IN THE SUPREME COURT OF OHIO

CASE NO.: 2007-0056

On Appeal from the
Court of Appeals Eighth Judicial District
Cuyahoga County, Ohio
Court of Appeals Case No. CA-06-87476

JOHN K. O'TOOLE, Personal Representative and
Administrator for the Estate of Sydney Sawyer,
Plaintiff-Appellee,
vs.
WILLIAM DENIHAN, et al.,
Defendants-Appellants.

TRIAL COURT NO.: CV450833

BRIEF OF DEFENDANT-APPELLANT TALLIS GEORGE MUNRO

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FILED
AUG 09 2007
CLERK OF COURT
SUPREME COURT OF OHIO

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STATEMENT OF THE FACTS

This is a discretionary appeal by defendant/appellant Tallis George Munro from the judgment of the Eighth District Court of Appeals that reversed the trial court's summary judgment ruling that Munro was immune under R.C. 2744.03(A)(6). The Court of Appeals held Munro was not immune because liability was expressly imposed on him by statute and/or Munro acted in a "reckless" manner during the performance of his duties for the Cuyahoga County Department of Children and Family Services (DCFS). Munro respectfully submits that the Court of Appeals' decision is contrary to Ohio law and radically extends personal liability upon Ohio social workers for discretionary determinations they must make every day based on the best information available. Because this decision improperly subjects such employees to individual liability, the judgment of the Court of Appeals should be reversed and the judgment of the trial court should be reinstated.

The relevant facts are that Appellee, John O'Toole, is the legal representative for the Estate of Sydney Sawyer, a four (4) year old girl who was pronounced dead on April 27, 2000. The Cuyahoga County Coroner's autopsy had determined that Sydney suffered internal injuries causing her death. The Coroner's Office ruled that Sydney Sawyer expired from "acute peritonitis of the abdomen brought on by blunt trauma". The child's natural mother and legal custodian, LaShon Sawyer, was eventually convicted of her daughter's murder after a second criminal jury trial.

The Estate of Sydney Sawyer claims that the Department of Children and Family Services, and the named Agency employees, are responsible for the child's death for failing to exercise authority in removing the child from her home after receiving a report

of physical abuse. Appellee-Plaintiff claims that the Agency (and It's social workers), should have exercised emergency custody intervention instead of choosing an alternative intervention tool.

Instead of emergency custodial intervention, Appellant supervisor Munro in concert with caseworker Duncan, elected one of three (3) available case management tools. Based upon the results of the initial investigation, Appellant herein, (along with caseworker Kamesha Duncan), chose a case management decision that did **not** require a legal change of custody. After reviewing the information received and exercising his professional judgment, Munro declined to seek immediate custody over Sydney Sawyer so that she could remain in the custody of her mother under the conditions of a "safety plan" that had been devised by Appellant and caseworker Duncan.

DCFS INVESTIGATION PROTOCOL

The investigation and initial evaluation of a suspected child abuse victim falls upon the assigned caseworker. The caseworker is required to initiate physical contact with the suspected abuse victim within one (1) hour of the case referral to the Department of Children and Family Services Agency (DCFS). The caseworker conducts other witness interviews as part of the initial investigation. Background investigation of other relevant factors are part of the case investigation, as well. After consideration of all these factors, the caseworker and the Supervisor formulate a case management decision for the family unit including both the child and the legal custodian.

In this matter, Appellant Kamesha Duncan was the investigating caseworker. Appellant herein, Tallis George Munro, was Kamesha Duncan's supervisor for the investigation period that lasted 30 days. At the conclusion of the 30-day period,

Appellant was required to either close the case or refer the case to another social services unit for ongoing case management. (Duncan Depo, filed 4/25/05, at pg. 10). At the conclusion of the 30 day period, either the DCFS supervisor or caseworker was required to report the investigatory case disposition to the local police authority. (Id.)

Pursuant to Agency protocol, a HotLine social worker prepared a referral form. If the Hotline caseworker determined that the report was for suspected child abuse, the referral was labeled and routed as a "Priority One" report.

The chief of the intake social workers unit at DCFS, Elsa Popchak, testified that at the time of the Sydney Sawyer referral, DCFS received approximately 16 "Priority One" case referrals **each** day. (Popchak Depo, filed 5/31/05, at pgs. 70-72). Munro had supervisory responsibility over 110 to 120 open cases. (Id. at pg. 63). (Munro estimated approximately 150 active cases.) (Munro Depo at pg. 41). At the time that a case is referred to the intake unit, the difficulty of the case cannot be determined until the investigation has been initiated. (Popchak Depo, filed 5/31/05, at pg. 65).

The Hotline referral form was transferred to a new case file. The case file was then sent to the investigation unit supervisor assigned for that day. The HotLine caseworker was responsible for faxing a copy of the complaint intake form to the police department. The investigative caseworker and Appellant herein were not required to send a report to the police department until the close of the investigation some 30-45 days later.

Munro's investigation unit was responsible for investigation of emergency child abuse referrals that came into the agency on March 29, 2000. The investigation units are randomly assigned each day to handle Priority One referrals. The investigatory units are

rotated so that a case could be assigned by chance to any of the investigating social workers within the Department. (Popchak Depo at pgs. 50-53; Munro Depo, filed 5/31/05, at pgs. 41, 47 & 50).

SYDNEY SAWYER CASE MANAGEMENT

Munro had been a licensed social worker since 1996. Munro held a Bachelor of Arts degree in Psychology from the Cleveland State University in Child Development and an MBA. He had been employed by the Cuyahoga County Department of Children and Family Services for approximately 8 years. He had been promoted to supervisor at the Department of Children and Family Services Intake Unit in 1998 and remained in that position at the time of this assignment. (Munro Depo at pgs. 6-12).

When Appellant Munro's unit was assigned to Priority One investigations, Munro would rotate Hot Line Referral assignments among the five (5) or six (6) caseworkers that he supervised in his unit. On March 29, 2000, caseworker Kamesha Duncan was assigned the investigation of the Sydney Sawyer report of abuse. Duncan, a Youngstown State University graduate, was trained internally for her first three (3) months of her employment. She was assigned field work beginning in January 2000. (Duncan Depo at pgs. 11 & 12). All of her field experience occurred while she was assigned to Appellant Munro's unit. (Duncan Depo at pgs. 11 – 12). Duncan served as the investigatory social worker in six (6) to eight (8) "Priority One" calls prior to investigating the Sydney Sawyer report of abuse. (Munro Depo at pg. 51).

Beginning in March 2000, the Cuyahoga County Department of Children and Family Services analyzed reports of abuse under a new case management system known as "Structured Decision Making" (SDM). The system replaced a previous operation

model known as the "Family Risk Assessment Model" (FRAM). (Popchak Depo at pgs. 12-120 and Popchak Depo, Exhibit "U" at pgs. 31-35; Munro Depo at pgs. 220-221; Duncan Depo at pgs. 17-26). The initial use of the SDM protocol started with cases opened after March 1, 2000. (Popchak Depo at pgs. 129-130; Munro Depo at pgs. 22-23). Therefore, Sydney Sawyer's report of abuse was examined under the SDM model.

Under the SDM model, the decision to obtain emergency custody was made after completion of the initial safety assessment. Investigative facts used to complete the safety assessment were gathered by the investigating social worker. (Popchak Depo, Exhibit "U" at pg. 177). As a "Priority One" Hotline referral, the assigned investigating social worker was required to leave the office in an effort to make face-to-face contact with the alleged victim of abuse within one (1) hour of the call. (Munro Depo at pg. 51; Duncan Depo at pg. 51; Munro Depo, Exhibit "A"). The safety assessment decision was required during the first 48 hours of the case opening. (Popchak Depo at pg. 122, Popchak Depo, Exhibit "U" at pgs. 31-35).

In this case, investigating social worker Duncan performed both tasks within the required time periods. (Munro Depo at pgs. 141, 161-163; Duncan Depo at pgs. 95-98).

The SDM Policy and Procedures Manual specifically stated that the investigatory social worker was to make the safety decision for the alleged victim of abuse at the time of the initial investigation, utilizing information that existed at that time. (Popchak Depo at pg. 49 and Exhibit "U"). The safety assessment chart in Sydney Sawyer's case had not been completed at the conclusion of the initial visit. However, the information and factors that were relevant to the safety assessment were considered by Duncan, and discussed with her supervisor, Appellant Munro herein. (Duncan Depo at pg. 43, 113-

117; Munro Depo at pg. 59). While discussing the information by telephone with Appellant Munro, these two (2) Agency employees used the questionnaire provided by the "Investigation and Assessment" form that was part of the Sydney Sawyer case packet.[1] (Duncan Depo, Exhibit "5" at pg. 66).

Caseworker Duncan interviewed several witnesses. Information learned from these witnesses was discussed with Appellant Munro. The interviews included:

- Sydney Sawyer, the suspected victim of child abuse;
- Ashley Jacobs, the nurse of the Ministerial Daycare Center who made the initial call to the Children's Hotline;
- The Administrator of the Ministerial Daycare Center;
- LaShon Sawyer, Sydney's natural mother, caregiver and legal custodian who was questioned at the Ministerial Daycare Center;
- Sydney Sawyer's teacher and assistant teacher; and
- Nashonda Cundif, Sydney Sawyer's homecare provider when LaShon Sawyer was away at her job.

Case information discovered during the first two (2) days of the investigation, were reported to Appellant Munro. After reviewing this information in light of his experience, Munro decided that allowing Sydney Sawyer to remain with her primary caregiver and mother, LaShon Sawyer, was the correct case management decision. Caseworker Duncan also agreed with this decision. (Duncan Depo at pgs. 95-98).

Facts that supported the collective decision of Appellant Supervisor Munro and caseworker investigator Duncan were all factors that should have been considered under the SDM case management model. Relevant facts supporting their decision included:

[1] The reference to "Investigation and Assessment" form recorded in Appellant Munro's transcript was incorrectly labeled "INA".

- Neither LaShon Sawyer nor Sydney Sawyer had any previous history of involvement with the Department of Children and Family Services;

- LaShon Sawyer was cooperating with the agency's investigation;

- LaShon Sawyer agreed to have the child examined by her regular pediatric caregiver, the NEON Clinic;

- LaShon Sawyer answered the investigator's questions;

- LaShon Sawyer permitted the agency to interview Sydney Sawyer privately, as well as physically examine Sydney Sawyer and photograph marks on Sydney's body;

- LaShon Sawyer permitted examination of Sydney's school and medical records;

- A personal interview with Sydney Sawyer that revealed the following:

    - Sydney Sawyer denied that she suffered from assaultive behavior;

    - Sydney Sawyer did not express fear of her mother, LaShon Sawyer; and

    - Sydney Sawyer and LaShon Sawyer showed affection and concern for one another.

- A background check of LaShon Sawyer further established:

    - No history of criminal activity;

    - No history or evidence of alcohol or substance abuse;

    - Sydney's residence was clean;

    - Sydney was cleanly and appropriately dressed; and

    - Sydney Sawyer did not appear to suffer from malnourishment, nor had she been neglected in any other manner.

(Duncan Deposition, Exhibit "5" ("Investigation and Assessment" form)).

Investigating social worker Duncan took several Polaroid photographs of the suspected marks of physical abuse on Sydney Sawyer's body. These photographs taken at the daycare center were of poor quality. The Polaroid photographs measured

approximately five (5) inches by three (3) inches in size, and were transported to the Agency. Appellant supervisor Munro examined them on March 31, 2000. Appellant Munro had never been in the physical presence of Sydney Sawyer. Since Appellant Munro did not have an opportunity to personally view these marks, he asked Duncan to physically describe the marks on Sydney Sawyer's person. (Munro Depo at pg. 64; Duncan Depo at pgs. 118-119).

Appellant Munro determined that the photographs did not clearly show that Sydney Sawyer suffered physical abuse. Appellant Munro looked to the findings of the physical examination conducted by the NEON Clinic on March 30 and March 31 and again on April 3, 2000 to either confirm or refute that the marks were evidence of physical abuse. (Munro Depo at pgs. 179-180). Although Appellant Munro never received the requested medical documents, caseworker Duncan relayed information from Sydney's physician that Sydney's x-rays were negative for fractures and that the exam did **not** establish physical abuse.

The SDM model required Duncan to make one of three (3) choices. A child of suspected abuse was determined to be either: 1) **safe** ("there are no children likely to be in immediate danger of serious harm"); or 2) **conditionally safe** ("controlling interventions have been taken and have resolved the unsafe situation for the present time."); or 3) **unsafe** ("approved removal and placement was the only possible intervention for the child. Without placement the child will likely to be in danger of immediate serious harm.") (Popchak Depo, Exhibit "U" at pgs. 31-35).

After reviewing all the information that was available to him, Appellant supervisor Munro made a case decision on March 29, 2000. Sydney Sawyer was

permitted to stay with her mother, caregiver, and legal custodian upon the condition that LaShon Sawyer complied with the Agency's safety plan.

The safety plan called for LaShon Sawyer to have Sydney Sawyer examined by the NEON medical clinic within one (1) day of the initial investigatory visit. Ministerial Daycare Center personnel were to monitor Sydney for any further indications of suspected abuse. And finally, investigatory caseworker Duncan was to have face-to-face contact with Sydney once a week during the 30-day investigatory period. (Duncan Depo at pg. 97; Munro Depo at pg. 163).

After the initial investigation and interview that occurred on March 29 and March 30, 2000, supervisor Munro followed the progress of the investigation throughout the ongoing 30-day period. Appellant Munro's supervisory practice was to speak with each of the caseworkers in his unit at least once each week to review the social workers' caseload. (Munro Depo at pg. 39). This was also in accordance with DCFS practice. (Popchak Depo at pgs. 37-39).

Appellant Munro recalled that he had spoken with Duncan on three (3) occasions concerning progress in Sydney's case before Sydney Sawyer's death on April 27, 2000. (Munro Depo at pg. 59; Duncan Depo at pgs. 37-39). Appellant Munro discussed the case with Duncan on April 4, 2000 and April 18, 2000. (Munro Depo at pgs. 184-189, Exhibit "I").

In all of the additional meetings that Appellant Munro held with caseworker Duncan, supervisor Munro requested that Duncan follow-up with the NEON Clinic for copies of medical records. Appellant Munro also requested that caseworker Duncan arrange another face-to-face contact with Sydney Sawyer.

Caseworker Duncan was unsuccessful in arranging a face-to-face meeting after the initial interview meeting on March 29, 2000 because the child was on a pre-approved family visit to Alabama. (Duncan Dep at pgs. 128-129; Munro Dep at pg. 86). Further direct contact did not occur due to the seasonal closing of the daycare center for Easter break and Duncan's other casework priorities. (Duncan Depo at pgs. 131-133, 162; Munro Depo at pgs. 183-186). Nonetheless, the record has established that Appellant supervisor Munro prompted caseworker Duncan to have the face-to-face observation.

Appellant Munro relied upon the information that was obtained from Sydney Sawyer's caseworker, Duncan. As a supervisory social worker, Appellant's duties included supervising cases of other workers in his unit. Appellant Munro was equally concerned for Sydney's case as well as the other cases assigned to his unit. But Appellant Munro was not notified that any of the initial risk factors that caused him to exercise his professional judgment had changed. Therefore, the initial safety plan remained in effect throughout the investigation period.

In the trial court proceedings, the court initially denied the various defendants' motions for summary judgment but ultimately reconsidered and granted summary judgment in reliance upon *Marshall v. Montgomery Cty. Children Serv. Bd.*, 92 Ohio St.3d 348, 2001-Ohio-209, 750 N.E.2d 549.

On November 27, 2006, the Court of Appeals reversed the trial court's judgment.

On January 11, 2007, Appellant Munro filed his notice of appeal in the Supreme Court of Ohio. Appellants DCFS, Denihan, and Duncan likewise filed their notice of appeal. On April 18, 2007, the Supreme Court of Ohio accepted jurisdiction on Appellant Munro's Proposition of Law No. II but declined jurisdiction on all other

propositions. On June 20, 2007, the Supreme Court of Ohio reconsidered and additionally accepted jurisdiction on Appellant Munro's Proposition of Law No. I and on Propositions I, II, and III of Appellants DCFS, Denihan, and Duncan.

ARGUMENT

FIRST PROPOSITION OF LAW ACCEPTED FOR REVIEW:

> The appellate court erred in holding that defendants Munro and Duncan acted in a "wanton or reckless manner" when the social worker defendants investigated a complaint of child abuse and made a professional decision not to petition the Juvenile Court of Cuyahoga County for emergency custody.

PROPOSED SYLLABUS:

An employee of a public children services agency is immune from liability for discretionary acts or omissions that are not contrary to a clear standard of conduct and in conscious disregard of a known risk. R.C. 2744.03(A)(6)(b), construed and applied.

This appeal asks the Court to decide whether the immunity conferred under R.C. 2744.03(A)(6) is real or illusory. With no basis to say that appellant Munro acted contrary to any clear standard of conduct or in conscious disregard of a known risk, the Court of Appeals reversed the trial court's summary judgment ruling, finding "evidence of recklessness" sufficient reason to deny Munro immunity under R.C. 2744.03(A)(6)(b). The appellate court's opinion does not say what Munro did or did not do that was clearly wrong, nor does it explain why what he did or did not do was not just negligent but "reckless."

Appellant Munro respectfully submits that the Court of Appeals erred in determining that his conduct could be considered "reckless" under Ohio law. Munro did not act contrary to any clear standard of conduct. He did not act in conscious disregard of the risk that LaShon Sawyer would kill her daughter. Indeed, the record shows that

Munro's conduct was consistent with the rules and regulations applicable to such investigations and that he exercised discretion based on the best information available to him. Nothing in this case suggests that appellant Munro acted with the kind of conscious disregard and disposition to perversity necessary to establish recklessness. Appellant respectfully requests that this Court reverse the judgment of the Court of Appeals and reinstate the judgment of the trial court that granted him immunity pursuant to R.C. 2744.03(A)(6).

