

How Will CHIPS (“Child in Need of Protective Services”) Impact Judges & Magistrates?

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.

Background

CHIPS grew out of recommendations by the Subcommittee on Responding to Child Abuse, Neglect, and Dependency of the Supreme Court of Ohio Advisory Committee on Children, Families, and the Courts. The Subcommittee was established 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. Over a five year period, this Subcommittee conducted extensive research and collected feedback from Ohio’s child-serving professionals in order to develop recommendations to improve the effectiveness of our state’s child protection laws. The Subcommittee developed a comprehensive proposal aimed at better focusing Ohio child protection law on the needs of children through a modified child protection law structure, modified statutory definitions, flexible case management authority and various training, model demonstration and evaluation initiatives.

There are two fundamental components to CHIPS:

- Overall structural, statutory change from an “abuse, neglect, dependency” system to a “Child in Need of Protective Services” model
- The establishment of a new array of statutory definitions for use in intake, investigation, adjudication and disposition of child protection cases

Child in Need of Protective Services

The proposed law adopts a “Child in Need of Protective Services” statutory structure. Such an approach will 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.*

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. Protecting children in Ohio from maltreatment is paramount. 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.

The fundamental components of the bill address the legal framework of Ohio's civil child protection law, as well as the scope of authority and justification for state intervention in instances where a child is maltreated or deprived of necessities:

- CHIPS will modify and clarify Ohio's civil child protection laws while fundamentally leaving the criminal system as is for holding people accountable for conduct which is harmful or risky to a child.
- CHIPS will clarify definitional barriers in current law that have an impact on practice across the state, which can result in different interpretations from one county to another or from one Court to another. For example, there are instances where current definitions of abuse, neglect and dependency in law are overbroad, too narrow, confusing, or undefined.

Changes in Statutorily Defined Child Protection Categories

The proposed law adopts the statutory enactment of seven carefully 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 intent to shift to a child-centered, but family-focused, system. Specifically, the child protection definitional language has been revised to emphasize the impact of an act or acts on a child, rather than the culpability of an actor. The new categories are:

- Physically Harmed
- Sexually Harmed
- Emotionally Harmed
- Lacking Necessary Health Care
- Harmed by Exposure to Substance Misuse
- Lacking Legally Required Education
- Lacking Necessary Care or Supervision

CHIPS and Alternative Response

In addition to CHIPS legislative reform, a second major recommendation of the Subcommittee on Responding to Child Abuse, Neglect and Dependency was the pilot testing and evaluation of an Alternative Response child protection practice model in Ohio. CHIPS is separate from Alternative Response. ***However, CHIPS will provide a strong legal and legislative foundation to support this very important child protection reform.***

Together, CHIPS and Alternative Response reflect an overall shift in how the state and its 88 public children services agencies engage and interact with families. Ohio's child protection definitions are the doorway through which families engage with the system – they set the parameters for when support is needed. Alternative Response is one option for how families may be supported when engaged with the child protection system. CHIPS and Alternative Response complement and support each other by shifting our focus to the existing needs of children and families.

Judges & Magistrates: Frequently Asked Questions

Why should we change to the “CHIPS” model?

Answer: The proposed law seeks to address areas in Ohio law where confusing language, overly broad or narrow definitions, murky categories, and unnecessary cross-references lead to inconsistent treatment of families and children. In January 2003, the United States Department of Health and Human Services found that Ohio is not consistent in its efforts to protect its children from abuse and neglect. After a review of the current law, Ohio received criticism from national experts and the federal Child & Family Services Review team, who concluded that Ohio’s abuse, neglect and dependency statutes and rules are inconsistent, ambiguous and confusing, leading to inconsistent case screening and investigation from county to county and to compromised outcomes for children.

What is an example of a term being *too broad* in definition in the current statutes and rules?

Answer: The definition of “dependency” under ORC 2151.04 is too broad, which leaves its use open to many different interpretations all over the state. Dependency is defined in wholly conclusory terms rather than explanatory terms: a dependent child is one whose “condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship.”

What is an example of a term being *too narrow* in definition in the current statutes and rules?

Answer: The civil sexual abuse definitions found in ORC 2151.031 are fundamentally reliant on cross-references to Chapter 2907 of the criminal code for definitions of relevant sexual activity. Currently, the child is not referred to by a typical practice-based term such as “sexually abused,” but as “a victim of sexual activity,” as defined in the criminal code.

