HB 371: THREATENING OHIO CHILDREN

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> Time after time we hear alarming reports, children's and young persons' mental health problems are increasing. More resources are demanded for child psychiatry and school nurses. But is the solution really more treatment and more money? Isn't it time that we seriously ask ourselves the question whether we no longer really understand the needs of children? And that we should stop believing only the answers that confirm us adults?
>
> ~ Roger Lord

HB 371 seems to be well intentioned, but seriously misguided. It's intended to correct Ohio's "overbroad, too narrow, confusing, or undefined" child welfare laws. Its 565 pages are supposed to fundamentally change the "[o]verall structur[e]" of Ohio's child welfare system with "a new array of statutory definitions" of when the State can intervene in the home.[1]

But from the bill's plain language, its sweeping changes could be used against almost any child in Ohio. It would let the State take children for:

- Accidents,
- Poverty conditions,
- Spanking and other common discipline methods, or
- Common Childhood Problems (like "aggressive . . . impulses"[2]).

The proposal also offends constitutional civil liberties. It abandons the principle behind "innocent until proven guilty." Rather, it lets the State presume there's been abuse, and then makes the parent prove otherwise. The legislation also allows:

- Less than Probable Cause to Intervene in the child's Home,
- False Reports of maltreatment, and
- Practices that Undermine Ohio's Alternative Response Project.

HB 371 does all this by overhauling the current child welfare system—which is based on terms like *abuse, neglect,* and *dependency*—and replacing it with a vastly expanded system that's based on the new term "child in need of protective services" (CHIPS, as it's being called). This new term is defined to mean not only what all the old terms meant, but also much more. CHIPS, then, becomes a sort of "one term to rule them all"—a term that's more sweeping and more powerful than all the old terms combined.

But such breadth and authority is also very dangerous. It not only threatens to drain already scarce economic resources, but more importantly, it threatens to subject a wide swath of children to unnecessary intervention—and thus to needless emotional and psychological damage.

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[1] Supreme Court of Ohio Advisory Committee on Children, Families, & the Courts, Subcommittee on Responding to Child Abuse, Neglect, & Dependency, *Child in Need of Protective Services Legislation*, at 1, *available at* http://www.law.capital.edu/adoption/ohiochildlaw/09.11_FAQ_CHIPS.pdf.

[2] Ohio H.B. 371 (2009), at 2267-71.

Contents

1. *The Point*—Intervention Afflicts Most Children with Severe Psychological & Emotional Trauma

It's said that CHIPS has been "carefully defined" from over five years of input from Ohio's child welfare workers.[3] Yet it seems that while everyone was busy asking child welfare workers what laws they want to be governed by, nobody asked the children.

Clearly, there are times to intervene in the child's life. But we have to understand that state intervention hurts. We're essentially talking about snatching the child from the most intimate place he or she knows. It's no surprise, then, that no matter how well intentioned, interfering in the child's family often causes serious emotional and psychological damage.[4]

Some say "the brute biological fact of parentage" isn't necessarily "worthy of respect and protection."[5] But that's not how most children think. Being conceived, carried, and born creates a relationship that's "one of the most binding in human life."[6] Interfering with that relationship tends to afflict children with fear, shame, guilt, trauma, anxiety, powerlessness, self-doubt, isolation, or depression.[7] It can even cause Post Traumatic Stress Disorder, psychosis, or suicidal ideations.[8] So to children, the biological fact of parentage matters . . . a lot.

The uncomfortable truth seems to be that dividing the family injures the child more than even minor abuse. For instance, a recent study of 15,000 cases indicates that maltreated children who are left in their own homes with little or no help end up emotionally and psychologically healthier, on average, than *comparably-maltreated* children placed in the foster system.[9] Such research suggests that, while there are times to come between the child and parent, we should be very cautious about doing so, and very hesitant to expand that interference.

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[3] *See* note 1 above.

[4] *See, e.g.*, Joseph J. Doyle, Jr., *Child Protection and Child Outcomes*, AM. ECON. REV., Dec. 2007, *available at* http://www.mit.edu/~jjdoyle/fostercare_aer.pdf; Joseph J. Doyle, Jr., *Child Protection and Adult Crime*, J. POL. ECON., Aug. 2008, *available at* http://www.mit.edu/~jjdoyle/doyle_jpe_aug08.pdf (both indicating that maltreated children placed in the foster system have poorer outcomes than comparably maltreated children who stayed home).

