

**Response to Reports of Child Maltreatment under a
Child in Need of Protective Services Statutory Framework,
with representative *Case Scenarios***

CHIPS includes seven carefully defined categories of circumstances in which a child could be adjudicated a “child in need of protective services.” These new definitional categories, which will replace the words “abuse, neglect and dependency” in Ohio law, are designed for effective and appropriate treatment of at risk children and families by child protection agencies throughout the state. The specificity of this framework also will promote a consistency of intervention across the state, helping to ensure that all children receive the same level of response regardless of where they live.

Further information about the proposed changes may be found at www.ohiochildlaw.com.

What will a Child in Need of Protective Services (“CHIPS”) System in Ohio accomplish?

- CHIPS represents an overall structural and statutory change from an “abuse, neglect, dependency” system to a system focused on the needs of children – a “Child in Need of Protective Services” model.** Such an approach will help to refocus Ohio child welfare law on the needs of Ohio’s children, *leaving to the criminal justice system the punishment of those who cause substantial harm or risk of substantial harm to our children.*
- A CHIPS approach to child protection relies on a statutorily defined array of circumstances to establish when a child protection agency is authorized to intervene in the life of a family and child.** The protection of injured and at risk children is paramount, with state intervention authorized when articulated conditions – independent of fault – are demonstrable. Further, a clearer, more comprehensive definition of the circumstances in which the State may intervene in a family in order to protect a child will substantially increase the likelihood that similarly situated families in different parts of the state will be treated consistently.
- Under CHIPS, parents are still fully responsible for preventing harm from befalling their children and will not be held any less accountable under the proposed changes.** The Child in Need of Protective Services model simply shifts systemic emphasis to the condition and needs of the child. Under the proposed system, parents are still accountable for conduct which is harmful or risky to their children and are required to correct behavior in accordance with a well-developed case plan. Furthermore, the creation of seven discrete categories of circumstances under which a child is to be considered “in need of protective services” as well as the elimination of the “catch-all” dependency category actually encourage increased accuracy in characterizing parental conduct.

The following case scenarios have been created to illustrate how CHIPS could impact responses to reports of child maltreatment. Following each case scenario is a brief summary of how the facts might be analyzed by reference to the definitions of our current child protection system and how the case would be analyzed by reference to the CHIPS definitions.

CHIPS Case Scenario – Sexually Harmed/Emotionally Harmed

A fifth grade teacher observes that ten year-old Katie has become very quiet and withdrawn, has recently failed to complete several homework assignments and has had trouble staying awake in class. This is a substantial change for Katie, who started the school year as a very outgoing child and conscientious student. The teacher shares her concerns with Katie after school one afternoon and asks if everything is okay. Katie confides that her mom's boyfriend, Matt, moved in a few months ago and that she "hates him." Because Katie's mom is at work, Matt is always there when Katie comes home from school, so she's had a hard time getting her homework done. When the teacher inquires further about the situation, Katie says that at first she really liked "hanging out with Matt" because he would take her places and do stuff she liked – "He was really nice, and it was kind-of like having a dad around."

"Then, a few weeks ago," Katie said, "it started getting weird." Katie told her teacher that Matt started trying to make her "watch movies and stuff on the computer that her mom wouldn't want her to see because some of them had naked men and women in them." Matt told her that she was "grown-up enough" and "that he trusted her and it would be their secret." Katie told her teacher that she had tried to talk to her mom about the situation. Katie said she told her mom that she didn't really feel comfortable being around Matt and that he made her feel nervous. Katie said that her mom told her she just needed to get used to having Matt around and that she should try to be nicer to him. When Katie's teacher asked her if she had any other concerns, Katie responded that she was just feeling very sad and lonely because her mom was spending all of her time with Matt. She said she was also having a hard time sleeping and that she had nightmares every night and stomach aches almost every day.

Katie's teacher is very concerned for Katie's safety and emotional well-being, and immediately decides to call in a report to child protective services.

