster care if the sole reason the child requires placement is the parent is facing a family emergency or requires temporary hospitalization.
6. Include within the definitions of child maltreatment cases where parents repeatedly have to place their children in foster care due to financial emergencies that they could prevent. But prohibit the state from requiring a parent to relinquish custody in order to arrange foster care if the only reason for the placement of the child is an isolated or excusable emergency faced by the parent.

Alternative Approaches Considered

1. Some statutes allowing states to intervene based on parental incapacity are very broadly worded. Such statutes may specify only that parents are unable to provide "adequate care" of the child or that a child's "condition or circumstances" requires state protection. Such language is too vague and overbroad to present a proper standard for intervention. Such language provides little guidance to agencies and courts and permits needless intervention. For example, such language could be interpreted to allow intervention against parents unable to keep their houses clean, even when the homes present no health threat. 705 ILL. COMP. STAT. 405/2-4(a), (d) (2005).
2. Some statutes allow intervention for children with disabilities or needs for special care. Unless a parent has abused or neglected a child, children with disabilities or the need for special care should be served by other agencies and pursuant to other laws.
3. DEL. CODE ANN. TIT. 10 §§ 901, 2302 (2005). A complementary solution would be to divert the case through an alternate response system. A separate statutory analysis memo addresses alternative response.

Other Things to Consider

- Consider adding to the definition of child maltreatment a list of specific parental disabilities that are so severe that they would prevent any person from being able to care for a child. Examples might include persons with an I.Q. below a specified (extremely low) score, or persons diagnosed with certain types of psychoses. We are assuming, of course, that there are certain conditions that prevent anyone from parenting, and that most mental health experts would agree on this. Note, however, statutory lists of such conditions do not yet exist. An alternative is to direct the state child welfare agency to develop such a list by regulation. The advantage of having such a list would be that it would simplify the court proceedings where it applied. Finally, the statute would need to make clear that the list of conditions is not exclusive, but rather meant to be used in addition, rather than instead of, #3 above.
- Parental unwillingness to care for a child generally fits within the general category of abandonment, extreme parental disinterest, or extreme lack of lack of commitment to the child. This also applies to parents who cannot be found. This issue is addressed in a separate statutory analysis memo.
- In states with separate definitions of dependency, parental failure to provide proper care or supervision may be lumped together with parental incapacity. Parental failure to provide adequate care or supervision is addressed in a separate statutory analysis memo.

12. Including a Child's Exposure to Domestic Violence in the Definition of Maltreatment

Summary of the Issue

Few states specifically include exposure to domestic violence in their child maltreatment statutes (those that do include AK, CA, FL, MN, MT, UT and Puerto Rico). Many states, however, include children exposed to domestic violence in their civil restraining order laws, often as an aggravating circumstance. All states address domestic violence in their child custody laws.

California statutorily requires that child protection caseworkers receive domestic violence training, and Alaska requires the agency to work with community partners to keep non-abusive parents with their children and hold batterers accountable.

Domestic violence advocates and the child welfare community have worked together to fashion solutions to domestic violence, a problem with complex layers. Child welfare workers want to be sure that children exposed to domestic violence come to the attention of the agency, while domestic violence advocates want to ensure victims are offered adequate assistance in order to escape the violence and keep their families intact.

Most states deal with the relationship between domestic violence and child maltreatment through policy, rather than by statute. The National Association of Public Child Welfare Administrators (NAPCWA) and its parent American Public Human Services Association (APHSA), along with leading experts in the domestic violence and child abuse fields, have developed a model protocol for states to follow. The model protocol encompasses the following 18 elements: 1.Training; 2. Intake/Screening; 3. Investigation/Assessment; 4. Case Planning/Interventions; 5. Documentation and Forms; 6. Specialized Case Consultation; 7.

Specialized Programs for Child Witnesses; 8. Batterer Accountability; 9. Cultural Diversity; 10. Specialized Visitation and Safe Exchange Services; 11. Family Centered Practice; 12. Out-of-Home Placement; 13. Cross System Collaboration; 14. Policy Review; 15. Confidentiality; 16. Multidisciplinary Practices; 17. Support for Workers; and 18. Domestic Violence Representation in Decision Making-Making Entities.

The Alaska Child Protection Code requires the child welfare agency to have a protocol in place that offers assistance to victims and requires the child welfare agency to make reasonable efforts to protect the child and prevent their removal from the home.

Minnesota actually repealed an earlier statute that had included domestic violence in its definition of child treatment because the increase in cases overtaxed the system. Their current statute defines domestic violence as child maltreatment only when exposure of a child to domestic violence is a chronic, recurring problem. Puerto Rico specifically includes exposure to domestic violence as emotional maltreatment, which could reduce the number of cases coming to court because the state would then have to prove the elements of emotional neglect. Florida amended its statute to allow the child protective agency discretion in whether to file a petition in domestic violence cases. Utah requires a child protective shelter care hearing whenever a parent has entered a domestic violence shelter at the request of a child protection agency.

Statutory Models Considered

Alaska: ALASKA STAT. § 47.17.035 (2005)
California: CAL. WELF. & INST. CODE §16206 (2005)
Florida: FLA. STAT. CH. 39.301 (2005)
Minnesota: MINN. STAT. § 626.5552 (2004)
Montana: MONT. CODE ANN. § 41-3-102 (2004)
Puerto Rico: P.R. LAWS ANN. § 441 (2002)

Proposed Elements of the Law

Based on our review of current laws and policies regarding domestic violence, we recommend the following elements be included in the definition of child maltreatment:

1. A requirement that the child protection agency show that the victimized parent was offered protective assistance and refused such assistance, and that the refusal has caused harm to the child.
2. Child protective services agencies should be statutorily authorized to work with victims of domestic violence and their children on a voluntary basis.
3. The child protection law should not be overly restrictive; i.e., it should not require the agency to prove a child has already been damaged by a domestic violence situation in the home; rather, risk of harm should be included in the definition.
4. The statute should not be overly inclusive by mandating child protective intervention against parents who have taken adequate steps to remove their child from a violent situation.
5. The state should coordinate implementation of its child maltreatment laws and policies, civil restraining order laws, and criminal domestic violence statutes.

6. Additionally, the state should work with community partners, including domestic violence agencies, to fashion solutions and provide specialized services to parents and children affected by domestic violence.

Alternative Approaches Considered

1. Not addressing this issue within the definition of child maltreatment—there are many complex layers to domestic violence, and different levels of harm. Some cases can be remedied by provision of services, while others are so serious and entrenched in the family patterns of behavior that the child must come under the jurisdiction of the agency and/or court. Law and policy should provide guidelines to caseworkers, lawyers, and judges regarding when to intervene and what types of intervention are appropriate.

2. Making every domestic violence case a child/abuse neglect case –with the provision of services, some parents can be assisted to keep their children safe and free from risk of physical harm or emotional damage. The child protection agency should have discretion to work with such families, rather than substantiating them for child maltreatment or bringing them under court jurisdiction.

3. Requiring that the child protection agency prove that emotional harm caused by the child's exposure to domestic violence has already occurred –it can be very difficult to prove emotional harm without a cadre of experts. The statute should reflect the current research that shows that children exposed to domestic violence suffer harm, without having to reprove that fact in every case. While it is true that some children may appear more resilient than others, it is impossible to accurately gauge the exact form and extent to which children are adversely affected. Therefore, the statute should presume harm, which is supported by the research.

Other Things to Consider

This is addressed in other sections

13. Amending Criminal Child Endangerment Laws to Specifically Apply to Parents

Summary of Issue

As Ohio decides how best to revise its civil child protective laws, it should also consider the extent to which criminal "child endangerment" laws apply to parents and legal guardians. Only about a third of state child endangerment criminal laws explicitly cover actions by parents, although some child endangerment laws use broad language that apparently would apply to parents.

The most common forms of criminal child endangerment law in which parents are listed as potential perpetrators address situations where a parent has severely harmed a child or placed their child at substantial risk of injury. These laws often include one or more specific types of parental acts, such as:

- **Having a child in a car while a parent is driving drunk**

- **Knowingly or grossly negligently leaving a child with someone who has had sex with children in the past (or a registered sex offender) or who has repeatedly physically abused children; or allowing physical or sexual abuse of a child by another person**
- **Contributing to or failing to prevent a child from buying or possessing a weapon**
- **Willfully depriving a child of food, clothing, shelter, or health care with serious ill-effects on the child**
- **Allowing a child to be in a place where illegal drugs are being manufactured**
- **Using greatly excessive or prolonged force, torture, or extreme cruelty to discipline a child**
- **Giving children intoxicating substances**
- **Making children prostitutes or photographing them in an intentionally sexually suggestive way.**

Another more common circumstance in which parents are prosecuted for criminal child endangerment occurs when children suffer serious harm or death while being left by a parent without adult supervision, or are left by a parent under circumstances where there is a substantial risk of death or severe harm to the child.

Some states define criminal child endangerment by referring to their civil child abuse or neglect or other child maltreatment definitions. Some even make a parent's failure to prevent abuse or neglect a basis for prosecution of the parent. The problem with references to non-criminal provisions of the law is that most definitions of child maltreatment for purposes of reporting and court intervention are too vague to stand up as definitions of criminal offenses. For that reason such definitions are unlikely to be used by prosecutors.

Some state child endangerment laws specify multiple "degrees" of criminal child endangerment. All criminal child endangerment laws include misdemeanor penalties for certain acts of child endangerment, but not all also have felony penalties for the most serious forms of this offense. What most commonly turns criminal child endangerment into felonies is the severity of the effect of parental actions or inactions on the child, such as that a child suffers death or serious bodily harm. Other state laws make criminal child endangerment into a felony based on the number of a parent's acts of (or convictions for) child endangerment.

A final issue concerns the parent's state of mind as an element of the offense. That is, state laws may require that a parent's actions in these cases be taken either "knowingly" or have occurred through extreme parental negligence. The following are some of the possible variations in requirements concerning parental intent:

- **It may be enough that a parent consciously took the actions leading to child endangerment, whether or not the parent was conscious of the risk. Of course, this may apply to some but not other types of actions of child endangerment.**
- **The law may require that a parent be reckless concerning possible harm to a child.**
- **The law may require that a parent's actions were reckless, but may also have to prove that parents know that their actions will adversely impact the child.**
- **The state may require that the parent intended (wished) for their actions to have a harmful effect on the child.**

- **Once a parental act of child endangerment is otherwise established, the law may shift the burden of proof regarding intent to the parent by making the lack of the required degree of intent a defense to the crime.**

Nearly all states have some form of state of mind ("*mens rea*") requirement as an element of their parental child endangerment laws.

Statutory Models Considered

Alaska: ALASKA STAT. § 11.51.100 (2005)
Arkansas: ARK. CODE ANN. § 5-27-203 (2005)
Delaware: DEL. CODE ANN. TIT. 11 § 603 (2005)
Iowa: IOWA CODE § 726.6 (2005)
Maine: ME. REV. STAT. ANN. TIT. 17-A § 554 (2005)
Minnesota: MINN. STAT. § 609.378 (2004)
Missouri: MO. REV. STAT. § 568.045 (2005)
Montana: MONT. CODE ANN. § 45-5-622 (2004)

Proposed Revisions of the Law

Based on our analyses of these and other criminal child endangerment laws, we recommend the following changes in the law:

1. Any act constituting criminal child endangerment in which a child has died or suffered severe physical or mental injury, or a second or subsequent offense of criminal child endangerment, should be considered a felony with appropriate punishments provided.
2. A parent, legal guardian, or other person legally charged with the care of a child should be considered to have committed criminal child endangerment if that person has intentionally or recklessly committed one of the following acts

- Leaving a child without adult supervision where the child has suffered death or serous bodily harm
- Leaving a child in any place under circumstances where there is a clear and substantial risk of death or severe harm to that child.
- **Leaving a child with someone who has had sex with children in the past, a registered sex offender, or one who has repeatedly physically abused children**
- **Allowing physical or sexual abuse of a child by another person**
- **Having a child in the car while a parent is driving drunk**
- **Contributing to or failing to prevent a child from buying or possessing a weapon**
- **Depriving a child of food, clothing, shelter, or health care with serious ill-effects on the child**
- **Allowing a child to be in a place where illegal drugs are being manufactured**
- **Using greatly excessive or prolonged force, torture or extreme cruelty to discipline a child**
- **Giving children intoxicating substances, where death or serious bodily harm results**
- **Facilitating a child's involvement in prostitution, or videotaping or photographing them in a sexually suggestive way, or otherwise sexually exploiting them.**

3. A parent, legal guardian, or other person legally charged with the care of a child should be considered to have committed criminal child endangerment if that person knowingly or recklessly acts in any other manner that creates a substantial risk of serious harm to a child's physical, mental, or emotional health or safety, or death.

Alternative Approaches Considered

1. Simply making a child's abuse or neglect (or failing to prevent such abuse or neglect), as defined in the civil child protection law, also punishable as criminal child endangerment.
2. Making any parental act in which a parent knowingly acts in a manner likely to be injurious to a child punishable as criminal child endangerment.
3. Not listing specific types of parental acts as illustrative of child endangerment.
4. Only having criminal child endangerment be a misdemeanor offense

Other Things to Consider

- It is important that criminal child endangerment laws apply to certain forms of severe child maltreatment by parents and legal guardians. First, criminal sanctions are more effective for some parents than the risk of loss of custody. Second, criminal laws have a deterrent effect, with an impact on parents who never come before the court. Third, in the case of particularly heinous crimes, criminal convictions can help establish the grounds for not requiring reunification services and for the termination of parental rights. This avoids needless foster care drift and increases the chances of child victims for a safe and permanent new home.
- Having a broad definition of criminal child endangerment can allow coverage of more harmful situations a child is parentally exposed to. (For example, a criminal penalty for intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health, or to cause the child's death.)
- However, it is important that parents be put on notice of those specific acts they might commit that could result in their being charged with criminal child endangerment.
- Certain crimes against children, including types of child endangerment, should be grounds for not requiring reasonable efforts to prevent foster placement and to reunify families as well as grounds for the termination of parental rights.

14 Summary Transfers of Custody from a Juvenile Justice Agency to the Child Welfare Agency

Summary of Issue

In some states, judges sometimes summarily transfer cases from the juvenile justice agency to the child welfare agency. That is, judges may transfer custody of a delinquent child (or status offender) from the juvenile court or juvenile justice agency to

the child welfare agency without first providing notice and the opportunity for a hearing to the child welfare agency.

When this happens, child welfare agencies often feel that the children have been inappropriately "dumped" with them because the juvenile justice agency does not want to handle a difficult case or lacks services to do so.

