

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

THE SUPREME COURT OF OHIO

Executive Summary and Appendices 13 and 14

Prepared under the Subcommittee's direction by:

**The National Center for Adoption Law and Policy
and**

The American Bar Association Center on Children and the Law

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EXECUTIVE SUMMARY

Project Purpose and Goals

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

Methodology

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

The project was carried out in three somewhat overlapping phases. First, the ABA and NCALP conducted concurrent research on national law related to child abuse and neglect screening and investigation and on current Ohio abuse/neglect/dependency law. While the legal research was in progress, NCALP researched both national best field practices and current Ohio field practice, using various tools such as online research, surveys, and group and individual interviews.

As the legal and field research neared completion, the ABA and NCALP synthesized their research conclusions and NCALP developed tentative alternative proposals for statutory/regulatory reform. NCALP and the ABA tested these alternatives in the field in stakeholder focus groups and the Subcommittee reviewed them through means of an online survey.

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

Summary of Recommendations

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

demonstration and evaluation initiatives in support of the implementation of its recommendations.

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

- Overall structural, statutory change from an “abuse, neglect, dependency” system to a “**Child in Need of Protective Services**” model
- The statutorily mandated establishment of an **Alternative Response** case-management paradigm in the Ohio Administrative Code (preceded by an 18 month pilot program, authorized by separate statute, to test the new model in at least ten Ohio counties)
- The establishment of a **new array of statutory definitions** for use in intake, investigation, adjudication and disposition of child protection cases, and
- Statutory **modification of the dispositional categories** in child protection cases with required recordation of dispositional and outcome determinations

The major features of these recommended components are:

“Child in Need of Protective Services”

The Subcommittee recommends that Ohio revise its overall child protection statutory structure and adopt a “Child in Need of Protective Services” structure. Such an approach will refocus Ohio child welfare law onto the needs of Ohio's children, *leaving to the criminal justice system the punishment of those who cause substantial harm or risk of substantial harm to our children.* The proposed statutory language endorsed by the Subcommittee can be found in Appendix 13.

Ohio's current child protection system focuses, in philosophy, on whether someone has harmed a child or put a child at risk of harm and whether an individual who has done so is culpable for that conduct. Ohio law should, rather, first inquire whether a child is in need of state intervention, regardless of whether it is someone's “fault” that the

child is in need of those services. A “Child in Need of Protective Services” approach to child protection would rely on a statutorily defined array of circumstances to establish when a child protection agency is authorized to intervene in the life of a family and child. The protection of injured and at risk children would become paramount, with state intervention authorized whenever articulated conditions – independent of fault – were demonstrable.

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

Alternative Response Case-Management

The Subcommittee recommends that an Alternative Response case-management system be statutorily mandated. Such a system would allow child protection agencies, as appropriate, to divert lower risk cases away from the traditional investigative case-management activities to an assessment case-management track. In those jurisdictions

that have implemented alternative response systems, child protection service providers are perceived by families as less adversarial or threatening than they are in jurisdictions exclusively engaged in traditional child protection investigations.

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

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

Appendix 13. The proposed statutory language authorizing an Alternative Response Pilot and Evaluation can be found in Appendix 14.

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

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

Changes in Statutorily Defined Child Protection Categories

The Subcommittee recommends the statutory enactment of seven defined circumstances in which a child is “in need of protective services.” These new categories, which would replace abuse, neglect and dependency in Ohio law, reflect the Subcommittee's intent to shift to a child-centered, but family focused, system enhanced by the alternative response practice model just discussed. Specifically, the child protection definitional language has been revised to emphasize the impact of an act or acts on a child, rather than the culpability of an actor.

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

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

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

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

The Subcommittee recommends that every child protection investigation carry a label, at its conclusion, of "Substantiated," "Unsubstantiated," or "Unable to Locate." In addition, the Subcommittee recommends that these terms be carefully defined in the Ohio Administrative Code and that the definition of "Unable to Locate" include specific steps which must have been taken by the local child protection agency before that label may be applied to an investigation. Finally, the Subcommittee recommends that an label indicating a specific defined outcome be assigned to every case screened into a child protection agency for either assessment or investigation. Draft language for the Administrative Rule establishing this labeling structure can be found at the end of Appendix 13.