[5] *See, e.g.*, Pena v. Mattox, 84 F.3d 894, 899 (7th Cir. 1996).

[6] State v. Giroux, 47 P. 798, 801 (Mont. 1897).

[7] *See, e.g.*, Sabrina Luz & Enrique Ortiz, *The Dynamic of Shame in Interactions Between Child Protective Services and Families Falsely Accused of Child Abuse*, 3 INST. PSYCH. THERAPIES (1991); Anthony J. Urquiza & Cynthia Winn, U.S. Dep't Health & Human Srvcs., *Treatment for Abused and Neglected Children: Infancy to Age 18*, at 71-80 (1994) (also saying that 70% of child abuse investigations are of families with no abuse or neglect); Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 WM. & MARY L. REV. 413, 520-21 (2005); John C. Duncan, Jr., *The Ultimate Best Interest of the Child Enures from Parental Reinforcement*, 83 NEB. L. REV. 1240 (2005); RICHARD WEXLER, WOUNDED INNOCENTS: THE REAL VICTIMS OF THE WAR AGAINST CHILD ABUSE 12 (1995).

[8] *See, e.g.*, National Coalition for Child Protection Reform, *80 Percent Failure*, Dec. 7, 2008, http://www.nccpr.org/reports/cfpanalysis.pdf); Doe v. Lebbos, 348 F.3d 820, 834 (9th Cir. 2003) (Kleinfeld, J., dissenting) (relating how Lacey, who before being placed in the foster system was "pleasant, cooperative [and] normal," was afterward "diagnosed with Post Traumatic Stress Disorder, hearing voices, and suicidal ideation.").

[9] *See, e.g.*, National Coalition for Child Protection Reform, *The Evidence Is In* (updated June 3, 2009), *available at* http://www.nccpr.org/reports/evidence.pdf; Wendy Koch, *Study: Troubled Homes Better than Foster Care*, USA TODAY, JULY 3, 2007.

2. Power to Remove almost Any Child

a. Punishes Accidents

CHIPS consistently justifies taking the child from the home when the parent acts "negligently." Not maliciously. Not recklessly. Negligently. If a parent or caregiver accidentally does something that the bill targets, the State can take the child.[10] This can happen when the child is injured by, say:

- a Car Accident where the parent is cited;
- Tripping over a misplaced Extension Cord; or
- a Bike Accident where the parent neglected to enforce the helmet rule.

While such injuries can be severe, families already have to deal with their intrinsic pain and guilt. They shouldn't also have to deal with the State trying to divide the family. Negligence—the imperfections or uncertainties of normal life—shouldn't be an excuse to take away the child. The State should intervene only when serious injury is caused intentionally or recklessly.

b. Punishes Common Childhood Problems

CHIPS allows the State to remove a child who has problems with behavior, socializing, or academics. Specifically, it allows removal for things like 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, when that behavior or condition is age or developmentally inappropriate.[11]

Aggressiveness? Social withdrawal? A low ability to think or reason? The bill says such problems evidence "psychological, emotional, or cognitive injury." But many children have these problems. We can visit almost any grocery store or daycare center to see kids with a "failure or inability to control aggressive or self-destructive impulses." This bill threatens to take away all these kids—and potentially others too. Notice that psychological or emotional injury under CHIPS is "not limited to" the above list.[12]

And as with most of the bill, the legislation doesn't even require that such common problems be caused intentionally or recklessly. Instead, it allows child removal just because a parent accidentally allowed "psychological, emotional, or cognitive injury."[13] This broad authority would effectively give caseworkers the power to take away, at their discretion, a wide swath of children. Yet it fails to account for the severe harm that intervention causes the child.