As is relevant to this proposition of law, R.C. 2744.03(A)(6) states that a political subdivision employee is immune from liability unless, among other things, "[t]he employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner *** ." R.C. 2744.03(A)(6)(b). [2] It appears that the Supreme Court of Ohio has addressed R.C. 2744.03(A)(6)(b) only once, in *Fabrey v. McDonald Village Police Dept.*. 70 Ohio St.3d 351, 1994-Ohio-368, 639 N.E.2d 31. In that case, the court first the constitutionality of R.C. 2744.02(B)(4) and affirmed the lower court determinations that the political subdivision was not liable pursuant to R.C. 2744.02 and the police chief was immune under R.C. 2744.03(A)(6)(b). It does not appear that the Supreme Court of Ohio has construed or applied R.C. 2744.03(A)(6)(b) since *Fabrey*.[3]

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[2] There has never been any suggestion in this case that appellant Munro acted manifestly outside the scope of his employment or official responsibilities so as to preclude immunity under R.C. 2744.03(A)(6)(a). In Munro's Second Proposition of Law that follows this discussion, Munro will address the contention that immunity was unavailable pursuant to R.C. 2744.03(A)(6)(c) because liability was expressly imposed by a section of the Revised Code.

[3] In *Greene Cty. Agricultural Soc. v. Liming*, 89 Ohio St.3d 551, 2000-Ohio-486, 733 N.E.2d 1141, the court vacated as premature but did not otherwise address substantively the lower courts' determination that the employee was immune because there was no evidence to deny immunity under R.C. 2744.03(A)(6)(b). Id. at 562, 2000-Ohio-486, 733 N.E.2d 1141.

While the Ohio courts before and after *Fabrey* have generally used legal definitions to ascertain whether the employee acted "with malicious purpose, in bad faith, or in a wanton or reckless manner," definitions that explain the meaning of legal terms may not necessarily establish practical standards of conduct. The instant case is not atypical and highlights the deficiency that exists in applying this statute to employees of a public children services agency (PCSA). The plaintiff need not identify any particular conduct as having been clearly wrong so long as the plaintiff claims the employee acted "recklessly." The threshold question of what duty is owed is blurred, if not lost, depending on the **result** of the employee's professional judgment. This practice effectively deprives all PCSA employees like Appellant Munro herein from rendering those decisions that they are required to render without fear of civil liability.

It was the nature of Appellant Supervisor Munro's position that required him to make a decision as to the risk assessment of the reported victim of abuse Sydney Sawyer. Munro and other PCSA employees are not given a choice as to which cases they will handle. Every reported case of child abuse or neglect has the potential for tragedy. The very nature of this process exposes each employee to second-guessing. It is precisely this type of decision-making function that should receive immunity.

The Court of Appeals ruled that the mere allegation that an employee acted "recklessly" is sufficient to deny employee immunity even though the employee did not do anything that was contrary to a clear standard of conduct and in conscious disregard of a known risk. While appellant respectfully submits that the Court of Appeals erred in its analysis and conclusion, this case provides an opportunity for the Court to consider this issue from a new perspective that goes beyond mere legal definitions in order to articulate

meaningful standards that may serve to establish what conduct is reckless. When proper legal standards are applied to Munro's conduct, the Court should hold that there was no basis to find that Munro acted recklessly and that the judgment of the trial court should be reinstated.

A. **An employee of a public children services agency should be immune from liability where the employee's discretionary acts or omissions are not contrary to a clear standard of conduct and in conscious disregard of a known risk.**

Despite the fact that appellant Munro exercised his discretion in accordance with state laws applicable to assessments and investigations, the Court of Appeals ruled that Munro was not entitled to immunity under R.C. 2744.03(A)(6)(b) because of "evidence of recklessness." Munro respectfully submits that if appropriate standards are applied to review his conduct, the Court should hold that Munro is immune for his discretionary acts that were not contrary to a clear standard of conduct and in conscious disregard of a known risk. The judgment should accordingly be reversed.

To be sure, "[d]etermining the point at which behavior rises from the merely negligent to the level of reckless behavior is in every instance problematic." *Cater v. Cleveland*, 83 Ohio St.3d 24, 35, 1998-Ohio-421, 697 N.E.2d 610 (Moyer, C.J., concurring). Fitting facts into a particular legal definition can be a subjective exercise. Articulating relevant considerations may better help courts to focus their analyses and enhance the consistency and predictability of the decisional process.

Of no less importance, articulating definite standards of conduct may be of particular value to employees of political subdivisions like appellant Munro, who faces individual civil liability only because he is called upon to exercise his professional judgment and discretion in varied and uncertain circumstances by developing a case plan

that best protects children without undue disruption to the family unit. Establishing meaningful guidelines may provide fair notice of the legal consequences flowing from an employee's alleged acts or omissions. Regardless of whether an employee really can appreciate that "the conduct was committed knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent," as the Court of Appeals said below, there may also be value in establishing some clear and simple lines of demarcation that may better help to distinguish right from wrong.

To that end, appellant respectfully submits that this Court's decision in *Fabrey v. McDonald Village Police Dept.*, supra, is instructive. While many Ohio case decisions have directed their attention primarily to the *Fabrey* opinion's definitional discussion of "wanton" and "reckless" conduct, less attention appears to have been given to another passage of the *Fabrey* opinion that ultimately informed the Court's decision in that case. Appellant submits that several useful principles may be gleaned from a close examination of that opinion.

In particular, the *Fabrey* court explicitly approved and adopted the following analysis rendered by the court of appeals:

> Appellant argues that Chief Tyree acted in a willful and wanton manner by knowingly failing to comply with the minimum jail standards promulgated by the state Department of Rehabilitation and Correction.
>
> *** There is no prohibition, in the standards, against permitting prisoners who do not present a threat to themselves or others to have smoking materials. Furthermore, appellee Tyree set forth the departmental policy on smoking in his deposition. Appellant has submitted no evidence as to how Riddle [the arrestee] obtained the lighter. Appellants do not allege that Chief Tyree gave the ignition device to Riddle (arguably such

> behavior could be considered willful and wanton conduct, given Riddle's unstable condition at the time of incarceration). In the absence of this type of behavior, rather than mere allegations that Chief Tyree committed acts that could be considered *negligent* per se, the trial court correctly determined that summary judgment was appropriate on this issue.

Fabrey, 70 Ohio St.3d at 356, 1994-Ohio-368, 639 N.E.2d 31 (emphasis in original).

The Supreme Court of Ohio concluded with these observations:

> Although appellants argue that Tyree's failure to maintain certain safety devices in violation of the standards caused Fabrey's injuries, a review of the record reveals that Tyree's conduct, while arguably negligent, does not rise to the level of wanton misconduct. Tyree apparently did not anticipate that a prisoner, while locked in a cell, would intentionally set fire to his own mattress. The General Assembly has declared that Tyree's mere negligence in his official duties should not give rise to personal liability. This was properly within its authority.

Fabrey, 70 Ohio St.3d at 357, 1994-Ohio-368, 639 N.E.2d 31.

Several practical principles emerge from this discussion that would appear to be relevant in virtually any case in which there is an issue as to whether the employee's conduct was merely negligent or whether the conduct was wanton or reckless.

As a start, the *Fabrey* opinion notes that the police chief did not engage in any conduct that directly caused the injury. The opinion observes: "Appellants do not allege that Chief Tyree gave the ignition device to Riddle (arguably such behavior could be considered willful and wanton conduct, given Riddle's unstable condition at the time of incarceration)." Id., 70 Ohio St.3d at 356, 1994-Ohio-368, 639 N.E.2d 31. In *Fabrey*, the plaintiffs' injury was caused by a third party, namely Riddle. The police chief had no direct involvement in the incident. Nor did the police chief engage in any conduct that independently increased a preexisting risk.

The *Fabrey* opinion further recognized that the police chief did not act contrary to any clear standard of conduct at the time. Answering the contention that Chief Tyree

acted in a willful and wanton manner by knowingly failing to comply with the minimum jail standards promulgated by the Ohio Department of Rehabilitation and Correction, the opinion notes: "There is no prohibition, in the standards, against permitting prisoners who do not present a threat to themselves or others to have smoking materials." Id., 70 Ohio St.3d at 356, 1994-Ohio-368, 639 N.E.2d 31. The fact that Ohio law did not clearly proscribe the employee's conduct was material to the *Fabrey* court's analysis. Certainly provisions in the Ohio Revised and Administrative Codes that clearly proscribe conduct would at least provide an objective way to assess whether the employee's conduct was clearly wrong at the time.

Beyond the absence of any explicit legal prohibitions, the plaintiffs in *Fabrey* did not allege the "type of behavior" that was contrary to a definite standard of conduct but rather appear to have alleged more generally that the police chief did not act reasonably. Allegations of such an indefinite nature would appear intrinsically to sound in negligence. In *Tighe v. Diamond* (1948), 149 Ohio St. 520, 80 N.E.2d 122, the court stated:

> Negligence implies a failure to comply with an indefinite rule of conduct in the circumstances of any particular case. It does not involve intent or a conscious purpose to do a wrongful act or to omit the performance of a duty.

Id. at 526, 80 N.E.2d 122. Thus while a failure to comply with an indefinite standard of conduct may reflect a negligent lapse in judgment, the deliberate failure to comply with a definite standard of conduct that involves little or no discretion may reflect conduct that is wanton or reckless.

Finally the *Fabrey* opinion considered whether the police chief acted in conscious disregard of a known risk. The court's opinion states: "Tyree apparently did not

anticipate that a prisoner, while locked in a cell, would intentionally set fire to his own mattress." Id., 70 Ohio St.3d at 357, 1994-Ohio-368, 639 N.E.2d 31. Because of the practical difficulty inherent in predicting human behavior, recklessness necessarily contemplates conduct that is undertaken in conscious and perverse disregard of a known particularized risk. It comprehends the inevitability of foresight, not the clarity of hindsight.

The *Fabrey* opinion thus appears to provide some general principles that, though not expressly stated in the opinion, can serve as a useful construct here in which to analyze whether an employee's conduct was so reckless as to deny the employee immunity under R.C. 2744.03(A)(6)(b).

To begin, it is clear here that appellant Munro did not engage in the conduct that directly caused the injury to Sydney Sawyer. Sydney Sawyer died as a result of LaShon Sawyer's criminal conduct. Munro did not do anything that independently increased any preexisting risk to Sydney.

Nor is there any suggestion that Munro acted in a manner that was contrary to a clear standard of conduct. The record instead confirms that Munro acted consistent with and not contrary to the applicable Ohio laws.

In particular, R.C. 5153.16(A) sets forth the powers and duties of a PCSA. As is relevant here, R.C. 5153.16(A) provides in relevant part as follows:

> Except as provided in Section 2151.422 of the Revised Code, in accordance with rules adopted under section 5153.066 of the Revised Code, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency shall do all of the following:
>
> (1) Make an investigation concerning any child alleged to be an abused, neglected, or dependent child;

***

(16) Implement a system of safety and risk assessment, in accordance with rules adopted by the director of job and family services to assist the public children services agency in determining the risk of abuse or neglect to a child;

***

(18) Make reasonable efforts to prevent the removal of an alleged or adjudicated abused, neglected or dependent child from the child's home, eliminate the continued removal of the child from the child's home, or make it possible for the child to return home safely, except that reasonable efforts of that nature are not required when a court has make the determination on division (A)(2) of section 2151.419 of the Revised Code ***.

Complementing these statutory powers and duties, Ohio Adm. Code 5101:2-34-32 sets forth PCSA requirements for assessments and investigations. At the time relevant to this case, the regulations required, the following:

(A) Upon receipt of a report of a child at risk of abuse and neglect, the PCSA shall determine the degree of risk to the child through collecting information from the following sources:

(1) The content of the report;
(2) Agency records for the family; and
(3) Information obtained from collateral sources.

***

(C) The PCSA shall consider the report an emergency when it is determined that there is imminent risk to the child's safety or there is insufficient information to determine whether or not the child is safe at the time of the report.

(D) For emergency reports, the PCSA shall attempt a face-to-face contact with the alleged child victim within one hour of the receipt of the report.

***

(G) The PCSA shall conduct:

(1) Face to face interviews with all adults residing in the home of the alleged child victim and the alleged perpetrator *** in order to:

(a) Assess their knowledge of the allegation;
(b) Observe the interaction of the alleged child victim and caretaker; and
(c) Obtain relevant information regarding the risk to the child.

(2) *** and obtain the child's explanation of the allegations contained in the report, ***
(3) Face to face interviews or telephone contacts with any persons identified as possible information sources during the assessment to obtain relevant information regarding the risk to the children. ***

(H) The PCSA shall take any other actions necessary to assess the risk to the child including, but not limited to:

(1) Taking photographs of areas of trauma on the child's body;
(2) Taking photographs of the child's environment (with the caretaker's consent);
(3) Securing a medical, and/or psychological examination/evaluation of the child (with consent of the child, parent, guardian, or custodian; or with a court order); or
(4) Securing any relevant records (including but not limited to school, mental health, medical, incident reports in an out-of-home care setting).

(I) At any time the PCSA determines a child to be at imminent risk of harm, the PCSA shall:

(1) Immediately enact a safety plan, pursuant to rule 5101:2-34-37 of the Administrative Code, utilizing the ODHS 1510, "Family Risk Assessment Model, Safety Plan for Children"; and/or
(2) Contact law enforcement; and/or
(3) Remove the child pursuant to rule 5101:2-39-12 of the Administrative Code.

***

(S) The PCSA shall complete a case resolution by completing the structured decision making steps 1 through 6 of the ODHA 1500, "Family Risk Assessment Model, Part I: Family Risk Assessment Matrix" at the completion of the family risk assessment, but no later than thirty days from the receipt of the report (forty-five days when information needed to

> determine the case resolution cannot be completed within thirty days and the reasons are documented in the case record).
>
> (T) The PCSA shall complete a case disposition at the completion of the out-of-home care and third party investigation, but no later than thirty days from the receipt of the report (forty-five days when information needed to determine the case disposition cannot be completed within thirty days and the reasons are documented in the case record).

Ohio Adm. Code 5101:2-34-32 (emphasis added).

The undisputed facts of this case showed that Appellant Munro acted consistent with these responsibilities. Under the system of safety and risk assessment implemented by DCFS, Munro caused an investigation of the referral regarding Sydney Sawyer. R.C. 5153.16(A)(1), (16). Caseworker Duncan made face-to-face contact with Sydney within one hour of the referral. Ohio Adm. Code 5101:2-34-32(D). That same day, Duncan interviewed LaShon Sawyer, Sydney's mother, face-to-face to assess her knowledge of the allegation, observe her interaction with Sydney, and obtain relevant information regarding the risk to Sydney. Ohio Adm. Code 5101:2-34-32(G). Duncan took Polaroid photographs of the suspected injuries. Ohio Adm. Code 5101:2-34-32(H)(1). A medical examination was scheduled and performed promptly. Ohio Adm. Code 5101:2-34-32(H)(3). School and medical records were reviewed. Ohio Adm. Code 5101:2-34-32(H)(4).

Duncan reported this information to Munro. Within 48 hours of the receipt of the referral, they made a determination of the risk to Sydney based on the content of the report, the absence of any agency records for the family, and information obtained from collateral sources. Ohio Adm. Code 5101:2-34-32(A). Because the information available did not suggest that Sydney was in imminent risk of harm, they made reasonable efforts to avoid removal of Sydney from her home by developing a case

management plan for the family. R.C. 5153.16(A)(18). Less than thirty days after receipt of the referral, however, LaShon Sawyer killed Sydney.

Munro did not fail to provide temporary emergency care in this case. No juvenile court order required DCFS to take custody of Sydney, see R.C. 5153.16(A)(3), nor did DCFS determine that emergency custody was necessary, see R.C. 5153.16(A)(7). The record shows Munro acted in accordance with the relevant standards and did not act contrary to any clearly defined standard of conduct.

Appellee never established that Munro's discretionary acts were contrary to any clear standard of conduct. Appellee instead has insisted that Munro was "reckless" by, among other things, not instructing his staff adequately on the change from FRAM and use of SDM, or instructing and supervising Duncan adequately, or calling a staffing, or using his clinical judgment in assessing Sydney's injuries, or contacting law enforcement. These complaints do not identify conduct that was clearly proscribed.

Appellee implicitly argues that Munro's failure to seek emergency custody and failure to adequately supervise caused Sydney's death. Putting aside the obvious proximate causation argument, Appellee never showed that Munro was required to exercise the agency's authority in a particular way. Munro exercised agency authority in a manner authorized by Ohio Adm.Code 5150:2-34-32(I), which directs the PCSA to (1) immediately enact a safety plan utilizing the family risk assessment model safety plan; **and/or** (2) contact law enforcement; **and/or** (3) remove the child. (emphasis added). Munro developed a safety plan based on the best information available. Munro initiated and supervised the investigation and evaluated the best information available at the time.

Munro did not engage in any conduct that was clearly proscribed by Ohio law. Nor was his conduct contrary to any definite standard of behavior. There are, moreover, practical limitations upon any social worker's ability to predict and protect for, as one court has said, "a social homeworker cannot be everywhere at all times and everything to everybody." *Jackson v. Butler Cty. Bd. of Cty. Commrs.* (1991), 76 Ohio App.3d 448, 455, 602 N.E.2d 363. Notwithstanding Munro's supervisory role over the investigation, nothing in this case suggests that he did anything that was clearly wrong.

Apart from the absence of any conduct by Munro that was contrary to a clear and definite standard of conduct, nothing in this case suggests that he acted in conscious and perverse disregard of a known risk. Munro examined the facts and photographs as they were reported. Extensive interviews were conducted of Sydney Sawyer, her primary caregiver, Lashon Sawyer, all relevant employees at the daycare center, and Sydney Sawyers' babysitter, Nashonda Cundiff. The Court of Appeals' statement that "the agency already knew that someone had injured this child and sill returned the child to her mother even though she had a long history of abusing her children," is factually wrong. Munro's background check confirmed that no prior complaints of abuse had ever been made concerning Sydney Sawyer or her mother. (See Munro Deposition @ pg. 115).