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

APPENDIX 13

Draft Statute – Child in Need of Protective Services Statute

Child In Need of Protective Services

A. Declaration of Policy

The bonds between children and their parents or legal guardians and the preservation of family relationships are matters of great importance; thus, intervention into family life on behalf of a child must be guided by clearly drafted law and sound professional practice standards. Parents have the primary responsibility for the care of their children and the primary right to make decisions on behalf of their children, and children should have the chance to grow up in their own families if at all possible. However, where a child is found to be in need of protective services because of maltreatment or deprivation of necessities required for his/her physical or emotional health and safety, the State is justified in intervening. In such circumstances, the paramount considerations guiding all decisions, with due deference to constitutionally guaranteed parental interests, are the health, safety and well-being of the child.

B. Statement of Intent

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

C. Scope of Authority

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

D. Child in Need of Protective Services

1. A child may be adjudicated a "Child in Need of Protective Services" if, due to one or more acts or omissions of the child's parent, legal guardian or legal custodian, the child is:
 - a. Physically harmed;
 - b. Sexually harmed;
 - c. Emotionally harmed;
 - d. Harmed by exposure to substance misuse;
 - e. Lacking necessary health care;
 - f. Lacking legally required education; or
 - g. Lacking necessary care or supervision.
2. Evidence provided to support an adjudication that a child is in need of protective services may be relevant to more than one of the categories enumerated in section D.1 above, and may justify such an adjudication regardless of the category or categories under which the court action was initiated.
3. Whenever a showing of substantial risk is necessary to support an adjudication of a child in need of protective services, substantial risk means the risk that a specified injury is markedly more likely than not to result from one or more acts or omissions.

4. In assessing or investigating a report that a child is in need of protective services, the public children services agency shall, as part of its response:
 - a. provide written notice of the rights of and services available to a parent, legal guardian or legal custodian of the child who is the subject of such a report;
 - b. make all reasonable efforts to prevent the removal of the child from a parent, legal guardian or legal custodian who has not been alleged to have harmed the child or placed the child at substantial risk of harm, balancing the risk of harm to the child of remaining with such person against the trauma that removal would cause the child;
 - c. provide assistance, to the extent it is reasonably able to do so, to a parent, legal guardian or legal custodian seeking the removal of, or a protective order against, one who is alleged to have harmed the child or placed the child at substantial risk of harm; and
 - d. when appropriate, refer the case to law enforcement officials for criminal investigation.

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

- F. Physically Harmed
 1. For purposes of this section, a child is "physically harmed" when:
 - a. the child has suffered physical injury, or was placed at substantial risk of such injury, from one or more intentional or negligent acts or omissions by the child's parent, legal guardian, or legal custodian.
 - b. In construing whether an act placed a child at substantial risk of physical injury, contextual factors to be considered may include: the

size, age, and any pre-existing condition of the child; the location of the injury; the strength and duration of any force used against the child; and whether the act was committed by an adult whose judgment was impaired at the time of the act.

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

- b. the child's parent, legal guardian or legal custodian required, directed, coerced, encouraged, permitted or negligently failed to prevent participation in a sexual act by the child with another person.

2. For purposes of this section:

- a. the provision of a product or information for the purpose of avoiding pregnancy or a sexually transmitted disease to a child by that child's parent, legal guardian or legal custodian shall not, by itself, be evidence that such person has encouraged, permitted or negligently failed to prevent the child's participation in a sexual act; and
- b. the participation by a child of at least 16 years of age in a consensual sexual act with a non-relative who is at least sixteen 16 years old but less than twenty 20 years old shall not be evidence that the child was sexually harmed, but may be evidence that the child is, for other reasons, a child in need of protective services.

3. For purposes of this section, examples of a "sexual act" include, but are not limited to:

- a. penetration, however slight, of the vagina or anal opening of one person by the penis of another;
- b. sexual contact between the genitals or anal opening of one person and the mouth or tongue of another;
- c. intrusion by one person into the genitals or anal opening of another person, including the use of objects for this purpose, other than for a valid medical purpose;
- d. intentional touching of the genitals, breasts, genital area, groin, inner thighs, or buttocks, or the clothing covering them, except when such touching occurs as part of appropriate child care activity, including medical care;
- e. intentional exposure of genitals in the presence of a child if such exposure is for the purpose of sexual arousal or gratification, humiliation, degradation or other similar purpose;
- f. sexual exploitation of a child, including requiring, directing, coercing, encouraging or permitting a child to solicit or engage in prostitution or a commercial sexually related act or performance, or negligently failing to prevent such sexual exploitation;
- g. making recorded images of a child for sexual gratification or commercial sexual exploitation;
- h. requiring, directing, coercing, encouraging or permitting a child to view one or more sexually explicit acts or materials or negligently failing to prevent a child from viewing sexually explicit acts or material;

- i. flagellation, torture, defecation or urination, or other sado-masochistic acts involving a child when for the purpose of the adult's or the child's sexual stimulation; or
- j. requiring, directing, coercing, encouraging, permitting or negligently failing to prevent the statutory rape of a child.