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[10] *See* Ohio H.B. 371 (2009), at 2149-50; 2204-06; 2230-31; 2235-36; 2243-44; 2256-62; 2280-81; 3866-69.
[11] *Id.* at 2267-71.
[12] *Id.* at 2267.
[13] *Id.* at 2258-65.

c. Subjective Ideas of when the Child Is "in Need"

HB 371 allows child removal for psychological or emotional injury. But before a child is taken, CHIPS doesn't require that the injury be severe or chronic. It only requires a "substantial, observable, adverse effect" on the child's "behavioral, emotional, social, or cognitive performance or condition."[14] The problem is that, whether something's "adverse" or "substantial" is subjective—it's up to the inclination of the caseworker.

There's the same problem with the bill's use of "physical harm," which is defined to mean "physical injury, or . . . substantial risk of physical injury."[15] Not only does this mean different things to different people, but the Revised Code even says physical harm means any bodily "impairment, regardless of its gravity or duration."[16] That's any bump or bruise caused by anything. The bill itself even says it "includes, but is not limited to" things like a sprain, burn, or any "injury that requires medical treatment"—even if that injury is caused negligently.[17]

These standards of physical, psychological, or emotional injury could subject virtually any child to removal. That's insensitive to the trauma that state intervention causes the child. Children aren't helped when they're taken from home at the discretion of the caseworker. They're not helped when a mandatory reporter anxiously reports every trifling incident, for fear that she may lose her job otherwise.[18] Children are only helped when intervention is less harmful than non-intervention—which is much less often than under CHIPS.

d. Removal for almost Any Sex or Substance Abuse

HB 371 uses the same, overbroad "emotionally harmed" standard to judge whether the child has been harmed by substance abuse:

> failure or inability to control aggressive or self-destructive impulses, significant acting out or regressive behavior, social withdrawal, or inability to think or reason, when that behavior or condition is age or developmentally inappropriate.[19]

It's true that youth sex and substance abuse is a big problem, but this bill makes it worse. Proponents say CHIPS helps children who are, say, "forced to watch sexually explicit material on television or the Internet."[20] But they seldom talk about how CHIPS authorizes child removal when a parent simply allows or "negligently fails to prevent" a kid from smoking pot, having sex, or seeing sexually explicit media.[21] That's over 90% of Ohio high schoolers.[22]

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[14] Ohio H.B. 371 (2009), at 2263-64.
[15] *Id.* at 2147-48.
[16] *See* O.R.C. § 2901.01(A)(3); Merriam-Webster's Dictionary, 10th Collegiate Ed. (2000) (defining "injury" as "an act that damages or hurts").
[17] Ohio H.B. 371 (2009), at 2147-53; 2160; 2165. *See also id.* at 4828-31.
[18] *Id.* at 3057-74.
[19] *Id.* at 2292-2301.
[20] Rita Price, *Bill Refocuses Child-Welfare Laws*, COLUMBUS DISPATCH, Jan. 11, 2010 (citing CHIPS proponent Denise St. Clair, Exec. Dir., Nat'l Ctr. Adoption L. & Pol'y, Capital University Law School).
[21] Ohio H.B. 371 (2009), at 2280-91; 2204-06; 2245-57; 2230-31. *See also id.* at 2176-79.

e. Targets Discipline Methods

A law is totalitarian when it involves "strict control of all aspects of life."[23] CHIPS' approach to child discipline borders on totalitarian. It doesn't just focus on preventing harmful results. It also tries to prohibit certain childrearing *methods*.[24]

For example, the bill justifies child removal for things like: (a) making the child go without dinner;[25] and (b) restraining the child "in a cruel manner or for a prolonged period of time"—which could mean anything from strict timeout to earnestly restraining a destructive child.[26] The bill targets such childrearing methods even when they don't produce "[i]njury that requires medical treatment."[27] Thus, it's suggesting that certain childrearing methods are inherently harmful, whether or not they produce medically harmful results.

i. Subtle Spanking Ban

CHIPS justifies intervention for "corporal discipline that results in physical injury."[28] Recall that physical injury can mean any bodily "impairment, *regardless of its gravity or duration*."[29] That's a potential spanking ban. It doesn't matter how minor, how brief, or how insignificant the physical discipline is. Under this bill, the child can be removed for almost any little swat—whether used "to correct and restrain the child," or whether caused negligently.[30]

Moreover, the legislation allows child removal for "corporal discipline that results in . . . a substantial risk of physical injury."[31] So, the child can be taken if a caseworker believes in the "continuum theory"—the idea that spanking, no matter how mild, can "transform[ ]" the parent into a severe abuser.[32] Although some spanking opponents recognize that there's virtually no evidence of this continuum, the National Association of Social Workers teaches that it does exist.[33] Thus, some caseworkers would say spanking is on the "continuum" of abuse, creating "a substantial *risk*" worthy of child removal.

