

# Recommendations for a Differential Response Statutory/Rule Framework in Ohio

Prepared by the National Center for Adoption Law & Policy



# TABLE OF CONTENTS

---

I. Introduction .....	3
II. Summary of Recommendations .....	5
III. Project Research .....	6
IV. Legal, Practice, and Field Research Conclusions That Informed Drafting of Recommendations. 10	
Ohio Legal Review.....	10
V. Recommendations .....	14
1. Ohio Revised Code Sec. 2151.01 Construction; Purpose .....	14
2. Ohio Revised Code Sec. 2151.011 Definitions .....	19
3. Ohio Revised Code Sec. 2151.412 Case plan for each child; changes; priorities; .....	23
4. Ohio Revised Code Sec. 2151.421(F)(1). Duty to report child abuse or neglect; investigation and follow-up procedures.....	26
5. Ohio Revised Code Sec. § 2151.022 Response to Accepted Reports of Child Abuse and Neglect .....	27
6. Ohio Revised Code Sec. 2151.4211 (suggested citation). Family Assessment Response; purpose and procedure .....	33
Additional Suggestions .....	37
Issues to Flag.....	37
Amendments to the Ohio Administrative Code .....	38
Next Steps .....	39



## I. INTRODUCTION

Under the direction of the Supreme Court of Ohio’s Advisory Committee on Children, Families, and the Court’s Subcommittee on Responding to Abuse, Neglect, and Dependency, and as part of Ohio’s Alternative Response Pilot Project (Pilot Project), the National Center for Adoption Law & Policy (NCALP) conducted research on Ohio and national law and practice and developed a set of recommendations for revising current State law to ensure that Ohio’s statutory and administrative rule framework is consistent with an alternative response approach to child protection policy and practice.

The project research encompassed a review of current Ohio law and administrative rule, as well as the laws of other states using alternative response practice approaches, analysis of the interim rule under which the Pilot Project operates, scholarship on best practices in differential response, materials generated during the Pilot Project, and field interviews of alternative response agency staff and Ohio Department of Job and Family Services (ODJFS) policy staff. This broad-based research was aimed at the development of a statutory framework for the alternative response approach going forward to statewide implementation that is both informed by lessons learned through the Ohio experience and consistent with the most promising practices identified in other alternative response jurisdictions.

This report contains recommendations for statutory reform and suggestions for administrative rule revisions that capture- current thinking in relation to alternative response in a framework for practice built on the successes of and wisdom gleaned from the Pilot Project work. The report includes:

- Summaries of the research, both legal and practice-based, that guided the development of the recommendations;
- Detailed recommendations with supporting rationale; and
- Suggestions for additional changes to or areas for study of Ohio law and practice that are outside the scope of this project.

## II. SUMMARY OF RECOMMENDATIONS

The full text of the recommendations for changes to the Ohio Revised Code (ORC) appears in Section V of this report. The following is a summary of recommendations for revisions to the ORC.

1. An implementing statute directing phased-in statewide adoption of a differential response approach under a specified timetable should be added to the ORC. This provision should include the establishment of differential response as Ohio's child protection practice approach and specify two differential response pathways: "Family Assessment Response (FAR)," representing the pathway that is now referred to as "Alternative Response," and "Investigative Assessment Response (IAR)," representing the pathway that is currently referred to as "Traditional Response." This provision should contain a clear statement of the philosophy underpinning a differential response approach, as well as a preference for an FAR approach in cases not requiring an investigative approach in order to preserve child safety and well-being.
2. The ORC should be amended to include clear definitions for Ohio's differential response child protection approach and the FAR and IAR pathways used under that approach.
3. Consideration should be given to amending the ORC to allow for greater flexibility in relation to juvenile court jurisdiction and case planning in cases assigned to the FAR approach in specified circumstances, *without* the necessity of reassigning the case from an assessment to an investigative response pathway.
4. Ohio's child abuse and neglect reporting statute (ORC § 2151.412) should be amended to add an exception to the 24-hour investigative response directive applicable to reports of abuse or neglect to allow for an assessment response for cases assigned to the FAR pathway within the timeframe set for response in FAR cases.
5. The ORC should be amended, in the context of the differential response approach, to provide for certain types of reports to receive mandatory assignment to the IAR pathway, including reports of physical abuse that results in serious injury or that creates a serious and immediate risk to a child's health and safety; sexual abuse; a suspicious child fatality; and reports requiring specialized assessments, third-party investigations, or involvement of a child advocacy center. Other reports should be statutorily authorized for assignment to FAR or IAR at the discretion of the public children services agency (PCSA).
6. A new section outlining core practice in FAR cases, based in part upon Ohio's Alternative Response Pilot Project interim rule language and, in part, on the statutes of other alternative response/differential response states, should be added to the ORC.



### III. PROJECT RESEARCH

Preparatory to drafting recommendations for statute/rule reform, NCALP conducted extensive research on Ohio law and policy, and other states' laws, policies, and practice. This research included:

- A review of law and practice in other alternative response states,<sup>1</sup> looking not only at state codes, but also at regulations and practice manuals in each state, to help guide the development of Ohio-specific recommendations. In relation to this research, NCALP:
  - Created a compilation of state statutes and regulations;
  - Identified supportive practice tools within each alternative response jurisdiction, such as manuals and policy guides;
  - Reviewed specific state statute legislative history, where indicated; and
  - Prepared a comparative state-by-state analysis.