Sydney Sawyer's home was examined and a safety plan developed that required Sydney Sawyer to be examined by a medical professional, remain in daycare and be supervised by its staff, and have weekly face-to-face interviews. Sydney Sawyer's mother was fully cooperative and compliant with all requests by DCFS. She had no criminal record or evidence of drug addiction or mental psychosis. Sydney Sawyer's mother worked a steady job, provided income for the household, and explained the origin

of Sydney's apparent injuries. Medical examiners independently confirmed that Sydney's x-rays were normal and did not suggest abuse. Though Supervisor Munro requested follow-up face-to-face meetings with Sydney, a pre-approved trip out of state for a family funeral and daycare closing for Easter break in part prevented those follow-up meetings. Regardless of whether the case was artfully plead to claim "recklessness," the evidence in this case cannot support the contention that Munro acted in conscious disregard of the risk that LaShon Sawyer would kill Sydney.

It is, moreover, incongruous to hold this individual employee personally liable for discretionary acts that are authorized by and not clearly contrary to law. Indeed, under the three-tiered analysis applicable to political subdivisions, the political subdivision enjoys immunity at the third analytical tier

> if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.

R.C. 2744.03(A)(2). The political subdivision is likewise immune at this tier

> if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

R.C. 2744.03(A)(3).

This Court's decisions confirm that "a political subdivision acts through its employees." *Elston v. Howland Loc. Schools*, 113 Ohio St.3d 314, 2007-Ohio-2070, 865 N.E.2d 845, at ¶ 19. Munro's conduct was authorized by law and/or necessary or essential for DCFS to exercise its powers, see R.C. 2744.03(A)(2). Munro's conduct likewise involved a discretionary determination concerning the enforcement powers of

the DCFS, see R.C. 2744.03(A)(3). It is illogical to think that the discretionary decisions and acts for which the political subdivision is immune would nevertheless subject the decision-maker to personal liability just by claiming the decision was made "recklessly."

When this case is considered not from the perspective of whether the employee could have done something differently but from the perspective of whether the employee acted in a manner that was contrary to a clear standard of conduct and in conscious disregard of a known risk, the facts here cannot sustain the Court of Appeals' determination that Munro's conduct could be reckless. He did not act contrary to a clear and definite standard of behavior and in conscious disregard of the risk that Lashon Sawyer would kill her daughter. It was error for the appellate court to make Munro a virtual insurer for the criminal misconduct of LaShon Sawyer. The judgment of the Court of Appeals should accordingly be reversed.

B. <u>Munro did not act in a reckless manner.</u>

Even considering this case based on definitions and standards currently used to decide whether conduct is "reckless," the conduct of appellant Munro cannot satisfy that high standard as a matter of law. Because Munro did not perversely disregard a known risk, he did not act in a reckless manner. The judgment of the Court of Appeals should accordingly be reversed.

The appellee has not contended, and the Court of Appeals did not find, that Murno acted "with malicious purpose," "in bad faith," or in a "wanton" manner. Appellee instead argued, and the Court of Appeals ruled, that supposed "evidence of recklessness" was sufficient to deny Munro immunity under R.C. 2744.03(A)(6)(b).

Appellant submits the Court of Appeals erred by determining that Munro's conduct could be considered "reckless."

Under Ohio law, "malicious purpose" is said to connote "the willful and intentional design to do injury, or the intention or desire to harm another, usually seriously, through conduct which is unlawful or unjustified." *Cook v. Hubbard Exempted Village Bd. of Edn.* (1996), 116 Ohio App.3d 564, 569, 688 N.E.2d 1058 (quoting *Jackson v. Butler Cty. Bd. of Cty. Commrs.* (1991), 76 Ohio App.3d 448, 453-454, 602 N.E.2d 363). "[I]n order for a malicious purpose to exist, there must be ill will or enmity of some sort." *Grimm v. Summit Cty. Children Servs. Bd.*, Summit App. No. 22702, 2006-Ohio-2411, at ¶ 73 (quoting *Shadoan v. Summit Cty. Children Servs. Bd.*, Summit App. No. 21486, 2003-Ohio-5775, at ¶ 12).

"Bad faith" means "more than bad judgment or negligence" and involves "a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud. It also embraces actual intent to mislead or deceive another." *Cook v. Hubbard Exempted Village Bd. of Edn.*, supra, 116 Ohio App.3d at 569, 688 N.E.2d 1058 (quoting *Jackson v. Butler Cty. Bd. of Cty. Commrs.*, supra, 76 Ohio App.3d at 454, 602 N.E.2d 363).

"Wanton" misconduct is "the failure to exercise any care whatsoever." *Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d at 356, 1994-Ohio-368, 639 N.E.2d 31 (citing *Hawkins v. Ivy* (1977), 50 Ohio St.2d 114, 363 N.E.2d 367, syllabus). The *Fabrey* court added:

> In *Roszman v. Sammett* (1971), 26 Ohio St.2d 94, 96-97, 55 O.O.2d 165, 166, 269 N.E.2d 420, 422, we stated, "mere negligence is not converted into wanton misconduct unless the evidence establishes a disposition to perversity on the part of the tortfeasor." Such perversity must be under

> such conditions that the actor must be conscious that his conduct will in all probability result in injury. Id. at 97, 55 O.O.2d at 166, 269 N.E.2d at 423.

Fabrey, 70 Ohio St.3d at 356, 1994-Ohio-368, 639 N.E.2d 31.

Explaining "reckless" conduct, the court in *Thompson v. McNeill* (1990), 53 Ohio St.3d 102, 559 N.E.2d 705, used the standard enunciated in 2 Restatement of the Law 2d, Torts (1965), at 587, Section 500:

> The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.

Thompson v. McNeill, 53 Ohio St.3d at 104-105, 559 N.E.2d 705. See, also, *Marchetti v. Kalish* (1990), 53 Ohio St.2d 95, 96, 559 N.E.2d 699, fn. 2.[4]

The *Thompson* court noted that the term "reckless" is often used interchangeably with "willful" and "wanton" and that the court's comments regarding reckless "apply to conduct characterized as willful and wanton as well." *Thompson*, 53 Ohio St.3d at 104, 559 N.E.2d 705, fn. 1. See, also, *McGuire v. Lovell*, 85 Ohio St.3d 1216, 1219, 1999-Ohio-296, 709 N.E.2d 841 (Moyer, C.J., dissenting) ("In the context of immunity, reckless conduct has been viewed as interchangeable with wanton conduct. This, however, does not diminish the level of misconduct required to meet either standard.")

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[4] Under Ohio's criminal code, "a person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances, when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist." R.C. 2901.22(C).

Reviewing these terms in the specific context of R.C. 2744.03(A)(6)(b), Ohio case decisions establish:

> In R.C. 2744.03(A)(6)(b), the word "reckless" is associated with the words "malicious purpose," "bad faith," and "wanton," all of which suggest conduct more egregious than simple carelessness. Looking at the use of the word "reckless" in the instant context, [the employee] must have "perversely disregarded a known risk" in order to lose *** immunity.

Poe v. Hamilton (1990), 56 Ohio App.3d 137, 138, 565 N.E.2d 887. Accord *Lipscomb v. Lewis* (1993), 85 Ohio App.3d 97, 102, 619 N.E.2d 102; *Jackson v. Butler Cty. Bd. of Cty. Commrs.* (1991), 76 Ohio App.3d 448, 454, 602 N.E.2d 363.

Applying these standards to the facts of the instant case, nothing in this record can provide grounds for the Court of Appeals' determination that Munro acted recklessly. Even considering his conduct in the light most favorable to appellee, there is nothing to suggest that Munro perversely disregarded a known risk such that his conduct could be characterized as "reckless." The record demonstrates that Munro performed services required of the PCSA. Relying on information provided by the assigned caseworker, Munro made a safety and risk assessment for Sydney Sawyer based on information he received. Exercising the responsibilities assigned to him and using the decision making process available to him at the time, Munro determined emergency custody was unwarranted.

As noted previously, state regulations required that the agency conduct an investigation. The record is devoid of any promulgated regulation where Appellant herein failed to perform an agency duty that was required of the PCSA. The administrative regulations required that the agency make a determination concerning the safety of the reported victim of abuse. The promulgated regulations did not require

Munro to reach a particular conclusion. Appellant utilized his professional judgment and drew an opinion based upon facts acquired during the investigation of the report, and made a discretionary determination. By any reasonable definition of the term, Munro did not act recklessly.

The intent of the legislature in the enactment of governmental immunity was to provide liability protection for those workers forced to make daily decisions in even the hardest cases. The Eighth Appellate District's erroneous ruling should not be permitted to stand because it subjects social workers to liability for exercising the discretion and professional judgment necessary to perform the responsibilities of a PCSA. The Court of Appeals erred in denying Munro immunity under R.C. 2744.03(A)(6)(b). The judgment should be reversed and the judgment of the trial court should be reinstated.

SECOND PROPOSITION OF LAW ACCEPTED FOR REVIEW:

The appellate court erred in holding that social workers Munro and Duncan were not immune from liability for failing to report suspected child abuse to police authorities, thereby creating a duty not contemplated by the legislature in R.C. Section 2151.421(A)(1)(a); or failing to provide "in loco parentis" duty of care, thereby creating a duty not contemplated by the legislature in R.C. Section 2919.22(A).

PROPOSED SYLLABUS:

An employee of a public children services agency who receives a report under R.C. 2151.421(A)(1)(a) is not required to cross-report that information to another investigating agency pursuant to R.C. 2151.421(A)(1)(a) and is immune from liability for not cross-reporting that information. R.C. 2151.421, R.C. 2744.03(A)(6)(c), applied.

An employee of a public children services agency who receives a report under R.C. 2151.421(A)(1)(a) is not thereby "in loco parentis" to the child who is the subject of the report.

The Court of Appeals' decision in this case creates new legal duties and responsibilities and radically extends individual employee liability in ways that are hard to fathom.

Contrary to the plain terms of R.C. 2151.421, this ruling requires every employee of a public children services agency (hereafter "PCSA") who is involved in an investigation of a referral to cross-report that preliminary information duplicatively to other law enforcement agencies or face personal civil liability. R.C. 2151.421 in fact contains no such cross-reporting requirement. If that were not enough, this appellate ruling considers PCSA employees "in loco parentis" to the children who are the subject of an investigation, thus making PCSA employees personally liable for the child's well-being even though the child remained at all times in the lawful custody of the child's parent.

The Court of Appeals' decision is contrary to law and logic. The court erred by holding that appellant Munro, who only supervised the caseworker's investigation of this referral, could not claim immunity under R.C. 2744.03(A)(6)(c) because liability was expressly imposed by a section of the Ohio Revised Code, namely, R.C. 2151.421 and/or R.C. 2919.22(A). Contrary to this appellate court ruling, neither statute provides grounds to hold Munro personally liable in this case. Munro accordingly requests that this Court reverse the judgment of the Court of Appeals and reinstate the judgment of the trial court.

Before addressing the specific Revised Code sections upon which appellee sought to impose civil liability on Munro, a brief review of the relevant provisions of Chapter 2744 of the Ohio Revised Code is in order.

R.C. 2744.03(A)(6)(c), as enacted by Am.Sub.H.B. No. 176 and effective as of November 20, 1985, provided that an employee of a political subdivision is immune from liability unless, among other things, "[l]iability is expressly imposed upon the employee by a section of the Revised Code." R.C. 2744.03(A)(6)(c). See 141 Ohio Laws, Part I, 1699, 1715. In a comparable provision applicable to political subdivisions themselves, R.C. 2744.02(B)(5) separately subjected such entities to tort liability in the following terms:

> In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to persons or property when liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Liability shall not be construed to exist under another section of the Revised Code merely because a responsibility is imposed upon a political subdivision or because of a general authorization that a political subdivision may sue and be sued.

See 141 Ohio Laws, Part I, 1699, 1713.

Effective January 27, 1997, Am.Sub.H.B. No. 350 purportedly amended R.C. 2744.03(A)(6)(c) to deny employee immunity if:

> (c) Liability is expressly imposed upon the employee by a section of the Revised Code. Liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because of a general authorization in that section that an employee may sue or be sued, or because the section uses the term shall in a provision pertaining to an employee.

See 146 Ohio Laws, Part II, 3867, 3990.

Am.Sub.H.B. No. 215, effective June 30, 1997, amended the introductory clause to R.C. 2744.03(A)(6) but did not change subsection (c). See 147 Ohio Laws, Part I, 909, 1151.

On August 16, 1999, the Supreme Court of Ohio declared Am.Sub.H.B. No. 350 unconstitutional in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 1999-Ohio123, 715 N.E.2d 1062. Following *Sheward*, the court issued a series of cases indicating that the law regarding appealability of orders denying statutory immunity to political subdivisions and their employees had returned to the law that existed prior to Am.Sub.H.B. No. 350's attempt to change it. See *Stevens v. Ackman*, 91 Ohio St.3d 182, 191, 2001-Ohio-249, 743 N.E.2d 901 (collecting cases). In *Stevens*, supra, decided on March 28, 2001, the court held that R.C. 2744.02(C), as purportedly amended by Am.Sub.H.B.350, was neither enacted nor reenacted by Am.Sub.H.B. 215 because the text of R.C. 2744.02(C), as amended by Am.Sub.H.B. 215, was the same as that in Am.Sub.H.B.350 that had been declared unconstitutional in *Sheward*.

In the aftermath of those decisions, R.C. 2744.03(A)(6)(c), as amended effective April 9, 2003 by Am.Sub.S.B. 106, currently provides as follows:

> (c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or a mandatory duty upon an employee, because that section provides for a criminal penalty, because of a general authorization that an employee may sue or be sued, or because the section uses the term "shall" in a provision pertaining to an employee.

See 149 Ohio Laws, Part II, 3500, 3510. With regard to political subdivisions, Senate Bill 106 amended R.C. 2744.02(B)(5) in similar terms. See 149 Ohio Laws, Part II, 3500, 3508.

As it relates to the instant case, the appellee's action accrued on April 27, 2000. The issue before this Court is whether liability was expressly imposed upon an employee like Munro by R.C. 2151.421 and/or R.C. 2919.22(A) in order to deny him immunity under R.C. 2744.03(A)(6)(c). For the reasons discussed hereafter, neither statute provided legal grounds to deny appellant Munro of the immunity conferred by R.C. 2744.03(A)(6)(c). Accordingly, the judgment of the Court of Appeals should be reversed.

A. R.C. 2151.421 does not require an employee of a public children services agency who receives a report under R.C. 2151.421(A)(1)(a) to cross-report that information to another investigating agency pursuant to R.C. 2151.421(A)(1)(a).

Appellee argued in the proceedings below that R.C. 2151.421 requires PCSA employees who receive reports of abuse or neglect pursuant to R.C. 2151.421(A)(1)(a) to report that same information to other local law enforcement agencies. Appellee contended that Munro's failure to cross-report the information received about Sydney Sawyer to other local law enforcement violated R.C. 2151.421 and deprived Munro of the employee of immunity provided under R.C. 2744.03(A)(6)(c). The Court of Appeals did not directly address whether R.C. 2151.421 requires PCSA employees to duplicatively

cross-report the reports they receive to another law enforcement agency but nevertheless ruled that the issue of fact whether a report was made to the Cleveland police department here precluded immunity under R.C. 2744.03(A)(6)(c). The appellate court's implicit ruling that R.C. 2151.421 imposed this duty to cross-report and civil liability on an investigating agency employee who does not do so is not supported by Ohio law or common sense.

To begin, R.C. 2151.421(A)(1) provided at all times relevant to this case, as follows:

> (a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report that knowledge or suspicion **to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.**
>
> (b) Division (A)(1)(a) of this section applies to any person who is an attorney; physician, including a hospital intern or resident; dentist; podiatrist, practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center; **employee of a** certified child care agency or other **public** or private **children services agency**; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; or a person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion.

R.C. 2151.421(A)(1) (emphasis added).[5]

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[5] At the time the appellee's action accrued on April 27, 2000, the version of R.C. 2151.421 then in effect was the version amended by Sub.H.B. No. 606, effective March

Because Munro is an employee of a PCSA under Chapter 5153 of the Ohio Revised Code, appellee has contended that Munro is a person described in R.C. 2151.421(A)(1)(b) such that he was required to report any knowledge or suspicion of Sydney Sawyer's abuse or neglect to the municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred pursuant to R.C. 2151.421(A)(1)(a). Contrary to appellee's contention, however, R.C. 2151.421 does not impose the duty to cross-report and does not expressly impose civil liability on Munro for not cross-reporting.

The Supreme Court of Ohio has previously considered whether R.C. 2151.421 imposes liability on political subdivision employees in order to deny them immunity under R.C. 2744.03(A)(6)(c). Those case decisions are illuminating here.

In *Campbell v. Burton*, 92 Ohio St.3d 336, 2001-Ohio-206, 750 N.E.2d 539, an eighth-grade student told a teacher of incidents in which a family friend allegedly engaged in improper sexual activity with the student. Id. at 337-338, 2001-Ohio-206, 750 N.E.2d 539. The teacher did not report this information to anyone. Id. at 338, 2001-Ohio-206, 750 N.E.2d 539. The student's family subsequently filed a civil lawsuit against the teacher and the school district that employed her for failing to report the alleged abuse in violation of R.C. 2151.421. Id. The trial court determined that the Fairborn school district was not liable pursuant to R.C. 2744.02(A)(1) and that the individual school district employees, including the teacher, were immune pursuant to R.C. 2744.03(A)(6). Id. at 339, 2001-Ohio-206, 750 N.E.2d 539. The court of appeals affirmed the trial court's judgment and certified the following question to resolve a

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9, 1999. See 147 Ohio Laws, Part III, 4686, 4697. Subsequent amendments to R.C. 2151.421(A)(1) do not appear to have affected the provisions relevant to this case.

conflict among the appellate districts: "For the purpose of the immunity exceptions in R.C. 2744.02(B)(5) and R.C. 2744.03(A)(6)(c), does R.C. 2151.421 expressly impose liability on political subdivisions and their employees for failure to report child abuse?" Id.