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[22] Office of National Drug Control Policy, Drug Policy Information Clearinghouse, *State of Ohio Profile of Drug Indicators*, Jan. 2008, at Chart 3, *available at* http://www.drugabusehelp.com/state/ohio.

[23] Merriam-Webster's Dictionary, note 16 above.

[24] Ohio H.B. 371 (2009), at 2147-98.

[25] *Id.* at 2175.

[26] *Id.* at 2180. The clinical research indicates that only two child discipline methods achieve a relatively high rate of compliance: spanking and barricading the child in a small room. *See, e.g.*, Mark W. Roberts & S.W. Powers, *Adjusting Chair Timeout Enforcement Procedures for Oppositional Children*, 21 BEHAV. THERAPY 257 (1990). Yet many would consider barricading to be cruel, and CHIPS would thus target both barricading and spanking. This would leave parents with no discipline method that's been shown to induce a relatively high rate of compliance.

[27] *See* Ohio H.B. 371 (2009), at 2165 (distinguishing such methods from injury that requires medical treatment).

[28] *Id.* at 1716-22. *See also id.* at 2147-51, 2163-64, 2166, 2170 (where terms could be subjectively applied to corporal discipline).

[29] *See* note 16 above and accompanying text (emphasis added).

[30] *Compare* Ohio H.B. 371 (2009), at 2147-48, *with id.* at 1716-22.

[31] *Id.* at 1716-22.

[32] *See, e.g.*, Elizabeth T. Gershoff, *Parental Corporal Punishment and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review*, 128 PSYCHOL. BULL. 539, 553 (2002).

[33] *Compare, e.g.*, National Association of Social Workers, *Physical Punishment of Children*, SOCIAL WORK SPEAKS Abstracts, *available at* http://www.socialworkers.org/resources/abstracts/abstracts/physical.asp, *with, e.g.*,

It's true that many researchers take opposing sides over the helpfulness of corporal discipline. Some say it encourages violence or other harmful behaviors. Others hold that this isn't what the research says, and note that youth violence and harmful behavior seems to rise when the frequency of spanking drops.[34]

But this debate among professionals doesn't address the ground-level problems with the bill. First, tearing apart the child's strongest natural bond causes the child severe psychological and emotional damage, more than is allegedly caused by corporal punishment.[35] And second, between 70% and 90% of children are spanked at some point in their lives.[36] Allowing removal of all these kids essentially allows child removal at the complete discretion of the caseworker.

f. The Fearsome Threesome: Casting the Net Wider

HB 371 creates a "fearsome threesome" of removable offenses: the lack of **(1) "necessary health care"; (2) education; and (3) "necessary care or supervision."** A finding that any one of these exists warrants state intervention, and could carry greater penalties than more common notions of abuse or neglect. These penalties include:

- removing the parent's right to Raise Mentally Ill Children;[37]
- allowing False Reports of a Fearsome Threesome offense;[38] and
- removing the parent's right to Consent before a child under 16 marries.[39]

i. Punishes Poverty & Allows Removal at the Caseworker's Discretion

The "necessary care or supervision" requirement would do two main things. First, it lets the State take a child for substandard food, clothing, shelter, or supervision. Essentially, children would be forcibly stripped from their families for poverty—a disturbing enough proposal.[40]

But more than that, the "necessary care or supervision" requirement allows child removal even when there's no law explicitly saying the child should be removed. That is, it lets the State intervene whenever a caseworker thinks that, "for any reason," there's a "substantial risk" that the child will one day be "in need of protective services."[41] Of course, "substantial risk" and

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MURRAY A. STRAUS & DENISE A. DONNELLY, BEATING THE DEVIL OUT OF THEM 285 n.6.2 (2001); U.N. Children's Fund (UNICEF), *A League Table of Child Maltreatment Deaths in Rich Nations*, 13, INNOCENTI REP. CARD NO. 5 (Sept. 2003) (citing U.S., Canadian, and U.K. studies); P. CAWSON, C. WATTAM, S. BROOKER & G. KELLY, CHILD MALTREATMENT IN THE UNITED KINGDOM 97 (2000).