---

<sup>1</sup> Although at least 17 states are using some form of differential response practice, NCALP selected for close study only those states with practice approaches closely resembling that used by the Ohio Alternative Response Pilot Project. These states are: Minnesota, Missouri, North Carolina, Louisiana, Tennessee, Virginia, Wyoming, and Oklahoma.

- A detailed review of the ORC and the Ohio Administrative Code (OAC), including:
  - Identification of provisions that will be impacted by statewide implementation of an alternative response approach; and
  - Identification of “missing provisions” required or recommended to support an alternative response approach.
- A review of practice literature for identification of promising practices and components that should be reflected in an alternative response statutory/regulatory framework.
- Compilation of information from the Ohio Alternative Response Pilot Project. In relation to this research, NCALP:
  - Reviewed Pilot Project chronicles.
    - Reviewed records of Pilot Project Workgroups, Leadership Council meetings, Transition Task Team conference calls and Design Workgroup meetings.
    - Reviewed the interim Pilot Project statute and rules.
    - Reviewed the Mid-Pilot Chronicle Report.
  - Attended Leadership Council Meetings.
  - Reviewed the “Alternative Response Fundamentals in Support of Ohio’s Child Protection Model” approved by the Leadership Council.
  - Conducted follow-up focus sessions/interviews in all 10 Pilot Project counties using a set of questions aimed at eliciting feedback to assist in developing recommendations responsive to issues identified during the Pilot Project.

In its review of current law relating to alternative response practice nationwide, NCALP sought to identify:

- All states that use a differential response practice approach.
- The status of alternative response in each state identified (pilot or established program).
- The extent of alternative response in each state identified (i.e., alternative response used statewide or limited to specific counties).
- The particulars of the alternative response approach used in each state identified, including:
  - Whether the approach closely resembles Ohio’s;
  - Whether the approach is similar to Ohio’s but relies heavily on private, community-based partners to provide some or all of their alternative response services (as compared to Ohio practice, in which the child protective services (CPS) agency is still responsible for completing the assessment);

- Whether alternative response is in pilot or planning stages;
- Whether a defunct or discontinued approach still may offer useful insights; and
- Whether the approach is consistent with the approach Ohio has adopted or national standards for differential response.
- The statutory/rule/policy framework for alternative response practice in each state identified as compatible with the Ohio approach and the treatment of the following topics, such as whether the topic was explicitly addressed and, if so, where the topic was found (statute, rule, or policy document):
  - Statements of intent or purpose
  - Authorizing language
  - Definitions
  - Screening of reports of child maltreatment
  - Pathway assignment
  - Case timeframes
  - Notice requirements
  - Assessment process
  - Required services
  - Central registry
  - Case record requirements
  - Findings or determinations made after assessment
  - Re-tracking cases from alternative response to traditional track, and vice versa
  - Staffing
  - Court involvement
- Provisions that appeared to be particularly appropriate for inclusion in Ohio statute, rule, or practice guidelines due to compatibility with the Ohio approach philosophy, Alternative Response Pilot Project rule, or feedback from the Pilot Project counties.

NCALP reviewed all Ohio child-protection-related statutes and rules to assess their compatibility (or lack thereof) with alternative response practice or philosophy. In addition, the structure and format of the code was reviewed to identify any barriers to an effective alternative response practice approach. Finally, attention was given to identifying gaps in the statutes and rules — i.e., topics important to alternative response that are missing or incomplete.

NCALP's review of practice literature and other resources for identifying promising practices and components that should be reflected in an alternative response statutory/regulatory framework included the following sources<sup>2</sup>:

---

<sup>2</sup> A complete list of references consulted in the review of practice literature is attached.



- The American Humane Association’s website pages on differential response and all resources and alternative response state project reports accessible through those web pages (<http://www.americanhumane.org/protecting-children/programs/differential-response/differential-response-resources.html>)
- National Quality Improvement Center on Differential Response in Child Protective Services’ website and all resources accessible through that site, including:
  - Differential Response in Child Protective Services: A Legal Analysis (<http://www.differentialresponseqic.org/assets/docs/differential-response-in.pdf>)
  - Online Survey of State Differential Response Policies and Practices: Findings Report (<http://www.differentialresponseqic.org/assets/docs/qic-dr-findings-report-jun09.pdf>)
  - Differential Response in Child Protective Services: A Literature Review (<http://www.differentialresponseqic.org/assets/docs/qic-dr-lit-review-sept-09.pdf>)
- National Conference of State Legislatures
  - Differential Response State Enacted Legislation as of June 2009 (<http://www.ncsl.org/default.aspx?tabid=17800>)

NCALP’s research in relation to existing Ohio Alternative Response Pilot Project materials included review of the following materials:

- The Pilot Project Chronicle
- The Pilot Project implementing statute
- The Pilot Project interim rule
- The “Alternative Response Fundamentals in Support of Ohio’s Child Protection Model” approved by the Leadership Council

NCALP also conducted interviews with targeted staff in each Ohio Alternative Response Pilot Project county. This field research elicited opinions on areas in which specific guidance, either in statute, rule, or policy, is needed. Staff were also asked to provide input on such things as: statutes, rules, or policies that hinder or assist alternative response practice; terminology preferences; categories that should or should not be required to be assigned to the traditional response pathway; pathway re-tracking; alternative response practices that should be applied to all accepted reports; and whether the statutes currently would allow an alternative response case to become court-involved without losing status as an alternative response case.