The Supreme Court of Ohio answered the certified question in the affirmative and held:

> 1. Within the meaning of R.C. 2744.02(B)(5) and 2744.03(A)(6)(c), R.C. 2151.421 expressly imposes liability for failure to perform the duty to report known or suspected child abuse.
>
> 2. Pursuant to R.C. 2744.02(B)(5), a political subdivision may be held liable for failure to perform a duty expressly imposed by R.C. 2151.421.
>
> 3. Pursuant to R.C. 2744.03(A)(6)(c), an employee of a political subdivision may be held liable for failure to perform a duty expressly imposed by R.C. 2151.421.

Campbell v. Burton, at syllabus. The court's majority determined that because R.C. 2151.99 imposed criminal liability for the failure to report under R.C. 2151.421(A)(1), that was sufficient to expressly impose civil liability upon the political subdivision, namely, the Fairborn school district, pursuant to former R.C. 2744.02(B)(5) and upon the individual employees of the political subdivision, namely, the Fairborn teacher and the school district superintendent, pursuant to former R.C. 2744.03(A)(6)(c). Id. at 341-343, 2001-Ohio-206, 750 N.E.2d 539. See, also, *Yates v. Mansfield Bd. of Edn.*, 102 Ohio St.3d 205, 2004-Ohio-2491, 808 N.E.2d 861, at syllabus ("Pursuant to former R.C. 2744.02(B)(5), a board of education may be held liable when its failure to report the sexual abuse of a minor student by a teacher in violation of R.C. 2151.421 proximately results in the sexual abuse of another minor student by the same teacher.")

On the same day that the Court decided *Campbell v. Burton*, the Court separately decided *Marshall v. Montgomery Cty. Children Serv. Bd.*, 92 Ohio St.3d 348, 2001-Ohio-209, 750 N.E.2d 549. In that case, the child's mother had a ten-year history of abuse allegations concerning her four other children that had been the subject of reports to the Montgomery County PCSA. Id. at 348-349, 2001-Ohio-209, 750 N.E.2d 549. In October 1994, eight months after the mother's fifth child was born, the PCSA received a report of child neglect relating to the mother's substance abuse. Id. at 350, 2001-Ohio-209, 750 N.E.2d 549. After initial attempts to contact the mother were unsuccessful, the agency finally contacted her six months after receiving the October 1994 report. Because the report could not be substantiated, that case was closed. The Dayton Police Department did not report the mother's October 1995 arrest for domestic violence and child endangering to the PCSA. The agency did not receive any other referrals until October 1996, when the mother beat her two-year old son to death. Id. at 351, 2001-Ohio-209, 750 N.E.2d 549.

The child's estate subsequently filed a civil lawsuit against Montgomery County, the County's Children Services Board, and the board's director, as well as the City of Dayton and an unnamed police officer. Id. The complaint alleged that the PCSA defendants negligently failed to investigate and remove the child from the mother's custody and that the Dayton defendants negligently failed to report the mother's arrest for domestic violence and child endangering. Id. The trial court granted the defendants' motions for summary judgment and the court of appeals affirmed, certifying the following question to this Court: "For the purposes of the immunity exceptions in R.C.

2744.02(B)(5) and R.C. 2744.03(A)(6)(c), does R.C. 2151.421 expressly impose liability on political subdivisions and their employees for failure to investigate child abuse?" Id.

The Supreme Court of Ohio answered this question in the negative, holding:

> Within the meaning of R.C. 2744.02(B)(5) and R.C. 2744.03(A)(6)(c), R.C. 2151.421 does not expressly impose liability for failure to investigate reports of child abuse.

Marshall v. Montgomery Cty. Children Serv. Bd., at syllabus. Distinguishing this case from *Campbell v. Burton*, the *Marshall* court's opinion said: "[I]n contrast to its imposition of a penalty for failure to report, R.C. 2151.99 does not impose a penalty for failure to investigate, pursuant to R.C. 2151.421(F)(1), reports of child abuse or neglect." Id. at 353, 2001-Ohio-209, 750 N.E.2d 549. The court accordingly affirmed the judgment of the court of appeals.

These decisions make several points that are instructive here.

First, *Marshall v. Montgomery Cty. Children Serv. Bd.* clearly establishes that R.C. 2151.421 does not expressly impose liability on a PCSA employee for the alleged failure to *investigate* a report of child abuse. In its decision below, the Court of Appeals sought to distinguish *Marshall* from the instant case, but the internal inconsistencies in the appellate court's opinion do not support its decision.

In particular, the Court of Appeals noted that the mother in *Marshall* had a ten-year history of abusing her children whereas LaShon Sawyer, Sydney's mother,

> did not have a similar history of domestic violence, and the child was beaten to death by the boyfriend and not the mother. Moreover, the case at bar lacks the significant history of violence, neglect and abandonment to the children by the mother in *Marshall*. Accordingly, we find *Marshall* to be distinguishable from the case at bar.

O'Toole v. Denihan, Cuyahoga App. No. 87476, 2006-Ohio-6022, at ¶ 21.[6] The absence of a "significant history of violence, neglect and abandonment" in the instant case only strengthens Munro's case here.

The Court of Appeals' further attempt to distinguish *Marshall* because the plaintiff there alleged that the PCSA defendants *negligently* failed to investigate but did not allege that the PCSA defendants *recklessly* failed to investigate is unpersuasive. See *O'Toole v. Denihan*, Cuyahoga App. No. 87476, 2006-Ohio-6022, at ¶ 23. *Marshall* established unequivocally that R.C. 2151.421 does not expressly impose any liability for failure to investigate reports of child abuse, regardless of whether the failure is negligent or reckless.

Thus to the extent that there was any allegation here that Munro failed to investigate a report of abuse or neglect, *Marshall v. Montgomery Cty. Children Serv. Bd.* confirms that R.C. 2151.421 does not expressly impose liability on Munro for the failure to investigate, so that allegation could not provide grounds to deny Munro immunity under R.C. 2744.03(A)(6)(c).

Second, *Campbell v. Burton* recognized that liability was expressly imposed for the failure to perform the duty to report known or suspected child abuse under R.C. 2151.421. But while paragraph three of that opinion's syllabus is worded broadly to say that "an employee of a political subdivision may be held liable" for failing to make the report required by R.C. 2151.421, "the syllabus of a Supreme Court opinion states the

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[6] Contrary to the appellate court' statement, Sydney Sawyer was beaten to death by her mother, not by her mother's boyfriend. And just two paragraphs before this statement, the Court of Appeals said inconsistently that Sydney's mother "had a long history of abusing her children." See *O'Toole v. Denihan*, Cuyahoga App. No. 87476, 2006-Ohio-6022, at ¶ 19. Contrary to this misstatement, there was no such history of reported abuse or neglect in this case.

controlling point or points of law *decided in and necessarily arising from the facts of the specific case before the Court for adjudication.*" *Agee v. Russell*, 92 Ohio St.3d 540, 546, 2001-Ohio-1279, 751 N.E.2d 1043 (emphasis in original) (quoting *State ex rel. Leonard v. White* (1996), 75 Ohio St.3d 516, 518, 664 N.E.2d 527). See, also, *Lindley v. Ferguson* (1977), 52 Ohio St.2d 60, 63, 369 N.E.2d 482; *Masheter v. Kebe* (1976), 49 Ohio St.2d 148, 150, 359 N.E.2d 74. "The syllabus of a Supreme Court opinion is not to be construed as being broader than the facts of that specific case warrant." *State v. McDermott*, 72 Ohio St.3d 570, 574, 1995-Ohio-80, 651 N.E.2d 985.

In *Campbell v. Burton*, the political subdivision employee who failed to make the report required by R.C. 2151.421 was the Fairborn teacher. Under R.C. 2151.421(A)(1)(b), a school teacher is required to report under R.C. 2151.421(A)(1)(a) any knowledge or suspicion of abuse or neglect to the PCSA or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. Because the teacher's failure to report her knowledge or suspicion subjected her to criminal liability under R.C. 2151.99, the court majority held that the teacher was not immune under R.C. 2744.03(A)(6)(c).

But *Campbell v. Burton* did *not* involve the claim presented here, which maintains that employees of a PCSA who receive a report under R.C. 2151.421(A)(1)(a) are required by that same statute to separately report that information to the local law enforcement agency. Even if *Campbell v. Burton* remains good authority for the proposition that a mandatory reporter under R.C. 2151.421(A)(1)(b) is not immune under former R.C. 2744.03(A)(6)(c) if they fail to make a report pursuant to R.C. 2151.421(A)(1)(a), the language used in paragraph three to the syllabus ought not be read

more broadly than the facts of the case warrant to unreasonably subject a PCSA employee to liability when the employee is not required to cross-report such information under R.C. 2151.421(A)(1)(a).

By its terms, R.C. 2151.421(A)(1)(a) expressly requires a mandatory reporter to make the report "to the public children services agency ***or*** a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred." R.C. 2151.421(A)(1)(a) (emphasis added). Contrary to the appellee's contention in this case and the Court of Appeals' implicit acceptance below, R.C. 2151.421 does not require employees of a PCSA who receive and investigate a report of abuse or neglect under R.C. 2151.421(A)(1)(a) to duplicatively report that same information to the municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.[7]

Had the General Assembly intended both the PCSA ***and*** the applicable law enforcement agency to receive such reports to conduct contemporaneous investigations, it presumably would have used the conjunctive "and" rather than the disjunctive "or" in R.C. 2151.421(A)(1)(a) to require reports to be made to both investigating agencies. But the words used plainly indicate the intent to require the report to be made to one or the other. When construing a statute, a court must ascertain and give effect to the legislative intent. See *Sarmiento v. Grange Mut. Cas. Co.*, 106 Ohio St.3d 403, 2005-Ohio-5410, 835 N.E.2d 692, at ¶ 25, where the court added:

> We cannot extend the statute beyond that which is written, for it is the duty of this court to give effect to the words used in a statute, not to delete

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[7] Under Ohio Adm. Code 5101:2-34-32(C), a PCSA may request assistance of law enforcement in specified situations.

> words used or to insert words not used. To do so would enlarge the scope of the statute beyond that which the General Assembly enacted.

Id. at ¶ 29 (citations and internal punctuation omitted).

It is moreover illogical to read this statute to impose a duplicative reporting duty only on the employees of the PCSA. If the General Assembly wanted these agencies to immediately report the referrals they receive to law enforcement, the General Assembly could have easily included a provision that required these agencies to cross-report the referrals they receive, but it did not do so. Indeed, while R.C. 2151.421(F)(1) does require the PCSA to submit a written report of its investigation to the law enforcement agency, R.C. 2151.421 does not require an (A)(1)(a) referral to be cross-reported to the law enforcement agency prior to the PCSA's completion of its investigation.

Recalling fundamental rules of construction, the Court said this in *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536:

> A basic rule of statutory construction requires that words in statutes should not be construed to be redundant, nor should any words be ignored. Statutory language must be construed as a whole and given such interpretation as will give effect to every word and clause in it. No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.

Id. at ¶ 26 (citations and internal punctuation omitted). A reasonable construction of R.C. 2151.421 refutes the tortured reading urged by the appellee and apparently accepted by the Court of Appeals.

Nor would it even be practical to construe R.C. 2151.421(A)(1)(a) to require such duplicative cross-reporting. By appellee's reasoning, every employee of a PCSA who receives any information of possible abuse or neglect must report that same information

to a local law enforcement agency. Thus for any one referral, any number of employees up the chain would have to report their information to any number of law enforcement agencies for investigation, or face civil liability. Just that one referral conceivably could generate countless investigations, ultimately hindering the efficacy of the investigatory process with needless redundancy. "It is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result." *Elston v. Howland Loc. Schools*, 113 Ohio St.3d 314, 2007-Ohio-2070, 865 N.E.2d 845, at ¶ 25. Surely the General Assembly did not intend such an absurd and needless duplication of public resources as that advocated by the appellee in this case.

To be sure, employees of a PCSA are, by R.C. 2151.421(A)(1)(b), expressly required to report knowledge or suspicion of child abuse or neglect to the appropriate PCSA or law enforcement agency pursuant to R.C. 2151.421(A)(1)(a). That duty presumably applies when an employee comes upon information of possible abuse or neglect apart from their daily work assignments such as, for example, when a caseworker is out investigating an assigned referral and sees signs of possible abuse or neglect of another child. The caseworker cannot ignore the obvious and of course must report the new matter to the relevant PCSA or applicable law enforcement agency. But the duty to report information an employee acquires apart from their regular work assignments should not be understood to impose a duty to report duplicatively to other law enforcement agencies information the employee receives as a work assignment pursuant to R.C. 2151.421(A)(1)(a).

The General Assembly enacted R.C. 2151.421 to safeguard children from abuse and neglect. See *Brodie v. Summit Cty. Children Servs. Bd.* (1990), 51 Ohio St.3d 112,

119, 554 N.E.2d 1301.[8] In many instances, only the state and its political subdivisions can provide the specialized care to protect children from abuse and neglect. See *Campbell v. Burton*, 92 Ohio St.3d at 341, 2001-Ohio-206, 750 N.E.2d 539; *Brodie v. Summit Cty. Children Servs. Bd.*, supra, 51 Ohio St.3d at 119, 554 N.E.2d 1301. The clear purpose of R.C. 2151.421 is to cause an investigation of suspected abuse or neglect to be initiated by the PCSA or applicable law enforcement agency. It does not follow, however, that R.C. 2151.421 imposes duplicative reporting duties on these investigating agencies. A sensible reading of R.C. 2151.421 cannot support the rule implicit in the Court of Appeals' decision here that subjects Munro to civil liability if he did not cross-report to law enforcement authorities the information the Cuyahoga County Department of Children and Family Services was in the process of investigating.

In this case, the undisputed facts showed that the Cuyahoga County Department of Children and Family Services received the referral concerning Sydney Sawyer on March 29, 2000. Appellant Munro reviewed the referral and assigned Kamesha Duncan to investigate the report. That same day, Duncan met separately with the staff at the referring daycare center; Sydney Sawyer; and Sydney's mother LaShon Sawyer. Duncan

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[8] In *Brodie*, decided under the law before the Political Subdivision Tort Liability Act took effect in 1985, see 51 Ohio St.3d at 119, 554 N.E.2d 1301, at fn. 6, the court held that a children services board and its agents could be liable for failing to investigate and report their findings as required by R.C. 2151.421 when a specific child is identified as abused or neglected. *Brodie*, syllabus at paragraph two. In *Gersper v. Ashtabula Cty. Children Servs. Bd.* (1991), 59 Ohio St.3d 127, 570 N.E.2d 1120, the court recognized "a clear distinction" between the failure to respond to a report of suspected child abuse and neglect in *Brodie* and the conduct of the agency and caseworker in *Gersper* who took affirmative steps commensurate with a health care professional's report to investigate the report and initiate judicial proceedings. *Gersper*, 59 Ohio St.3d at 130, 570 N.E.2d 1120. In the instant case, the contention is not that Munro failed to respond but rather that he failed to respond adequately. While Munro disputes that contention, that dispute is immaterial because Munro should be immune in any case under R.C. 2744.03(A)(6).

telephoned Munro several times to discuss the matter. Munro continued to monitor Duncan during the course of the investigation up until Sydney's tragic death on April 27, 2000 at the hands of her mother. Munro's supervisory responsibilities over this investigation did not require him to cross-report the referral that the PCSA was investigating.

The Court of Appeals erred when it held that any issue of fact whether Munro (or any other agency employee) made a report to the Cleveland police department provided grounds to reverse the summary judgment rendered in favor of Munro. That supposed question of fact would be immaterial in any case, for R.C. 2151.421 does not require an employee of a PCSA who has received a report under R.C. 2151.421(A)(1)(a) to cross-report that information to another law enforcement agency, nor does it expressly impose civil liability for not doing so. The Court of Appeals accordingly erred by ruling that Munro was not entitled to immunity under R.C. 2744.03(A)(6)(c).

B. <u>An employee of a public children services agency who receives a report under R.C. 2151.421(A)(1)(a) is not thereby "in loco parentis" to the child who is the subject of the report.</u>

Appellee alternatively sought to impose personal liability on Munro by alleging that he acted "in loco parentis" and could have been subject to criminal liability under R.C. 2919.22 for endangering children. The Court of Appeals' opinion does not directly discuss this contention, though it found that there were genuine issues of material fact as to whether the agency and/or its employees "created a substantial risk to Sydney's health and safety by violation of their legal duties owed to her." See *O'Toole v. Denihan*, Cuyahoga App. No. 87476, 2006-Ohio-6022, at ¶ 16. To the extent that the Court of Appeals' decision implicitly holds that an employee like Munro is "in loco parentis" to

children who are the subject of an investigation following receipt of a report made pursuant to R.C. 2151.421(A)(1)(a), the appellate court's decision is contrary to law and reason.

At all relevant times, R.C. 2919.22(A), entitled "Endangering Children," provided as follows:

> 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. ***

R.C. 2919.22(A). See 148 Ohio Laws, Part IV, 8674, 8705, Am.Sub.S.B. No. 107, effective March 23, 2000.

In *State v. Noggle*, 67 Ohio St.3d 31, 1993-Ohio-189, 615 N.E.2d 1040, the court held that a high school teacher was not a person in loco parentis under R.C. 2907.03(A)(5), which provided at the time as follows:

> No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:
>
> ***
>
> (5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian or person in loco parentis.

R.C. 2907.03(A). The *Noggle* court stated:

> The term "in loco parentis" means "charged, factitiously, with a parent's rights, duties, and responsibilities." Black's Law Dictionary (6 Ed. 1990) 787. A person in loco parentis has assumed the same duties as a guardian or custodian, only not through a legal proceeding.

Id. at 33, 1993-Ohio-189, 615 N.E.2d 1040. See, also, *State ex rel. Asberry v. Payne* (1998), 82 Ohio St.3d 44, 49, 693 N.E.2d 794, fn. 2 ("A person in loco parentis assumes the same duties as a guardian or custodian, although not through a legal proceeding.")