[34] *See, e.g.*, Erica Goode, *Findings Give Some Support to Advocates of Spanking*, N.Y. TIMES, Aug. 25, 2001 (generally describing the positions of both sides); note 26 above; ROBERT E. LARZELERE, PH.D., SWEDEN'S SMACKING BAN: MORE HARM THAN GOOD 14 (2004).

[35] *Compare, e.g.*, notes 7-9 above; MARK E. COURTNEY, SHERRI TERAO & NOEL BOST, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH (2004) (all indicating that children who were taken into the foster system are harmed more than children from *comparable situations* who were not taken into the foster system).

[36] *See, e.g.*, Den A. Trumbull, M.D. & S. DuBose Ravenel, M.D., *Spare the Rod? New Research Challenges Spanking Critics*, 9 FAM. POL'Y 5 (Oct. 1996).

[37] Ohio H.B. 371 (2009), at 16,587-16,600.

[38] *Id.* at 9651-70.

[39] *Id.* at 10,053-60. *See also id.* at 9173-82; 17,184-97.

[40] *See id.* at 2395-2416.

[41] *See id.* at 2412-16.

"for any reason" can be interpreted differently by different people, and thus could threaten virtually any child, at the discretion of the caseworker.

ii. Non-traditional School Unprotected

CHIPS gives the State power to take a child who "has not regularly or timely attended school."[42] Yet it doesn't define "school," opening the door to harassment of children in non-traditional schools (*e.g.*, home, online, or correspondence schools).[43]

iii. The "One Professional" Healthcare Rule

HB 371 says a child lacks "necessary health care" when a court finds: (1) there's "disagreement between a licensed health professional . . . and a child's parent . . . as to the necessary course of health care treatment for that child"; and (2) the treatment advised by that professional "is substantially more beneficial to the child than the course of treatment preferred by the child's parent . . . ."[44]

This "one professional" standard sets up a unilateral system to remove children for medical reasons. All it takes is one health professional's opinion that there's a much better treatment. There's no consideration of the child's preference, even if the child is an adolescent. There's not even protection against that one professional's opinion being unreasonable or controversial.[45] Indeed, the bill already approves a controversial treatment, saying that a child can be taken for the parent's refusal to give the child "behavior modifying drugs."[46]

CHIPS makes this the standard regardless of a "sincerely held religious or spiritual belief or . . . any other reason."[47] Not having health insurance, then, would be "any other reason." Likewise, not being able to afford the co-pay would be "any other reason." And taking the contrary advice of another licensed medical professional would also be "any other reason."

This "one professional" standard is inconsistent with the protections proposed by many bioethicists. For instance, Gaylin & Macklin would add that, to override the parent's preference:

- the Medical Profession must Agree about the appropriate treatment; and
- the Expected Result must be a relatively Normal Life with reasonably good quality.[48]

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[42] Ohio H.B. 371 (2009), at 2343-94.

[43] *See id*. at 14,544-55.

[44] *Id*. at 2318-27.

[45] The proposal says it's limited to serious or life-threatening physical conditions. *Id*. at 2312-17. But this is essentially a statement of purpose, not an element of the "one professional" standard. If it were intended to affect only serious conditions, then the bill wouldn't allow removal for not giving the child "behavior modifying drugs."

[46] Ohio H.B. 371 (2009), at 2389-94.

[47] *Id*. at 2331-32.

[48] WHO SPEAKS FOR THE CHILD? THE PROBLEMS OF PROXY CONSENT (W. Gaylin & R. Macklin eds., 1982). *See also* Alexander A. Kon, MD, CM, FAAP, *When Parents Refuse Treatment for Their Child*, 8 JONA'S HEALTHCARE LAW, ETHICS, & REGULATION 5 (Jan./Mar. 2006).