H. Emotionally harmed

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

I. Harmed by Exposure to Substance Misuse

- 1. For the purpose of this section a child is "harmed by exposure to substance misuse" when a child's parent, legal guardian or legal custodian:
 - a. used a substance and such use, including use first discovered through a newborn child's positive toxicology screen, resulted in physical, psychological, emotional or cognitive injury, or substantial risk of such injury, to the child; or
 - b. required, directed, coerced, encouraged, permitted, or negligently failed to prevent the child's use of alcohol and such use resulted in physical, psychological, emotional or cognitive injury, or substantial risk of such injury, to the child; or
 - c. required, directed, coerced, encouraged, permitted, or negligently failed to prevent the child's use of an illegal substance or use of a legal substance illegally; or
 - d. required, directed, coerced, encouraged, permitted, or negligently failed to prevent the child's exposure to the sale, manufacture or distribution of an illegal substance or the illegal sale or distribution of a legal substance, or to the presence of chemicals or equipment intended for use in the manufacturing of an illegal substance.
- 2. For purposes of this section, the term "substance" refers to any mood or behavior-altering product, including, but not limited to, alcohol, illegal or controlled drugs, legal drugs, such as over-the-counter or prescription medications, and other products that can be inhaled, ingested, injected or applied.

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

J. Lacking Necessary Health Care

1. For purposes of this section, a child is "lacking necessary health care" when, due to an act or omission of a child's parent, legal guardian, or legal custodian, the child is not provided medical, surgical, psychiatric, psychological or other care required to treat a condition where such treatment is likely to prevent the child's death, disfigurement, or serious impairment, or where such treatment is necessary to substantially reduce the child's pain, suffering or serious impairment, or correct or substantially diminish a child's debilitating or crippling condition.
2. A child's parent, legal guardian, or legal custodian may, because of sincerely held religious or spiritual beliefs or for any other reason, provide or decline to provide health services to the child, even in contravention of the advice of a qualified health care provider, and a court may order the provision of such services over the objection of a parent, legal guardian or legal custodian only if the court determines that the child is lacking necessary health care as defined in this section.
3. When there is a disagreement between a qualified health care provider and a child's parent as to the necessary course of health care treatment for that child, the child shall be found to be lacking necessary health care only if the course of treatment advised by the qualified health care provider is found by a court to be substantially more beneficial to the child than the course of treatment preferred by the child's parent, legal guardian or legal custodian.

K. Lacking Legally Required Education

1. For purposes of this section, a child is "lacking legally required education" when, due to one or more acts or omissions of a parent, legal guardian or legal custodian, the child has not regularly or timely attended school, or received other education services as required under the Ohio Revised Code or other law.
2. Any person responsible for reporting, investigating or enforcing alleged violations of Ohio's compulsory school attendance laws may provide written notice to an appropriate public children services agency when that person believes that the agency's intervention may help to assist the child in obtaining legally required education. Such notice shall specify:
 - a. all known steps taken to assure compliance with Ohio's compulsory school attendance laws; and
 - b. all known acts or omissions by the child's parent, legal guardian or legal custodian that may have contributed to the child's alleged lack of legally required education.

3. The public children services agency shall have no obligation to assess or investigate when such notice fails to demonstrate that a substantial, good faith effort to investigate and enforce Ohio's compulsory school attendance laws has been made or when the notice fails to provide the information required in section 2, above.
4. If a substantial, good faith effort to investigate and enforce Ohio's compulsory school attendance laws has not been undertaken, the public children services agency may seek from a juvenile court, and that court may enter, an order directing that such efforts be made.
5. When any person responsible for reporting, investigating or enforcing alleged violations of Ohio's compulsory school attendance laws knows or suspects that a child is in need of protective services for any reason other than that the child may lack legally required education, that person shall immediately report that knowledge or suspicion to the appropriate public children services agency for its standard assessment or investigation.
6. If, in assessing or investigating a report that a child is in need of protective services, a public children services agency discovers facts that may support an adjudication that a child is lacking legally required education, the public children services agency shall, in addition to its own required protocol, notify the appropriate person or entity responsible for investigating or enforcing alleged violations of Ohio's compulsory school attendance laws.
7. The refusal of a child's parent, legal guardian or legal custodian to administer or permit the child to take behavior modifying medication shall not be deemed an act or omission relevant to a report that a child is lacking legally required education, but it may be relevant to a report that a child is lacking necessary health care.