The *Noggle* court explained:

> The phrase "person in loco parentis" in R.C. 2907.03(A)(5) applies to a person who has assumed the dominant parental role and is relied upon by the child for support. This statutory provision was not designed for teachers, coaches, scout leaders, or any other persons who might temporarily have some disciplinary control over a child. Simply put, the statute applies to the people the child goes home to.

Id. Because the teacher had not assumed such duties, the court held that he was not in loco parentis under R.C. 2907.03(A)(5).[9]

In the matter at hand, Munro was not a person "in loco parentis" to Sydney Sawyer. Munro did not have custody or control over Sydney Sawyer. Munro plainly did not assume the "dominant parental role" upon whom the child relied for support. *State v. Noggle*, supra. Indeed, Munro never even met Sydney Sawyer. Munro did not assume parental rights, duties, and responsibilities merely by supervising the investigation of this referral. Appellee's contention that Munro's responsibility to supervise an investigation made him "in loco parentis" to Sydney Sawyer is utterly untenable. So even if *Campbell v. Burton*, supra, remains good law for the proposition that *criminal* liability is sufficient to expressly impose *civil* liability under former R.C. 2744.03(A)(6)(c), Munro could not face criminal liability under R.C. 2919.22(A) in any event.

Beyond that, and contrary to the appellate court's ruling, Munro played no part in creating a substantial risk to the health or safety of Sydney Sawyer. Sydney remained at all times in the lawful custody of her mother, LaShon Sawyer, while the referral was being investigated. The risk to Sydney's health or safety was created by LaShon Sawyer.

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[9] R.C. 2907.03(A) was subsequently amended to include teachers and coaches under new subsections (A)(7), (8), and (9). Subsection (A)(5) was amended only to add the phrase "of the other person" to the end of R.C. 2907.03(A)(5).

It was not created by Munro. R.C. 2919.22(A) thus could provide no legitimate grounds to deny Munro immunity under R.C. 2744.03(A)(6)(c).

Moreover, to the extent this Court of Appeals decision means that PCSA employees automatically displace custodial parents and guardians and assume parental rights, duties, and responsibilities over children merely because the employee's job requires them to investigate such referrals, the court's ruling defies law and reason. Indeed, "the Constitutions of both the United States and the state of Ohio afford parents a fundamental right to custody of their children." *In re James*, 113 Ohio St.3d 420, 2007-Ohio-2335, 866 N.E.2d 467, at ¶ 16. See, also, *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599.

In *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, the Supreme Court of Ohio said:

> Ohio's child-welfare laws are designed to care for and protect children, "whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety." R.C. 2151.01(A).

Id. at ¶ 29. As noted previously, Ohio public children services agencies are directed to "[m]ake reasonable efforts to prevent removal of an alleged or adjudicated abused, neglected, or dependent child from the child's home ***." R.C. 5153.16(A)(18).

Yet under the Court of Appeals ruling now before this Court, every PCSA employee involved in investigating a referral apparently assumes parental rights, duties, and responsibilities regardless of whether PCSA has custody of the child and clearly without regard to whether the PCSA employee has legal custody. Under this ruling, the employee must choose to either (1) assume parental duties and responsibilities to avoid civil if not criminal liability under R.C. 2744.03(A)(6)(c) and R.C. 2919.22(A) **but** face

liability for interfering with the fundamental right to parent one's child; or (2) minimize disruption to parental rights and family unit structure pursuant to R.C. 2151.01(A) and R.C. 5153.16(A)(18) **but** face civil if not criminal liability under R.C. 2744.03(A)(6)(c) and R.C. 2919.22(A) for not having assumed parental responsibilities. Practically speaking, the PCSA employee is condemned if he does and condemned if he doesn't. The likely effect of this appellate court ruling will be to paralyze social workers for fear of ruinous personal liability and deter other individuals from pursuing this worthy career. The radical extension of personal liability endorsed by the Court of Appeals in this case cannot be sustained by law or reason.

The Court of Appeals decision on review here is bad law and worse policy. To the extent the lower court's ruling suggests that a PCSA employee like Munro becomes "in loco parentis" to children who are the subject of agency investigations, the court's decision should be rejected as contrary to law and logic. R.C. 2919.22(A) could not provide proper grounds to deny Munro immunity under R.C. 2744.03(A)(6)(c). Accordingly, the judgment of the Court of Appeals should be reversed.

CONCLUSION

Appellant Tallis George Murno respectfully requests that the judgment of the Court of Appeals be reversed and that the judgment of the trial court be reinstated.

Respectfully submitted,

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Cuyahoga County Prosecutor

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CERTIFICATE OF SERVICE

A copy of the foregoing document was sent via regular U.S. mail this 9th day of ~~July~~ August, 2007 to the following:

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James C. Cochran

APPENDIX

IN THE SUPREME COURT OF OHIO

07-0056

WILLIAM DENIHAM, et al.	)	CASE NO. _____
Appellant,	)	On Appeal from the Court of Appeals Eighth Judicial District, Cuyahoga County, Ohio
v.	)	
JOHN K. O'TOOLE, Personal Representative and Administrator of the Estate of Sydney Sawyer.	)	Court of Appeals Case No.: 087476

NOTICE OF APPEAL OF APPELLANT TALLIS GEORGE-MUNRO

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FILED
JAN 11 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

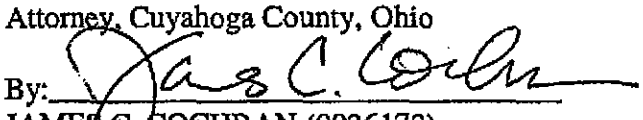
Notice of Appeal of Appellant Tallis George-Munro

Appellant Tallis George-Munro hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Judicial District, entered in case No. 087476 journalized on November 27th, 2006.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

WILLIAM D. MASON, Prosecuting
Attorney, Cuyahoga County, Ohio

By: 
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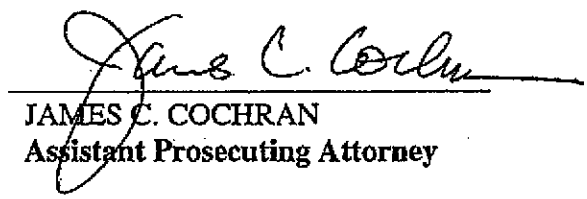
CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal has sent by ordinary U.S. mail, mailed this 11th day of January 2007, to: David Ross and Michelle J. Sheehan, 1400 Midland Building, 101 Prospect Avenue, Cleveland, Ohio 44115; Matthew J. Lampke, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215; John W. Martin and Andy Petropouleas, 800 Rockefeller Building, 614 Superior Avenue, N.W., Cleveland, Ohio 44113; and William D. Beyer and Joan E. Pettinelli, Wuliger, Fadel & Beyer, 1340 Sumner Court, Cleveland, Ohio 44115.



JAMES C. COCHRAN
Assistant Prosecuting Attorney

NOV 2 7 2006

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 87476

CA05087476
42575416

JOHN K. O'TOOLE, ADMINISTRATOR, ETC.

PLAINTIFF-APPELLANT

vs.

WILLIAM DENIHAN, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-450833

BEFORE: Calabrese, P.J., Kilbane, J., and Blackmon, J.

RELEASED: November 16, 2006

JOURNALIZED: NOV 2 7 2006

VOL 0624 PG 0882

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FILED A... ...LIZED
PER APP. R. 22(E)
NOV 27 2006
GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY_____DEP.

ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED
NOV 16 2006
GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY_____DEP.

CA05087476 42385692

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

VOL 0624 PG 0884

ANTHONY O. CALABRESE, JR., P.J.:

Plaintiff-appellant, John O'Toole, personal representative and administrator for the estate of Sydney Sawyer, appeals the decision of the trial court. Having reviewed the arguments of the parties and the pertinent law, we hereby reverse and remand to the lower court.

I.

According to the case, appellant brought this wrongful death and survival action as the personal representative and administrator for the estate of Sydney Sawyer ("Sydney") in the Cuyahoga County Court of Common Pleas. Appellant brought his claim against appellees, the Cuyahoga County Department of Children and Family Services ("DCFS"), its executive director, William Denihan ("Denihan"), supervisor Tallis George-Munro ("Munro"), social worker Kamesha Duncan ("Duncan"), and John Doe county policymakers and employees. The complaint asserted seven substantive claims for relief, including: Count 1 - failure to report suspected or known child abuse of Sydney to law enforcement; Count 2 - negligently failing to report suspected child abuse; Count 3 - recklessly creating a substantial risk to the health and safety of Sydney; Count 4- negligently performing job duties; Count 5 - breaching special duty of care; Count 6 - reckless implementation of a risk assessment protocol used for investigation of child abuse and to investigate Sydney's case; Count 7 -

recklessness in investigating the known or suspected child abuse of Sydney; and Count 8 - intentional or negligent conduct in the performance of duties. The complaint also challenged the constitutionality of R.C. Chapter 2744 to the extent that it may extend statutory immunity to appellees.[1] In compliance with R.C. 2721.12, a copy of the complaint was served upon the Ohio Attorney General on March 4, 2002.

On November 27, 2002, defendants DCFS, Denihan, and Duncan filed a motion for summary judgment asserting that they were immune from liability pursuant to R.C. Chapter 2744 on all claims. On February 13, 2003 and

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[1]R.C. 2744.02. Classification of functions of political subdivisions; liability; exceptions.

"(A) (1) ***, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function. ***

(B) ***, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows: ***

(5) ***, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term 'shall' in a provision pertaining to a political subdivision."

February 25, 2003, appellant filed briefs in opposition to the respective motions. The trial court denied the defendants' motions. The trial court provided the following:

> **"[t]he court finds genuine issues of material fact remain to be tried as to whether defendants have violated any duty imposed by law that would defeat sovereign immunity pursuant to R.C. 2744.02 and 2744.03, e.g., *Campbell v. Burton* (2001), 92 Ohio St.3d 336, at paragraphs 2 and 3 of the syllabus; see also, R.C. 2744.02(B)(5), 2744.03(A)(6)(c). The court reserves judgment on this issue until after all the evidence has been presented at trial. The motions are therefore denied."**[2]

On April 25, 2005, defendants DCFS, Denihan and Duncan filed a renewed motion for summary judgment, again asserting statutory immunity under R.C. 2744.02 and 2744.03.[3] On April 27, 2005, defendant Munro filed a motion for

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[2]See November 2003 order.

[3]R.C. 2744.03. Defenses or immunities of subdivision and employee.

"(A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies: ***

(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty

summary judgment also asserting immunity on all claims. Appellant filed its combined brief in opposition to defendants' motions for summary judgment on May 31, 2005. Appellant argued that the exceptions to immunity in R.C. 2744.03(A)(6)(c) and (b) (as to its employees), defeat immunity, and R.C. 2744.02 and 2744.03 are unconstitutional as applied to appellant's claims. By journal entry dated November 16, 2005, the trial court reversed its earlier ruling and granted defendants' motions for summary judgment in their entirety. The trial court provided the following:

> **"[t]he court finds that plaintiff has failed to present genuine issues of material fact for trial affirmatively refuting the binding case law of *Marshall v. Montgomery County Children Services Board*, 92 Ohio St.3d 348, 2001-Ohio-209. Thus, the motions are well-taken and granted."**

conflicting ruling followed Butler first then Mars

Appellant then appealed the trial court's decision to this court on December 14, 2005.

According to the facts, Sydney was pronounced dead at Rainbow Babies and Children's Hospital in Cleveland, Ohio on April 28, 2000. Sydney was a 4-year-old girl who had been physically abused and subsequently died from her injuries. The social workers at the hospital notified the police and the DCFS.

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upon an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term 'shall' in a provision pertaining to an employee."

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Deputy Cuyahoga County Coroner and Forensic Pathologist Joseph Felo, D.O., performed the autopsy. Dr. Felo determined the cause of death to be blunt impacts to the child's trunk, causing perforation of the small intestine and acute peritonitis. It is Dr. Felo's opinion, as to a reasonable degree of medical certainty, that the fatal injuries occurred on April 27, 2000.[4]

Appellee DCFS is the public children services agency within the Cuyahoga County Department of Human Services. DCFS is charged with investigating allegations of child abuse and neglect, and providing care, protection and support to abused and neglected children. Duncan began her employment as a social worker with DCFS on October 25, 1999. She had no prior experience as a social worker and was new to the field. Duncan was "in training" until January 2000, and the Sydney Sawyer case was one of her first assignments. Her direct supervisor was Munro who was responsible for supervising five to six social workers and who reported directly to the intake unit chief, Elsa Popchak. Popchak reported to deputy director Zuma Jones, who, in turn, reported to Denihan.

[4]See testimony of Joseph Felo, D.O., October 6, 2000.

II.

Appellant's first assignment of error states the following: "The trial court erred in granting summary judgment in favor of appellees DCFS, Denihan, Munro and Duncan because it improperly applied *Marshall v. Montgomery County Children Services Board* (2001), 92 Ohio St.3d 348, 2001-Ohio-209, to appellant's claims for violation of the statutory duty to report known or suspected child abuse, child endangering, and recklessness."

Appellant's second assignment of error states the following: "The trial court erred in granting summary judgment on all of appellant's claims as Ohio Revised Code Chapter 2744, as applied, violates the Ohio Constitution."

III.

Civ.R. 56 provides that summary judgment may be granted only after the trial court determines: 1) no genuine issues as to any material fact remain to be litigated; 2) the moving party is entitled to judgment as a matter of law; and 3) it appears from the evidence that reasonable minds can come but to one conclusion and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

It is well established that the party seeking summary judgment bears the burden of demonstrating that no issues of material fact exist for trial. *Celotex Corp. v. Catrett* (1987), 477 U.S. 317, 330; *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115. Doubts must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356.

In *Dresher v. Burt* (1996), 75 Ohio St.3d 280, the Ohio Supreme Court modified and/or clarified the summary judgment standard as applied in *Wing v. Anchor Medina, Ltd. of Texas* (1991), 59 Ohio St.3d 108. Under *Dresher*, "the moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact or material element of the nonmoving party's claim." Id. at 296. The nonmoving party has a reciprocal burden of specificity and cannot rest on mere allegations or denials in the pleadings. Id. at 293. The nonmoving party must set forth "specific facts" by the means listed in Civ.R. 56(C) showing a genuine issue for trial exists. Id.

This court reviews the lower court's granting of summary judgment de novo. *Brown v. Scioto Bd. of Commrs.* (1993), 87 Ohio App.3d 704. An appellate court reviewing the grant of summary judgment must follow the standards set forth in Civ.R. 56(C). "The reviewing court evaluates the record *** in a light most favorable to the nonmoving party ***. [T]he motion must be overruled if

reasonable minds could find for the party opposing the motion." *Saunders v. McFaul* (1990), 71 Ohio App.3d 46, 50; *Link v. Leadworks Corp.* (1992), 79 Ohio App.3d 735, 741.

We find that genuine issues of material fact remain concerning the Cleveland Police Department records. Appellant asserts that the evidence in the record reflects that no form was ever faxed to the police in Sydney's case. Appellant declares that "there is no record of any such report being received by the Cleveland Police Department."[5] Appellant states that the hotline form in the Sawyer case clearly reflects that the police had not been contacted and specifically stated that a "call needs to be made" to the police. Appellant further states that, not only did Munro or Duncan fail to make the telephonic or personal report to the police required by R.C. 2151.421(C), but they failed to make any report whatsoever at any time prior to Sydney's death, nearly a month after they knew of her abuse.

In contrast, appellees argue that the undisputed facts establish that appellees *did report* Sydney's case referral to the police. Appellees point to Munro's testimony that the DCFS' case referral file indicates that the police were notified of Sydney's case referral. Munro testified that when a complaint

[5]See appellant's brief, p. 37.

is received by the hotline, the hotline worker has a carbon copy form containing relevant complaint information that is automatically faxed to the Cleveland Police Department.

In addition to the above, we find that genuine issues of material fact remain concerning the investigation of Denihan and the DCFS. Appellees created a substantial risk to Sydney's health and safety by violation of their legal duties owed to her. Specifically, they were reckless in assigning an inexperienced worker to the intake unit without proper supervision; instituting structured decision making ("SDM"), a safety and risk assessment model, without worker demonstration of knowledge, skills and clinical judgment necessary to implement the new process; allowing Munro to continue in his supervisor position without demonstrating supervisory knowledge and skills without demonstration of the knowledge and skills to implement SDM; not providing independent medical examiners to determine the nature of the physical condition of children when abuse is suspected; not providing a quality controls system to ensure that in Priority 1 cases child safety has been determined; and not providing a mechanism to determine if SDM was being properly implemented.

Claim of reckless as matter of law

Additional evidence of recklessness in the record includes the fact that the social worker returned the four-year-old child to the mother after observing

evidence of severe injuries; for example, bruising to the face, whip marks on the child's back, and burn marks on her palms.

The Ohio Supreme Court defined "reckless" as:

> **"[T]he conduct was committed knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent."**

Cater v. City of Cleveland, 83 Ohio St.3d 24, 33, 1998-Ohio-421.

Moreover, we note that we find this case to be fact-specific, primarily due to the fact that the agency already knew that someone had injured this child and still returned the child to her mother, even though she had a long history of abusing her children.

In addition to the genuine issues of material fact remaining in the case at bar, we find *Marshall v. Montgomery County Children Services Board* to be distinguishable from the case at bar.

In *Marshall*, the mother, Rozanne Perkins, "had a history of abusing her children," and was dependent on alcohol and drugs. Perkins had a substantial history of abusing her children beginning in 1985. From 1985 to 1995 Perkins had four other children who were taken away from her. In addition, the Dayton Police Department arrested Perkins for domestic violence. She had attempted

to stab her boyfriend, the baby's father, while she was driving her car with her baby in the backseat. In the case at bar, however, the mother did not have a similar history of domestic violence, and the child was beaten to death by the boyfriend and not the mother. Moreover, the case at bar lacks the significant history of violence, neglect and abandonment to the children by the mother in *Marshall*. Accordingly, we find *Marshall* to be distinguishable from the case at bar.