Such standards recognize (contrary to the CHIPS rule) that intervening in the child's life should not be based on one professional's limited views, on debatable ideas of "better" treatment, or on matters that are less significant than the child's strongest and most natural social bond.

3. Civil Liberties Violated

HB 371 emphasizes that it couldn't be used to put parents in jail, and that it only affects parental rights under "civil law."[49] Technically that's true—a CHIPS finding does only take away the parent's civil rights. But they're significant rights, like:

- the right to Keep his or her Own Child,[50]
- the right to Shared Custody,[51]
- the right to Adopt,[52] and
- the right to be free from a Domestic Violence civil protection order.[53]

Simply saying that a law only affects civil rights doesn't make it all better. The fact remains that most loving parents would rather go to jail themselves than see their child forever torn away and raised by someone else.

The Ohio Supreme Court seemed to recognize this in 1997, when it said that a termination of parental rights is "the family law equivalent of the death penalty."[54] Indeed, the U.S. Supreme Court has held:

> Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by *at least* clear and convincing evidence.[55]

The Court recognized that dividing the family is so serious that it's subject to strong constitutional protection. One would think, then, that with the severe impact CHIPS can have on the child and family, HB 371 would come with strong constitutional protections—protections that approach criminal protections. Instead, it treats them worse than criminals.

a. Abandons the Principle behind "Innocent until Proven Guilty"

Under CHIPS, the State can make the parent prove there was no mistreatment. It starts by letting the State take the child based on a mere presumption that the child is "in need":

> 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

[49] *See, e.g.*, Ohio H.B. 371 (2009), at 39-41.
[50] *Id.* at 3959-96.
[51] *Id.* at 10,750-59.
[52] *Id.* at 10,152-94.
[53] *Id.* at 12,532-45.
[54] In re Hayes (1997), 79 Ohio St.3d 46, 48, (quoting In re Smith (1991), 77 Ohio App.3d 1, 16).
[55] *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982) (emphasis added).

> 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.[56]

So if a kid gets hurt, but the parent just doesn't know how, the State can presume there's been abuse, and take the child. Or if a kid falls off the jungle gym and gets hurt, but the caseworker doesn't believe that's what happened, there's a presumption of abuse, and the child can be taken.

Then, after the child is removed based on a presumption of "need," CHIPS makes the parent prove in court that the presumption was wrong:

> 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.[57]

Recall the Supreme Court's holding that, under the Constitution, the State must produce at least "clear and convincing evidence" before it can permanently severe the child from the home. But instead of meeting this burden, HB 371 simply redefines it. That way, the State doesn't have to produce any evidence of what, if anything, actually happened. If the parent doesn't know how the child was hurt, or if the State just doesn't believe the parent, that's enough.

b. Less than Probable Cause

HB 371 doesn't just take away constitutional due process *after* the State intervenes; it also lets state intervention *begin* unconstitutionally. To start, the Fourth Amendment to the U.S. Constitution requires Probable Cause before the State can intervene:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[58]

So, under the Constitution, before the State can interfere in the home, it must get a warrant, and that warrant must be based on Probable Cause. Indeed, Ohio's U.S. District Court said this applies to child welfare investigations, just as much as it applies to police investigations. If there's not Probable Cause, any intervention in the home violates the Constitution.[59]

Yet CHIPS allows less than Probable Cause. It lets the State into the home based on "reasonable grounds to believe," or even a mere "suspicion."[60] It allows intervention based on

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[56] Ohio H.B. 371 (2009), at 5230-35.
[57] *Id.* at 3853-58 (emphasis added).
[58] U.S. Const. amend. IV.
[59] Walsh v. Erie Cty. Dep't Job & Fam. Srvcs., 240 F.Supp.2d 731 (N.D. Ohio 2003).
[60] Ohio H.B. 371 (2009), at 2373-80; 3234-58.