## IV. LEGAL, PRACTICE, AND FIELD RESEARCH CONCLUSIONS THAT INFORMED DRAFTING OF RECOMMENDATIONS

### Ohio Legal Review

Preliminary conclusions from the review of Ohio child protection statutes and administrative code provisions that guided the development of statutory recommendations included the following:

- Current Ohio child protection law allows only for an investigative response to reports of child abuse, neglect, or dependency. Rather than adding an alternative, or secondary, response option to this “one size fits all” approach, consideration should be given to amending the ORC to establish an overarching differential response model that allows for assignment of cases to either an assessment or investigative response. Creating a separate code section establishing the framework for cases assigned to an assessment pathway,

similar to that currently applicable to investigated cases, within the statutory framework for a differential response systemic approach would be the preferred approach for ORC reform. Amending all existing statutes and rules that apply to traditional case investigations and practice that are inconsistent with differential response to incorporate dual-track directives is not practical and may lead to confusion in application; for clarity, separate provisions specific only to differential response cases assigned to an assessment pathway should be added to the statutes and rules.

- Otherwise, most of Ohio’s child-protection statutes, to the extent that they apply only to an investigative approach, do not need to be altered. A few, however, will require revision for consistency with a differential response approach, including those related to case-planning.

### Review of law and practice in other alternative response states

Although 17 states are using some form of differential response practice, NCALP selected for the closest study only those states with practice models closely resembling that used by the Ohio Alternative Response Pilot Project. These states are: Minnesota, Missouri, North Carolina, Louisiana, Tennessee, Virginia, Wyoming, and Oklahoma.

- Of these eight states, seven include authorizing language and/or policy statement in statute rather than administrative rule.
- States have taken widely different approaches in drafting their alternative response legislative scheme. Some states’ codes, such as those of Tennessee and Minnesota, contain detailed statutory provisions, while other states, such as Virginia, only address the core tenets of differential response in statute, leaving detailed process and requirements to administrative rule. Many states set forth and define the available responses within a comprehensive definition statute.
- According to the National Quality Improvement Center on Differential Response, and review of alternative response state law and policy, a core component of a differential response approach is that the identity of individuals receiving an assessment response are not entered into the state central registry system. The majority of differential response/alternative response states have taken this approach, while Vermont has taken a different approach by creating a tiered registry to “balance the need to protect children and the potential employment consequences of a registry record.”<sup>3</sup>
- All eight states permit a case originally assigned to an assessment or differential response to be later re-tracked to an investigative response, if appropriate. At least three of these states also permit a case originally assigned to investigation to be re-assigned to assessment as well.

---

<sup>3</sup> Vt. Stat. Ann. Tit. 33 § 4911.

- Most of these states integrate elements of differential response/alternative response throughout their statutory scheme. However, Virginia and Tennessee have a single statute that outlines the core elements of the differential response/alternative response instead of integrating the elements throughout other code sections.

### Field Interviews

Conclusions from interviews with Pilot Project county staff include:

- In general, agency staff approve of the Pilot Project rules; they offered few suggestions for change.
- Staff believe that current statutes and rules do not pose a great barrier to an alternative response approach.
- There was no consensus regarding terminology for the systemic practice approach and the individual responses within the system. Many workers preferred retaining “alternative response” as the name for the approach, since it is now familiar throughout Ohio and a change in terminology could create confusion. Others were open to changing the terminology now, prior to further implementation, to more accurately describe the system and two distinct response pathways.
- Agency staff believe that the interim pilot rule regarding what cases are required to be assigned to an investigative pathway provides sufficient guidance. Workers like the flexibility of the pathway assignment requirements, which permits discretion as to which cases to assign to alternative response. Some staff raised concerns regarding the appropriateness of pathway assignment to alternative response of certain cases, including sexual abuse cases, serious drug addiction cases, and cases involving domestic violence.
- Agency staff believe that cases should be permitted to be reassigned from the alternative response pathway to the traditional response<sup>4</sup> pathway, and vice versa. There was some concern that allowing traditional response cases to be re-tracked to the alternative response pathway may lead to alternative response becoming a “dumping ground” for traditional response cases.
- Agency staff would like to see extended timeframes applicable in alternative response cases (45 days to conduct the assessment, for example) implemented for all cases, as longer timeframes allow caseworkers more time to get to know the family and fosters family engagement in sound decision-making.

---

<sup>4</sup> Although recommendations as to changes in terminology are made herein, throughout this report, terminology used in the Ohio Alternative Response Pilot Project, such as “alternative response” and “traditional response,” is retained when reporting comments from field interviews.