Assuming arguendo that the facts in the case at bar were not distinguishable from *Marshall*, the case is still misapplied. *Marshall* only dealt with the failure to investigate child abuse claims. Appellant's claims are not based solely on negligence in the investigation of the abuse of Sydney. The lower court disregarded appellant's claims for appellees' failure to report the known or suspected abuse of Sydney to law enforcement, Count 1; recklessly creating a substantial risk to the health and safety of Sydney by violating their duties of care and protection owed to her, Counts 3 and 6; and the recklessness of Munro and Duncan in investigating the abuse of Sydney, Count 7.

The express issue in *Marshall* dealt specifically with whether R.C. 2151.421 imposes liability for a negligent failure to investigate for purposes of the exceptions to immunity in R.C. 2744.02(B)(5) as to a political subdivision and R.C. 2744.03(A)(6)(c) as to its employees. The Ohio Supreme Court found the

result troubling but was "confined to review the law based upon the issues presented in this appeal." Id. at 352. The Ohio Supreme Court was not presented with a claim that CSB employees *recklessly* failed to investigate. The Ohio Supreme Court's decision in *Marshall* does not govern appellant's claims for appellees' failure to report known or suspected child abuse to law enforcement, or for appellees' reckless creation of a substantial risk to the health or safety of Sydney.

Appellant argues in his first assignment of error that the trial court erroneously granted summary judgment. We find merit in appellant's argument.

The conflicting evidence regarding the Cleveland Police Department records demonstrates substantial dispute as to genuine issues of material fact. There are also genuine issues of material fact regarding Denihan and Duncan. Moreover, we find *Marshall* to be distinguishable from the case at bar.

Appellant's first assignment of error is sustained.

Based on the disposition of appellant's first assignment of error, appellant's remaining assignment of error is moot. App.R. 12 (A)(1)(c).

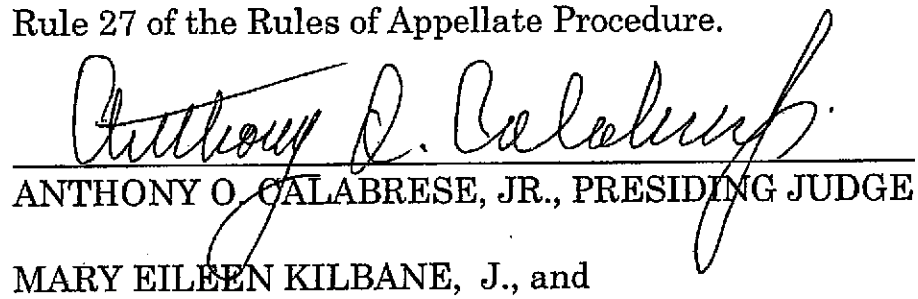
Judgment reversed and remanded.

It is ordered that appellant recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



ANTHONY O. CALABRESE, JR., PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
PATRICIA ANN BLACKMON, J., CONCUR

2151.01 Construction; purpose

The sections in Chapter 2151. of the Revised Code, with the exception of those sections providing for the criminal prosecution of adults, shall be liberally interpreted and construed so as to effectuate the following purposes:

(A) To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code, whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;

(B) To provide judicial procedures through which Chapters 2151. and 2152. of the Revised Code are executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.

(2000 S 179, § 3, eff. 1-1-02; 1969 H 320, eff. 11-19-69)

2151.421 Persons required to report injury or neglect; procedures on receipt of report

(A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Division (A)(1)(a) of this section applies to any person who is an attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code; registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; superintendent, board member, or employee of a county board of mental retardation; investigative agent contracted with by a county board of mental retardation; employee of the department of mental retardation and developmental disabilities; employee of a facility or home that provides respite care in accordance with section 5123.171 of the Revised Code; employee of a home health agency; employee of an entity that provides homemaker services; a person performing the duties of an assessor pursuant to Chapter 3107. or 5103. of the Revised Code; or third party employed by a public children services agency to assist in providing child or family related services.

(2) Except as provided in division (A)(3) of this section, an attorney or a physician is not required to make a report pursuant to division (A)(1) of this section concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if, in accordance with division (A) or (B) of

section 2317.02 of the Revised Code, the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding.

(3) The client or patient in an attorney-client or physician-patient relationship described in division (A)(2) of this section is deemed to have waived any testimonial privilege under division (A) or (B) of section 2317.02 of the Revised Code with respect to any communication the attorney or physician receives from the client or patient in that attorney-client or physician-patient relationship, and the attorney or physician shall make a report pursuant to division (A)(1) of this section with respect to that communication, if all of the following apply:

(a) The client or patient, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(b) The attorney or physician knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar position to suspect, as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient.

(c) The abuse or neglect does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(4)(a) No cleric and no person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity, who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect shall fail to immediately report that knowledge or reasonable cause to believe to the entity or persons specified in this division. Except as provided in

section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. In the circumstances described in section 5120.173 of the Revised Code, the person making the report shall make it to the entity specified in that section.

(b) Except as provided in division (A)(4)(c) of this section, a cleric is not required to make a report pursuant to division (A)(4)(a) of this section concerning any communication the cleric receives from a penitent in a cleric-penitent relationship, if, in accordance with division (C) of section 2317.02 of the Revised Code, the cleric could not testify with respect to that communication in a civil or criminal proceeding.

(c) The penitent in a cleric-penitent relationship described in division (A)(4)(b) of this section is deemed to have waived any testimonial privilege under division (C) of section 2317.02 of the Revised Code with respect to any communication the cleric receives from the penitent in that cleric-penitent relationship, and the cleric shall make a report pursuant to division (A)(4)(a) of this section with respect to that communication, if all of the following apply:

(i) The penitent, at the time of the communication, is either a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age.

(ii) The cleric knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, as a result of the communication or any observations made during that communication, the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent.

(iii) The abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child under eighteen years of age or upon a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code.

(d) Divisions (A)(4)(a) and (c) of this section do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the sacred trust.

(e) As used in divisions (A)(1) and (4) of this section, "cleric" and "sacred trust" have the same meanings as in section 2317.02 of the Revised Code.

(B) Anyone who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in similar circumstances to suspect, that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or reasonable cause to suspect to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the public children services agency or to a municipal or county peace officer. In the circumstances described in section 5120.173 of the Revised Code, a person making a report or causing a report to be made under this division shall make it or cause it to be made to the entity specified in that section.

(C) Any report made pursuant to division (A) or (B) of this section shall be made forthwith either by telephone or in person and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain:

(1) The names and addresses of the child and the child's parents or the person or persons having custody of the child, if known;

(2) The child's age and the nature and extent of the child's injuries, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist, including any evidence of previous injuries, abuse, or neglect;

(3) Any other information that might be helpful in establishing the cause of the injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to have occurred or of the threat of injury, abuse, or neglect that is known or reasonably suspected or believed, as applicable, to exist.

Any person, who is required by division (A) of this section to report child abuse or child neglect that is known or reasonably suspected or believed to have occurred, may take or cause to be taken color photographs of areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child.

(D) As used in this division, "children's advocacy center" and "sexual abuse of a child" have the same meanings as in section 2151.425 of the Revised Code.

(1) When a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, upon receipt of the report, the municipal or county peace officer who receives the report shall refer the report to the appropriate public children services agency.

(2) When a public children services agency receives a report pursuant to this division or division (A) or (B) of this section, upon receipt of the report, the public children services agency shall do both of the following:

(a) Comply with section 2151.422 of the Revised Code;

(b) If the county served by the agency is also served by a children's advocacy center and the report alleges sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, comply regarding the report with the protocol and procedures for referrals and investigations, with the coordinating activities, and with the authority or responsibility for performing or providing functions, activities, and services stipulated in the interagency agreement entered into under section 2151.428 of the Revised Code relative to that center.

(E) No township, municipal, or county peace officer shall remove a child about whom a report is made pursuant to this section from the child's parents, stepparents, or guardian or any other persons having custody of the child without consultation with the public children services agency, unless, in the judgment of the officer, and, if the report was made by physician, the physician, immediate removal is considered essential to protect the child from further abuse or neglect. The agency that must be consulted shall be the agency conducting the investigation of the report as determined pursuant to section 2151.422 of the Revised Code.

(F)(1) Except as provided in section 2151.422 of the Revised Code or in an interagency agreement entered into under section 2151.428 of the Revised Code that applies to the particular report, the public children services agency shall investigate, within twenty-four hours, each report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person

or persons responsible. The investigation shall be made in cooperation with the law enforcement agency and in accordance with the memorandum of understanding prepared under division (J) of this section. A representative of the public children services agency shall, at the time of initial contact with the person subject to the investigation, inform the person of the specific complaints or allegations made against the person. The information shall be given in a manner that is consistent with division (H)(1) of this section and protects the rights of the person making the report under this section.

A failure to make the investigation in accordance with the memorandum is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from the report or the suppression of any evidence obtained as a result of the report and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person. The public children services agency shall report each case the uniform statewide automated child welfare information system that the department of job and family services shall maintain in accordance with section 5101.13 of the Revised Code. The public children services agency shall submit a report of its investigation, in writing, to the law enforcement agency.

(2) The public children services agency shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention.

(G)(1)(a) Except as provided in division (H)(3) of this section, anyone or any hospital, institution, school, health department, or agency participating in the making of reports under division (A) of this section, anyone or any hospital, institution, school, health department, or agency participating in good faith in the making of reports under division (B) of this section, and anyone participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports or the participation in the judicial proceeding.

(b) Notwithstanding section 4731.22 of the Revised Code, the physician-patient privilege shall not be a ground for excluding evidence regarding a child's injuries, abuse, or neglect, or the cause of the injuries, abuse, or neglect in any judicial proceeding resulting from a report submitted pursuant to this section.

(2) In any civil or criminal action or proceeding in which it is alleged and proved that participation in the making of a report under this section was not in good faith or participation in a judicial proceeding resulting from a report made under this section was not in good faith, the court shall award the prevailing party reasonable attorney's fees and costs and, if a civil action or proceeding is voluntarily dismissed, may award reasonable

attorney's fees and costs to the party against whom the civil action or proceeding is brought.

(H)(1) Except as provided in divisions (H)(4) and (M) of this section, a report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

(2) No person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.

(3) A person who knowingly makes or causes another person to make a false report under division (B) of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or a neglected child is guilty of a violation of section 2921.14 of the Revised Code.

(4) If a report is made pursuant to division (A) or (B) of this section and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains eighteen years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board, shall submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death. On the request of the review board, the agency or peace officer may, at its discretion, make the report available to the review board. If the county served by the public children services agency is also served by a children's advocacy center and the report of alleged sexual abuse of a child or another type of abuse of a child is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, the agency or center shall perform the duties and functions specified in this division in accordance with the interagency agreement entered into under section 2151.428 of the Revised Code relative to that advocacy center.

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section, including a report alleging sexual abuse of a child or another type of abuse of a child referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies

the person who made the report, statements of witnesses, or police or other investigative reports.

(I) Any report that is required by this section, other than a report that is made to the state highway patrol as described in section 5120.173 of the Revised Code, shall result in protective services and emergency supportive services being made available by the public children services agency on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact. The agency required to provide the services shall be the agency conducting the investigation of the report pursuant to section 2151.422 of the Revised Code.

(J)(1) Each public children services agency shall prepare a memorandum of understanding that is signed by all of the following:

(a) If there is only one juvenile judge in the county, the juvenile judge of the county or the juvenile judge's representative;

(b) If there is more than one juvenile judge in the county, a juvenile judge or the juvenile judges' representative selected by the juvenile judges or, if they are unable to do so for any reason, the juvenile judge who is senior in point of service or the senior juvenile judge's representative;

(c) The county peace officer;

(d) All chief municipal peace officers within the county;

(e) Other law enforcement officers handling child abuse and neglect cases in the county;

(f) The prosecuting attorney of the county;

(g) If the public children services agency is not the county department of job and family services, the county department of job and family services;

(h) The county humane society;

(i) If the public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, each participating member of the children's advocacy center established by the memorandum.

(2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to division (A) or (B) of this section and, when feasible, providing for only one interview of a child who is the subject of any report made pursuant to division (A) or (B) of this section. A failure to follow the procedure set forth in the memorandum by the concerned officials 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 child neglect and does not give, and shall not be construed as giving, any rights or any grounds for appeal or post-conviction relief to any person.

(3) A memorandum of understanding shall include all of the following:

(a) The roles and responsibilities for handling emergency and nonemergency cases of abuse and neglect;

(b) Standards and procedures to be used in handling and coordinating investigations of reported cases of child abuse and reported cases of child neglect, methods to be used in interviewing the child who is the subject of the report and who allegedly was abused or neglected, and standards and procedures addressing the categories of persons who may interview the child who is the subject of the report and who allegedly was abused or neglected.

(4) If a public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, the agency shall incorporate the contents of that memorandum in the memorandum prepared pursuant to this section.

(K)(1) Except as provided in division (K)(4) of this section, a person who is required to make a report pursuant to division (A) of this section may make a reasonable number of requests of the public children services agency that receives or is referred the report, or of

the children's advocacy center that is referred the report if the report is referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 of the Revised Code, to be provided with the following information:

(a) Whether the agency or center has initiated an investigation of the report;

(b) Whether the agency or center is continuing to investigate the report;

(c) Whether the agency or center is otherwise involved with the child who is the subject of the report;

(d) The general status of the health and safety of the child who is the subject of the report;

(e) Whether the report has resulted in the filing of a complaint in juvenile court or of criminal charges in another court.

(2) A person may request the information specified in division (K)(1) of this section only if, at the time the report is made, the person's name, address, and telephone number are provided to the person who receives the report.

When a municipal or county peace officer or employee of a public children services agency receives a report pursuant to division (A) or (B) of this section the recipient of the report shall inform the person of the right to request the information described in division (K)(1) of this section. The recipient of the report shall include in the initial child abuse or child neglect report that the person making the report was so informed and, if provided at the time of the making of the report, shall include the person's name, address, and telephone number in the report.

Each request is subject to verification of the identity of the person making the report. If that person's identity is verified, the agency shall provide the person with the information described in division (K)(1) of this section a reasonable number of times, except that the agency shall not disclose any confidential information regarding the child who is the subject of the report other than the information described in those divisions.

(3) A request made pursuant to division (K)(1) of this section is not a substitute for any report required to be made pursuant to division (A) of this section.

(4) If an agency other than the agency that received or was referred the report is conducting the investigation of the report pursuant to section 2151.422 of the Revised Code, the agency conducting the investigation shall comply with the requirements of division (K) of this section.

(L) The director of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section. The department of job and family services may enter into a plan of cooperation with any other governmental entity to aid in ensuring that children are protected from abuse and neglect. The department shall make recommendations to the attorney general that the department determines are necessary to protect children from child abuse and child neglect.

(M)(1) As used in this division:

(a) "Out-of-home care" includes a nonchartered nonpublic school if the alleged child abuse or child neglect, or alleged threat of child abuse or child neglect, described in a report received by a public children services agency allegedly occurred in or involved the nonchartered nonpublic school and the alleged perpetrator named in the report holds a certificate, permit, or license issued by the state board of education under section 3301.071 or Chapter 3319. of the Revised Code.

(b) "Administrator, director, or other chief administrative officer" means the superintendent of the school district if the out-of-home care entity subject to a report made pursuant to this section is a school operated by the district.

(2) No later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency shall provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency shall not provide witness statements or police or other investigative reports.

(3) No later than three days after the day on which a public children services agency that conducted the investigation as determined pursuant to section 2151.422 of the Revised Code makes a disposition of an investigation involving a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall send written notice of the disposition of the investigation to the administrator, director, or other chief administrative officer and the owner or governing board of the out-of-home care entity. The agency shall not provide witness statements or police or other investigative reports.

(2006 S 238, eff. 9-21-06; 2006 S 17, eff. 8-3-06; 2004 S 66, eff. 5-6-05; 2004 S 185, eff. 4-11-05; 2004 H 106, eff. 9-16-04; 2004 S 178, eff. 1-30-04; 2002 S 221, eff. 4-9-03; 2002 H 374, eff. 4-7- 03; 2002 H 510, eff. 3-31-03; 2000 H 448, eff. 10-5-00; 1999 H 471, eff. 7-1-00; 1998 H 606, eff. 3-9-99; 1998 S 212, eff. 9-30-98; 1997 H 408, eff. 10-1-97; 1997 H 215, eff. 6-30-97; 1996 S 223, eff. 3-18-97; 1996 S 269, eff. 7-1-96; 1996 H 274, eff. 8-8-96; 1992 H 154, eff. 7-31-92; 1990 S 3, H 44; 1989 H 257; 1986 H 529, H 528; 1985 H 349; 1984 S 321; 1977 H 219; 1975 H 85; 1969 H 338, S 49; 131 v H 218; 130 v H 765)

2151.99 Penalties

(A)(1) Except as otherwise provided in division (A)(2) of this section, whoever violates division (D)(2) or (3) of section 2151.313 or division (A)(4) or (H)(2) of section 2151.421 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(2) Whoever violates division (A)(4) of section 2151.421 of the Revised Code knowing that a child has been abused or neglected and knowing that the person who committed the abuse or neglect was a cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith, is guilty of a misdemeanor of the first degree if the person who violates division (A)(4) of this section and the person who committed the abuse or neglect belong to the same church, religious society, or faith.

(B) Whoever violates division (D)(1) of section 2151.313 of the Revised Code is guilty of a minor misdemeanor.

(C) Whoever violates division (A)(1) of section 2151.421 of the Revised Code shall be punished as follows:

(1) Except as otherwise provided in division (C)(2) of this section, the offender is guilty of a misdemeanor of the fourth degree.

(2) The offender is guilty of a misdemeanor of the first degree if the child who is the subject of the required report that the offender fails to make suffers or faces the threat of suffering the physical or mental wound, injury, disability, or condition that would be the basis of the required report when the child is under the direct care or supervision of the offender who is then acting in the offender's official or professional capacity or when the child is under the direct care or supervision of another person over whom the offender while acting in the offender's official or professional capacity has supervisory control.