Quite frequently, judges do this when, in delinquency or status offense cases, they are faced with a child who should not be in secure detention for reasons that are not the child's fault, such as when a parent refuses to pick their child up, there is a need for a relative placement, or private child service agencies aren't willing to handle these youth. Judges may issue such summary orders out of frustration from the lack of non-secure community based resources for delinquent children (and sometimes status offenders) who cannot presently go home.

Child welfare agencies are themselves entitled to due process of law, and such summary orders transferring custody violate their due process rights. Instead of entering such summary orders, judges might order the amendment of the delinquency petition to add allegations of child maltreatment or, depending on state law, order the filing of a separate child maltreatment petition and even dismiss the delinquency petition.

If state law does not give the judge power to amend or order a child maltreatment petition, a judge may report the matter to the child protection agency or even subpoena a representative of the agency and ask why no such petition has been filed. A judge might take such steps, for example, if the parent of the delinquent child is unwilling to care for their child.

If there is an emergency in which a delinquent child or status offender would be endangered if left in a facility for delinquents and there is no time to provide advance notice to the child welfare agency before transferring custody, the judge should be able to transfer the placement and schedule a shelter care (emergency removal hearing). The shelter care hearing should occur within the time limits that apply to children removed from home in emergencies due to child maltreatment. The child welfare agency should receive notice of the hearing and have the opportunity to appear and challenge the placement. In the absence of such emergency, there should be advanced notice to the child welfare agency and the opportunity to challenge the decision before the child is actually placed in its custody.

States and local governments need to work with the courts to create procedures and protocols for these situations. Such protocols should involve due process, including legal representation of the children, in such cases.

Statutory Models Considered

None. Statutes vary regarding whether, in juvenile justice cases, a judge has the dispositional authority to transfer custody to the child welfare agency without a finding of child maltreatment. For example, in Arkansas, the court lacks such authority. ARK. CODE ANN. § 9-27-330 (2005). In Georgia, the law explicitly empowers the court to enter such an order. GA. CODE ANN. §§15-11-66(a)(1), 15-11-55 (2005).

Proposed Elements of the Law

1. Require, before transfer of custody of a child from the juvenile court or juvenile justice agency to the child welfare agency in a delinquency or status offense case, prior notice to the child welfare agency and the initiation of a child maltreatment case.
2. Where it is necessary to immediately place a child in the child welfare agency's custody to prevent potential harm to a child from a placement with delinquents, permit the court to temporarily transfer custody of the child, to be followed by a shelter care (emergency custody) hearing and the immediate initiation of child maltreatment proceedings.
3. Allow courts to consolidate juvenile justice and child maltreatment proceedings when the court already has jurisdiction based on delinquency or status offenses. When the court first has jurisdiction based on child maltreatment, allow consolidation of the cases after delinquency or status offense jurisdiction has been established. In such cases, apply all legal protections and other requirements that apply in other child protection cases.
4. Require state and local agencies and courts to develop protocols to address cases where delinquent children are also subject to parental maltreatment, including but not limited to parental disinterest and abandonment.

Alternative Approaches Considered

The current statutory scheme: existing statutes do not provide guidance in cases where judges summarily transfer custody to child welfare agencies that are not parties to a delinquency or status offense case.

Other Things to Consider

- Such cases may not be common, especially in small counties and judicial districts. Therefore, agencies and courts may not have the interest or knowledge to develop a good protocol. Localities should be permitted simply to adopt a model protocol prepared by the state or even to choose from alternative model protocols.
- "Dumping of cases" onto the child welfare agency will be reduced if there is a sufficient range of services and placements available to juvenile justice agencies. But that would not eliminate the need for coordination between child welfare agencies and juvenile justice agencies when child maltreatment and child misbehavior coexist. In such cases, the juvenile justice agency may need to be involved to help control the child, and the child welfare agency may need to be involved to help control and work with the parents. Each state needs to work out its own solutions.

15. Timeliness Requirements for Court Proceedings

Summary of Issue

Achieving timely permanency for children in foster care is a fundamental goal for both state child welfare agencies and state courts hearing child protection cases. Sound judicial administration is key to reducing delays in child protection cases. There are a number of well-known techniques for reducing delays, collectively known as

caseflow management. Recently, national judicial organizations have developed a new curriculum for courts to improve their use of these techniques.

It is also important, however, for statutes and court rules to set deadlines and otherwise reinforce the use of caseflow management. There are a number of ways that state laws can be helpful.

Among other things, state statutes can:

- Specify deadlines for every stage of the court process.

There should be deadlines for every court hearing and every step in the judicial process in child protection cases, not just for certain hearings that take place early in the case. Ohio law already has fairly comprehensive time limits for child protection proceedings, imposing deadlines for the hearing following emergency removal of a child from the home, the adjudication, disposition, review hearings, permanency hearings, and the filing of motions for termination of parental rights (permanent custody). As explained more fully below, however, there are gaps in Ohio time limits concerning (a) steps leading to adjudication, (b) completion of termination of parental rights proceedings, and (c) completion of steps for the termination of parental rights process.

- Define deadlines for hearings based on when hearings end.

In some courts, a significant cause of delays in child protection hearings is non-consecutive court days. For example, if an adjudication hearing is contested and cannot be completed at the time scheduled, it might be reset for weeks or months into the future. Thus the hearing is, in effect, spread over a long period of time. More often, a non-contested hearing may begin and then be continued for an extended period because there is missing information.

To excuse such delays, attorneys sometimes argue that deadlines are based on the date of the "initiation" rather than completion of court hearings. But since the purpose of deadlines is to move cases quickly toward permanency for each child, it is more logical to have deadlines be based on the completion of hearings. It is the completion of hearings that allows each case to go forward to the next stage of the process. It is important that the law be clear on this point.

Current Ohio deadlines specify when a hearing is to be "held." The most reasonable interpretation of "held" is completed, as opposed to begun or partially completed. It would be even clearer, however, if the term "completed" were substituted for the term "held."

It is generally acceptable for hearing deadlines to be based on the date of completion of the hearing rather than the completion of the written order. This is because it is possible to schedule the next stage of the case and begin to implement the court's verbal order before the written order is prepared. An exception is the termination of parental rights, where a clear decision is sometimes necessary to the recruitment of families for adoption and because the completion of the court order is necessary for appeals to go forward and to initiate adoption proceedings.

- Create deadlines for the completion of written court orders.

Delays in the completion of court orders can be a problem when there is a disagreement about the judge's verbal decision or where external parties are not willing to share information or initiate services before receiving a copy of the order. In addition,

providing a written version of the court order to all of the parties can clarify and explain, especially to parents and age-appropriate children, what is expected of them.

The best practice is to complete and distribute court orders at the end of each hearing, and this practice should be strongly encouraged, including through language in the statutes. Where that is not possible, there should be strict and short deadlines for the completion and distribution of court orders, which should go to all parties and their attorneys.

The best practice is to develop an efficient process of preparing orders and distribute them at or shortly after court hearings are completed. This practice is not practical, of course, when it is necessary to prepare complex findings following a contested hearing.

- Adopt further requirements to ensure that deadlines are taken seriously.

Many jurisdictions throughout the United States ignore or widely evade statutory deadlines for child protection proceedings. While correcting this is largely a matter of judicial administration, there also are steps the legislature can take to avoid needless judicial delays. Among these are the following:

- Specify strict grounds for continuances and other exceptions to deadlines.

Both state statutes and court rules can make it clear that continuances and other delays are not to be granted based on the convenience of attorneys. Without being unduly inflexible, state law can specify grounds for continuances and extensions of time, such as the unexpected unavailability of essential witnesses, illness, and other unexpected and unpredictable reasons why delay is necessary for the proper administration of justice.

- Require parties to submit written statements explaining their reasons for requesting delays and require courts to state their reasons in writing for granting delays.

One helpful approach is to require parties to submit a written statement explaining the reasons for delays and to require judges to provide written reasons when granting a continuance or other delay. Such requirements make it less convenient to request and grant delays, help ensure that both attorneys and judges more carefully think about the need for delays, and create records regarding delays and reasons for delays.

- Require courts to schedule hearings earlier, if possible, when court dates must be changed.

When courts set court hearings earlier, when possible, after parties try to change the dates of court hearings, this both avoids delays in individual cases and makes it clear to attorneys that delays in future cases will be difficult to achieve.

- Support the improved use of judicial computer systems to avoid delays.

The legislature can also support the use of computers to help avoid delays. For example, computers can be programmed to measure the typical timeliness of different court events and to provide statistics comparing the performance of different courts. Computers can also be programmed to assist judges, by notifying them of pending court

deadlines, alerting them when court hearings are not set according to legal deadlines, and in a variety of ways making the court process more efficient.

The legislature can help facilitate the better use of computers, for example, by making a special directive to produce timeliness statistics for child protection proceedings, adopting a legislative resolution on this topic, or making a special appropriation. Michigan has done this, for example. In addition, either the legislature or the Supreme Court can require statewide standards for judicial computer systems in child protection cases, to ensure timeliness and efficient functioning of courts in these cases. Such standards must, of course, take into account the practical needs and circumstances of rural courts.

- Support caseflow management initiatives for child protection cases.

If the legislature chooses to support strengthened use of computers to improve timeliness of child protection cases, it can also support special caseflow management initiatives.

Such initiatives are particularly important to the state because of the much higher costs of needlessly prolonged foster care, including administrative costs and services.

- Support better judicial workloads for dependency cases and better judicial workload analysis.

A frequent cause of judicial delays in child protection cases is that judicial workloads are excessive and it is therefore not possible to meet the deadlines. State legislatures can support both better workloads for these cases and can support workload analysis initiatives that take into account the amount of time needed to perform as the law intends. Typical judicial workload analysis has not taken into account the legislation greatly expanding the duties of judges in these cases and the time needed to handle the cases as the law intends. Past studies have mostly looked at the amounts of time judges already spend on these cases.

- Maintain strict deadlines for adjudication.

Many states, like Ohio, have set deadlines for adjudication. Deadlines for adjudication hearings generally vary from 10 to 120 days, often based on the date the petition is filed.

The most common deadlines are 30, 60, and 90 days. The *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* (National Council of Juvenile and Family Court Judges 1995) recommends 60 days. The *American Bar Association, the National Conference of Chief Justices, and the National Council of Juvenile and Family Court Judges have endorsed the Resource Guidelines*.

It is important to keep in mind, however, that Ohio is far more liberal than most states in allowing voluntary placements, which can last for 30 days without prior court approval. Most other states sharply restrict the use of voluntary placements specified circumstances, and many also set shorter time limits before court approval is required. The extra 30 days under Ohio law permits extra time for the agency to prepare its case before court proceedings are initiated. The agency, of course, can and should notify its attorneys immediately whenever a child is removed from home pursuant to a voluntary placement agreement.

In addition, Ohio law is liberal in granting one 30-day extension for adjudication. Parties are allowed an additional 30 days if there are delays in completing service of process or to complete evaluations. It would also help to allow such an extension when advocates for parents and children can demonstrate that they need an additional 30 days to properly investigate and prepare their cases. Also helpful would be to allow an adjudication hearing for one parent to go forward if the other cannot yet be served, while allowing the other parent to reopen the adjudication after service is completed. Further, if a parent is not located before adjudication, the law should require continuing efforts to locate that person and require that the issue of completion of service be brought up at all subsequent hearings until the judge finds that reasonable efforts to identify and find a parent have been exhausted.

Another step might be to require a pretrial hearing under specified circumstances, such as when service has not been completed within 30 days. At such a hearing the judge would be charged with reviewing the sufficiency of efforts to complete service.

- Limit delays in disposition hearings.

Ninety days is a reasonable deadline for the completion of disposition. It is true that further evaluations may be needed beyond the ninety day period, and that further revisions will be needed in the case plan. It is also the case in some areas that important evaluations are delayed beyond the ninety-day deadline. Some providers of evaluations have long waiting lists.

What is important to keep in mind is that dispositional orders are temporary in nature. It is normal and expected that case plans will be revised as further information is provided. When judges feel that their disposition decisions are made based on incomplete information, they should set deadlines for further steps in the case and schedule early review hearings. In addition, judges should consider working with their communities to identify the causes of such delays and, in come cases, issuing subpoenas to obtain explanations of service delays.

Ohio law takes the unusual step of requiring dismissal of cases without prejudice when disposition does not occur within 90 days. Dismissal with prejudice in these cases would endanger children and would not be appropriate.

Dismissal without prejudice generally does not impose an unreasonable burden on parties who fail to be ready for disposition hearings within the deadline. If being returned home would endanger the child, they can obtain an emergency removal order and re-file the petition.

Dismissal without prejudice is not necessarily, however, a sufficient remedy in itself to ensure the timeliness of disposition. Some parties may get into the habit of routinely getting cases dismissed without prejudice where it is not convenient to have the case ready for court within 90 days.

There are several ways that state law or court rules can help limit the incentives to use such dismissals to delay cases. It can impose tight deadlines for extensions of time beyond 90 days. It can direct the court not to allow dispositional hearings to be taken off the docket by dismissal without prejudice –In other words, can limit the circumstances in which the prosecutor or agency attorney is allowed to dismiss cases without prejudice. It can require written filing of statements explaining the reason for dismissal and court orders specifying why it is being allowed. The law can also authorize or direct judges to apply sanctions for improper dismissals or requests for dismissal.

- Encourage or require more frequent periodic review hearings.

Federal law requires reviews at least once every six months, and Ohio law assigns this function to courts. Where judges have the time and levels of skills to conduct high quality periodic review hearings without unduly inconveniencing the parties (e.g., being scheduled at precise and reasonably convenient times), these hearings can be a powerful tool for achieving permanency, safety, and the overall well being of children in foster care. While Michigan requires such hearings at least once every three months for children in foster care, most states do not exceed the federal minimum. If considering requiring more frequent review hearings, the legislature should keep in mind the courts' capacity to fulfill the requirements and the costs of doing so. Among the particular circumstances in which frequent reviews are often necessary are for very young children in foster cares and following termination of parental rights, especially when a child has not yet been placed into a permanent home.

- Require more timely termination of parental rights (permanent custody) proceedings.

There should be deadlines not only for the filing of motions for termination of parental rights (permanent custody), but also for the proceedings themselves. Among other things, there should be required pre-hearing conferences when service of process has not been completed in a timely manner or cases will be contested, for completion of the proceedings, and for the issuance of a permanent custody order. Termination of parental rights delays are serious in some parts of Ohio, and a number of other state laws have addressed these issues.