What is an example of a term that is currently undefined?

Answer: One type of neglect under ORC 2151.03 is “abandonment,” which is not defined. The definitional section of the code creates a “presumption” of abandonment, but does not define the term. The Ohio Administrative Code says that “abandoned child”... “means a child presumed abandoned [pursuant to the language of the definitional section of the abandonment code].”

What is an example of a definition that is *too confusing* in the current statutes and rules?

Answer: ORC 2151.031 defines an “abused child” ... as one who has been “endangered” and the criminal section 2919.22 lists “abuse of the child” as a form of endangerment. This circular reference does not assist caseworkers, prosecutors or judges in determining the definition of abused child or endangered child. This ambiguity could lead to different interpretations or applications throughout the state.

How will the CHIPS model change the way cases are adjudicated?

Answer: The proposed law adopts the statutory enactment of seven defined circumstances in which a child is “in need of protective services,” as listed above. These new categories, which would replace abuse, neglect and dependency in Ohio law, emphasize the impact of an act or acts on a child, and will serve as the evidentiary bases for an adjudication that a child is a “Child In

Need of Protective Services.” This single, less stigmatizing category of adjudication replaces the current adjudicatory categories of “abused,” “neglected,” or “dependent,” eliminating the opportunity to consume valuable time and resources in an adversarial “plea bargaining” effort to get an allegation of abuse “reduced” to one of dependency. This leads to more parental buy-in and cooperation and more parental focus on the child.

What are the standards for making this adjudication?

Answer: 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 or legal guardian/custodian. If there is no credible explanation for the harm or the explanation is inconsistent 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.

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

Answer: Parents will not be held any less accountable due to the proposed changes. The Child in Need of Protective Services model simply shifts systemic emphasis to the condition and needs of the child. Under the proposed system, parents are still accountable for conduct which is harmful or risky to their children and are required to correct behavior in accordance with a well-developed case plan. Furthermore, the creation of seven discrete categories of circumstances under which a child is to be considered “in need of protective services” as well as the elimination of the “catch-all” dependency category actually encourage increased accuracy in characterizing parental conduct. Additionally, the Alternative/Differential Response structure is directly aimed at increasing parental accountability by engaging parents in a proactive working relationship to ensure their child’s safety.

Does the CHIPS model cover acts by persons other than parents?

Answer: Yes, in appropriate circumstances. The new law recognizes that in order for the government to constitutionally intervene in a family, even at the initial response stage, there must be a nexus between parental conduct and the alleged harm or risk of harm to the child, and there must be deference given to the parents’ constitutional right to be free of unwarranted government intrusion into private family life. Thus, the proposal limits PCSA intervention in relation to acts by persons other than parents to those circumstances in which a parent is in some way responsible for the child’s harm or risk of harm from non-parental conduct. Under this model, the non-parental actor is dealt with by the criminal justice system, as appropriate.

In addition, the law does not impact those situations in which public children services agencies are statutorily assigned responsibility for response to allegations of child maltreatment by persons other than a child’s parent, legal guardian or legal custodian, most notably out-of-home care providers. These recommendations are not intended to modify or eliminate this responsibility (as is specifically stated in the recommended statutory language).

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

Answer: The proposed change would not preclude uninvited agency involvement in situations in which no explanation has been provided for harm which has befallen a child or the explanation given is dubious but can not be proven to be untrue. Parents have the responsibility to protect their children from harm and when their children have been harmed while in the custody and

control of their parents, it is reasonable to presume, in the absence of a credible contrary explanation, that the harm resulted from an act or omission of the parent. The proposed statute expressly provides Ohio public children services agencies the authority to presume, throughout the course of its investigation, an act or omission of a parent in such circumstances and expressly authorizes the juvenile court to conclude, in such circumstances, that a child is need of protective services.

How will these changes impact criminal cases?

Answer: The proposed statute is designed to more clearly delineate the distinction between civil and criminal child protection statutes, but the criminal statutes, and the prosecution of offenders under those statutes, will remain fundamentally the same. The proposed definitional changes were carefully crafted to provide greater guidance to agencies and the courts in civil child protection matters and should in no way impede the prosecution of criminal child abuse or endangerment cases.

For More Information

Where can I find more information about CHIPS?

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