"facts that may support"—not *probably* support, but *may* support—a finding of "need."[61] The bill even allows preemptive intervention, when it's reasonably suspected that the child "will become a child in need" sometime in the future.[62]

These standards are unconstitutional. And they fail to respect the child's psychological and emotional integrity, because they don't protect the child from needless intervention.

c. False Reports Allowed

In addition to not requiring Probable Cause to intervene in the child's home, HB 371 also weakens the false reporting statute. It only makes it illegal to falsely report physical, sexual, emotional, or substance abuse.[63] By omission, therefore, it protects any other false report. There's nothing stopping someone from vindictively reporting, say, a Fearsome Threesome offense. Instead of immunizing malicious reporters, the law should penalize them more harshly, and broaden their discovery without discouraging legitimate reports.

d. Undermines Ohio's Alternative Response Project

Ohio just launched the four-year Alternative Response Pilot Project, using $1.8 million from the federally funded National Quality Improvement Center on Differential Response in Child Protective Services. That is, we *just promised* to help the nation study the effect of *alternatives* to invasive child welfare investigations. This promise was a direct response to the success that other states have had with Alternative Response programs.[64]

Proponents of HB 371 strongly advertise CHIPS as the "next step" to Alternative Response.[65] Indeed, they've released a four-page summary of the bill, and the only thing in the entire summary that's bolded, underlined, and italicized is the statement: "***CHIPS will provide a strong legal and legislative foundation to support [Alternative Response].***"[66] This statement is misguided, because the bill directly contradicts Alternative Response.

Whereas Alternative Response is designed to minimize harmful state intervention, CHIPS would vastly expand it. We cannot, in good faith, tell the nation that we're using its money to study alternatives to state intervention, and at the same time expand the power of the State to intervene.

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[61] Ohio H.B. 371 (2009), at 5155-60. *See also id.* at 5200-04; 14,556-60.
[62] *Id.* at 5748-49.
[63] *Id.* at 9651-70.
[64] *See, e.g.*, Patricia Schene, Ph.D., *The Emergence of Differential Response*, 20(2-3) PROTECTING CHILDREN: DIFFERENTIAL RESPONSE IN CHILD WELFARE 7, 9 (2005).
[65] *See, e.g.*, Representative Connie Pillich, Sponsor Testimony on Ohio H.B. 371 (2009), Jan. 19, 2010.
[66] *See* note 1 above, at 4.

4. Conclusion

HB 371 says that state intervention "should always be balanced against the trauma that removal would cause the child."[67] But the bill denies this principle at almost every turn. Removal for accidents. Removal for common childhood problems. Removal for the child's aggressive impulses. Removal for low analytic skills. Removal for spanking or other common discipline methods. Removal for mere suspicions. Removal for possibilities. Removal for parental ignorance. Removal for presumptions. Removal based on no affirmative evidence.

CHIPS gives the State the power to chip away at the child's life for an excessive variety of reasons, and oddly, still says that it considers the trauma such intervention causes. Given what we're finding out about the effects of state intervention in the child's life—depression, stigmatization, higher crime, even psychosis or suicidal ideations—CHIPS would move the law in the wrong direction.

Proponents say it would give people more ability to challenge the State's child welfare actions.[68] Yet, a careful reading of the bill shows that this isn't the case. CHIPS leaves virtually no child welfare practice that *could* be challenged. Almost anything goes. By contrast, according to the U.S. Department of Health & Human Services, most state statutes only allow a family to be divided when there's "[s]evere or chronic" abuse or neglect.[69]

The ultimate test of any civilization is what it does with its children. Children aren't helped by when we undermine their civil liberties or violate the Constitution. And they certainly aren't helped by the needless psychological and emotional harm that HB 371 would allow.

It's true that we should protect children from serious danger by caregivers; but we should also protect them from serious danger by the State. If we truly have the child's best interests in mind, we'll respect the dangers on either side; and we'll recognize that what's easiest on the child welfare worker isn't necessarily what's easiest on the child.

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[67] Ohio H.B. 371 (2009), at 1745-47. *See also id.* at 1715-16 ("[C]hildren should have the chance to grow up in their own families if at all possible.").

[68] *See* note 20 above.

[69] Child Welfare Info. Gateway, U.S. Dep't Health & Hum. Srvs., *Grounds for Termination of Parental Rights*, http://www.childwelfare.gov/systemwide/laws_policies/statutes/groundtermin.cfm#fn2, updated Dec. 2, 2009.