DEFINITIONS

Current Law

Under current Ohio law, the civil sexual abuse is a subset of child abuse, with its definition fundamentally reliant on cross-references to the criminal code. The child is not referred to by a typical practice-based term such as "sexually abused," but rather as "a victim of sexual activity," as defined in criminal code Section 2907.

A major problem with this approach is that the criminal code provisions are aimed primarily at conduct involving actual physical contact, or concerned with non-parental acts or commercially-based offenses. As is illustrated by the following review of the current relevant provisions, the applicable statutory language simply is not specific to the type of sexual harm that may be most common within the home.

ORC Ann. § 2151.031. (Abused child defined) states that an "abused child" includes any child who:

(A). Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

Turning to Chapter 2907 (Sex Offenses), there are several sections to consider:

ORC Ann § 2907.01. (Definitions) states:

As used in sections 2907.01 to 2907.37 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

C) "Sexual activity" means sexual conduct or sexual contact, or both.

Under these provisions, the form of child “abuse” referred to as “sexual activity” requires actual physical contact, which is not present in our scenario. Nor does the scenario appear to implicate ORC Ann. § 2907.04. (Unlawful sexual conduct with minor), which provides, in relevant part:

(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

Although ORC Ann § 2907.311. (Displaying matter harmful to juveniles) appears from its title to be relevant to the scenario, its provisions are limited to commercial provision of harmful material:

(A) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character or content of the material involved, shall display at the establishment any material that is harmful to juveniles and that is open to view by juveniles as part of the invited general public.

Perhaps current law’s closest “match” with the scenario is ORC Ann. § 2907.31. (Disseminating matter harmful to juveniles) which provides:

(A) No person, with knowledge of its character or content, shall recklessly do any of the following:

(1) Directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

There is, however, an affirmative defense to this charge if the person charged is the parent, or legal guardian or custodian of the child, or if the parent, or legal guardian or custodian of the child consented to the conduct toward the child (assuming the conduct involved material “harmful to juveniles” but not “obscene.” ORC Ann. § 2907.31 (D).

CHIPS

The CHIPS framework is built on the philosophy that the first focus in response to reports of child maltreatment should be on the condition of the child. Under this fact scenario, the initial inquiry is whether Katie is a child in need of protective services by virtue of being sexually harmed due to acts or omissions of her parent, specifically in relation to a third party actor.

There are many differences between the CHIPS definition of sexual harm and current Ohio law relating to sexual activity:

- “Sexual harm” is more explicitly and comprehensively defined than under current child protection law, which relies on a cross reference to an entire chapter of the criminal code with no other guidance.
- The CHIPS definition contains a representative list of sexual acts, which includes “knowingly permitting, encouraging, or forcing a child to watch pornography.”
- The CHIPS definition of sexual harm excludes the acts of a person other than the child’s parent, legal guardian or custodian, *unless* the parent, legal guardian or custodian permitted the child to participate in a sexual act with another, intentionally or negligently.

Analyzing this specific fact pattern under the CHIPS statutory scheme underscores the reasoning behind the proposed changes. First, third party acts that cause harm that are in some way attributable to parental conduct are specifically covered. Subsection E, which is of general application to all categories of harm, states:

- E. Non-Parental Acts. A child may be adjudicated a child in need of protective services due to one or more acts or omissions of a person other than the child’s parent, legal custodian or legal guardian, if the child’s parent, legal guardian or legal custodian:**
- 1. required, directed, coerced, encouraged or permitted the child to be physically harmed, sexually harmed, emotionally harmed, harmed by exposure to substance misuse, lacking necessary health care, lacking legally required education, or lacking necessary care or supervision; or**
 - 2. knowingly or negligently failed to prevent the child from being physically harmed, sexually harmed, emotionally harmed, harmed by exposure to substance misuse, lacking necessary health care, lacking legally required education, or lacking necessary care or supervision; or**
 - 3. knowingly or negligently placed the child at substantial risk of being physically harmed, sexually harmed, emotionally harmed, harmed by exposure to substance misuse, lacking necessary health care, lacking legally required education, or lacking necessary care or supervision.**