- Ensure that other court proceedings do not take precedence over child protection proceedings.

In some courts, attorneys request and judges grant delays in previously scheduled child protection proceedings when other courts wish to schedule hearings for other cases. In other courts, attorneys sometimes appear late in court because of other court commitments. In still other courts, it is common for child protection proceedings to be indefinitely delayed until the resolution of related criminal proceedings. State law should make it clear that other court proceedings should not take precedence over child protection proceedings except when it will benefit the child, based on documented, specific circumstances of the individual child.

- Requiring cases to be on the court docket at all times.

To avoid complications in the scheduling of hearings, the next hearing should consistently be scheduled in child protection proceedings. While there are occasional exceptions when this isn't possible, this should be standard procedure in child protection cases where timeliness issues are central.

Statutory Models Considered:

- Florida: FLA. STAT. CH. 39.013(10) (2005) (criteria for continuances).
- Michican: MICH. COMP LAWS § 712A.22 (2005) (mandatory reports on timeliness regarding every statewide timeliness requirement).
- Arkansas: ARK. CODE ANN. § 9-27-315 (2005) (deadline for emergency removal hearing).

- Utah: UTAH CODE ANN. § 78-3a-306 (2005) (deadline for emergency removal hearing).
- Florida: FLA. ANN. STAT. § 39.402 (2005) (deadlines for emergency removal hearing and adjudication).
- Utah: UTAH CODE ANN. § 78-3a-308 (2005) (deadline for adjudication).
- Arizona: ARIZ. REV. STAT. § 8-844(E) (2004) (deadline for disposition).
- Utah: UTAH CODE ANN. § 78-3a-312(5) (2005) (deadline for filing of termination of parental rights petition and pretrial trial hearing after permanency hearing).
- Connecticut: CONN. GEN. STAT. § 45a-716(a) (2004) (deadline for termination of parental rights hearing).
- Arkansas: ARK. CODE ANN. § 9-27-341(d)(1) (2005) (deadlines for completion of termination of parental rights hearing and completion of written order).
- Delaware: DEL. CODE ANN. TIT. 13 § 1108 (2005) (deadline for completion of termination of parental rights hearing and completion of written order).

Proposed Elements of the Law:

1. Specify deadlines for every stage of the process.
2. Define deadlines for hearings based on when hearings end.
3. Create deadlines for the completion of written court orders.
4. Specify strict grounds for continuances and other exceptions to deadlines.
5. Require parties to submit written statements explaining their reasons for requesting delays, and require courts to state their reasons in writing for granting delays.
6. Require courts to schedule hearings earlier, if possible, when court dates must be changed.
7. Support the improved use of judicial computer systems to avoid delays.
8. Support caseflow management initiatives for child protection cases.
9. Support better judicial workloads for dependency cases and better judicial workload analysis.
10. Maintain strict deadlines for adjudication, including:
    a. Maintaining the current 30-day deadline.
    b. 30 day extensions for delays in service of process and for further investigation and case preparation, but only when additional time is essential and when the party making the request has been diligent in trying to locate parties, conducting investigations, and preparing the case.
    c. Allowing adjudication to go forward for only one party, but allowing the other party to reopen the adjudication when served and requiring ongoing efforts to locate and serve the missing party.
    d. Requiring pretrial hearings when there are delays in the service of process.
11. Limit delays in disposition hearings by:
    a. Maintaining the current 30-day deadline.
    b. Not providing exceptions for delays in evaluations.
    c. Maintaining requirement of dismissal without prejudice for non compliance with deadline and also imposing other strict requirements for extensions in cases where cases are immediately re-filed, including:
        i. Imposing very strict deadlines for disposition after dismissal with prejudice.

ii. Directing the court not to deny the dismissal of dispositional hearings where there is no compelling reason to take the hearing off the docket.
iii. Requiring the filing of written statements explaining the reason for dismissal and written court orders specifying why it is being allowed.
iv. Authorizing or directing judges to apply sanctions for a pattern of improper dismissals or requests for dismissals.

12. Encourage or require more frequent periodic review hearings.
13. Require more timely termination of parental rights (permanent custody) proceedings by:
    a. Setting deadlines for the service of process.
    b. Requiring pretrial hearings when service of process is not completed on time.
    c. Imposing deadlines for completion of termination of parental rights hearings based on completion of service.
    d. Imposing deadlines for completion of court orders following the end of termination of parental rights hearings.
14. Ensure that other court proceedings do not routinely take precedence over child protection proceedings by requiring specific findings when that occurs, explaining why the individual circumstances of the child require such delays.
15. Require cases to be on the court docket at all times.

Alternative Approaches Considered:

- Leaving time limits issues to court rules and judicial administration. In some states, timelines are considered procedural and ultimately a matter for the judiciary. On the other hand, most courts need, to achieve timeliness, the combination of statutes, court rules, local commitments to caseflow management in these cases, and judicial system accountability timeliness requirements.
- Deadlines limited to particular stages of the court process. Adding additional deadlines increases the pressure on local courts and requires additional effort to ensure full accountability for all deadlines.
- Deadlines only for entire legal stages, rather than also for intermediate stages. This allows local courts to have more discretion regarding their own court process, but also does not address important causes of delays.
- Deadlines only for the initiation of hearings as opposed to the end of hearings. These allow more time to complete hearings and impose less pressure on courts to be timely.
- Continuances "for good cause" rather than more explicitly limiting the grounds. These are widely abused in many but not all courts. They also allow more judicial discretion.
- Allowing long periods of time for completion of disposition.
- Making the time a child is "considered to have entered foster care" (as defined by federal law) the basis of TPR and permanency hearing deadlines. This gives the agency and the parents up to 60 additional days to achieve permanency for the child, but also increases the risk of non-compliance with federal timeliness requirements.

Other Things to Consider:

- Making the evidence from the prior proceedings part of the record in the TPR case. This avoids needless repetition in producing evidence and, at the option of the legislature, can also eliminate the need to repeatedly serve process on the parties. Of course, this requires considering the termination of parental rights to be a part of one overarching court process rather than fully separate
- Eliminating the need for new service of process in the TPR (where there was earlier personal service) – make it a motion for TPR
- Strengthening earlier requirements for service on missing parents, including follow up
- Notifying the parties of the possibility of TPR and that all evidence may be considered in a later TPR case
- Developing the statewide judicial capacity for performance measurement in child maltreatment cases

16. Alternative Response System

Summary of Issues

Approximately 20 states use some type of alternative response approach, although in some states the system is applied only is some counties, not statewide. The term "alternative response" applies to any system where cases are diverted from an investigation and put on a different "track" where the family is offered services relevant to their needs.

The systems used across the country vary widely, but some common elements include: use of risk and safety assessment tools; decision-making protocols; and a special track for service delivery. Because state systems vary widely and contain many disparate elements, it is difficult to hold up one system as an ideal model. Below are some elements that should be taken into consideration.

- How the case is determined to be appropriate for an alternative response
- Statutory criteria for application of the alternative response process
- Timeframes for initiating and completing the alternative response process
- The nature and specificity of assessment tools to be used
- Flexibility to conduct an investigation after a case is diverted from that process
- The creation of new community services linkages to aid in the assessment/services response
- Keeping records on diverted cases
- Evaluation of effectiveness of the alternative response process

Overall, reports from the states indicate that alternative response can be a positive tool for keeping children safe, connecting families with services and freeing up resources to be devoted to higher risk cases. Because those systems rely heavily on decision-making tools and protocols, alternative response may be a way to help states arrive at better consistency in decisionmaking and application of maltreatment definitions. The danger in instituting an alternative response system is that cases of abuse or neglect can be inaccurately labeled as "low risk," or families may be able to avoid agency supervision, thus putting children at higher risk.

Following are some considerations to keep in mind regarding the creation of an alternative response system.

Determining Whether the Case is Appropriate for Alternative Response

In most states, a risk level is ascribed to the case at intake. Lower risk cases are referred to an alternative response track, while higher risk cases stay on the investigative track.

In a minority of states, the case is sent to the local district, which determines whether the case is appropriate for alternative response. In either case, the risk assessment tool must be carefully designed to ensure the most serious cases get investigated.

In some states, cases that are screened out for abuse or neglect can still be referred for services through the alternative response system. For example, in Missouri, cases where a child witnesses domestic violence are determined, as a policy matter, not to be classified as maltreatment, but instead are referred for services. Other examples of cases that are screened out for maltreatment but referred for services include where a child is suicidal or exhibiting extreme behaviors, or where the caretaker is too ill to care for a child.

Statutory Criteria

In some alternative response states, certain categories of cases must receive a full investigation (for example, cases where there is a criminal history or prior indicated child protective reports). Other states use language such as "where there is a serious risk of harm to the child," or "substantial child endangerment." In order to ensure children's safety, investigations should be mandated in the most serious cases.

Another statutory consideration is whether to grant discretion to localities in using alternative response. Some state statutes are very broad, in that they only authorize the local district or county to devise an alternative response system. If discretion is left to the localities, the state should still provide clear guidance and criteria, so that there is uniformity among local districts and counties.

Timeframes

Although the lower risk cases are referred to the alternative response track, the agency should not lose the sense of urgency when responding to those reports. A prompt assessment ensures that serious risk factors are not missed.

Some states enforce mandated timeframes, guaranteeing that the child and family are assessed promptly. For instance, in Arizona the provider must initiate an assessment within 48 hours of a referral.

Strong Assessment Tools

Generally, the assessment tool is the key to which cases are placed on the alternative response track. A safety assessment should gather facts concerning "the extent of maltreatment, circumstances surrounding the maltreatment, child functioning including vulnerability, adult functioning, general parenting and disciplinary practices," according to a report by the U.S. Children's Bureau.

A family assessment tool should go beyond determining initial level of risk. According to a federal report on the Child and Family Service Reviews, assessments should address underlying causes of maltreatment, all members of the family, and should not be a one-time event. Rather, the needs of the family should be assessed on an ongoing basis.

Flexibility to Return a Case to the Investigative Track if Services are not Accepted by the Family, or Where Risk to a Child Appears to Warrant a Full Investigation

After an assessment has been performed and the case is determined to be sufficiently low in risk to warrant being placed on a non-investigation track, most states specifically provide that the agency should have the flexibility necessary to return the case to an investigative track if necessary. Returning a case to the investigative track may be necessary when, for example, a parent stops attending a drug treatment program, a child divulges more details about a neglect allegation, or the situation deteriorates in such a way as to increase risk of harm to the child.

The Creation of Community Services

One of the key goals of alternative response in many states is to link families with services within their own community. Some states specifically authorize the creation of multidisciplinary or community service teams or systems to facilitate and strengthen the alternative response system.

Keeping Records of Diverted Cases

Many states keep records of cases diverted to the alternative response. For example, in Minnesota, when the case is closed, the agency must document the outcome, including a description of the services offered and the removal or reduction of risk to the child. Such documentation ensures that the case is not closed prematurely and also ensures that repeated offenses would be caught by the agency. Having past records would also be useful in formulating case plans should future intervention become necessary.

Evaluation of Effectiveness

Before launching a statewide initiative, a state may consider piloting an alternative response approach in a select number of counties and then evaluating the results with a well-designed study. An evaluation, including random assignment, would provide for a more accurate comparison of cases.

Statutory Models Considered

Alaska: ALASKA STAT. § 47.17.030 (2005)
Arizona: ARIZ. REV. STAT. § 8-816 (2004)
Delaware: DEL. CODE ANN. TIT. 16 § 906 (2005)
Idaho: IDAHO CODE § 16-1631 (2005)
Kentucky: KY. REV. STAT. ANN. § 620.040 (2004)
Louisiana: LA. CH. C. ART. 612 (2005)
Minnesota: MINN. STAT. § 626.5551 (2004)
Missouri: MO. REV. STAT. § 210.145 (2005)
Nevada: NEV. REV. STAT. § 432B.260 (2004)
Oklahoma: OKLA. STAT. TIT. 10 § 7105.1 (2004)
Pennsylvania: 23 PA. CONS. STAT. § 6368 (2005)
South Carolina: S.C. CODE ANN. § 20-7-480 (2004)
Texas: TEX. FAM. CODE § 261.3105 (2005)
Utah: UTAH CODE ANN. § 62A-4a-202 (2005)
Vermont: VT. STAT. ANN. TIT. 33 § 4915
Virginia: VA. CODE ANN. § 63.2-1504 (2005)
Washington: WASH. REV. CODE § 26.44.030 (2005)
Wyoming: WYO. STAT. ANN. § 14-3-203 (2005)

Proposed Elements of the Law

Based on a review of current laws and policies regarding alternative response, we recommend the following elements be included in the statutory definition of any alternative response by child protective services agencies that involve the conducting of family assessments in place of formal maltreatment investigations:

1. The most serious allegations, along with cases involving prior reports of child maltreatment or possible criminal activity involving child maltreatment, should be investigated.
2. A requirement that assessments be initiated within a short time frame so as to ensure that child safety issues are addressed as soon as possible.
3. Statutory language should clearly provide for flexibility to conduct an investigation after the case has been referred to the assessment track.
4. Authorization of community service teams to provide assessments, in order to encourage community development of partnerships to maximize alternative response systems.
5. Instituting a pilot program, with a strong evaluative component required by law, which would help the state determine whether its alternative response system is effectively keeping children safe.

Other Approaches Considered

- Mandating investigation in every case
- Not requiring assessments to be completed within certain time limits

- Not specifically providing for a procedure to change cases from assessment to investigation when necessary

Other Considerations

The use of carefully designed risk assessment tools helps ensure that the most serious risk factors are considered. Comprehensive family assessments ensure that the family's needs are met on an on-going basis, and that any need for more serious intervention is caught promptly. Well-designed assessment tools also provide a structure for more uniform decision making among caseworkers.