L. Lacking Necessary Care or Supervision

1. For purposes of this section, a child is "lacking necessary care or supervision" when:
 - a. the child's parent, legal guardian or legal custodian has placed the child at substantial risk of being physically harmed, sexually harmed, emotionally harmed, harmed by exposure to substance misuse, lacking necessary health care, or lacking legally required education; or
 - b. the child's parent, legal guardian or legal custodian fails to provide the child with:
 - i. food, clothing, shelter, or supervision; or
 - ii. adequate supervision or arrangements for the child's care in the absence of the child's parent, legal guardian or legal custodian; or
 - iii. a safe and appropriate place to live after prohibiting the child from living at the residence of the child's parent, legal guardian or legal custodian; and

- c. the failure to provide the life necessities described above creates a substantial risk that the child would suffer injury which could result in an adjudication of a child in need of protective services under any provision of this chapter.
2. A child is lacking necessary care or supervision when any of the above circumstances arise from any reason, including the death or physical or mental incapacity of the child's parent, legal guardian or legal custodian.

M. Alternative Response

1. The Department of Job and Family Services shall promulgate an administrative rule for the implementation of an Alternative Response approach to reports of a child in need of protective services which requires all public children services agencies, through the use of an appropriate set of screening procedures contained in the rule, to respond to reports of a child in need of protective services by assigning the report either to an assessment track or an investigation track.
2. The administrative rule implementing the Alternative Response approach to reports of a child in need of protective services shall require each public children services agency to respond to all such reports as follows:
 - a. if, in the opinion of agency, the allegations in the report will not result in an adjudication that the child is in need of protective services, the agency shall assign the report to an assessment track which utilizes collaboration between the family and the agency in the determination and implementation of appropriate actions on behalf of the child; or
 - b. if, in the opinion of the agency, the allegations may result in an adjudication that the child is in need of protective services, the agency shall assign the report to an investigation track which utilizes a comprehensive evidence gathering and case planning process in the determination and implementation of appropriate actions on behalf of the child; and
 - c. the agency shall assign all reports alleging that a child may be in need of protective services to the assessment track unless its screening procedures establish that the assessment track's collaborative approach is unlikely to adequately protect the child.
3. The administrative rule implementing the Alternative Response approach to reports of a child in need of protective services shall establish:
 - a. timeframes within which the public children services agencies must make assignments of reports to each track and process reports along each track; and
 - b. standard labels, and their definitions, for use in describing the results of completed assessments and investigations and any agency determinations made regarding those assessments and investigations; and
 - c. explicit authority for the public children services agencies to move reports from one track to the other when appropriate.

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

Draft of Administrative Rule Implementing the Alternative Response Statutory Provisions

1. Upon the receipt of a report by a public children services agency that a child is in need of protective services, the agency shall, in addition to taking any immediately necessary protective actions, determine, within 24 hours, whether the substance of the report falls within the jurisdiction of the agency, and if so, assign the report to either an assessment or an investigation track.
2. For cases assigned to the assessment track, the public children services agency shall assess the child's safety, any risk of future harm to the child, and the family's strengths, needs and resources within 45 days of the assignment of the report to the assessment track. A case assigned to the assessment track may, at any point in time, be reassigned to the investigation track.
 - a. Upon the completion of the assessment, each case shall be assigned one of the following needs determination labels: "No Services Needed," "Voluntary Services Recommended," or "Services are Needed." At any time after the assignment of a needs determination label, the agency may change the needs determination label to reflect changes in its risk assessment.
 - b. When the agency determines that Voluntary Services are Recommended, the agency shall provide information to the family about recommended services and shall, to the extent the agency is reasonably able to do so, assist the family in obtaining any services the family wishes to access.
 - c. When the agency determines that Services are Needed, the agency shall provide information to the family about the services it deems necessary to protect a child from harm or risk of future harm and shall assist the family in obtaining those services. If the family refuses services deemed necessary by the agency, the agency shall assign the case to the investigation track.
3. For cases assigned to the investigation track an investigation shall be conducted regarding the child's safety and any risk of future harm to the child and shall be completed within 45 days of the assignment of the case to the investigation track. A case assigned to the investigation track may, at any point in time, be reassigned to the assessment track.
 - a. Upon the completion of the investigation, the case shall be assigned one of the following investigation result labels: "Substantiated," "Unsubstantiated," "Unsubstantiated/Report based on fabricated allegations" or "Unable to Locate."
 - i. "Substantiated" cases are those in which there is a preponderance of evidence that a child is in need of protective services.
 - ii. "Unsubstantiated" cases are those in which there is not a preponderance of evidence that a child is in need of protective services.
 - iii. "Unsubstantiated/Report based on fabricated allegations" cases are those in which the agency has concluded that an unsubstantiated report was based upon fabricated allegations.