In addition, the responsibility of a parent for third party acts is explicit in the “sexual harm” definition:

G. Sexually Harmed

- 1. For purposes of this section, a child is “sexually harmed” when:**
 - a. the child’s parent, legal guardian or legal custodian, participated in a sexual act with the child, or**
 - b. the child’s parent, legal guardian or legal custodian required, directed, coerced, encouraged, permitted or negligently failed to prevent participation in a sexual act by the child with another person.**

The facts presented in this scenario might also support a finding that Katie is a child in need of protective services as a result of “**emotional harm.**” Again, there are many differences between the CHIPS definition of “emotional harm” and current Ohio law:

- “Emotional harm” is more clearly defined than under current Ohio law, which relies on archaic “mental injury” terminology to define emotional harm to children.
- The “mental injury” terminology in current Ohio law has been interpreted by many courts as requiring an existing behavioral, cognitive or emotional disorder linked to a specific act or omission on the part of a parent, guardian or legal custodian. The CHIPS definition of emotional harm specifies behavioral indicators that courts and agencies may consider in determining whether a child has been emotionally harmed, rather than a requirement of a diagnosed disorder

H. Emotionally harmed

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

CHIPS Case Scenario – Physically Harmed

During a routine scoliosis screening, a school nurse noticed several large, dark bruises, welts, and small cuts on thirteen year-old Max's lower back. When the nurse asked Max about the bruises, he stated that he was "fine" and that "his step-dad had just given him a whupping." The school nurse thought that Max's injuries might have come from being hit with a belt, and she placed a call to the local children services agency to report Max's injuries.

Max's step-father, Brian, told the children services caseworker that he had, in fact, used a belt on Max. Max and his friends had been caught shoplifting from a local store, and Max needed to "learn a lesson." Brian told the caseworker that he was a firm believer in corporal punishment. He said that he never intended to leave bruises, and he didn't believe that he had used excessive force while administering the punishment.

RELEVANT DEFINITIONS

Current Law

Ohio law's current civil definition of abuse relies in part on a circular cross-reference to the criminal code's offense of "child endangerment," which, in turn, lists "abuse of the child" as a form of endangerment.

The civil code also includes non-accidental physical or mental harm and physical or mental harm that is at odds with a parent's explanation as forms of abuse, with an exception for such harm administered as corporal punishment unless the punishment either is prohibited under the criminal endangerment provision or threatens the child's mental health or welfare.

The effect of these provisions is to exempt from the definition of abuse some types of harm that would be considered abusive if not inflicted as an act of parental discipline, including, potentially, the type of harm described in this factual scenario.

Current Law

ORC Ann. § 2151.031. (Abused child defined) states that the term "abused child" includes any child who:

(B) Is endangered as defined in section 2919.22* of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22* of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare.

*The relevant provisions of ORC § 2919.22 (Endangering children) are:

(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;

CHIPS

Under CHIPS, there are new, clearer definitions of the circumstances in which the State may intervene in a family in order to protect a child. The development of the CHIPS definitional framework for “physical harm” focused on identifying definitional barriers to consistent and effective practice in child protection case screening and investigation, and on creating statutory revisions aimed at eliminating those barriers by clearly defining terms, carefully articulating circumstances in which intervention is justified, and providing guidelines for assessment of whether a child is “at substantial risk” of physical injury due to parental conduct.

Specific features of the CHIPS definition of “physically harmed” relevant here are:

- Clarification of the current definition through the elimination of cross references to the criminal code. The definition is self-contained and detailed to provide clearer guidance.
- Inclusion of a non-exclusive list of physical symptoms that may result from physical harm to supplement a general definition.
- Further supplementation of the general definition by reference to a non-exclusive list of specific types of parental behavior that may result in physical harm.
- The elimination of corporal punishment as an excuse for the infliction of harm that would otherwise be considered maltreatment.
- Inclusion of a list of factors to be considered in the assessment of whether a child has been placed at substantial risk of physical injury.