Appendix 10 Alternative Statutory Structure Proposals

PHYSICAL ABUSE

OHIO LAW	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
§ 2151.031. As used in this chapter, an "abused child" includes any child who…: (B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child; (C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code. (D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare. (E) Is subjected to out-of-home care child abuse. **§ 2919.22**. Endangering children A) No person, who is the parent, guardian, custodian, person havingcustody or control, or person in	A. "Physical Abuse" means any intentional, reckless, or threatened act upon a child under eighteen years of age, by a parent, guardian or custodian, that results in physical injury or harm or that creates a substantial risk of harm to a child, including but not limited to: 1) striking a child with a closed fist; 2) shaking a child under age three; 3) twisting the arm of a child 4) throwing, kicking, burning, or cutting a child; 5) interfering with a child's breathing; 6) threatening a child with a deadly weapon; 7) prolonged deprivation of a child's sustenance or medication for purposes of punishment; 8) providing a child with dangerous drugs; 9) physically restraining the child in a cruel manner or for a prolonged period; 10) any intentional, reckless or threatened act that results in one or more of the following injuries to a child: a. sprains, dislocations, or cartilage damage; b. bone or skull fractures; c. brain or spinal cord damage; d. cranial hemorrhage or injury to other internal organs; e. asphyxiation, suffocation or drowning; f. injury resulting from use of a deadly weapon; g. burns or scalding; cuts,	A. "Abused child" means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent: (1) inflicts, causes to be inflicted, or allows to be inflicted upon such child physical injury, by other than accidental means, which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function; or (2) creates a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function. B. "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily part.	A. An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person. B. "Harm" can occur by: 1) Physical injury or emotional maltreatment; 2) Failure to supply the child with adequate food, clothing, shelter or health care. For the purposes of this subchapter, "adequate health care" includes any medical or non-medical remedial health care permitted or authorized under state law. Notwithstanding that a child might be found to be without proper parental care, a parent or other person responsible for a child's care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone; or 3) Abandonment of the child. C. "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional

loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body. B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age: 1.Abuse the child; 2. Torture or cruelly abuse the child 3. Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child. 4. Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development.	lacerations, punctures, or bites; h. unconsciousness i. permanent or temporary disfigurement; k. permanent or temporary loss or impairment of a body part or function l. nontrivial soft tissue swelling m. severe bruising n. severe pain o. death (B) It is not necessary to identify who perpetrated an injury upon a child in order to find that that child has been physically abused (C) The following situations may be considered grounds for termination of parental rights and for not requiring reasonable efforts to preserve and reunify a family: a. actual injury to a child or sibling that could have caused death if not treated; b. more than one abusive act that has caused lasting harm to a child; c. more than one separate act causing one or more of the injuries enumerated in paragraph 1(j) of this section (H) An injury to a child that is inconsistent with the explanation given of it shall shift the burden of presenting evidence to the parent, guardian, or custodian in any court action arising from such injury (I) It is the policy of this state to protect children from assault and abuse and to encourage parents and other caretakers to use methods of		maltreatment or sexual abuse. D. "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means. E. "Emotional maltreatment" means a pattern of malicious behavior which results in impaired psychological growth and development. F. "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

	correction and restraint of children that are not dangerous to the children. However, the physical discipline or corporal punishment of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, guardian, or legal custodian for purposes of restraining or correcting the child. In construing whether the act of physical discipline or corporal punishment constitutes child abuse, the force used against the child should be considered with respect to: the size, age, and condition of the child; the location of the injury; the strength and duration of the force used by the adult; and whether the injuries to the child were caused recklessly or while the adult was angry and out of control, such as while being under the influence of alcohol or drugs. (J) Physical discipline or corporal punishment of a child by anyone other than the child's parent, guardian, or legal custodian for purposes of restraining or correcting the child is prohibited unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child. (K) Acts of a parent, guardian, or custodian that result in injury or substantial risk of injury to a child shall not be considered abuse if the act is necessary to prevent physical injury or harm to oneself or another person, or more serious physical injury or harm to the child.		

SEXUAL ABUSE

OHIO LAW	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
§ 2151.031. As used in this chapter, an "abused child" includes any child who: A) Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child... **§ 2907.01. Definitions.** As used in sections 2907.01 to 2907.37 of the Revised Code: (A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. (B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person. C) "Sexual activity" means sexual conduct or sexual contact, or both. **§ 2907.04. Unlawful sexual conduct with minor.** (A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.	"Sexual abuse" means, except as otherwise provided in Subsection 3, contacts or interactions in which a parent, guardian, or other adult having custodial control or supervision of a child under age 18, or an adult otherwise responsible for such child's welfare who has continued and sanctioned access to the child, commits, coerces, encourages, allows, permits, or fails to protect the child from sexual acts against the child. 1."Sexual acts" for purposes of this section include, but are not limited to: a)any penetration, however slight, of the vagina or anal opening of one person by the penis of another; b) any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person; c) any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, other than for a valid medical purpose; d) the intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this would not include acts that would be reasonably construed to be a normal caregiver responsibility, or showing of affection for a child, or have a valid medical purpose;	The term " sexual abuse " includes – A. the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or B. the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;	A. "Abuse" means harm or threatened harm to a child's health or welfare. Harm or threatened harm to a child's health or welfare can occur through sexual abuse or attempted sexual abuse or sexual exploitation or attempted sexual exploitation. B. "Sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children as those acts are defined by [state] law. C. Sexual abuse shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than three years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent. D. "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child for commercial purposes.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor. (1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree. (2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree. (3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree. (4) If the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code, unlawful sexual conduct with a minor is a felony of the second degree. **§ 2907.05. Gross sexual imposition** (A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies: (4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.	e) the intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act in the presence of a child if such exposure is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose; f) the sexual exploitation of a child, including knowingly permitting, encouraging, or forcing a child to solicit for or engage in prostitution or a commercial sexual act or performance, or to make a photographic record of any of the acts defined herein; g) knowingly permitting, encouraging, or forcing the child to watch pornography; h) flagellation, torture, defecation or urination, or other sado-masochistic acts involving the child when for the purpose of the adult's sexual stimulation; or i) facilitating or permitting the statutory rape of the child. 2.This section excludes: a) sexual acts allegedly committed by any person not specifically enumerated above unless the child's parent, parent, guardian, or other adult having custodial control or supervision of the child knowingly or negligently encouraged, allowed, or permitted such acts; or b) sexual acts between another minor child in the home and the sexually victimized child, unless the child's parent, parent, guardian, or other adult having custodial control or supervision of the child either knowingly or negligently encouraged, allowed, or permitted such acts.		

1) Defined within the civil child protection law, without reference to the separate, existing set of criminal child sexual abuse laws.

2) Defined to include contacts or interactions in which a parent, guardian, or other adult having custodial control or supervision of the child or otherwise responsible for the child's welfare within their home, commits, coerces, encourages, allows, permits, or fails to protect the child from any of a listed set (see 3.) of sexual acts against the child.

3) Defined as sexual acts that include:

a)any penetration, however slight, of the vagina or anal opening of one person by the penis of another;

b any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person;

c) any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, other than for a valid medical purpose;

d) the intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this would not include acts that would be reasonably construed to be a normal caregiver responsibility, or showing of affection for a child, or have a valid medical purpose;

e) the intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act in the presence of a child if such exposure is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;

f) the sexual exploitation of a child, including allowing, encouraging, or forcing a child to solicit for or engage in prostitution or a commercial sexual act or performance, or to make a photographic record of any of the acts defined herein;

g) forcing the child to watch pornography for the purpose of the adult's sexual arousal or gratification, child degradation, or other similar purpose;

h) flagellation, torture, defecation or urination, or other sado-masochistic acts involving the child when for the purpose of the adult's sexual stimulation;

i) facilitation of the statutory rape of the child, where the parent, guardian, or caretaker has knowledge of the child's unlawful sexual relationship.

k) Sexual abuse of a child by a teacher, day care provider, or other person with some level of responsibility to the child while the child is out of the home would not be covered by this definition, unless a parent knowingly encouraged, allowed, or permitted such acts. Sexual acts between a minor child in the home and the sexually victimized child would also not be covered here, unless again the parent knowingly encouraged, allowed, or permitted such acts. However, if a parent is extremely negligent in their supervising of a child, and that is related to the child's sexual victimization by another child in the home, then that should be a basis for an agency substantiation and court finding that a child is in need of care and protection due to failure to supervise.

EMOTIONAL MALTREATMENT

OHIO'S CURRENT LAW	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
O.R.C. § 2151.031 As used in this chapter, an "abused child" includes any child who…: (D) Because of the acts of his parents, guardian, or custodian, suffers…mental injury that harms or threatens to harm the child's health or welfare O.R.C. § 2151.03. (A) As used in this chapter, "neglected child" includes any child…: (6) Who, because of the omission of the child's parents, guardian, or custodian, suffers… mental injury that harms or threatens to harm the child's health or welfare **O.R.C. § 2151.011. Definitions** (A) As used in the Revised Code: (22) "Mental injury" means any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in section 2919.22 of the Revised Code and is committed by the parent or other person responsible for the child's care. **O.R.C. § 2919.22**. Endangering children (A) No person...shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. (B) No person shall do any of the following one years of age: 3) Administer corporal punishment or	**EMOTIONAL MALTREATMENT** 1."Emotional abuse" means a pattern of behavior toward a child by parent, guardian, or other adult having custodial control of a child under age 18, or an adult otherwise responsible for such child's welfare who has continued and sanctioned access to the child that has an observable, sustained, and adverse effect on the child's psychological, emotional, intellectual, cognitive or social functioning and/or development, *or* conduct by such person towards the child that is so severely humiliating and degrading that it results in a substantial risk of a sustained and adverse effect on the child's psychological, emotional, intellectual, cognitive or social functioning and/or development. 2. "Emotional neglect" means repeated omissions or failure to act in relation to a child by parent, guardian, or other adult having custodial control of a child under age 18, or an adult otherwise responsible for such child's welfare who has continued and sanctioned access to the child, that results in an observable, sustained, and adverse effect on the child's psychological, emotional, intellectual, cognitive or social functioning and/or development, including the adult's refusal of appropriate treatment of the child for such effect. 3. For purposes of this section, an "observable, sustained, and adverse effect on a child's mental, emotional, cognitive or social functioning and/or	**CHILD ABUSE** The term "child abuse shall mean any of the following… (ii) An act or failure to act by a perpetrator which causes non-accidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age. "**SERIOUS MENTAL INJURY.**" A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that: (1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or (2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.	"Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody and control of a child. Abuse includes: "Serious emotional injury" means an injury that is diagnosed by a medical doctor or a psychologist and that does any one or a combination of the following: (a) Seriously impairs mental faculties. (b) Causes serious anxiety, depression, withdrawal or social dysfunction behavior to the extent that the child suffers dysfunction that requires treatment. (c) Is the result of sexual abuse
other physical d …linary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child…;	development" must be evidenced by a substantial and observable impairment in the child's ability to function within a child's normal range of performance, behavior, emotional response, or cognition based on the child's age and stage of development, with due regard to the child's culture. Such evidence may include, but is not limited to, the child's failure to thrive, control aggressive or self-destructive impulses, ability to think and reason, or severe acting-out behavior; however, such impairment must be shown to be clearly attributable to the acts, the failure to act, or the omissions of parent, guardian, or other adult having custodial control of a child under age 18, or an adult otherwise responsible for such child's welfare who has continued and sanctioned access to the child		

DOMESTIC VIOLENCE

OHIO LAW	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
§ 2919.25. Domestic violence (criminal statute) A) No person shall knowingly cause or attempt to cause physical harm to a family or household member. B) No person shall recklessly cause serious physical harm to a family or household member. C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member. (D)(1) Whoever violates this section is guilty of domestic violence. (2) Except as otherwise provided in division (D)(3) or (4) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree, and a violation of division (A) or (B) of this section is a misdemeanor of the first degree	A. A child who has been exposed to domestic violence may be considered to be emotionally abused. (B) A child is considered to have been exposed to domestic violence when: (1) a parent or other person responsible for the care of the child engages in violent behavior that imminently or seriously endangers the child's physical or mental health; (2) a parent or other person responsible for the care of the child engages in repeated violent behavior that imminently or seriously endangers a family or household member; (3) the child has witnessed repeated incidents of violent behavior that imminently or seriously endangers a family or household member.	"Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home. The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.	If the PCSA determines in an investigation of abuse or neglect of a child that (1) the child is in danger because of domestic violence or that the child needs protection as a result of the presence of domestic violence in the family, the PCSA shall take appropriate steps for the protection of the child, In this paragraph, "appropriate steps" includes (A) reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is not a domestic violence offender; (B) reasonable efforts to remove the alleged domestic violence offender from the child's residence if it is determined that the child or another family or household member is in danger of domestic violence; and (C) services to help protect the child from being placed or having unsupervised visitation with the domestic violence offender until the department determines that the offender has met conditions considered necessary by the department to protect the safety of the domestic violence victim and household members; (2) a person is the victim of domestic violence, the PCSA shall provide the victim with a written notice of the
			rights of and services available to victims of domestic violence. [(3) For purposes of this provision, "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member: (A) assault or battery (B) burglary (C) criminal trespass (D) arson or criminally negligent burning (E) criminal mischief (F) terrorist threatening (G) violating a protective order; or (H) harassment

MEDICAL NEGLECT

OHIO LAW	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
§ 2151.03. Neglected child defined; failure to provide medical care for religious reasons (A) As used in this chapter, "neglected child" includes any child…: (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary…medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being; (4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition; (B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person's responsibility under section 2151.421 [2151.42.1] of the Revised Code to report known or suspected child abuse, known or suspected child neglect, and children who are known to face or are suspected of facing a threat of suffering abuse or neglect and does not preclude any exercise of the authority of the state,	Medical Neglect is defined as… The failure of a parent or legal guardian to supply a child with necessary medical, surgical, mental health (including psychiatric or psychological treatment), or other care required for a child's health, including but not limited to, parental failure to use resources made available to treat a diagnosed medical condition if such treatment may prevent the child's death, disfigurement, or serious impairment, or where such treatment is necessary to make a child substantially more comfortable, reduce the child's pain and suffering, or correct or substantially diminish a child's debilitating or crippling condition from worsening	A. The term "withholding of medically indicated treatment means the failure to respond to the child's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to a child when, in the treating physician's or physicians' reasonable medical judgment— (1) the infant is chronically and irreversibly comatose; (2) the provision of such treatment would— (a) merely prolong dying; (b) not be effective in ameliorating or correcting all of the child's life-threatening conditions; or (c) otherwise be futile in terms of the survival of the infant; or (B) the provision of such treatment would be virtually futile in terms of the survival of the child and the treatment itself under such circumstances would be inhumane.	PARENTS' RELIGIOUS BELIEFS If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, if appropriate. OR When the health or condition of a child who is a ward of the court requires it, the court may consent to the performing and furnishing of hospital, medical, surgical or dental treatment or procedures, including the release and inspection of medical or dental records. A child, or parent of any child, who is opposed to certain

any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.			medical procedures authorized by this subsection may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the court may limit the performance of matters provided for in this subsection or may authorize the performance of those matters subject to terms and conditions the court considers proper. OR A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child shall not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires: (a) Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or (b) Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization

MEDICAL NEGLECT

OHIO LAW	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
§ 2151.03. Neglected child defined; failure to provide medical care for religious reasons (A) As used in this chapter, "neglected child" includes any child…: (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary…medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being; (4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition; (B) Nothing in this chapter shall be construed as subjecting a parent, guardian, or custodian of a child to criminal liability when, solely in the practice of religious beliefs, the parent, guardian, or custodian fails to provide adequate medical or surgical care or treatment for the child. This division does not abrogate or limit any person's responsibility under section 2151.421 [2151.42.1] of the Revised Code to report known or suspected child abuse, known or suspected child neglect, and children who are known to face or are suspected of facing a threat of suffering abuse or neglect and does not preclude any exercise of the authority of the state,	Medical Neglect is defined as… The failure of a parent or legal guardian to supply a child with necessary medical, surgical, mental health (including psychiatric or psychological treatment), or other care required for a child's health, including but not limited to, parental failure to use resources made available to treat a diagnosed medical condition if such treatment may prevent the child's death, disfigurement, or serious impairment, or where such treatment is necessary to make a child substantially more comfortable, reduce the child's pain and suffering, or correct or substantially diminish a child's debilitating or crippling condition from worsening	A. The term "withholding of medically indicated treatment means the failure to respond to the child's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to a child when, in the treating physician's or physicians' reasonable medical judgment— (1) the infant is chronically and irreversibly comatose; (2) the provision of such treatment would— (a) merely prolong dying; (b) not be effective in ameliorating or correcting all of the child's life-threatening conditions; or (c) otherwise be futile in terms of the survival of the infant; or (B) the provision of such treatment would be virtually futile in terms of the survival of the child and the treatment itself under such circumstances would be inhumane.	PARENTS' RELIGIOUS BELIEFS If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, if appropriate. OR When the health or condition of a child who is a ward of the court requires it, the court may consent to the performing and furnishing of hospital, medical, surgical or dental treatment or procedures, including the release and inspection of medical or dental records. A child, or parent of any child, who is opposed to certain

any political subdivision, or any court to ensure that medical or surgical care or treatment is provided to a child when the child's health requires the provision of medical or surgical care or treatment.			medical procedures authorized by this subsection may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the court may limit the performance of matters provided for in this subsection or may authorize the performance of those matters subject to terms and conditions the court considers proper. OR A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child shall not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires: (a) Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or (b) Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization

SUBSTANCE ABUSE

OHIO LAW	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
§ 2919.22. Endangering children (B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age: (6) Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 or 2925.041 [2925.04.1] [marijuana, controlled substances] of the Revised Code when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section 2925.04 or 2925.041 [2925.04.1] of the Revised Code that is the basis of the violation of this division.	Neglect is defined as… 1) Use of alcohol or a controlled substance by a parent or person responsible for the care of the child that harms or causes a risk of harm to the child, provided that the parental behavior connected with the substance abuse and the results of such behavior would constitute maltreatment as otherwise defined in the law. 2) Exposing a child to the criminal distribution of dangerous drugs, the criminal production or manufacture of dangerous drugs, or the operation of an unlawful clandestine laboratory to which the child has access. 3) When a newborn child's toxicology screen yields a positive result for an illegal drug due to prenatal maternal drug abuse, the newborn is *per se* a neglected (abused) child.	"Neglect" is defined as…: 1) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a non-medical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance; (2) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; 3) Causing, permitting, or encouraging a child to use a controlled substance except for controlled substances that are prescribed and dispensed to the child in accordance with the law 4) The presence of an illegal drug in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child, including a child born with fetal alcohol syndrome; 5) Manufacturing a controlled substance, or having possession of chemicals or equipment needed for manufacturing a controlled substance, in a child's residence.	"Abuse" means…: 1. An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child. 2. The person responsible for the care of a child has, in the presence of the child, manufactured a dangerous substance, or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

§ 2919.22. Endangering children

(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

(6) Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 or 2925.041 [2925.04.1] of the Revised Code when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section 2925.04 or 2925.041 [2925.04.1] of the Revised Code that is the basis of the violation of this division.

EDUCATIONAL NEGLECT

OHIO LAW	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
§ 2151.03. Neglected child defined; (A) As used in this chapter, "neglected child" includes any child...: (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;	1.Educational Neglect is defined generally as failure by a child's parent, guardian or custodian who is financially able to do so, or who has been provided with other reasonable means to do so, to provide for that child's education, including but not limited to: a) Failure or refusal, over an extended period of time, of the child's parent, guardian or custodian to secure the child's regular and timely school attendance (including tutoring and summer school, when educationally required) over an extended period of time, b) Actions or failures to act that interfere with the provision of any needed educational services or individualized educational program for the child pursuant to the federal Individuals with Disabilities Education Act. 2. A petition based solely upon the failure of a child's parents, guardian or custodian to provide their child with an education shall specify what efforts educational system personnel have made to bring about the child's regular and timely attendance or the initiation of any needed special education program for the child, and whether the child's continued truancy, tardiness, or lack of necessary educational program is related to the parent's refusal to cooperate with school personnel. If educational system personnel have not made such efforts, the court may join the schools, whether public or private, as parties to the case, however, the school's efforts shall not be a requirement for filing such a petition or proving the case. 3. This provision is not intended to cover a parent's refusal to provide their child with medications recommended by the school for addressing a child's in-school behavioral or attention problems. These actions should be the basis for intervention only when they represent failures to provide medical care.	Educational Neglect is defined as failure or refusal to provide necessary education required by law, excluding the failure to follow an individualized educational program, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected; A child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or non-medical remedial health care permitted or authorized under state law;	"Educational Neglect" means: (4) failure to ensure that the child is educated as defined in state law, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications.

DEPENDENCY

OHIO LAW	ALTERNATIVE 1	ALTERNATIVE 2	ALTERNATIVE 3
2151.04. As used in this chapter, "dependent child" means any child: A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian; B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian; C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship; D) To whom both of the following apply: (1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child. (2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.	As used in this chapter, "dependent child" means any child: A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian; B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian; C) To whom both of the following apply: (1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child. (2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.	"Dependent child": A) Means a child who is 1) In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control. 2) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care. 3) Under the age of eight years and who is found to have committed an act that would result in adjudication as a delinquent juvenile or incorrigible child if committed by an older juvenile or child. 4) Incompetent or not restorable to competency and who is alleged to have committed a serious criminal offense.	"Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

EXCLUSIONS			
If a child is found to have committed a delinquent act and is subsequently determined to be in need of treatment or rehabilitation, the court may make any order best suited to the child's treatment, rehabilitation, and welfare, including an order authorized by law for the disposition of a dependent child. OR Expressly excluded from this provision are delinquent or unruly children for whom there is no child protection concern. AND/OR A child may not be committed to the custody or guardianship of a PCSA and placed in an out-of-home placement solely because the child's parent or guardian lacks shelter or solely because the child's parents are financially unable to provide treatment or care for a child with a developmental disability or mental illness. The PCSA shall make appropriate referrals to emergency shelter services and other services for the homeless family with a child which lacks shelter.	Here are some models of the second type: "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.		

Appendix 11 Survey Results Compilation

Results Summary

Show All Pages and Questions | Export... | View D

Filter Results

To analyze a subset of your data, you can create one or more filters.

Add Filter... **Total:** 440 **Visible:** 440

Share Results

Your results can be shared with others, without giving access to your account.

Configure... **Status:** Enabled **Reports:** Summary and Detail

2. Demographic Information

1. What is your agency of employment?

View	**Total Respondents**	**432**
	(skipped this question)	8

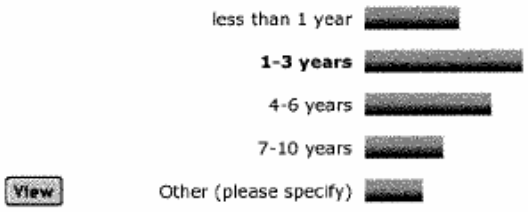
2. What is your current position in the child welfare system? (check one)

		Response Percent	Response Total
	Caseworker	**61.4%**	**269**
	Supervisor	24.2%	106
	Administrator	4.3%	19
View	Other (please specify)	10%	44
	Total Respondents		**438**
	(skipped this question)		2

3. In what area do most of your responsibilities lie?

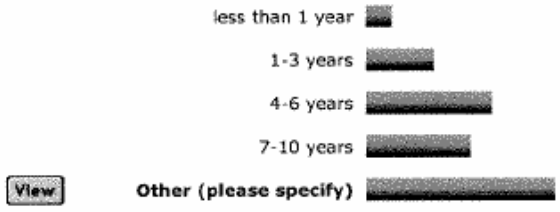
		Response Percent	Response Total
	Intake screening	15.4%	67
	Intake investigations	**60.8%**	**265**
	Ongoing case management	8.7%	38
View	Other (please specify)	15.1%	66
	Total Respondents		**436**
	(skipped this question)		4

4. How long have you worked in this position?



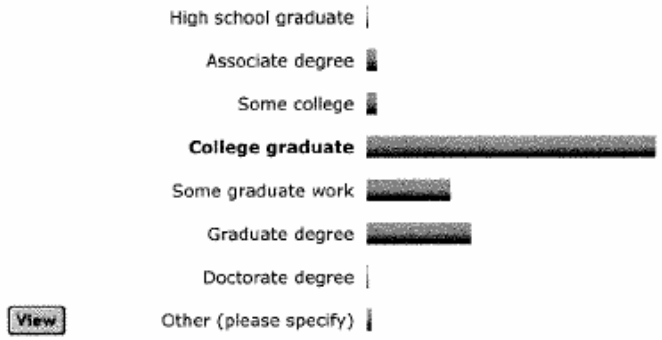
	Response Percent	Response Total
less than 1 year	18.1%	79
1-3 years	**30%**	**131**
4-6 years	24.8%	108
7-10 years	15.4%	67
Other (please specify)	11.7%	51
Total Respondents		**436**
(skipped this question)		4

5. How long have you worked in child welfare?



	Response Percent	Response Total
less than 1 year	5.5%	24
1-3 years	13%	57
4-6 years	24.3%	106
7-10 years	20.4%	89
Other (please specify)	**36.8%**	**161**
Total Respondents		**437**
(skipped this question)		3

6. What is your level of education?



	Response Percent	Response Total
High school graduate	0.9%	4
Associate degree	2.5%	11
Some college	2.1%	9
College graduate	**55.1%**	**241**
Some graduate work	16.7%	73
Graduate degree	20.8%	91
Doctorate degree	0.5%	2
Other (please specify)	1.4%	6
Total Respondents		**437**
(skipped this question)		3

3. Screening

7. Does your agency have written screening procedures?

	Response Percent	Response Total
Yes	**93.1%**	**393**
No	6.9%	29
Total Respondents		**422**
(skipped this question)		**21**

8. Do you think that suspected child abuse, neglect, dependency in your county is:

	Response Percent	Response Total
Under reported	27.6%	117
Reported adequately	**48.8%**	**207**
Over reported	23.6%	100
Total Respondents		**424**
(skipped this question)		**19**

9. How often does your agency receive reports/referrals of child maltreatment that do not warrant investigation?

	Response Percent	Response Total
Frequently	**42.9%**	**182**
Sometimes	40.3%	171
Occasionally	9.2%	39
Seldom or never	1.7%	7
View Unknown (please explain)	5.9%	25
Total Respondents		**424**
(skipped this question)		**19**

10. What types of reports/referrals are most often screened out (and no investigation made)? Please rank in order from most common (1) to least common (6)

	1	2	3	4	5	6	Response Average
Child Abuse	7% (23)	3% (11)	4% (13)	4% (15)	24% (84)	**58% (204)**	**5.11**
Neglect	3% (11)	8% (29)	8% (29)	22% (78)	**51% (177)**	7% (24)	**4.30**
Dependency (parent unable to care for child)	3% (10)	6% (20)	32% (114)	**46% (163)**	9% (30)	4% (15)	**3.65**
Child's mental health	9% (35)	31% (115)	**35% (130)**	15% (56)	7% (25)	2% (8)	**2.85**
Delinquency/Unruly	**42% (159)**	36% (137)	10% (38)	4% (14)	4% (17)	5% (18)	**2.08**
	53%						

Other	**(117)**	13% (29)	10% (21)	6% (13)	3% (6)	16% (35)	**2.40**
						Total Respondents	**409**
						(skipped this question)	**31**

11. If your answer to Question 10 was "Other," please explain:

View	**Total Respondents**	**132**
	(skipped this question)	**308**

12. Given the limited information provided, please indicate whether you think that each of the following reports/referrals should be screened-in (S/I) or screened-out (S/O). Note: In each situation, there are no other indications of harm to the child.

	S/I	S/O	Response Total
Child witnessed domestic violence between parents	**89% (377)**	11% (47)	**424**
Child's parent arrested on drug charges	**52% (221)**	48% (202)	**423**
Caller saw the parent use drugs	45% (191)	**55% (232)**	**423**
Caller saw child begging for meals in neighborhood	**85% (359)**	15% (64)	**423**
Child missed 25 days of school	**52% (220)**	48% (202)	**422**
Caller saw parent spank 2 year old child with belt	**92% (391)**	8% (33)	**424**
Caller saw parent spank 12 year old child with belt	37% (158)	**63% (266)**	**424**
Child locked out of house for 1 hour in 38 degree weather	**92% (387)**	8% (35)	**422**
Parent screams at child when he misbehaves	12% (52)	**88% (371)**	**423**
Parent swears at child	17% (73)	**83% (348)**	**421**
Parent does not secure child's seat belt when in the car	39% (163)	**61% (260)**	**423**
Parent can't pay for services for child's severe mental health problems	**51% (216)**	49% (208)	**424**
Parent unable to control their unruly child	11% (47)	**89% (376)**	**423**
15 year old girl is having sex with 19 year old boyfriend	**61% (258)**	39% (165)	**423**
		Total Respondents	**419**
		(skipped this question)	**21**

13. Which, if any, of the following should, in your opinion, be automatically screened out at the time of the initial referral? Check all that apply.