- Most agency staff believe that if they need or desire to have court involvement in an alternative response case, it can be done, but would involve creating a case plan, which is not currently permitted within SACWIS for alternative response cases. Agency staff admittedly had never tried seeking court involvement in an alternative response case (other than by re-tracking to traditional response), but suggested this be an option to be explored in the future.
- Staff strongly suggested that a minimal statutory framework for an alternative response approach is preferable for maintaining maximum flexibility as alternative response practice expands statewide; detailed practice guidance is better left to rule and policy documents.
- Topics identified for inclusion in statute:
  - Statement of intent or philosophy
  - Implementing language
  - Mandatory pathway assignment
  - Definitions for key terms
  - Process in cases with court involvement
  - Reassignment from one response pathway to another
  - Initial family contact timeframe
- Topics identified for inclusion in rule:
  - Timeframes (other than for initial family contact)
  - Notice requirements
  - Assessment process
  - Services potentially available to families
  - Case record requirements and processes
  - Detailed guidance for pathway reassignment



## V. RECOMMENDATIONS

### 1. Ohio Revised Code Sec. 2151.01 Construction; Purpose

***Amend to include an implementing statute directing the establishment of a systemic differential response approach to child protection in Ohio. This statute should contain a clear statement of the philosophy and goals of the differential response approach, provide for two response pathways, and set a preference for a FAR in cases not requiring an IAR in order to protect child safety and well-being. The statute should also set a timeframe for statewide implementation of differential response.***

#### **Rationale**

Establishment of a systemic differential response approach in an implementing statute will underscore that an assessment response to a report of child maltreatment is not an alternative, or secondary, option and will reinforce Ohio's commitment to a child protection system that is family-centered and responsive to individual needs. Establishing a preference for an assessment response in cases where an investigative response is not required for child safety

further emphasizes the paradigm shift to family partnering. Finally, inclusion in the implementing statute of a reasonable timeframe for statewide phased-in expansion that is based on recommendations from the Final Report of the AIM team will highlight the importance attached to this change in approach and set the pace for timely training and systems modification.

This section should also include language that emphasizes the philosophical underpinnings of a differential response child protection approach as articulated in the Guiding Principles of the Ohio Alternative Response Pilot Project — specifically, that CPS intervention in all cases, regardless of response pathway assignment, seeks to engage families through practices that:

- Focus first on child safety;
- Are child-centered and family-focused;
- Identify families’ strengths and needs by emphasizing the engagement of families; and
- Are aimed at achieving child safety through active, collaborative, and respectful engagement of parents, family, community, and all other CPS stakeholders.

Proposed HB 371 (Child in Need of Protective Services, or “CHIPS”), introduced in the Ohio House of Representatives in fall of 2009, amends ORC Section 2151.01 by replacing it with two new code sections that set out a clear statement of intent for Chapter 2151, Ohio’s child protection statutes. Proposed Section 2151.02 respects the constitutional protection afforded to the parent-child relationship while also recognizing a child’s need for safety and well-being, and seeks to guide decision making when the State is justified in intervening on behalf of the child. Proposed Section 2151.021 articulates the overall philosophy and goals of Ohio’s child protection system as highlighted above.

It is recommended that any proposed amendments to the ORC include the two proposed code sections above from HB 371 (2151.02 and 2151.021). It is further recommended that an additional subsection be added to proposed Section 2151.021 which provides a statutory preference for a FAR in cases not requiring an investigative assessment response.

### National Statutory Research Findings

- Of the eight states examined, the majority include a statement of intent in their statutes. Two states, Oklahoma and Virginia, reserve such language for the administrative code. For example (emphasis added):
  - Minnesota Stat. § 626.556. Reporting of Maltreatment of Minors.
    - (Subdivision 1. Public Policy) The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be

jeopardized through physical abuse, neglect, or sexual abuse. *While it is recognized that most parents want to keep their children safe, sometimes circumstances or conditions interfere with their ability to do so. When this occurs, families are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child maltreatment.* In furtherance of this public policy, it is the intent of the legislature under this section to *strengthen the family* and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children. In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; *to require a family assessment, when appropriate, as the preferred response to reports not alleging substantial child endangerment;* to require an investigation when the report alleges substantial child endangerment; and to provide protective, family support, and family preservation services when needed in appropriate cases.

- Tennessee Code Sec. § 37-5-602. Purposes.
  - The purposes of this part are to safeguard and enhance the welfare of children and to preserve family life, by preventing harm and sexual abuse to children and by *strengthening the ability of families to parent their children effectively through a multi-level response system using available community-based public and private services.* It is intended that the department perform its function under this part pursuant to the belief that families can change the circumstances associated with the level of risk to a child, when they are provided with intensive and comprehensive services tailored to their strengths and needs. *The department's fundamental assumptions shall be that most children are better off with their own families than in substitute care, and that separation has detrimental effects on both parents and children. Whenever possible, preservation of the family should serve as the framework for services, but, in any case, the best interests of the child shall be paramount.*
- Particular attention should be given to Minnesota's statement of intent, which includes a statutory preference for an assessment in cases not requiring an investigative response. The inclusion similar language in Ohio law will emphasize the practice philosophy that families are best served by systemic collaboration to identify and build upon their strengths in order to keep their children safe.



## Literature Review Findings

Over the past decade, a rapidly growing number of states have implemented differential response systems either statewide or through pilot projects in select counties. From 1998 to 2009, the number of states utilizing differential response, either statewide or in pilot status, more than doubled — from 7 in 1998 to 18 in 2009 (National Quality Improvement Center on Differential Response [QIC-DR], 2009). As the practice has grown, so has the body of literature exploring the implementation, outcomes, and overall impact of differential response systems. Practice findings to date largely reflect favorable outcomes in relation to child safety, parental engagement, and service provision (Schene, 2008).