The CHIPS provisions relevant to this factual scenario are:

F. Physically Harmed

- 1. For purposes of this section, a child is “physically harmed” when:**
 - a. the child has suffered physical injury, or was placed at substantial risk of such injury, from one or more intentional or negligent acts or omissions by the child’s parent, legal guardian, or legal custodian.**
 - b. In construing whether an act placed a child at substantial risk of physical injury, contextual factors to be considered may include: the size, age, and any pre-existing condition of the child; the location of the injury; the strength and duration of any force used against the child; and whether the act was committed by an adult whose judgment was impaired at the time of the act.**
- 2. For purposes of this section, “physical injury” includes, but is not limited to:**
 - a. a sprain, dislocation, or cartilage damage;**
 - b. a bone or skull fracture;**
 - c. brain or spinal cord damage;**
 - d. a cranial hemorrhage or injury to other internal organs;**
 - e. asphyxiation, suffocation or drowning;**
 - f. an injury resulting from use of a deadly weapon;**
 - g. a burn, scalding, laceration, puncture, or bite;**
 - h. loss of consciousness;**
 - i. loss or impairment of a body part or function;**
 - j. nontrivial soft tissue swelling;**
 - k. nontrivial bruising;**
 - l. injury that requires medical treatment;**
 - m. severe pain; or**
 - n. death.**
- 3. Examples of circumstances that may result in a child’s physical injury, or a substantial risk of physical injury, include, but are not limited to:**
 - a. being struck with an object or a closed fist;**
 - b. being shaken;**
 - c. having a limb twisted;**
 - d. being thrown, kicked, burned, or cut;**
 - e. having breathing interfered with;**
 - f. being threatened with a deadly weapon;**
 - g. being deprived of sustenance;**
 - h. being provided with dangerous substances; or**
 - i. being physically restrained in a cruel manner or for a prolonged period.**
- 4. It is the policy of this State to protect children from maltreatment and to encourage parents and other caretakers to use methods of correction and restraint that are not dangerous to children. In keeping with this policy, “physical harm” includes corporal discipline by a parent, legal guardian, or legal custodian that results in physical injury or creates a substantial risk of physical injury.**

CHIPS Case Scenario – Harmed by Exposure to Substance Misuse

Jim is the father of 17 year-old Kelly and grandfather of Kelly’s two year-old son, Martin. Jim returned home from work one evening to find Martin at the bottom of the stairs of their two-story home, with a bad cut on his forehead and crying uncontrollably. Martin’s mom, Kelly, was lying unconscious on her bedroom floor with a rag in her hand and a bottle of nail polish remover overturned on the floor next to her. Jim immediately called 911 to seek medical attention for both Kelly and Martin. Kelly regained consciousness before paramedics arrived, but she was disoriented and incoherent.

Martin had a large bruise and needed a few stitches in his forehead but was otherwise uninjured. The emergency room doctor believed that Martin probably fell down the stairs after Kelly passed out from inhalant use. She called children services to report Martin’s injury and the suspected inhalant abuse.

Kelly later admitted to her father and the children services caseworker that she had been “huffing” repeatedly over a period of hours that afternoon trying to maintain a “high.” Martin was playing in her room, and she had closed her bedroom door thinking that he wouldn’t be able to get out of the room. Kelly reported that she had used inhalants many times before but had never previously passed out.

RELEVANT DEFINITIONS

Current Law

Currently, there are no provisions under current law, either in the civil provisions relating to child abuse/neglect/dependency or in the criminal code provisions relating to drug-related offenses, that speak specifically to this factual scenario. Thus, there are a number of ways these facts could be approached, resulting in potentially inconsistent treatment and outcomes from county to county.