	Response Percent	Response Total
Caller is able to provide the names but not the addresses of the subjects of the referral	19.4%	81
Caller is unable to provide the		

names or addresses of the subjects of the referral	**70.6%**	**295**
Caller is the spouse of the alleged perpetrator, with whom Caller is in the midst of a divorce or custody dispute.	13.2%	55
Caller did not witness the alleged maltreatment, but heard of it through a third party	23.9%	100
Caller has called three times previously to report this child as abused; upon investigation, all three reports were found to be unsubstantiated	27.8%	116
None of the above	22.2%	93
	Total Respondents	**418**
	(skipped this question)	**22**

14. Overall, how would you rate your agency's screening procedures?

	Response Percent	Response Total
Excellent	18.4%	78
Good	**61.9%**	**263**
Fair	17.2%	73
Poor	2.6%	11
	Total Respondents	**425**
	(skipped this question)	**19**

15. Please rank the following suggestions for improving your agency's screening procedures, with 1 being most helpful and 5 being least helpful:

	1	2	3	4	5	Response Average
Clearer written policies on what is screened in or out	**50% (206)**	22% (92)	12% (49)	7% (29)	8% (33)	**2.00**
Better training of screeners	**33% (134)**	25% (104)	20% (84)	11% (47)	10% (41)	**2.41**
Special review process for screened-out cases	16% (63)	23% (94)	**24% (97)**	22% (88)	16% (64)	**2.99**
Better referral mechanisms for screened-out cases	19% (77)	25% (101)	**27% (110)**	21% (87)	8% (32)	**2.74**
Knowing that the agency to which the case was referred actually aided the family	16% (67)	23% (94)	19% (79)	12% (50)	**29% (121)**	**3.16**
				Total Respondents		**412**
				(skipped this question)		**28**

16. Other than those listed in Question 15, what suggestion(s) do you have for improving your agency's screening procedures?

View **Total Respondents** **146**

(skipped this question) 294

4. Investigation

17. In the following scenarios, would you be more likely to suspect abuse, neglect, or dependency, or none of these, based upon the limited information provided?

	Abused	Neglected	Dependent	None of these	Response Total
Child's parents refuse medical treatment for their child's leukemia, for religious reasons	1% (3)	34% (141)	21% (87)	**44% (179)**	**410**
Child has been diagnosed with severe ADHD; parents refuse to put him on prescribed medication despite strong recommendations from child's teacher and school psychologist	0% (0)	27% (112)	11% (45)	**62% (251)**	**408**
Parent spanks child with belt, causing bruises on child's buttocks	**86% (356)**	0% (0)	1% (4)	13% (52)	**412**
Parent has been diagnosed as paranoid schizophrenic, and thinks aliens are communicating with him through the TV; child is attending school, appears healthy and clean and exhibits no behavior problems	1% (4)	2% (10)	34% (138)	**63% (259)**	**411**
Family lost their home and belongings in flood; they have been staying with various relatives and friends for 4 months and the children have not returned to school	0% (0)	**46% (188)**	38% (157)	16% (66)	**411**
A Vietnamese-American child has a large red welt on his chest; he tells school officials that his mother caused the welt by rubbing his skin vigorously with a coin	29% (119)	1% (6)	7% (30)	**62% (252)**	**407**
Parent slaps child on cheek, leaving handprint	**85% (347)**	0% (0)	2% (7)	13% (55)	**409**
Parent of 2 children, ages 4 and 5, spends most of the time out of the home at work, often not returning until 7-8 p.m.; the children are able to let themselves into the apartment and a neighbor keeps an eye on them	0% (1)	**84% (345)**	8% (31)	8% (35)	**412**
Parents give a 2 year old cough medicine at night to keep him quiet because he tends to run around and pester them	**49% (198)**	37% (150)	7% (30)	7% (28)	**406**

Total Respondents **410**

(skipped this question) 30

18. Approximately how many children have you involuntarily removed from their homes in the past year on reports/referrals of abuse, neglect or dependency?

View **Total Respondents** **382**

(skipped this question) 58

19. Of the children you have involuntarily removed from their homes in the past year, how many were removed pursuant to an emergency custody order?

View Total Respondents	368
(skipped this question)	72

20. Please rank the following suggestions for improving your agency's investigation procedures, with 1 being most helpful and 5 being least helpful:

	1	2	3	4	5	Response Average
Clarify the laws regarding what constitutes abuse or neglect	**35% (134)**	11% (42)	13% (51)	19% (73)	21% (82)	**2.81**
Have more investigators	**28% (106)**	27% (102)	15% (55)	17% (63)	14% (51)	**2.60**
Lower investigative caseloads	22% (83)	**34% (131)**	18% (71)	17% (66)	9% (33)	**2.57**
Better training of investigators	10% (40)	17% (66)	**34% (131)**	26% (101)	12% (46)	**3.12**
Improved coordination with law enforcement	9% (35)	13% (52)	21% (82)	18% (69)	**39% (151)**	**3.64**
				Total Respondents		**405**
				(skipped this question)		**35**

21. Other than those listed in Question 20, do you have any suggestions for improving your agency's investigation procedures:

View Total Respondents	119
(skipped this question)	321

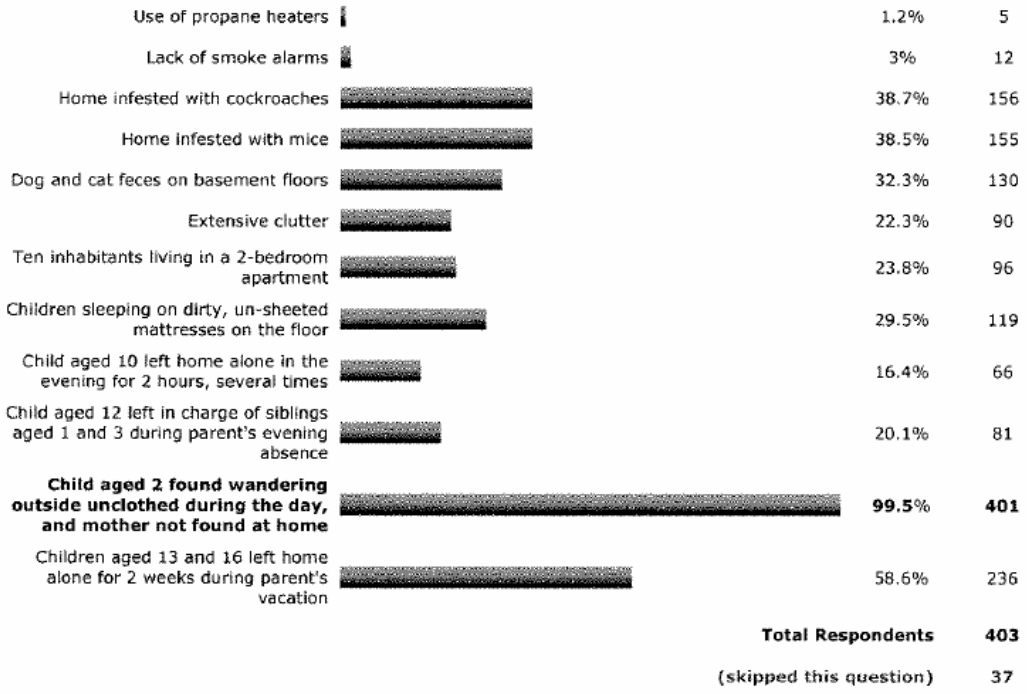
5. Disposition

22. Do you think the child abuse, neglect, dependency reports/referrals that are investigated by your agency are:

	Response Percent	Response Total
Under-substantiated	13.7%	56
Appropriately substantiated	**79%**	**323**
Over-substantiated	7.3%	30
	Total Respondents	**409**
	(skipped this question)	**32**

23. Which of the following factors, standing alone, would be sufficient to warrant a disposition of "substantiated" in a neglect report/referral alleging inadequate care? Check all that apply.

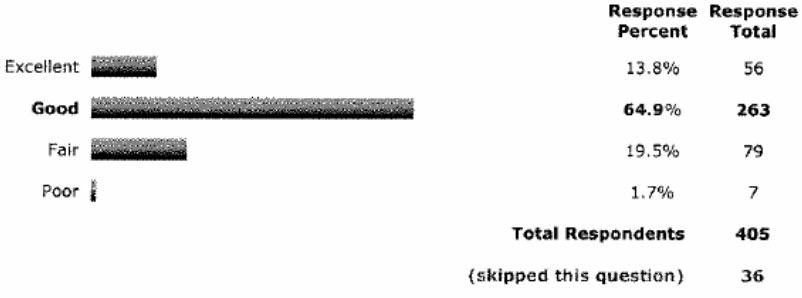
	Response Percent	Response Total
No running water	21.1%	85
No indoor plumbing	21.1%	85
No electricity	22.3%	90
No gas	17.9%	72



Use of propane heaters	1.2%	5
Lack of smoke alarms	3%	12
Home infested with cockroaches	38.7%	156
Home infested with mice	38.5%	155
Dog and cat feces on basement floors	32.3%	130
Extensive clutter	22.3%	90
Ten inhabitants living in a 2-bedroom apartment	23.8%	96
Children sleeping on dirty, un-sheeted mattresses on the floor	29.5%	119
Child aged 10 left home alone in the evening for 2 hours, several times	16.4%	66
Child aged 12 left in charge of siblings aged 1 and 3 during parent's evening absence	20.1%	81
Child aged 2 found wandering outside unclothed during the day, and mother not found at home	**99.5%**	**401**
Children aged 13 and 16 left home alone for 2 weeks during parent's vacation	58.6%	236
	Total Respondents	**403**
	(skipped this question)	**37**

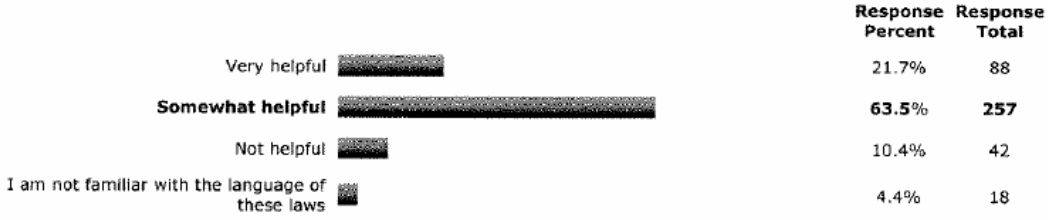
6. Statutory Language

24. How would you rate your understanding of Ohio's abuse, neglect, dependency laws?



	Response Percent	Response Total
Excellent	13.8%	56
Good	**64.9%**	**263**
Fair	19.5%	79
Poor	1.7%	7
	Total Respondents	**405**
	(skipped this question)	**36**

25. How helpful are Ohio's abuse, neglect, and dependency laws in guiding your daily decision-making in abuse/neglect/dependency cases?



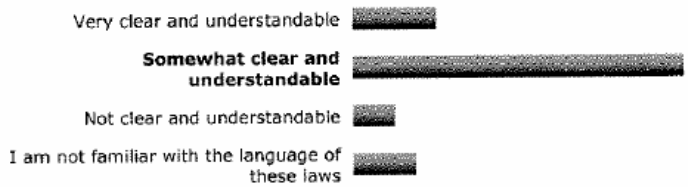
	Response Percent	Response Total
Very helpful	21.7%	88
Somewhat helpful	**63.5%**	**257**
Not helpful	10.4%	42
I am not familiar with the language of these laws	4.4%	18

Total Respondents	**405**
(skipped this question)	**36**

26. How often do you refer to Ohio's child maltreatment laws to assist you in determining whether a child is abused, neglected, or dependent?

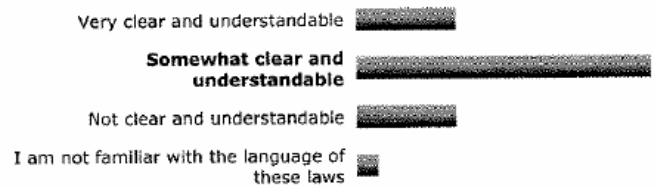
	Response Percent	Response Total
Always	7%	28
Frequently	28.2%	113
Sometimes	**39.9%**	**160**
Seldom or Never	24.9%	100
Total Respondents		**401**
(skipped this question)		**41**

27. How clear and easy to understand and apply are Ohio's laws defining sexual abuse of children?



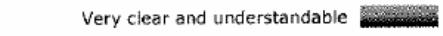
	Response Percent	Response Total
Very clear and understandable	16.3%	66
Somewhat clear and understandable	**63.1%**	**255**
Not clear and understandable	8.4%	34
I am not familiar with the language of these laws	12.1%	49
Total Respondents		**404**
(skipped this question)		**38**

28. How clear and easy to understand and apply are Ohio's laws with regard to when physical discipline becomes child abuse?



	Response Percent	Response Total
Very clear and understandable	19.4%	78
Somewhat clear and understandable	**56.1%**	**226**
Not clear and understandable	19.9%	80
I am not familiar with the language of these laws	4.7%	19
Total Respondents		**403**
(skipped this question)		**38**

29. Ohio's laws with regard to child dependency are clear and easy to understand and apply.



	Response Percent	Response Total
Very clear and understandable	15.4%	62

Somewhat clear and understandable	**61.9%**	**249**
Not clear and understandable	15.2%	61
I am not familiar with the language of these laws	7.5%	30
Total Respondents		**402**
(skipped this question)		**40**

30. How clear and easy to understand and apply are Ohio's laws with regard to child neglect?

	Response Percent	Response Total
Very clear and understandable	14.4%	58
Somewhat clear and understandable	**71.2%**	**287**
Not clear and understandable	8.7%	35
I am not familiar with the language of these laws	5.7%	23
Total Respondents		**403**
(skipped this question)		**39**

31. Overall, how effective are Ohio's laws in defining which children are abused, neglected, or dependent?

	Response Percent	Response Total
Very effective	13%	52
Somewhat effective	**80.8%**	**323**
Not effective	6.2%	25
Total Respondents		**400**
(skipped this question)		**42**

32. Ohio's legal definitions of child maltreatment serve the best interest of abused, neglected, and dependent children...

	Response Percent	Response Total
Always	3.8%	15
Frequently	34.4%	137
Usually	**41.5%**	**165**
Sometimes	19.1%	76
Seldom or never	1.3%	5
Total Respondents		**398**
(skipped this question)		**43**

7. Inter-Agency Collaboration

33. In any given case, how likely is the Court to sustain the agency's abuse, neglect, or dependency petition?

	Response Percent	Response Total
Very likely	**50.4%**	**201**
Somewhat likely	39.6%	158
Not likely	2.5%	10
View Comments:	7.5%	30
Total Respondents		**399**
(skipped this question)		**42**

34. How well do you think that the following agencies and practitioners in your county are doing in their efforts to identify children who are suspected or at risk of being abused, neglected, and dependent?