(2006 S 137, eff. 3-30-07; 2006 S 17, eff. 8-3-06; 2000 S 179, § 3, eff. 1-1-02; 1998 H 173, eff. 7-29-98; 1989 H 257, eff. 8-3-89; 1986 H 529; 1985 H 349; 1984 H 258; 1972 H 511; 1969 H 320; 130 v H 765; 1953 H 1)

2744.02 Political subdivision not liable for injury, death, or loss; exceptions

(A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

(2) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.

(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;

(b) A member of a municipal corporation fire department or any other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;

(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license issued pursuant to Chapter 4506. or a driver's license issued pursuant to Chapter 4507. of the Revised Code, the operation of the vehicle did not constitute willful

or wanton misconduct, and the operation complies with the precautions of section 4511.03 of the Revised Code.

(2) Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

(4) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

(C) An order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.

(2002 S 106, eff. 4-9-03; 2001 S 108, § 2.01, eff. 7-6-01; 1997 H 215, eff. 6-30-97; 1996 H 350, eff. 1-27-97 [FN1]; 1994 S 221, eff. 9-28-94; 1989 H 381, eff. 7-1-89; 1985 H

176) (2002 S 106, eff. 4-9-03; 2001 S 108, § 2.01, eff. 7-6-01; 1997 H 215, eff. 6-30-97; 1996 H 350, eff. 1-27-97 [FN1]; 1994 S 221, eff. 9-28-94; 1989 H 381, eff. 7-1-89; 1985 H 176)

2744.03 Defenses and immunities

(A) In a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

(2) The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.

(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

(4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to section 2152.19 or 2152.20 of the Revised Code, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123. of the Revised Code in connection with the community service or community work for or in the political subdivision.

(5) The political subdivision is immune from liability if the injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious

purpose, in bad faith, or in a wanton or reckless manner.

(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:

(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.

(7) The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

(B) Any immunity or defense conferred upon, or referred to in connection with, an employee by division (A)(6) or (7) of this section does not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in section 2744.02 of the Revised Code.

(2002 S 106, eff. 4-9-03; 2001 S 108, § 2.03, eff. 1-1-02; 2001 S 108, § 2.01, eff. 7-6-01; 2000 S 179, § 3, eff. 1-1-02; 1997 H 215, eff. 6-30-97; 1996 H 350, eff. 1-27-97 [FN1]; 1994 S 221, eff. 9- 28-94; 1986 S 297, eff. 4-30-86; 1985 H 176)

2901.22 Culpable mental states

(A) A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.

(B) A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

(C) A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist.

(D) A person acts negligently when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that his conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that such circumstances may exist.

(E) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element.

(1972 H 511, eff. 1-1-74)

2907.03 Sexual battery

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary

control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(B) Whoever violates this section is guilty of sexual battery. Except as otherwise provided in this division, sexual battery is a felony of the third degree. If the other person is less than thirteen years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.

(C) As used in this section:

(1) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(3) "Institution of higher education" means a state institution of higher education defined in section 3345.011 of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code.

(2006 H 95, eff. 8-3-06; 2006 S 17, eff. 8-3-06; 2002 H 510, eff. 3- 31-03; 2002 S 9, eff. 5-14-02; 1997 H 32, eff. 3-10-98; 1997 S 6, eff. 6-20-97; 1995 S 2, eff. 7-1-96; 1994 H 454, eff. 7-19-94; 1972 H 511, eff. 1-1-74)

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;

(5) 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;

(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 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 of the Revised Code that is the basis of the violation of this division.

(C)(1) No person shall operate a vehicle, streetcar, or trackless trolley within this state in violation of division (A) of section 4511.19 of the Revised Code when one or more children under eighteen years of age are in the vehicle, streetcar, or trackless trolley. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division and a violation of division (A) of section 4511.19 of the Revised Code that constitutes the basis of the charge of the violation of this division. For purposes of sections 4511.191 to 4511.197 of the Revised Code and all related provisions of law, a person arrested for a violation of this division shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(2) As used in division (C)(1) of this section:

(a) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(b) "Vehicle," "streetcar," and "trackless trolley" have the same meanings as in section 4511.01 of the Revised Code.

(D)(1) Division (B)(5) of 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.

(2) Mistake of age is not a defense to a charge under division (B)(5) of this section.

(3) In a prosecution under division (B)(5) of this section, the trier of fact may infer that an actor, model, or participant in the material or performance involved is a juvenile if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the actor, model, or participant as a juvenile.

(4) As used in this division and division (B)(5) of this section:

(a) "Material," "performance," "obscene," and "sexual activity" have the same meanings as in section 2907.01 of the Revised Code.

(b) "Nudity-oriented matter" means any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to prurient interest.

(c) "Sexually oriented matter" means any material or performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.

(E)(1) Whoever violates this section is guilty of endangering children.

(2) If the offender violates division (A) or (B)(1) of this section, endangering children is one of the following:

(a) Except as otherwise provided in division (E)(2)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(2)(c) or (d) of this section, a felony of the fourth degree;

(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, a felony of the third degree;

(d) If the violation is a violation of division (B)(1) of this section and results in serious physical harm to the child involved, a felony of the second degree.

(3) If the offender violates division (B)(2), (3), (4), or (6) of this section, except as otherwise provided in this division, endangering children is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child,

endangering children is a felony of the second degree. If the offender violates division (B)(6) of this section and the drug involved is methamphetamine, the court shall impose a mandatory prison term on the offender as follows:

(a) If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than two years. If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than five years.

(b) If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.

(4) If the offender violates division (B)(5) of this section, endangering children is a felony of the second degree.

(5) If the offender violates division (C) of this section, the offender shall be punished as follows:

(a) Except as otherwise provided in division (E)(5)(b) or (c) of this section, endangering children in violation of division (C) of this section is a misdemeanor of the first degree.

(b) If the violation results in serious physical harm to the child involved or the offender previously has been convicted of an offense under this section or any offense involving

neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(5)(c) of this section, endangering children in violation of division (C) of this section is a felony of the fifth degree.

(c) If the violation results in serious physical harm to the child involved and if the offender previously has been convicted of a violation of division (C) of this section, section 2903.06 or 2903.08 of the Revised Code, section 2903.07 of the Revised Code as it existed prior to March 23, 2000, or section 2903.04 of the Revised Code in a case in which the offender was subject to the sanctions described in division (D) of that section, endangering children in violation of division (C) of this section is a felony of the fourth degree.

(d) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction it imposes upon the offender pursuant to division (E)(5)(a), (b), or (c) of this section or pursuant to any other provision of law and in addition to any suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law, the court also may impose upon the offender a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code.

(e) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction imposed upon the offender pursuant to division (E)(5)(a), (b), (c), or (d) of this section or pursuant to any other provision of law for the violation of division (C) of this section, if as part of the same trial or proceeding the offender also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the offender also shall be sentenced in accordance with section 4511.19 of the Revised Code for that violation of division (A) of section 4511.19 of the Revised Code.

(F)(1)(a) A court may require an offender to perform not more than two hundred hours of supervised community service work under the authority of an agency, subdivision, or charitable organization. The requirement shall be part of the community control sanction or sentence of the offender, and the court shall impose the community service in accordance with and subject to divisions (F)(1)(a) and (b) of this section. The court may require an offender whom it requires to perform supervised community service work as part of the offender's community control sanction or sentence to pay the court a reasonable fee to cover the costs of the offender's participation in the work, including, but not limited to, the costs of procuring a policy or policies of liability insurance to cover the period during which the offender will perform the work. If the court requires the offender to perform supervised community service work as part of the offender's community

control sanction or sentence, the court shall do so in accordance with the following limitations and criteria:

(i) The court shall require that the community service work be performed after completion of the term of imprisonment or jail term imposed upon the offender for the violation of division (C) of this section, if applicable.

(ii) The supervised community service work shall be subject to the limitations set forth in divisions (B)(1), (2), and (3) of section 2951.02 of the Revised Code.

(iii) The community service work shall be supervised in the manner described in division (B)(4) of section 2951.02 of the Revised Code by an official or person with the qualifications described in that division. The official or person periodically shall report in writing to the court concerning the conduct of the offender in performing the work.

(iv) The court shall inform the offender in writing that if the offender does not adequately perform, as determined by the court, all of the required community service work, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code, and that, if the court orders that the offender be so committed, the court is authorized, but not required, to grant the offender credit upon the period of the commitment for the community service work that the offender adequately performed.

(b) If a court, pursuant to division (F)(1)(a) of this section, orders an offender to perform community service work as part of the offender's community control sanction or sentence and if the offender does not adequately perform all of the required community service work, as determined by the court, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code. The court may order that a person committed pursuant to this division shall receive hour-for-hour credit upon the period of the commitment for the community service work that the offender adequately performed. No

commitment pursuant to this division shall exceed the period of the term of imprisonment that the sentencing court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under that sentence or term and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code.

(2) Division (F)(1) of this section does not limit or affect the authority of the court to suspend the sentence imposed upon a misdemeanor offender and place the offender under a community control sanction pursuant to section 2929.25 of the Revised Code, to require a misdemeanor or felony offender to perform supervised community service work in accordance with division (B) of section 2951.02 of the Revised Code, or to place a felony offender under a community control sanction.

(G)(1) If a court suspends an offender's driver's or commercial driver's license or permit or nonresident operating privilege under division (E)(5)(d) of this section, the period of the suspension shall be consecutive to, and commence after, the period of suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege that is imposed under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law in relation to the violation of division (C) of this section that is the basis of the suspension under division (E)(5)(d) of this section or in relation to the violation of division (A) of section 4511.19 of the Revised Code that is the basis for that violation of division (C) of this section.

(2) An offender is not entitled to request, and the court shall not grant to the offender, limited driving privileges if the offender's license, permit, or privilege has been suspended under division (E)(5)(d) of this section and the offender, within the preceding six years, has been convicted of or pleaded guilty to three or more violations of one or more of the following:

(a) Division (C) of this section;

(b) Any equivalent offense, as defined in section 4511.181 of the Revised Code.

(H)(1) If a person violates division (C) of this section and if, at the time of the violation, there were two or more children under eighteen years of age in the motor vehicle involved in the violation, the offender may be convicted of a violation of division (C) of this section for each of the children, but the court may sentence the offender for only one of the violations.

(2)(a) If a person is convicted of or pleads guilty to a violation of division (C) of this section but the person is not also convicted of and does not also plead guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, both of the following apply:

(i) For purposes of the provisions of section 4511.19 of the Revised Code that set forth the penalties and sanctions for a violation of division (A) of section 4511.19 of the Revised Code, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute a violation of division (A) of section 4511.19 of the Revised Code;

(ii) For purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code and that is not described in division (H)(2)(a)(i) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall constitute a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(b) If a person is convicted of or pleads guilty to a violation of division (C) of this section and the person also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute, for purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code, a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(I) As used in this section:

(1) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code;

(2) "Limited driving privileges" has the same meaning as in section 4501.01 of the Revised Code;

(3) "Methamphetamine" has the same meaning as in section 2925.01 of the Revised Code.

(2006 S 8, eff. 8-17-06; 2006 S 53, eff. 5-17-06; 2004 S 58, eff. 8- 11-04; 2002 H 490, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 2000 S 180, eff. 3-22-01; 1999 S 107, eff. 3-23-00; 1999 H 162, eff. 8-25- 99; 1997 S 60, eff. 10-21-97; 1996 S 269, § 8, eff. 5-15-97; 1996 S 269, § 1, eff. 7-1-96; 1996 H 353, § 4, eff. 5-15-97; 1996 H 353, § 1, eff. 9-17-96; 1995 H 167, eff. 5-15-97; 1995 S 2, eff. 7-1-96; 1994 H 236, eff. 9-29-94; 1988 H 51, eff. 3-17-89; 1985 H 349; 1984 S 321, H 44; 1977 S 243; 1972 H 511)

5153.16 Powers and duties of public children services agency

(A) Except as provided in section 2151.422 of the Revised Code, in accordance with rules adopted under section 5153.166 of the Revised Code, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency shall do all of the following:

(1) Make an investigation concerning any child alleged to be an abused, neglected, or dependent child;

(2) Enter into agreements with the parent, guardian, or other person having legal custody of any child, or with the department of job and family services, department of mental health, department of mental retardation and developmental disabilities, other department, any certified organization within or outside the county, or any agency or institution outside the state, having legal custody of any child, with respect to the custody, care, or placement of any child, or with respect to any matter, in the interests of the child, provided the permanent custody of a child shall not be transferred by a parent to the public children services agency without the consent of the juvenile court;

(3) Accept custody of children committed to the public children services agency by a court exercising juvenile jurisdiction;

(4) Provide such care as the public children services agency considers to be in the best interests of any child adjudicated to be an abused, neglected, or dependent child the agency finds to be in need of public care or service;

(5) Provide social services to any unmarried girl adjudicated to be an abused, neglected, or dependent child who is pregnant with or has been delivered of a child;

(6) Make available to the bureau for children with medical handicaps of the department of health at its request any information concerning a crippled child found to be in need of treatment under sections 3701.021 to 3701.028 of the Revised Code who is receiving services from the public children services agency;

(7) Provide temporary emergency care for any child considered by the public children services agency to be in need of such care, without agreement or commitment;

(8) Find certified foster homes, within or outside the county, for the care of children, including handicapped children from other counties attending special schools in the county;

(9) Subject to the approval of the board of county commissioners and the state department of job and family services, establish and operate a training school or enter into an agreement with any municipal corporation or other political subdivision of the county respecting the operation, acquisition, or maintenance of any children's home, training school, or other institution for the care of children maintained by such municipal corporation or political subdivision;

(10) Acquire and operate a county children's home, establish, maintain, and operate a receiving home for the temporary care of children, or procure certified foster homes for this purpose;

(11) Enter into an agreement with the trustees of any district children's home, respecting the operation of the district children's home in cooperation with the other county boards in the district;

(12) Cooperate with, make its services available to, and act as the agent of persons, courts, the department of job and family services, the department of health, and other organizations within and outside the state, in matters relating to the welfare of children, except that the public children services agency shall not be required to provide supervision of or other services related to the exercise of parenting time rights granted pursuant to section 3109.051 or 3109.12 of the Revised Code or companionship or visitation rights granted pursuant to section 3109.051, 3109.11, or 3109.12 of the Revised Code unless a juvenile court, pursuant to Chapter 2151. of the Revised Code, or a common pleas court, pursuant to division (E)(6) of section 3113.31 of the Revised Code, requires the provision of supervision or other services related to the exercise of the parenting time rights or companionship or visitation rights;

(13) Make investigations at the request of any superintendent of schools in the county or the principal of any school concerning the application of any child adjudicated to be an abused, neglected, or dependent child for release from school, where such service is not provided through a school attendance department;

(14) Administer funds provided under Title IV-E of the "Social Security Act," 94 Stat. 501 (1980), 42 U.S.C.A. 671, as amended, in accordance with rules adopted under section 5101.141 of the Revised Code;

(15) In addition to administering Title IV-E adoption assistance funds, enter into agreements to make adoption assistance payments under section 5153.163 of the Revised Code;

(16) Implement a system of safety and risk assessment, in accordance with rules adopted by the director of job and family services, to assist the public children services agency in determining the risk of abuse or neglect to a child;

(17) Enter into a plan of cooperation with the board of county commissioners under section 307.983 of the Revised Code and comply with each fiscal agreement the board enters into under section 307.98 of the Revised Code that include family services duties of public children services agencies and contracts the board enters into under sections 307.981 and 307.982 of the Revised Code that affect the public children services agency;

(18) Make reasonable efforts to prevent the removal of an alleged or adjudicated abused, neglected, or dependent child from the child's home, eliminate the continued removal of the child from the child's home, or make it possible for the child to return home safely, except that reasonable efforts of that nature are not required when a court has made a determination under division (A)(2) of section 2151.419 of the Revised Code;

(19) Make reasonable efforts to place the child in a timely manner in accordance with the permanency plan approved under division (E) of section 2151.417 of the Revised Code and to complete whatever steps are necessary to finalize the permanent placement of the child;

(20) Administer a Title IV-A program identified under division (A)(4)(c) or (f) of section 5101.80 of the Revised Code that the department of job and family services provides for the public children services agency to administer under the department's supervision pursuant to section 5101.801 of the Revised Code;

(21) Administer the kinship permanency incentive program created under section 5101.802 of the Revised Code under the supervision of the director of job and family services;

(22) Provide independent living services pursuant to sections 2151.81 to 2151.84 of the Revised Code.

(B) The public children services agency shall use the system implemented pursuant to division (A)(16) of this section in connection with an investigation undertaken pursuant to division (F)(1) of section 2151.421 of the Revised Code to assess both of the following:

(1) The ongoing safety of the child;

(2) The appropriateness of the intensity and duration of the services provided to meet child and family needs throughout the duration of a case.

(C) Except as provided in section 2151.422 of the Revised Code, in accordance with rules of the director of job and family services, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency may do the following:

(1) Provide or find, with other child serving systems, specialized foster care for the care of children in a specialized foster home, as defined in section 5103.02 of the Revised Code, certified under section 5103.03 of the Revised Code;

(2)(a) Except as limited by divisions (C)(2)(b) and (c) of this section, contract with the following for the purpose of assisting the agency with its duties:

(i) County departments of job and family services;

(ii) Boards of alcohol, drug addiction, and mental health services;

(iii) County boards of mental retardation and developmental disabilities;

(iv) Regional councils of political subdivisions established under Chapter 167. of the Revised Code;

(v) Private and government providers of services;

(vi) Managed care organizations and prepaid health plans.

(b) A public children services agency contract under division (C)(2)(a) of this section regarding the agency's duties under section 2151.421 of the Revised Code may not provide for the entity under contract with the agency to perform any service not authorized by the department's rules.

(c) Only a county children services board appointed under section 5153.03 of the Revised Code that is a public children services agency may contract under division (C)(2)(a) of this section. If an entity specified in division (B) or (C) of section 5153.02 of the Revised Code is the public children services agency for a county, the board of county commissioners may enter into contracts pursuant to section 307.982 of the Revised Code regarding the agency's duties.