Turning to the most relevant provisions under current Ohio law, it appears that due to Kelly’s conduct in this scenario, Martin could be categorized as “neglected.”

Ohio Revised Code Ann. (“ORC”) § 2151.03 (Neglected child defined) states that the term “neglected child” includes any child:

(A)(2) Who lacks adequate parental care because of the faults or habits of the child’s parents, guardian, or custodian;

(A)(6) Who, because of the omission of the child’s parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare;

Another possible categorization for the child in this case is “abused.” ORC Ann. § 2151.031. (Abused child defined) states that the term “abused child” includes any child who:

(B) Is endangered as defined in section 2919.22* of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

*The relevant provision here of ORC § 2919.22 (Endangering children) is:

(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.

Finally, this scenario could potentially implicate ORC § 2151.04 (Dependent child defined), which defines "dependent child" as including a child:

(B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;

(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

There are also some criminal code provisions that have some limited relevance:

CHIPS

Under CHIPS, there are new, clearer definitions of the circumstances in which the State may intervene in a family in order to protect a child. The development of the CHIPS definitional framework focused on identifying definitional barriers to *consistent* and *effective* practice in child protection case screening and investigation, and on creating statutory/regulatory revisions aimed at eliminating those barriers by clearly defining terms and carefully articulating circumstances in which intervention is justified.

There are many differences between the CHIPS provision definition of "harmed by exposure to substance misuse and current Ohio law that could be applied to parental drug/alcohol use:

- "Harmed by Exposure to Substance Misuse" is explicitly and comprehensively defined, unlike current child protection law provisions, under which agencies must select from and interpret a number of arguably relevant provisions, none of which specifically relate to substance use or misuse.
- The CHIPS definition of "substance" is expansive as to the types of substances that could be misused by a parent so as to threaten a child's safety. The definition is intended to capture drug and alcohol use, but to also include other substances commonly used to achieve a "high" or another altered state.

- In addition to physical harm of the type that an impaired parent may intentionally or negligently cause to a child, the CHIPS “Harmed by Exposure to Substance Misuse” provision specifically speaks to the emotional harm or risk of harm that might be caused a child by a parent’s misuse of substances.

The CHIPS provisions relevant to this factual scenario are:

I. Harmed by Exposure to Substance Misuse

1. For the purpose of this section a child is “harmed by exposure to substance misuse” when a child’s parent, legal guardian or legal custodian:

- a. used a substance and such use, including use first discovered through a newborn child’s positive toxicology screen, resulted in physical, psychological, emotional or cognitive injury, or substantial risk of such injury, to the child;**

2. For purposes of this section, the term “substance” refers to any mood or behavior altering product, including, but not limited to, alcohol, illegal or controlled drugs, legal drugs, such as over-the-counter or prescription medications, and other products that can be inhaled, ingested, injected or applied.

3. For purposes of this section, psychological, emotional or cognitive injury is a substantial, observable, adverse effect on a child’s behavioral, emotional, social or cognitive performance or condition. Evidence relevant to proving such an effect may include, but is not limited to, the child’s failure or inability to control aggressive or self-destructive impulses, significant acting-out or regressive behavior, social withdrawal, or inability to think or reason, and whether such behavior or condition is age or developmentally appropriate.

Under CHIPS, other circumstances that may support a finding that a child has been harmed by exposure to substance misuse include circumstances in which the parent:

- caused, or negligently failed to prevent the child’s use of alcohol and such use resulted in physical, psychological, emotional or cognitive injury, or substantial risk of such injury, to the child;
- caused, or negligently failed to prevent the child’s use of an illegal substance or use of a legal substance illegally; or
- caused, or negligently failed to prevent the child’s exposure to the sale, manufacture or distribution of an illegal substance or the illegal sale or distribution of a legal substance, or to the presence of chemicals or equipment intended for use in the manufacturing of an illegal substance.