In part, these outcomes flow from a systemic structure that provides flexibility for child protection agencies to tailor their responses to reports of child maltreatment in accord with the circumstances and level of risk presented. Eight “core elements” of differential response were identified by Merkel-Holguin, Kaplan, and Kwak (2006) through a comprehensive national review of states’ differential response models. Three of these core elements include:

- “The use of two or more discrete responses of intervention”;
- “The creation of multiple responses for reports that are *screened in and accepted for response*”; and
- “The establishment of multiple responses is codified in statute, policy, and/or protocols” (Merkel-Holguin, Kaplan, and Kwak, 2006, cited by the QIC-DR, 2009).

A statutory framework that authorizes more than one type of child protection response establishes a systemic structure that is inherently more responsive to individualized family needs. Federal data reflects that most child protection interventions do not result in either substantiated findings or court involvement (U.S. Department of Health and Human Services, Children’s Bureau, 2007). The investigative process is most critical when criminal proceedings or the likely involvement of juvenile court is anticipated (Johnson, Sullivan Sutton, & Thompson, 2005). In other circumstances, the investigative approach may be less effective in engaging and serving at-risk families. Several evaluations of differential response systems have found increased satisfaction among both families and workers with a family assessment approach, increased numbers of families participating in voluntary services, and decreased numbers of referrals to child protection (QIC-DR, 2009).

An effective differential response system relies on the quality of practice in each response pathway. There are inherent commonalities that must bridge all child protection responses, including a central focus on child safety and well-being and an emphasis on permanency within the family whenever possible (Child Welfare Information Gateway, 2008). Supportive casework practice is vitally important in all child protection responses. Dumbrell (2006) found that voluntary child welfare clients frequently experienced feelings of “power being wielded over

them” just as involuntary clients did. Dumbrill’s study found that parents were more likely to act in partnership with workers when they perceived that the child protection agency’s power was being used to assist and support rather than to control them. A clear statement of philosophy underpinning the entire system of practice will underscore the critical common elements that are central to child protection, regardless of pathway assignment.

While establishing the foundation for the overall differential response system, a clear articulation that the FAR is the preferred approach for cases not requiring an investigative response will support the institutionalization of the practice on a statewide basis. As Kirk (2008) states, “One of the overarching policy objectives of differential response is to develop a cooperative, caring, and voluntary relationship with families who may benefit from services such that the risk of future abuse or neglect is reduced.” In 2005, based on the positive outcomes demonstrated through the state’s pilot evaluation, the Minnesota state legislature codified Minnesota’s two-pathway differential response system with a stated emphasis on utilizing the family assessment approach when an investigation was not required (Johnson, Sullivan Sutton, & Thompson, 2005).

Finally, practice literature also indicates that many states implementing differential response have done so through a phased-in approach, where the practice is established over time (QIC-DR, 2009). There is substantial support for a multi-year phased-in approach demonstrated by the experiences of other states, including Missouri, Minnesota, and North Carolina (Loman & Siegel, 2004; Center for Child and Family Policy, 2006). Conversely, in its review of the literature, the National Quality Improvement Center on Differential Response (2009) found in two unpublished reports that Kentucky, which implemented differential response on a statewide basis with no pilot period, had “difficulty implementing it consistently.” An articulated timeline for statewide implementation will support a comprehensive change process while establishing a clear expectation that the practice will be implemented on a statewide basis.

### Field Research Findings

- The vast majority of county participants voiced approval for an alternative response approach and indicated that alternative response had made a positive impact on their practices. Participants noted that a shift in focus from allegations to family needs has allowed workers to concentrate on family dynamics and provide more meaningful services.
- Many participants commented that an alternative response approach empowers families to ask questions and become active in their cases.
- The majority of participants also noted that the alternative response approach does not make children any less safe. One case worker from Fairfield County stated, “Taking concentration off of the allegation, removal of labels, focusing on the family system, and having longer timeframes will take you miles farther with families.” A Fairfield County

supervisor stated, “Building a positive relationship and partnering with families is beneficial to both families and the community and keeps kids safe.”

- Participants were asked if Ohio statute should specify a preference for an assessment response to be used in those cases that do not require an investigation, similar to Minnesota law. The majority of county alternative response workers, supervisors, and administrators responded that they would like to see similar language in Ohio statute. One participant noted, “It is social work and we are trying to get away from the punitive nature of children’s services, so it should be the preferred response to a case.”
- A few participants did not believe that there should be a statutory preference for an alternative response, with one preferring “suggested response” to “preferred response.” Another participant believed that preference language could require counties to use an alternative response FAR for all cases that qualify and expressed concern that her agency currently does not have the capacity to handle the corresponding caseload. Two participants did not voice an opinion regarding the preference language.
- ODJFS policy staff suggested that the alternative response statute should not state a preference for the use of an assessment response in cases that are not required to be placed in an investigative pathway until full statewide implementation. Policy staff were also concerned that a preference for assessment response in statute may have legal ramifications if all counties cannot implement alternative response in the same way due to limited resources.

## 2. Ohio Revised Code Sec. 2151.011 Definitions

***Amend to include new definitions for Ohio’s child protection differential response approach and dual response pathways, “Family Assessment Response (FAR),” representing the pathway that is now referred to as “alternative response,” and “Investigative Assessment Response (IAR),” representing the pathway that is currently referred to as “traditional response.”***

### Rationale

“***Differential response***” is the term most widely used to describe an approach that allows child protection workers to respond in different ways to reports of abuse and neglect based on safety and risk analysis of factors including the nature and extent of the harm to a child. This is the term of choice in literature and materials developed by leading national child protection organizations, including American Humane and the National Quality Improvement Center on Differential Response in Child Protective Services. The term “alternative response” connotes a practice that is a substitute for a less conventional approach. The term “differential response” is more accurately descriptive of the system envisioned for Ohio and will allow for the addition of other response tracks as appropriate over time. Changing the name now will provide

consistency with national terminology and will more accurately reflect the core tenets of the practice approach. The term “differential response” is used throughout the remainder of this section to refer to the recommended systemic approach.

