

NATIONAL COALITION FOR CHILD PROTECTION REFORM

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HB 371: OHIO'S WOLF IN SHEEP'S CLOTHING

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Overview

Under current Ohio law, almost anything imaginable can be considered abuse or neglect. The new law simply takes the burden of imagination off the shoulders of caseworkers by providing the most breathtakingly broad laundry list in any statute I've ever seen anywhere in the country.

There is not a parent in Ohio who wouldn't be at risk of losing her or his child to foster care at some point under the provisions of this bill, were a caseworker inclined to take that child away.

Furthermore, under this bill, in at least two places, the burden of proof explicitly shifts to the parent to prove innocence:

When there is no credible explanation for harm to a child or when 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 a child in need of protective services.

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, the court may hold that the finding, by itself, constitutes clear and convincing evidence sufficient to support an adjudication that the child is a child in need of protective services.

The very act of calling so many possible symptoms and scenarios to the attention of frontline workers is likely to prompt a surge in abuse and neglect cases (I decline to use the bill's silly euphemism, "Child in Need of Protective Services") and a spike in foster care placements.

The reason counties are inconsistent in their rates of child removal – not just in Ohio, by the way, but everywhere, including states where state agencies run the child welfare system – has to do with the culture of practice in that county, habit, and whether the death of a child "known to the system" was on the front page that day. It has very little to do with what's in the law. To the extent that this bill may increase consistency among counties it will be consistency in the wrong direction – toward a take-the-child-and-run mentality.

And that means this bill also is a budget-buster – since foster care costs far more than safe, proven approaches to avoid foster care.

Specifics

--For starters, this law is open season on every impoverished family in Ohio. It defines neglect (again, I refuse to use their silly euphemism, child in need of protective services) as including lack of

(a) Adequate food, clothing, shelter, or supervision;

(b) Adequate supervision or arrangements for the child's care in the absence of the child's parent, legal guardian, or legal custodian;

(c) A safe and appropriate place to live after prohibiting the child from living in the same residence as the parent, legal guardian, or legal custodian.

(B) A child is lacking necessary care or supervision when any of the circumstances described in division (A) of this section arise for any reason, including the death or physical or mental incapacity of the child's parent, legal guardian, or legal custodian.

That is a definition of poverty.

Interestingly, the Public Children's Services Association of Ohio claims there is a "no fault" provision concerning this part of the law. I assume that would mean a provision saying this does not apply if the lack of food, clothing, shelter etc. is not the fault of the parent. But I don't see that in the actual bill. (And CPS agencies in states that have this provision ignore it anyway – it does nothing to actually stop such agencies from confusing poverty with neglect.)

And, in fact, putting such a provision in the bill would be inconsistent with the entire philosophy of the bill which supposedly is to ignore parental culpability or the lack of it. This is something the National Center for Adoption Law and Policy says over and over in its propaganda for the bill, with great pride. And notice provision B above which specifically says it's neglect if the child is "lacking necessary care or supervision ... **for any reason...**" [emphasis added].

That is an extremely dangerous change. It makes explicit what previously was bad enough when it was merely implied: We don't care if this child is hungry only because your foodstamps ran out and you couldn't get a job - the law says we still can take him away and expose him to the enormous harm of foster care.

--The substance misuse provisions are way too broad.

First, some context:

University of Florida Medical Center researchers studied two groups of infants born with cocaine in their systems. One group was placed in foster care, the other with birth mothers able to care for them. After six months, the actual physical development of the infants was

better when they were left in their own homes. For the foster children, being taken from their mothers was more toxic than the cocaine.

It is extremely difficult to take a swing at “bad mothers” without the blow landing on their children. If we really believe all the rhetoric about putting the needs of children first, then we need to put those needs ahead of everything – including how we may feel about their parents. That doesn’t mean we can simply leave children with addicts – it does mean that drug treatment for the parent almost always is a better first choice than foster care for the child.

Yet this bill automatically classifies a positive drug test as neglect.

And this bill would allow for removal of children for all sorts of other reasons. For instance, a parent “negligently fails to prevent” his son from smoking pot, or drinking when mom and dad aren’t home.

--The provisions concerning sexual abuse are similarly overbroad.

These provisions would allow for intervention by child protective services if the parents “negligently” fail to prevent their 16 year old son from having consensual sex with his 15 year old girlfriend. (And there’s more: If two 17 year olds have sex it is “not 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.”) And two little kids “playing doctor” also might qualify as sexual abuse.

--The “lacks necessary health care” provision reads as if child protective services could take away a child if he has a serious illness and isn’t getting treated because the parents lack health insurance. I don’t think that was the intent of this provision, but that’s still what it allows.

--Even physical abuse, normally the least difficult to define, in this law can mean any bump or bruise caused by anything. The list of injuries includes a “sprain” a “burn” or any “injury that requires medical treatment” – thereby penalizing the parent who may simply be overprotective and take her child to the emergency room when it’s not really necessary. And it can mean anything else, because the astoundingly long list of possibilities is only a list of examples. The law specifically says physical harm “includes, but is not limited to” the items on the list.

And the injury doesn’t have to be inflicted intentionally. “Negligent acts or omissions” will do. So the child who accidentally burns himself on a space heater can be defined as abused. So is the child who sprains his ankle when he trips on an extension cord which was run because of poor wiring in a poor person’s house.

--Back when I wrote a book about the child welfare system, nearly 20 years ago (*Wounded Innocents: The Real Victims of the War Against Child Abuse* (Prometheus Books: 1990, 1995)), I wrote about the danger of broad, vague “symptom lists” that people are told to watch out for because they might be signs a child is being abused. It’s true, they might. But the same symptoms also can occur for all sorts of other reasons. Ohio now takes things a grand

step further: They've actually codified some of these lists as evidence to be used in trials. That's bizarre.

CONCLUSION

HB 371 is the legislative equivalent of the wolf in sheep's clothing. It is just as overbroad, just as overreaching, just as coercive, just as dangerous and, in its own way, even just as vague as existing law. But the wolf of excessive coercive intervention into families is dressed up in the sheep's clothing of benevolent language about not blaming anyone and the almost Orwellian term "child in need of protective services."

I'm sure the proponents of this bill will claim that just because it allows virtually any child in Ohio, at some point in her or his life, to be branded a "child in need of protective services" that doesn't mean all those children will be taken away. No, they'll say, it will just allow us to provide help.

Well, providing help is perfectly possible now. All you have to do is go up to the door, knock on it and offer the help – on a voluntary basis. Try offering a parent whose children are living in dangerous housing because it's all the family can afford a rent subsidy so they can move someplace better, and you won't need a law to get her or him to take it. A law like this is needed only to coerce a family, whether through what is, for the child, an inherently traumatic investigation or the worst coercion of all, exposing the child to the enormous risks of needless foster care.

Sometimes coercive intervention is absolutely essential to save a child. But the current law allows for such intervention whenever it is truly necessary (and, tragically, far too often when it is not). Read closely the hypotheticals used to justify this law and you find that current law may be confusing at times, but it doesn't stop authorities from doing whatever they want in the name of "child protection."

The current law is awful. And there are excellent model statutes available that can be used as guidelines for fixing it; models that are far better than the mess that is HB 371.

But if the only choice is the current bad law or the proposed bad law, stick with what you've got. At least as things stand now, it's easy to spot the wolf when we see it.

There is much more about the problems in Ohio child welfare in NCCPR's Ohio report, available on our website here: <http://www.nccpr.org/reports/secondchance.pdf>

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