	Excellent	Good	Fair	Poor	Response Total
Your Agency	43% (173)	**54% (218)**	2% (9)	0% (0)	**400**
CDJFS	18% (68)	**55% (206)**	24% (90)	2% (9)	**373**
Court	13% (50)	**56% (223)**	28% (112)	3% (10)	**395**
Police	10% (41)	**56% (222)**	31% (123)	4% (14)	**400**
Schools	12% (50)	**50% (202)**	31% (123)	7% (27)	**402**
Medical Professionals	10% (40)	**58% (234)**	28% (114)	3% (14)	**402**
				Total Respondents	**400**
				(skipped this question)	**40**

35. Please rank the following in terms of how positively they affect your county's child protection practices (with 1 being the most positive and 5 being the least positive):

	1	2	3	4	5	Response Average
Ohio laws pertaining to child abuse, neglect and dependency	**30% (109)**	21% (76)	20% (75)	15% (55)	15% (54)	**2.64**
Policies and procedures of your PCSA related to identifying children in need of protection	**39% (146)**	33% (122)	16% (59)	6% (21)	6% (22)	**2.06**
Policies and procedures of ODJFS related to identifying children in need of protection	10% (36)	23% (85)	**27% (101)**	23% (86)	16% (60)	**3.13**
Policies and procedures of the Court related to identifying children in need of protection	3% (11)	13% (48)	22% (82)	**39% (144)**	23% (84)	**3.66**
Collaboration among institutions, agencies and practitioners	20% (78)	14% (54)	15% (57)	15% (59)	**36% (137)**	**3.32**
					Total Respondents	**391**
					(skipped this question)	**49**

36. Do you have additional comments on question 35?

View	**Total Respondents**	**79**
	(skipped this question)	**361**

37. Which, if any, of the following factors interfere with the ability of your county's PCSA and the Court to see eye-to-eye in terms of what constitutes child abuse, neglect, dependency? Check all that apply.

		Response Percent	Response Total
	Different interpretations as to what constitutes child abuse, neglect dependency	**63.7%**	**237**
	Competing interests (e.g., reliance on evidence vs. clinical judgment)	59.7%	222
	Lack of training	29.3%	109
	Lack of trust	27.2%	101
View	Other (please specify)	18%	67
	Total Respondents	**372**	
	(skipped this question)	**68**	

8. Training Needs

38. I last received training/education regarding the application of Ohio's abuse/neglect/dependency laws to screening decision-making (check one):

	Response Percent	Response Total
within the last 6 months	**26.3%**	**105**
7-12 months ago	15.3%	61
1-2 years ago	17.3%	69
2-5 years ago	15.8%	63
more than 5 years ago	14.5%	58
never	10.8%	43
Total Respondents	**399**	
(skipped this question)	**42**	

39. I last received training/education regarding the application of Ohio's abuse, neglect, dependency laws to investigation decision-making (check one):

	Response Percent	Response Total
within the last 6 months	**29%**	**115**
7-12 months ago	18.1%	72

1-2 years ago	16.6%	66
2-5 years ago	16.6%	66
more than five years ago	13.4%	53
never	6.3%	25
Total Respondents		**397**
(skipped this question)		**45**

40. How helpful and relevant to your daily decision-making in abuse/neglect/dependency cases is the training/education you have received regarding Ohio's abuse/neglect/dependency laws?

	Response Percent	Response Total
Very helpful and relevant	32.5%	129
Somewhat helpful and relevant	**54.7%**	**217**
Not helpful and relevant	6.8%	27
Not applicable	6%	24
Total Respondents		**397**
(skipped this question)		**45**

41. Comments/Possible areas of improvement in training and education related to Ohio's abuse, neglect, dependency laws.

View	**Total Respondents**	**128**
	(skipped this question)	**312**

42. Please feel free to add your comments or suggestions about any aspect of Ohio's current child maltreatment laws, your agency's screening and investigation procedures, or any other matter covered in this survey.

View	**Total Respondents**	**97**
	(skipped this question)	**343**

Appendix 12 Charts of Focus Group Comments

PHYSICAL ABUSE

Focus Group 1 **(PCSA Staff)**	**Focus Group 2** **(Prosecutors, Public Defs, GAL's)**	**Focus Group 5** **(PCSA/ODJFS Staff)**
Several said they would prefer Alternative 1 if we put sections J and K up front; and add to section 10: "including but not limited to…" Most didn't like Alt. 2 because it requires that you know who did it. Most did not like situations that per se are grounds for tpr 5 prefer more specificity in the laws; 5 prefer more general Most prefer retaining separate categories rather than "CHINS"	Group preferred Alternative 2, but add section C from current law. 7 for more specificity, 3 more discretion Insert section I alternative 1 (policy consideration) into alternative 2 Define substantial risk (lower threshold than current criminal definition) Alternative 1 should be in the legislative comments	All preferred Alternative 1, but: Include any adult w/ responsibility for the child Clarify ambiguous terms: "lasting harm", "not dangerous", "reasonable and moderate" "substantial risk of harm" A *pattern* of *less* serious behavior should qualify In paragraph just before (J) (pg 3), add "developmental stage, size, vulnerability, cognitive functioning" Same paragraph: change "and whether" to "or whether" Delete "while the adult was angry and out of control"—it's abuse regardless of parent's control Need greater clarity re line between discipline and abuse
Focus Group 3 **(PCSA Administration)**	**Focus Group 4** **(PCSA Caseworkers & Supervisors)**	

All but one participant preferred Alternative 1 (one preferred 3) Most thought outside perpetrators, e.g. "paramour" should be covered. Suggestion: simply delete the words "by a parent, guardian, or custodian" Under current language: uncle living in the house would not be covered—should be. Define "disfigurement" There is no section "10 (j)" in Alternative 1 Also correct section C(c) of Alt. 1	All but two participants preferred Alternative 1 Discussion of "under 18 definition of child: Unanimous approval. Response to "CHINS": We just got SACWIS, which does separate into categories—you'll never get them to change it." Also, "It would require us to get involved in too many cases, taking time from true a/n/d." SACWIS does have a category of "FINS" but it is defined very narrowly. Majority concerned that section H inappropriately puts the burden of proof on the parent	

SEXUAL ABUSE

Focus Group 1 **(PCSA Staff)**	**Focus Group 2** **(Prosecutors, Public Defs, GAL's)**	**Focus Group 6** **(PCSA Caseworkers and Supervisors)**

Most preferred the specificity of Alternative 1, particularly section 1(a) through (i). Consensus: Add section 3(C) from Alternative 3 (excluding consensual acts between minors, etc.) but remove "opposite sex" language Group pretty evenly split re whether definition of "child" should be extended to age 21 for MRDD kids.	Majority preferred Alternative 1, but "started getting confused at section 2(a) Most liked section C in Alternative 3, however remove "oppsite sex." Add "needn't show who did it" language to be consistent with physical abuse rule.	All preferred the specificity of Alternative 1, however: remove "for valid medical purposes" in section —causes more problems than it solves. Replace section 1d "except that this would not include acts…caregiver responsibility" with "for the purpose of sexually arousing or gratifying either person" language from current law. Address the common situation where mom puts daughter on birth control because she knows she can't stop child's sexual behavior. Under current language this mom could be charged with child abuse or neglect. There should be an age-difference limit re sex between children. Move sections a and b of Alternative 1 to the neglect statute Section 2b: Rather than excluding sex acts between children in the home, include them "unless the parent is taking steps to control the child."
Focus Group 9 **(Agency Attorneys)**	**Focus Group 8** **(PCSA Caseworkers & Supervisors)**	**Focus Group 6** **(PCSA Caseworkers and Supervisors)**

Alternative 1, section d "except that this would not include acts…purpose" is way too vague. "My way of showing affection to a child is different from a perp's way of showing it. Also, this provision makes it too easy for a perp to justify abuse by "pretending" it is for medical reasons. Who gets to decide "reasonably construed"? No one liked Alternatives 2 or 3. Group split between favoring current law and Alternative 1, although none had any particular problems with current law. Group liked the "fails to protect" language at the end of the first paragraph of Alternative 1.	Group preferred Alternative 1. Group was split on the issue of whether the age limit should be 18 or 21 in cases of handicap. They agreed that whatever is decided should be consistent with the criminal laws. All particularly liked section g of Alternative 1. All in favor of excluding "stranger danger."	Law should not apply to a 15-year-old having sex with a 19-year-old, if consensual. Alternative 1 should have a minimum age of 15 or 16. Child under 10 should not be labeled as a perpetrator. Group likes Alternative 1, but require a 4 year age difference between minors having sex; Also provide for intra-familial sex.

EMOTIONAL MALTREATMENT

Focus Group 8 **(PCSA Staff)**	**Focus Group 9** **(Agency Attorneys)**	**Focus Group 5** **(PCSA/ODJFS Staff)**

All rejected a diagnosis requirement; 5 preferred the language of Alternative 1, 2 preferred "behavior that is consistent with a diagnosable condition". Group unanimously preferred Alternative 1, overall, although felt it's readability could be improved by breaking it into sections. All liked the idea of two separate categories of emotional abuse and neglect All liked the requirement of a "pattern of behavior". All preferred Alternative 1. but amend section 3 to allow assessment by licensed social workers.	Alternative 2 is too vague and requires a diagnosis. Alternative 3 also requires a diagnosis, which they didn't like. Group preferred alternative 1, but suspected that emotional maltreatment will continue to be almost impossible to prove and "we'll still be pleading it down to dependency every time." Would prefer "repeated behavior" rather than "a pattern of behavior"—reduces proof problems. Suggestion: As an alternative to creating a separate emotional maltreatment statute, could put emotional abuse in the abuse statute and emotional neglect in the neglect statute.	Group felt that Alternative 1 is "a pretty good attempt at defining emotional maltreatment However, very serious maltreatment should not require a "pattern of behavior" Group preferred "behavior that is consistent with a diagnosable injury." To require an actual diagnosis would make it very difficult to prove, particularly in rural areas without access to needed experts Group liked the term "emotional maltreatment" Suggestion: Give examples of behaviors that constitute emotional maltreatment: e.g. berating, name-calling. Yelling and screaming?
Focus Group 3 **PCSA Administration**	**Focus Group 6** **(PCSA Caseworkers & Supervisors)**	**Focus Group 7** **(PCSA Caseworkers & Supervisors**
Majority preferred Alternative 1, but add the requirement of a formal diagnosis, "to avoid a constant barrage by feuding spouses and others" One preferred that adoption of a CHINS model, which would make the specificity of Alternative 1 unnecessary, but if this isn't possible go with Alternative 1. One participant could not accept Alternative 1, calling it "a defense lawyer's field day" because it opens the door for focusing on semantics. Also felt that Alts 2 and 3 are too limited. Suggested a combination.	Group did not like the diagnosis requirement in Alternative 3—not practical. Consensus was that the child's behavior, rather than a diagnosis, should be determinative. All liked the "pattern of behavior" language, but agreed this may need more definition. All preferred Alternative 1, but suggested that language be added to specifically exclude parents' refusing to give their children medication for ADJD.	All liked the "pattern of behavior" (or "repeated behavior") requirement—everyone can make a mistake occasionally. All liked the emotional abuse/neglect distinction Group agreed a formal diagnosis should not be required. Group evenly divided between requiring "behavior consistent with a diagnosis" or simply behavior. Unanimous preference for Alternative 1, however delete "clearly" attributable, expand experts to social workers and counselors, and omit medical doctors ("we don't look to them for that kind of expertise.")

DOMESTIC VIOLENCE

Focus Group 1 **(PCSA Staff)**	**Focus Group 8** **(PCSA Administrators and Supervisiors)**	**Focus Group 9** **(PCSA Attorneys)**
Group preferred Alternative 1, but be clearer that child need not necessarily witness the d.v. What if d.v. by a parent or person responsible for a child is repeated and another member of the family is injured or seriously or imminently endangered -- but no demonstrated harm to the child? What does repeated mean? How many times must it occur? What if d.v. is repeated (by anyone) and the child witnesses it, and another member of the family is injured or seriously or imminently endangered -- but again there is no demonstrated harm to the child? Why can't it be one horrific incident? E.g. a stabbing of one parent by the other justifies state intervention for the protection of the child. Group particularly liked Alternative 1 sections 2 and 3, which don't require proof of harm to the child. They did not like the last paragraph of Alternative 2, which would fully excuse the victim of domestic violence from removing the child from a dangerous situation.	Group did not favor Atlernative 1; they felt that it was unnecessarily repetitive. Also, d.v. should not be limited to household members—it should be "any significant other who has a relationship with anyone in the family." Also wondered what "imminently or seriously" mean. Unanimous preference for Alternative 3, but include section A of Alternative 1, add "witnessed or present" language from Alternative 1, and remove the word "repeated" from Alternative 3.	Group preferred Alternative 1, however add current 2919.25 language: "or that the child believes will cause imminent or serious danger." A single incident should be enough. Serious concerns about Alternative 3: it puts the burden on the agency to protect the children rather than law enforcement or the court. Takes a lot out of the court's hands and puts it into the agency's.
Focus Group 5 **(PCSA/ODJFS Staff)**	**Focus Group 7** **(PCSA Caseworkers & Supervisors)**	**Focus Group 6** **(PCSA Caseworkers & Supervisors)**

All preferred alternative 1, however add sections B and C of alternative 3 Modify Alternative 3 sections B and C to add "d.v., threats, menacing, and stalking All agree: Delete the words "imminently or seriously" from Alternative 1	Consensus: Combine Alternative 3 with the definitions in Alternative 1. Child should be required to have been present in the home at the time of the d.v., even in the case of repeated d.v. Consensus: The seriousness of the d.v. should be considered in determining whether a single incident is enough. Alternative 3 section 3, remove "burglary" and provide definitions of the remaining crimes.	Group agreed that domestic violence should be included in the neglect statute rather than in abuse or emotional abuse. Should require a pattern of behavior unless it is particularly egregious. Consensus: Limit it to d.v. in the home between a household member and another." All prefer Alternative 1, but include the language from 2919.25 sections B and C.

NEGLECT

Focus Group 1 **(PCSA Staff)**	**Focus Group 2** **(Prosecutors, Public Defs, GAL's)**	**Focus Group 5** **(PCSA/ODJFS Staff)**
Most preferred Alternative 1 Alternative 3 too vague; Didn't like Alternative 2, prefer keeping distinct categories Group likes the inclusion of medical and educational neglect and substance abuse in the neglect statute.	Group evenly split between using current law or Alternative 1 as a starting point Explicitly exclude deserted baby from abandonment. "A deserted child shall not be considered a neglected child." Alt 1 (A): Delete first sentence after "Abandoning a child." Section D: Add "when able to do so." Consider adding a presumption: If agency shows parent is not providing, burden shifts to parent to show why s/he can't Section F: Add "for an extended period of time" after the word "Failing" Look for Ohio statute re "contributing to the dependency of a child"	The group preferred Alternative 1, with the following suggested changes: Section A, delete "intent to permanently sever"—difficult to establish Section B: Delete "appropriate for a child", again susceptible to different interpretations Section E: Delete the words "sexual conduct harmful" , replace with "harm." Section C: Delete the words "a reasonable person would realize"; Delete the word "immediate".