**“Family assessment response”** — a term used by several states to refer to what is now called “alternative response” in Ohio — more accurately describes the actions taken by an agency when responding to a report assigned for assessment rather than investigation. The term “alternative response” implies a *substitute* way of engaging families, where possible, rather than the *preferred* method when investigation is not required.

**“Investigative assessment response”** “is a term that more accurately describes a response resulting in a determination or finding in relation to an accepted report, while still emphasizing that the approach to assessment is broader than the allegation itself. Many states utilizing a differential response approach refer to their traditional response pathway as an “investigation.” This term, however, can carry a negative connotation for families and may deemphasize the goal of a holistic assessment approach. The term “investigative assessment response” reflects the shift in practice that Ohio has embraced while integrating a comprehensive assessment process into all child maltreatment investigations, but still captures the distinction from both a FAR and a law enforcement investigation.

### National Research Findings

- All states studied employ the terms “investigation” and “assessment” in referring to pathway responses. The following are specific labels used:
  - North Carolina: “family assessment response” and “investigative assessment response”
  - Minnesota, Missouri, and Virginia: “family assessment and investigation”
  - Oklahoma, Tennessee, Wyoming, and Louisiana: “assessment and investigation”
- Most states specify a dual-pathway response, although some states have opted to add additional response pathways.
  - Minnesota Stat. Sec. 626.556, subd. 10, provides that the local welfare agency may, upon receipt of a report, conduct either “a family assessment or an investigation as appropriate to prevent or provide a remedy for child maltreatment.” According to Minnesota’s Child Maltreatment Screening Guidelines, in some counties limited services, including information and referral, may be offered as a response to reports that do not qualify for investigation or family assessment. These services are voluntary and provide short-term support.
  - Tennessee Code Ann. Sec. 37-5-04(a) provides for: (1) investigation of the report of harm, which includes a determination of whether there exists a threat of harm,

- identification of the person responsible for the harm, and adhering to all other statutory requirements for a “traditional response” to a report of harm; (2) assessment of the child and the family’s need for and referral to available community-based public or private services; (3) referral for available community-based public or private services without assessment or investigation; or (4) no further action by the department.
- Of the states closely reviewed, only Minnesota has a statutory preference for a FAR. Minnesota’s law is drafted to “require a family assessment, when appropriate, as the preferred response to reports not alleging substantial child endangerment; to require an investigation when the report alleges substantial child endangerment; and to provide protective, family support, and family preservation services when needed in appropriate cases.” (Minnesota Stat. Sec. 626.556, subd. 1.)
  - Other states, while not specifically stating a preference for a FAR in statute, use language strongly suggesting a preference for maintaining family integrity while assessing for services, with the investigative pathway reserved for those cases in which an assessment approach is not possible.
    - Louisiana Child. Code Ann. art. 726 has as a directive “to protect the integrity of the family by authorizing adjudication and the imposition of a dispositional judgment requiring participation in a plan of services **only after** all available voluntary alternatives have been exhausted.”
    - Tennessee Code Ann. Sec. 37-5-602(s) states that “The department’s fundamental assumptions shall be that most children are better off with their own families than in substitute care, and that separation has detrimental effects on both parents and children. Whenever possible, preservation of the family should serve as the framework for services, but, in any case, the best interests of the child shall be paramount.”
  - North Carolina uses the term “investigative assessment response,” which is descriptive of the response used in the Ohio Pilot Project. Also instructive for the development of an Ohio definition are the laws of Minnesota, Oklahoma and Virginia. For example, Minnesota Stat. Sec. 626.556, sub. 2 states:

“(b) ‘Investigation’ means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed.”
  - The term “family assessment response” is also used in North Carolina. Minnesota and Illinois, which have identical statutory definitions for their assessment responses, provide a base for the development of Ohio’s definition for that term:

“Family assessment” means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

### Literature Review Findings

A number of states have established differential response structures with two principal pathways. In a review of state differential response models from 2006, 13 of 15 differential response states were identified as having two response pathways for accepted reports of child maltreatment (Merkel-Holguin, Kaplan, and Kwak, 2006). A comprehensive literature review conducted by the National Quality Improvement Center on Differential Response (2009) states, “Differential response typically has two pathways to serve families: 1) an investigation pathway, and 2) a non-investigation pathway. The non-investigation pathway has also been called *alternative response*, *family assessment response*, and similar titles by various jurisdictions in their implementation processes.”