- iv. "Unable to Locate" cases are those in which, after substantial efforts, as defined in the Ohio Administrative Code, the public children services agency is unable to locate the child or the child's parent, legal guardian or legal custodian.
- b. For purposes of this section, "preponderance of the evidence" means evidence which shows that the proposition that is sought to be proved is more likely than not; that the evidence in favor of the proposition is more persuasive than the evidence against the proposition.
- c. The agency shall make a needs determination with respect to all cases on the investigation track and shall assign each case to one of the categories described below. A case assigned to any category may, at any point in time, be reassigned to a different category.
 - i. A "Substantiated Report" will be assigned to one of the following categories:
 - (a) Category I - Removal required. Cases shall be assigned to this category when the agency determines that a change in the custodial status of a child is necessary to protect the child from injury or substantial risk of injury.
 - (b) Category II - Court mandated services required. Cases shall be assigned to this category when the agency determines that a change in the custodial status of a child is not necessary to protect the child from injury or substantial risk of injury, but court mandated services are.
 - (c) Category III - Services are needed. Cases shall be assigned to this category when the agency determines that services are needed to protect the child from injury or substantial risk of injury and that the family is likely to cooperate with the provision of those services.
 - ii. An "Unsubstantiated Report" will be assigned one of the following categories:
 - (a) Category IV - Voluntary services recommended. Cases shall be assigned to this category when the agency determines that services are not necessary to protect the child from injury or substantial risk of injury, but that the family would benefit from services which may be available.
 - (b) Category V - No services are needed. Cases shall be assigned to this category when the agency determines that services are not necessary to protect the child from injury or substantial risk of injury.

APPENDIX 14
Draft Statute – Authorization for Alternative Response Pilot &
Evaluation

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

1. The Department of Job and Family Services shall develop, implement, oversee and evaluate, on a pilot basis, an “Alternative Response” approach to reports of child abuse, neglect and dependency. The pilot program shall be implemented in at least ten counties that agree to participate in the pilot program.
2. The pilot program shall last eighteen months, not including time expended in preparation for the implementation of the pilot program and any post-pilot evaluation activity. The pilot program, including all implementation preparation and post-pilot evaluation activity, shall be completed by December 31, 2007.
3. Public Children Services Agencies in counties participating in the pilot program shall respond to all reports that a child is abused, neglected or dependent as follows:
 - a. if, in the opinion of agency, the allegations in the report will not result in an adjudication that the child is abused, neglected or dependent, the agency shall assign the report to an assessment track which utilizes collaboration between the family and the agency in the determination and implementation of appropriate actions on behalf of the child; or
 - b. if, in the opinion of the agency, the allegations in the report may result in an adjudication that the child is abused, neglected or dependent, the agency shall assign the report to an investigation track which utilizes a comprehensive evidence gathering and case planning process in the determination and implementation of appropriate actions on behalf of the child; and
 - c. the agency shall assign all reports of abuse, neglect or dependency to the assessment track unless its screening procedures establish that the assessment track’s collaborative approach is unlikely to adequately protect a child from abuse, neglect or dependency.
4. The Department of Job and Family Services shall establish for the Alternative Response pilot counties:
 - a. timeframes within which the pilot agencies must make assignments of reports to each track and process reports along each track;
 - b. standard labels, and their definitions, for use in describing the results of completed assessments and investigations and any agency determinations made regarding those assessments and investigations;
 - c. explicit authority for the pilot agencies to move reports from one track to the other when appropriate;
 - d. any other provisions necessary for the effective implementation of the Alternative Response pilot.
5. The Department shall assure that the Alternative Response pilot is independently evaluated with respect to costs, outcomes for children and families, worker satisfaction and any other criteria the Department believes will be useful in the consideration of

statewide implementation of an Alternative Response approach to child protection. The measures associated with the 18 month pilot program period shall, for purposes of such evaluation, be compared with those same measures in the pilot counties during the 18 month period immediately preceding the beginning of the pilot program period.

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