Focus Group 3 **(PCSA Caseworkers & Supervisors)**		
Consensus of the group was preference for Alternative 1. Exclude deserted baby from section A Group really liked section E, said it would "give them something to hang their hats on." It will change practice, but "maybe that's a good thing." Also like section F, but agreed that a parent who does this should also be criminally charged (currently no consequences for parent who does this)		

SUBSTANCE ABUSE

Focus Group 1 **(PCSA Staff)**	**Focus Group 2** **(Prosecutors, Public Defs, GAL's)**	**Focus Group 5** **(PCSA/ODJFS Staff)**

Group prefers Alternative 2, but add the words "distribution or selling" to section 2. They particularly liked the word "exposure" in section 1. Delete the cross-reference in alternative 2 section 1. Group divided as to whether distribution should be *neglect per se.* Some felt this to be sufficiently dangerous that it should be specifically mentioned. Others said there must be a showing of harm to the child. This may be covered by General Neglect, Alternative 1.	Remove cross reference in Alternative 2 section 1. Group divided re whether the statute should require a showing of harm to the child; Also split re whether law should mandate testing of infants—very intrusive and painful Put infant testing positive for drugs as a result of mom's drug use in the abuse statute	Consensus: Combine Alternative 1, section 3 and Alternative 2, sections 2, 3, and 5 to create a new alternative. (OR Combine Alternative 1 sections 1 and 3 with Alternative 2 sections 3 and 5. But in alternative 2 section 5, replace "in a child's residence" with "an area to which a child has access", to account for drugs manufactured in a hotel room or the back of a car. In alternative 1, section 1 require exposing a child to "a substantial risk of harm" rather than just an ordinary risk. Alternative 1 section 3: what about legal substances such as alcohol at a certain level? Liked inclusion of substance abuse in the neglect statute
Focus Group 8 **PCSA Administrators, Supervisors)**	**Focus Group 4** **(PCSA Caseworkers & Supervisors)**	
This subject was not fully tested in this group, however an Intake department supervisor expressed the view that there should not be a requirement that a child test positive—mother testing positive should be sufficient to establish neglect.	Label drugs in a child's body as abuse, but a child lacking care because of a parent's substance abuse as neglect. Move alternative 1 section 3 to the abuse statute. Which drugs? Heroin, cocaine, but not necessarily marijuana.	

EDUCATIONAL NEGLECT

Focus Group 3 (PCSA Administration)	Focus Group 4 (PCSA Caseworkers & Supervisors)	Focus Group 8 (Supervisors and Administrators)
Group preferred Alternative 1, however, define what is meant by “extended period of time”. Consensus: Add that if a child is under middle school age the school must charge the parents with contributing to truancy (criminal statute) before calling CSB; Middle school and older: school must first file delinquency charges.	All preferred Alternative 2, however add Alternative 1 section 3 where medication is referred to. Move alternative 1(3) to the abuse statute. Which drugs? All agreed that heroin and cocaine should be included, but not necessarily marijuana.	Group preferred Alternative 1, however schools should be held accountable for making reasonable efforts.

MEDICAL NEGLECT

Focus Group 8 PCSA Administrators and Supervisors	Focus Group 6 (PCSA Caseworkers & Supervisors)	Focus Group 4 (PCSA Caseworkers & Supervisors)

.Group did not like the "including psychiatric or psychological treatment" language of Alternative 1. Parents should be able to make those decisions for their children. Some professionals over-diagnose bipolar and other conditions, some schools "want kids to be zombies." Let parents decide. For a child who really needs counseling—e.g. suicidal teen whose parents think she's after attention—let's call that child dependent, not medically neglected." Group was divided as to whether there should be a religious exception. What does "seriously held" beliefs mean?	Group agreed that a child's condition must be life-threatening before the State can intervene. I.e. a child born without kneecaps whose parents refuse surgery to replace them: no intervention permitted. Also agreed there must be a religious exception; The State should not, as a general rule, have the right to interfere with a parent's decision based on religion, even if the condition is life-threatening. However, parent should have to show that they have been in this faith for a while. Worker should have to verify that this belief is held throughout the particular religion. Alternative 1: Take out "to make a child more comfortable." Cough medicine would apply under that language.	Group preferred Alternative 2, but change "infant" to "child" in section A (1). Religious exception should be retained. Group preferred the third example, but remove section b, permitting treatment by a spiritual practitioner.

DEPENDENCY

Focus Group 5 **(PCSA/ODJFS Staff)**	**Focus Group 7** **(PCSA Caseworkers and Supervisors)**	**Focus Group 9** **(PCSA Attorneys)**
General agreement: don't like Alternative 2 sections 3 and 4—would allow CSB to be forced to be responsible for kids with severe behavior or mental health problems. Add section D from current law to the neglect statute Discussed possibility of discarding dependency and add another provision to the neglect statute. Or keep dependency but narrowly define it as "parent, guardian, etc. is deceased or too ill to care for the child."	"If there was no dependency, how would we get anything adjudicated?" "If we get rid of section C, it may keep us from being able to stay in when we have a gut feeling something's wrong but can't prove it. All prefer current Ohio law, with the addition of the exclusions on page 2 of the Alternatives presented.	Don't remove section C, it's our safety net. It allows us to put something in front of the magistrate and do something." "If I was a constitutional lawyer I'd say take it out of there, but as a prosecutor it is very useful for me." Group prefers current law, but add sections 3 and 4 of Alternative 2.
Focus Group 8 **PCSA Supervisors and Administrators**		

Don't abolish dependency, because: 1)you'll be criminalizing parents who have no fault; 2) you'll take away the ability to plea bargain, which gives us the ability to stay involved and try to keep kids safe when we can't prove abuse or neglect; If Alternative 2 is chosen, replace the word "willing" (which signifies neglect) with "able." Group unanimously preferred current law, including the "catch-all" provision (2151.04(C) Group discussed the CHINS approach, and concluded that they would prefer to retain the current designations, adding CHINS as a "nice adjunct" to what we already have, but by itself it's a little too loosey-goosey for us." "The true perp needs to have a label that stays with them for the rest of their life, in order for us to be able to serve and protect future generations."		

Appendix 13 Draft Statute - Child in Need of Protective Services

Draft Statute as of 12/30/05 – Proposed Final Draft

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, by itself, may constitute clear and convincing evidence 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., or

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 a substantial, good faith effort to investigate and enforce Ohio's compulsory school attendance laws has been made or when the notice fails to provide the information required in section 2, above.

4. If a substantial, good faith effort to investigate and enforce Ohio's compulsory school attendance laws has not been undertaken, 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 it 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.

M. Alternative Response

1. The Department of Job and Family Services shall promulgate an administrative rule for the implementation of an Alternative Response approach to reports of a child in need of protective services which requires all public children services agencies, through the use of an appropriate set of screening procedures contained in the rule, to respond to reports of a child in need of protective services by assigning the report either to an assessment track or an investigation track.

2. The administrative rule implementing the Alternative Response approach to reports of a child in need of protective services shall require each public children services agency to respond to all such reports as follows:

   a. if, in the opinion of agency, the allegations in the report will not result in an adjudication that the child is in need of protective services, the agency shall assign the report to an assessment track which utilizes collaboration between the family and the agency in the determination and implementation of appropriate actions on behalf of the child; or

   b. if, in the opinion of the agency, the allegations may result in an adjudication that the child is in need of protective services, the agency shall assign the report to an investigation track which utilizes a comprehensive evidence gathering and case planning process in the determination and implementation of appropriate actions on behalf of the child; and

   c. the agency shall assign all reports alleging that a child may be in need of protective services to the assessment track unless its screening procedures establish that the assessment track's collaborative approach is unlikely to adequately protect the child.

3. The administrative rule implementing the Alternative Response approach to reports of a child in need of protective services shall establish:

   a. timeframes within which the public children services agencies must make assignments of reports to each track and process reports along each track; and

   b. standard labels, and their definitions, for use in describing the results of completed assessments and investigations and any agency determinations made regarding those assessments and investigations; and

   c. explicit authority for the public children services agencies to move reports from one track to the other when appropriate.

   d. any other provisions necessary for the effective implementation of the Alternative Response approach to reports of a child in need of protective services.

Draft of Administrative Rule Implementing the Alternative Response Statutory Provisions

1. Upon the receipt of a report by a public children services agency that a child is in need of protective services, the agency shall, in addition to taking any immediately necessary protective actions, determine, within 24 hours, whether the substance of the report falls within the jurisdiction of the agency, and if so, assign the report to either an assessment or an investigation track.

2. For cases assigned to the assessment track, the public children services agency shall assess the child's safety, any risk of future harm to the child, and the family's strengths, needs and resources within 45 days of the assignment of the report to the assessment track. A case assigned to the assessment track may, at any point in time, be reassigned to the investigation track.

a. Upon the completion of the assessment, each case shall be assigned one of the following needs determination labels: "No Services Needed," "Voluntary Services Recommended," or "Services are Needed." At any time after the assignment of a needs determination label, the agency may change the needs determination label to reflect changes in its risk assessment.

b. When the agency determines that Voluntary Services are Recommended, the agency shall provide information to the family about recommended services and shall, to the extent the agency is reasonably able to do so, assist the family in obtaining any services the family wishes to access.

c. When the agency determines that Services are Needed, the agency shall provide information to the family about the services it deems necessary to protect a child from harm or risk of future harm and shall assist the family in obtaining those services. If the family refuses services deemed necessary by the agency, the agency shall assign the case to the investigation track.

3. For cases assigned to the investigation track an investigation shall be conducted regarding the child's safety and any risk of future harm to the child and shall be completed within 45 days of the assignment of the case to the investigation track. A case assigned to the investigation track may, at any point in time, be reassigned to the assessment track.

a. Upon the completion of the investigation, the case shall be assigned one of the following investigation result labels: "Substantiated," "Unsubstantiated," "Unsubstantiated/Report based on fabricated allegations" or "Unable to Locate."

i. "Substantiated" cases are those in which there is a preponderance of evidence that a child is in need of protective services.

ii. "Unsubstantiated" cases are those in which there is not a preponderance of evidence that a child is in need of protective services.

iii. "Unsubstantiated/Report based on fabricated allegations" cases are those in which the agency has concluded that an unsubstantiated report was based upon fabricated allegations.

iv. "Unable to Locate" cases are those in which, after substantial efforts, as defined in the Ohio Administrative Code, the public children services agency is unable to locate the child or the child's parent, legal guardian or legal custodian.

b. For purposes of this section, "preponderance of the evidence" means evidence which shows that the proposition that is sought to be proved is more likely than not; that the evidence in favor of the proposition is more persuasive than the evidence against the proposition.

c. The agency shall make a needs determination with respect to all cases on the investigation track and shall assign each case to one of the categories described below. A case assigned to any category may, at any point in time, be reassigned to a different category.

i. A "Substantiated Report" will be assigned to one of the following categories:

(a) Category I – Removal required. Cases shall be assigned to this category when the agency determines that a change in the custodial status of a child is necessary to protect the child from injury or substantial risk of injury.

(b) Category II – Court mandated services required. Cases shall be assigned to this category when the agency determines that a change in the custodial status of a child is not necessary to protect the child from injury or substantial risk of injury, but court mandated services are.

(c) Category III – Services are needed. Cases shall be assigned to this category when the agency determines that services are needed to protect the child from injury or substantial risk of injury and that the family is likely to cooperate with the provision of those services.

ii. An "Unsubstantiated Report" will be assigned one of the following categories:

(a) Category IV – Voluntary services recommended. Cases shall be assigned to this category when the agency determines that services are not necessary to protect the child from injury or substantial risk of injury, but that the family would benefit from services which may be available.

(b) Category V – No services are needed. Cases shall be assigned to this category when the agency determines that services are not necessary to protect the child from injury or substantial risk of injury.

Appendix 14 Draft Statute – Authorization for Alternative Response Pilot & Evaluation

Child Protective Services – Statutory Authorization for Alternative Response Pilot and Evaluation

1. The Department of Job and Family Services shall develop, implement, oversee and evaluate, on a pilot basis, an "Alternative Response" approach to reports of child abuse, neglect and dependency. The pilot program shall be implemented in at least ten counties that agree to participate in the pilot program.

2. The pilot program shall last eighteen months, not including time expended in preparation for the implementation of the pilot program and any post-pilot evaluation activity. The pilot program, including all implementation preparation and post-pilot evaluation activity, shall be completed by December 31, 2007.

3. Public Children Services Agencies in counties participating in the pilot program shall respond to all reports that a child is abused, neglected or dependent as follows:

    a. if, in the opinion of agency, the allegations in the report will not result in an adjudication that the child is abused, neglected or dependent, the agency shall assign the report to an assessment track which utilizes collaboration between the family and the agency in the determination and implementation of appropriate actions on behalf of the child; or

    b. if, in the opinion of the agency, the allegations in the report may result in an adjudication that the child is abused, neglected or dependent, the agency shall assign the report to an investigation track which utilizes a comprehensive evidence gathering and case planning process in the determination and implementation of appropriate actions on behalf of the child; and

    c. the agency shall assign all reports of abuse, neglect or dependency to the assessment track unless its screening procedures establish that the assessment track's collaborative approach is unlikely to adequately protect a child from abuse, neglect or dependency.

4. The Department of Job and Family Services shall establish for the Alternative Response pilot counties:

    a. timeframes within which the pilot agencies must make assignments of reports to each track and process reports along each track;

    b. standard labels, and their definitions, for use in describing the results of completed assessments and investigations and any agency determinations made regarding those assessments and investigations;

    c. explicit authority for the pilot agencies to move reports from one track to the other when appropriate;

    d. any other provisions necessary for the effective implementation of the Alternative Response pilot.

5. The Department shall assure that the Alternative Response pilot is independently evaluated with respect to costs, outcomes for children and families, worker satisfaction and any other criteria the Department believes will be useful in the consideration of statewide implementation of an Alternative Response approach to child protection. The measures associated with the 18 month pilot program period shall, for purposes of such evaluation, be compared with those same measures in the pilot counties during the 18 month period immediately preceding the beginning of the pilot program period.

5. The Department is authorized to enact any Administrative Rules necessary to the implementation of this provision.

Appendix 15 List of Members of the Subcommittee on Responding to Child Abuse, Neglect and Dependency

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