Other jurisdictions’ experiences indicate that, over time, the percentage of cases assigned to the non-investigation pathway will grow as workers become more comfortable with the approach and more confident that this pathway does not compromise safety (QIC-DR, 2009). A longitudinal study of Minnesota’s system found that from 2001 to 2005, the percentage of cases assigned to the non-investigation pathway grew from 36% to 51%, and some of the most experienced counties in Minnesota were assigning nearly 80% of reports to the non-investigation pathway (Siegel & Loman, 2006). Evaluation studies in Virginia and North Carolina also revealed significant growth in the use of the non-investigation pathway over time (Virginia Department of Social Services, 2005; Center for Child and Family Policy, 2006). Such experiences suggest that although the non-investigation pathway may first be implemented as an *alternative* to the traditional child protection response, this pathway may eventually become the primary response. Pathway terminology should be carefully selected in anticipation of a longer-term change process. For example, although Minnesota started as an “alternative response” state at the outset of its pilot, the state eventually codified the approach as the “family assessment response” (Institute of Applied Research, 2006).

### Field Research Findings

- There were many opinions regarding the terminology that should be used going forward to describe the alternative response approach and each individual response pathway. The majority of those interviewed believed that the overall approach should be “differential response,” but many believed that the approach should continue to be called “alternative

response,” as it may be “too late” to change the name. Other suggestions for a systemic name included “strengthening families,” “empowering families,” and “multiple response.”

- In relation to the response pathway currently known as “alternative response,” the majority of believed that the pathway name should be changed, as the word “alternative” suggests a substitute way of conducting assessments, which is inconsistent with the expectation that alternative response will become the preferred response. Although there was no consensus on renaming the pathway, there were multiple suggestions offered, including “family engagement,” “family assessment,” “assessment,” and “family-directed response.”
- In relation to the response pathway currently referred to as “traditional response,” the majority of interviewees believed that the name should be changed because this will not be the preferred response in the future and the word “traditional” connotes that the response is antiquated or outdated. However, there was no general consensus on a new pathway label. Some participants suggested calling this response an “investigation,” while many others did not like this term because it may connote police involvement, which is not necessarily part of an investigative response. Other suggestions included “assessment,” “immediate response,” “front-line response,” and “dispositional assessment.”
- Policy staff suggested that the systemic approach be called a “Differential Response System,” with the pathway currently known as alternative response referred to as “differential response assessment” or “differential response engagement,” and the pathway currently known as traditional response renamed “investigation assessment.”

### 3. Ohio Revised Code Sec. 2151.412 Case plan for each child; changes; priorities;

**Amend to allow for flexibility in family assessment response (FAR) cases in which there is court participation, *without* the necessity of reassigning the case from an FAR pathway to an investigative assessment response (IAR) pathway. Specifically, Amend § 2151.412 to provide an exemption for the creation of a case plan in cases in which the juvenile court orders protective supervision in relation to a child under the jurisdiction of the court for a non-abuse or neglect-related reason, such as truancy or unruliness, and in which the child’s family is involved in a case assigned to a FAR and a Family Services Plan is in effect.**

#### Rationale

Altering the case-planning statute to allow for flexibility in the limited number of FAR cases in which a court assumes jurisdiction over a party will allow for services to be provided pursuant to the existing Family Services Plan created with the family, thereby avoiding the requirement of creating a separate case plan document and/or reassigning the case to an IAR. In addition, allowing for a court to order protective supervision in a delinquency, truancy, or drug court case without requiring a pathway change or the development of a new case plan will provide

for continuity of existing staffing and services and lessen or eliminate case delay or redundant planning.

### Current Ohio Law

Ohio Revised Code § 2151.412(A)(3), provides that case plans must be prepared and maintained for any child who is receiving services from a public agency and who is alleged in a complaint to be abused or neglected or who is living at home subject to an order for protective supervision. The only exemption provided is for children served by a private child-serving agency under a voluntary permanent custody surrender. The ORC should contain a similar provision providing an exemption to the case planning requirement for those cases assigned to a FAR pathway in which a Family Services Plan is in effect.

**Note:** Under current Ohio law (ORC § 2151.23(A) (1)), the juvenile court has exclusive general jurisdiction over any child alleged in a complaint to be abused, neglected, or dependent. Guardian ad litem appointment is required for a child regarding whom a complaint alleging abuse or neglect is filed and, in cases where the parent of the child appears to be mentally incompetent or is under the age of 18, a guardian appointment is required for that parent. Filing of a complaint triggers statutory requirements related to court hearings, case planning, right to counsel, and timeframes. No provision currently authorizes deviation from the processes initiated by the filing of a complaint in order to allow for limited court involvement in abuse, neglect, or dependency cases.

Current Ohio law does, however, allow for a complaint filed in juvenile court in relation to an alleged unruly child to be held in abeyance until the child completes a diversionary plan (see § 2151.27(F)). Upon the successful completion of such plan, the complaint is dismissed. A similar provision in the ORC, providing for abeyance of a complaint in a FAR case based on an allegation of abuse or neglect containing a request for specific relief in the form of provision of court-supervised or court-ordered mediation or services, and providing for dismissal of the complaint on motion of the agency, supported by proof of successful completion of services or mediation, would allow for limited court involvement in cases where such involvement is necessary for better family or service-provider engagement.

Although Minnesota's statute does not explicitly state that court involvement may be sought in cases assigned to an assessment response where maltreatment is not determined, but services are determined to be needed (Minn. Stat. § 626.556, subd. 10e(b)), Minnesota's differential response court schema<sup>5</sup> appears to provide the potential for court intervention in cases where "maltreatment is not determined, but need for protective services is determined." In such cases, court action may be necessary if there is insufficient progress on a case or if child safety

---

<sup>5</sup> See flowchart from the *Minnesota Judges Juvenile Protection Benchbook* (December 2004), attached.



requires court-ordered compliance with a case plan, regardless of whether there has been a substantiation or determination of maltreatment.