(2006 S 238, eff. 9-21-06; 2005 H 66, eff. 9-29-05; 2003 H 95, eff. 9-26-03; 2002 H 38, eff. 11-1-02; 2001 H 94, eff. 9-5-01; 2000 S 180, eff. 3-22-01; 2000 H 332, eff. 1-1-01; 2000 H 448, eff. 10-5-00; 1999 H 471, eff. 7-1-00; 1998 H 484, eff. 3-18-99; 1997 H 352, eff. 10-1-97; 1997 H 408, eff. 10-1-97; 1997 H 215, eff. 6-30-97; 1996 H 274, eff. 8-8-96; 1993 H 152, eff. 7-1-93; 1992 H 478; 1991 H 298; 1986 H 428; 1984 H 37; 1980 H 900, H 378; 1978 H 523; 1974 H 1138; 1972 H 494; 1971 H 913; 1969 S 49; 127 v 1012)

5153.166 Family services duties, rules

In addition to other rules specifically authorized by the Revised Code, the director of job and family services may adopt rules governing public children services agencies' performance of their family services duties, including the family services duties that public children services agencies have under sections 5153.16 to 5153.19 of the Revised Code.

(2006 S 238, eff. 9-21-06)

5101:2-34-32 PCSA requirements for assessments and investigations

(A) Upon receipt of a report of a child at risk of abuse and neglect, the PCSA shall determine the degree of risk to the child through collecting information from the following sources:

(1) The content of the report;

(2) Agency records for the family; and

(3) Information obtained from collateral sources.

(B) The PCSA may request assistance of law enforcement at any time during an assessment/investigation for any reason including, but not limited to, worker safety.

(C) The PCSA shall consider the report an emergency when it is determined that there is imminent risk to the child's safety or there is insufficient information to determine whether or not the child is safe at the time of the report.

(D) For emergency reports, the PCSA shall attempt a face-to-face contact with the alleged child victim within one hour of the receipt of the report.

(E) For all other reports, the PCSA shall attempt a face-to-face or telephone contact within twenty-four hours with a principal or collateral source to ensure that the child is safe and attempt a face-to-face contact with the alleged child victim within three calendar days of receipt of the report.

(F) If the PCSA has attempted a face-to face contact with the alleged child victim and the child was unavailable, the PCSA shall continue making attempts at least every five working days until the child is seen or until the PCSA is required[38] to make a case resolution or case disposition pursuant to paragraphs (R) and (S) of this rule.

(G) The PCSA shall conduct:

(1) Face to face interviews with all adults residing in the home of the alleged child victim and the alleged perpetrator (unless law enforcement or the county prosecutor will interview the alleged perpetrator pursuant to the procedures delineated in the child abuse and neglect memorandum of understanding) in order to:

(a) Assess their knowledge of the allegation;

(b) Observe the interaction of the alleged child victim and caretaker; and

(c) Obtain relevant information regarding the risk to the child.

(2) Face to face interviews with all children residing within the home to evaluate the child's condition and obtain the child's explanation of the allegations contained in the report,

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at least every five working days until the PCSA is required" in the 1996-97 OMR 2289 version.

unless the child does not have sufficient verbal skills or has been previously interviewed and additional interviewing would be detrimental. When possible, the child should be interviewed separately from the alleged perpetrator (should a child residing in the home not be interviewed, the PCSA must document the justification in the case record).

(3) Face to face interviews or telephone contacts with any persons identified as possible information sources during the assessment to obtain relevant information regarding the risk to the children. Discretion shall be exercised in the selection of collateral sources to protect the family or out-of-home care setting's right to privacy. To protect the confidentiality of the principals, persons shall not be randomly interviewed.

(H) The PCSA shall take any other actions necessary to assess the risk to the child including, but not limited to:

(1) Taking photographs of areas of trauma on the child's body;

(2) Taking photographs of the child's environment (with the caretaker's consent);

(3) Securing a medical, and/or psychological examination/evaluation of the child (with consent of the child, parent, guardian, or custodian; or with a court order); or

(4) Securing any relevant records (including but not limited to school, mental health, medical, incident reports in an out-of-home care setting).

(I) At any time the PCSA determines a child to be at imminent risk of harm, the PCSA shall:

(1) Immediately enact a safety plan, pursuant to rule 5101:2-34-37 of the Administrative Code, utilizing the ODHS 1510, "Family Risk Assessment Model, Safety Plan for Children"; and/or

(2) Contact law enforcement; and/or

(3) Remove the child pursuant to rule 5101:2-39-12 of the Administrative Code.

(J) The PCSA shall request assistance from law enforcement, the county prosecutor,, the PCSA's legal counsel, or the court when refused access to the alleged child victim or any records required to conduct the assessment/investigation.

(K) The PCSA shall have an interpreter present for all interviews when the PCSA has determined that a principal of the case has a language or any other impairment that causes a barrier in communication (i.e., principal is deaf or hearing impaired or speaks a language other than English or is developmentally delayed or autistic).

(L) The PCSA shall notify the child (unless the child is not of an age or developmental capacity to understand), the child's parent, guardian or custodian, and the alleged perpetrator of the case resolution/case disposition within three calendar days upon completion of the assessment/investigation. The PCSA shall document in the case record, the date and method of notification.

(M) The PCSA located within the county in which the child's parent, guardian, or custodian resides shall lead assessment efforts when two or more Ohio PCSAs are involved. In situations of joint custody or shared parenting, the PCSA in the county in which the child's residential parent at the time of the incident resides shall lead the assessment efforts.

(N) If a report of child abuse and neglect involves a child who is living in a shelter for victims of domestic violence or a homeless shelter the PCSA who received the report shall:

(1) Determine if the child was brought to the shelter pursuant to an agreement with a shelter in another county. If a determination is made that there was an agreement in place, the PCSA in the county from which the child was brought shall lead the investigation/assessment and provide the required supportive services or petition the court for custody of the child, if necessary.

(2) Lead the investigation when a determination was made that the child was not brought to the shelter under an agreement with a shelter in another county. When two or more PCSA's are involved the non-lead PCSA shall be responsible for following procedures outlined in paragraph (O) of this rule.

(3) Commence the investigation/assessment if a determination can not [*sic*] be made immediately if an agreement is in effect. The PCSA shall continue to determine if an agreement is in effect and then follow procedures outlined in paragraph (N)(1) or (N)(2) of this rule.

(O) When requested by the lead PCSA (either verbally or in writing), the non-lead PCSA shall conduct interviews of any principals and collateral sources presently located within its jurisdiction and assist in the completion of a family risk assessment (unless the lead PCSA notifies the other PCSA that they will interview these parties) within a time frame that will allow the lead PCSA to fulfill their time frames outlined in this rule. All PCSAs involved shall document the request in the case record.

(P) The Ohio PCSA shall cooperate with the out-of-state PCSA, including, when necessary, leading investigative efforts when the child is located within Ohio or when the abuse or neglect is alleged to have occurred within Ohio.

(Q) The PCSA shall contact other PCSAs immediately but no later than the next working day to share information in accordance with rule 5101:2-34-38 of the Administrative Code and to coordinate investigative efforts in accordance with rules 5101:2-34-33 to 5101:2-34-36 of the Administrative Code.

(R) The PCSA shall follow procedures set forth in rule 5101:2-35-77 of the Administrative Code when the report of neglect involves alleged withholding of appropriate nutrition, hydration, medication, or medically indicated treatment from a disabled infant with a life-threatening condition.

(S) The PCSA shall complete a case resolution by completing the structured decision making steps 1 through 6 of the ODHS 1500, "Family Risk Assessment Model, Part 1: Family Risk Assessment Matrix" at the completion of the family risk assessment, but no later than thirty days from the receipt of the report (forty-five days when information needed to determine the case resolution cannot be completed within thirty days and the reasons are documented in the case record).

(T) The PCSA shall complete a case disposition at the completion of the out-of-home care and third party investigation, but no later than thirty days from the receipt of the report (forty-five days when information needed to determine the case disposition cannot be completed within thirty days and the reasons are documented in the case record).

(U) The PCSA shall enter into the central registry, pursuant to rule 5101:2-35-16 of the Administrative Code, the case resolution/case disposition at the completion of the assessment/investigation.

(V) The assessment/investigation documentation and any material obtained as a result of the assessment/investigation, shall be maintained in the case record. If any information gathering activity cannot be completed, justification and written approval of the executive director or his designee shall be filed in the case record. The PCSA may not waive the case resolution/case disposition or the time frame for making the case resolution/case disposition. The PCSA shall document in the case record the date, time, and with whom the assessment/investigation began.

HISTORY: Eff. 12-30-97

1997-98 OMR 1051 (A*), eff. 10-1-97; 1996-97 OMR 2289 (R-E), eff. 6-1-97; 1995-96 OMR 2593 (A), eff. 6-1-96; 1995-96 OMR 569 (R-E), eff. 10-1-95; 1989-90 OMR 768 (A), eff. 1-1-90; 1987-88 OMR 747 (A), eff. 1-1-88; 1986-87 OMR 763 (E), eff. 1-1-87

RC 119.032 rule review date: 12-30-02

VERTICAL LINE in margin denotes emergency rule, in effect for 90 days unless readopted.

OAC 5101:2-34-37

Ohio Admin. Code § 5101:2-34-37

BALDWIN'S OHIO ADMINISTRATIVE CODE ANNOTATED
5101 JOB AND FAMILY SERVICES DEPARTMENT
5101:2 JOB AND FAMILY SERVICES DEPARTMENT--SOCIAL SERVICES DIVISION
CHAPTER 5101:2-34. REPORTS OF ALLEGED CHILD ABUSE AND NEGLECT

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Rules are current through July 22, 2007;
Appendices are current through May 31, 2007

5101:2-34-37 PCSA requirements for completing the JFS 01510, "Family Decision Making Model: Safety Plan for Children"

(A) The public children services agency (PCSA) shall immediately implement a JFS 01510, "Family Decision Making Model: Safety Plan for Children"(rev. 2/2001) when it has been determined that there is imminent risk of harm to a child or to prevent future risk of harm to a child.

(B) At a minimum, the PCSA shall assess all of the following elements to determine the degree of intervention necessary to protect the child:

(1) The degree and frequency of maltreatment.

(2) The vulnerability of the child.

(3) The child's role in the family.

(4) The ability and willingness of the caretaker to protect the child.

(5) The accessibility of the perpetrator.

(C) When developing the JFS 01510, the PCSA shall consider, at a minimum, all of the following:

(1) Involvement of parents, extended family, and community resources.

(2) Least restrictive and least disruptive strategies possible while securing the safety of the child.

(3) Methods of obtaining feedback from other responsible persons/agencies involved.

(D) The PCSA shall obtain signatures from all responsible persons indicating their willingness to be responsible for an action step identified on the JFS 01510.

(E) The PCSA shall provide a copy of the JFS 01510 to all responsible persons.

(F) The PCSA shall implement other safety measures when a responsible person is unwilling to sign the JFS 01510.

(G) The PCSA may implement an action step with a verbal commitment when the responsible person is unavailable to sign the JFS 01510. The verbal commitment shall be solidified with a signature within one working day from when the verbal commitment was received. The PCSA shall document the date and time the verbal commitment was given by the responsible person.

(H) The PCSA shall maintain a copy of the JFS 01510 in the case record.

HISTORY: 2005-06 OMR pam. #8 (A), eff. 4-17-06; 2000-2001 OMR 1537 (A), eff. 4-1-01; 1996-97 OMR 2294 (E), eff. 6-1-97

RC 119.032 rule review date(s): 11-30-10; 11-2-05; 9-27-05; 11-2-00

OAC 5101:2-39-12

Ohio Admin. Code § 5101:2-39-12

BALDWIN'S OHIO ADMINISTRATIVE CODE ANNOTATED
5101 JOB AND FAMILY SERVICES DEPARTMENT
5101:2 JOB AND FAMILY SERVICES DEPARTMENT--SOCIAL SERVICES DIVISION
CHAPTER 5101:2-39. REMOVALS

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Rules are current through July 22, 2007;
Appendices are current through May 31, 2007

5101:2-39-12 Removal of a child from his own home

(A) Removal of a child from his own home shall be considered necessary when the child is at imminent risk and in need of protection from child abuse or neglect. When considering the need to remove a child from his home the public children services agency (PCSA) shall complete the JFS 01510 "Family Decision Making Model: Safety Plan for Children" (rev.1/2001) if applicable. The PCSA shall also complete or update the risk assessment form. The risk assessment will assist the PCSA in determining:

(1) The risk of harm to the child if he remains in his home is greater than the risk of harm to the child if he is removed from the home.

(2) The potential for serious physical or emotional harm the child may suffer if he remains in his home.

(3) The likelihood that such harm will occur and the extent to which the risk can be alleviated by the provision of supportive services.

(4) The emotional trauma or other harm the child may suffer if he is removed from the home.

(B) When a determination is made to remove a child from his own home, the PCSA shall:

(1) Provide preplacement services to the child and his parent, guardian, or custodian in accordance with the requirements contained in rule 5101:2-42-64 of the Administrative Code.

(2) Provide to the potential caregiver all information outlined in rule 5101:2-42-90 of the Administrative Code.

(3) Develop and execute the individual child care agreement according to procedures outlined in rule 5101:2-42-90 of the Administrative Code.

(C) When emergency removal of a child from his own home is necessary, the PCSA shall consider emergency removal procedures in the following order:

(1) Filing a complaint in the juvenile court with a motion requesting emergency removal of child and providing advance notice to the parent, guardian, or custodian regarding the time of the court hearing.

(2) Petitioning the court for an ex parte emergency order to remove the child and requesting a determination from the court that reasonable efforts were not possible due to the urgent nature of the child's removal.

(3) Requesting the assistance of a law enforcement officer or a duly authorized officer of the court.

(4) Following the most preferred procedure for the emergency removal of a child that will not endanger the child.

(D) When a PCSA removes a child pursuant to paragraphs (C)(2) and (C)(3) of this rule, it shall petition the court for an order authorizing the continued placement of the child within twenty-four hours or the next working day and request a determination by the court that reasonable efforts were not possible due to the urgent nature of the child's removal.

(E) When emergency removal of the child occurs and the caretaker is present, the PCSA shall provide the child, when age-appropriate, and caretaker, with the following information:

(1) Reason for emergency removal.

(2) PCSA name, telephone number, address, and name of person to contact regarding the case.

(3) Visitation schedule prior to a journalized case plan.

(4) Time and place of court hearings, when known and applicable.

(5) When known, the name and telephone number of the employee designated by the court to provide the appointment of counsel to a parent, guardian, or custodian who cannot afford to hire an attorney.

(F) When emergency removal of a child occurs in the absence of the parent, guardian, or custodian, the PCSA shall provide or attempt to provide the parent, guardian, or custodian with the information stated in paragraphs (E)(1) to (E)(5) of this rule within

twenty-four hours. Notification shall be given verbally and followed in writing.

(G) The PCSA is not required to duplicate any written notice that has previously been provided by a court officer or court employee.

(H) The PCSA shall request assistance from the appropriate law enforcement agency to remove a child when any of the following conditions exist:

(1) The PCSA is unable, due to the immediacy of the situation, to obtain a court order authorizing the emergency removal of a child.

(2) The PCSA is denied entry into the home, or is denied access to the child.

(3) The parent, guardian, custodian or child offers physical resistance to the emergency removal.

(4) The personal safety of the child or PCSA employee is jeopardized.

(I) The PCSA shall remove a child and provide temporary emergency care for a child considered to be in need of protection, without agreement or commitment, when all of the following conditions exist:

(1) The caretaker is unavailable.

(2) The child is in a life-threatening situation requiring immediate intervention.

(3) Time does not permit obtaining a court order.

The PCSA must petition the court for an order authorizing the continued placement of the child within twenty-four hours or the next business day.

(J) When relative placements have been explored and determined to be unavailable or unsuitable, the PCSA shall ensure that the temporary emergency care for the child is in the least-restrictive most family-like setting available to meet the needs of the child in accordance with rule 5101:2-42- 05 of the Administrative Code.

(K) When the PCSA removes a child from the home due to abuse, neglect or dependency and the family is a participant in Ohio works first (OWF), the PCSA shall notify the county department of job and family services (CDJFS) of the child's removal according to procedures contained in the OWF county plan of cooperation. The child's caretaker may continue to participate in OWF and receive cash assistance for up to six payment months when the PCSA:

(1) Notifies the CDJFS at the time the PCSA takes the child into custody that it believes the child will be able to return to the home within six months.

(2) Informs the CDJFS at the end of the first five months after the PCSA takes the child into custody that both of the following are occurring:

(a) The parent, legal guardian, custodian, or specified relative of the child is cooperating with the case plan prepared pursuant to rule 5101:2-39-08.1 of the Administrative Code.

(b) The PCSA is making reasonable efforts to return the child to the home of the OWF assistance group.

(L) The PCSA shall document the following information in the case record:

(1) Provision of preplacement services.

(2) Provision of information to the potential caregiver.

(3) Provision of the individual child care agreement to the substitute caregiver.

(4) Attempts to provide the parent, guardian, or custodian with notification of the child's emergency removal.

(5) Attempts to provide the parent, guardian, or custodian with notification of any court hearings.

(6) Copies of ex parte emergency orders, if applicable and the court determination that reasonable efforts were not possible due to the urgent nature of the child's removal.

(7) Notification to the CDJFS regarding removal of the child from the home and expected date for reunification of the child with his caretaker, if applicable.

HISTORY: 2005-06 OMR pam. #8 (A), eff. 4-17-06; 2000-2001 OMR 1550 (A), eff. 4-1-01; 1999-2000 OMR 2111 (A), eff. 7-1-00; 1998-99 OMR 2911 (A), eff. 6-17- 99; 1998-99 OMR 2179 (A*), eff. 3-18-99; 1997-98 OMR 1713 (A), eff. 12-30- 97; 1997-98 OMR 1056 (A*), eff. 10-1-97; 1988-89 OMR 718 (E), eff. 1-1-89

RC 119.032 rule review date(s): 3-31-09; 11-2-05; 10-31-05; 11-2-00