### National Research Findings

The avoidance of court involvement (when consistent with child health and safety) is one of the core features of a differential approach that is focused on family engagement with services rather than on substantiation and adjudication of maltreatment. The review of state laws thus yielded little guidance for statutory treatment of those few cases assigned an assessment response that could benefit from limited court involvement for specific purposes.

### Literature Review Findings

One of the keys to successful implementation of differential response is system flexibility to adapt to changing needs. As the authors of a 2005 article on Minnesota's child welfare reform efforts state, "The community is better served by a child protection system that can respond flexibly to the conditions presented and employ resources where they have the greatest potential benefit" (Johnson, Sullivan Sutton, & Thompson, 2005). This flexibility may include the involvement of juvenile court resources in some circumstances. With child safety at the core of all decision making, voluntary service provision may not be possible in all high-risk circumstances. States have dealt with the question of court intervention for non-investigation pathway cases in different ways. While some states require these cases to be reassigned to an investigation pathway, others allow for the provision of court-ordered services without a pathway change (Kaplan & Merkel-Holguin, 2008). The national review conducted by the Child Welfare League of America (CWLA) and the American Humane Association in 2006 found that in 11 of 15 differential response states, the assessment response could be used in cases involved with the juvenile dependency court (Merkel-Holguin, Kaplan, & Kwak, 2006).

This same review found that four states allowed for the continued use of the assessment response for cases in which a child entered substitute care (Merkel-Holguin, et al., 2006). This is a particularly sensitive concern for families engaged through the FAR and in need of a service that might be accessed through placement; for example, residential treatment for a child with a serious emotional disturbance. As Sawyer and Lohrbach (2005) indicate, "The number of children in placement outside the family home is very low in the family assessment response. The presenting concern for placement is usually related to a child in need of special care and treatment due to a serious emotional disturbance rather than a child safety concern due to maltreatment." System flexibility to adapt to family- and child-specific needs is a foundational element of an effective differential response structure.

## Field Research Findings

- Supervisors and administrators were split on the issue of court involvement with alternative response cases. Approximately half of the participants believe that if court involvement is desirable in an alternative response case, the case should be transferred to an investigative pathway because: “SACWIS currently prevents “alternative response cases from going to court”; case progress would be impeded, as court cases can take over a year or more and alternative response workers are not equipped to deal with that type of ongoing work; and, involving the court changes the relationship between the family and the caseworker in a way not compatible with alternative response philosophy. One participant stated, “[C]ourt involvement should automatically result in a pathway change. With court involvement, there are things that you have to do by law, etc., so it is more restrictive and the decisions are being taken away from families and the agency, so the family is not the driving force anymore about what is happening with them.”
- Other participants felt that certain types of FAR cases could proceed successfully with court involvement, including truancy, family drug court cases, voluntary agreements for custody, and protective supervision cases.
- Policy team participants were not certain whether court-involved cases should be excluded from alternative response. While open to the idea, they believed such involvement is not currently possible under SACWIS and were also unsure if CAPMIS would allow court involvement in alternative response cases.

## 4. Ohio Revised Code Sec. 2151.421(F)(1). Duty to report child abuse or neglect; investigation and follow-up procedures

**Amend the reporting statute to include an exception to the requirement that all accepted reports of abuse or neglect receive an investigative response within 24 hours, to allow for a FAR during an extended timeframe. .**

### Rationale

Under current ORC § 2151.421(F)(1), PCSAs are required to investigate every report of child abuse or neglect within 24 hours:

“...[T]he public children services agency shall investigate, within twenty-four hours, each report of child abuse or child neglect that is known or reasonably suspected to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat

of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible.”

Establishment of a differential response child protection approach will require amendment of this provision to allow for PCSA to use a FAR to a referral or report of maltreatment within timeframes and pursuant to procedure for response set by rule.

### Literature Review Findings

Typically in differential response systems, pathway assignment occurs during the screening process (QIC-DR, 2009). Because pathway assignment may significantly impact the initial approach with families, many systems are structured to support pathway decision making upon receipt of a report (Yuan, 2005; QIC-DR, 2009). While child safety guides all case actions regardless of the response pathway assigned, the non-investigation pathway places a strong emphasis on establishing a family-centered approach. Kaplan and Merkel-Holguin (2008) identified a set of “core values” that guide practice in non-investigation pathways, including a greater focus on engagement and minimizing the use of practices that might be perceived as adversarial. How this concept is made operational in practice varies among jurisdictions. At the point of initial contact with families, this value may be reflected in practices aimed at approaching families in a more respectful manner. In Minnesota’s implementation of the family assessment approach, model fidelity was measured around such factors as whether families were approached as a unit and in “a positive manner that is consistent with family-centered practice” (Loman & Siegel, 2004). Such family-centered practices might include calling in advance to schedule an appointment for the initial visit, rather than conducting an unannounced visit, and meeting with family members as a unit whenever possible for that initial visit. The proposed statutory amendment will require timely initiation of cases assigned to the FAR that is consistent with current practice for all reports of child maltreatment in Ohio, while allowing for an underlying policy and procedural framework that will support family-centered approaches to case initiation.

## 5. Ohio Revised Code Sec. § 2151.022 Response to Accepted Reports of Child Abuse and Neglect

**Add a new section to the ORC establishing mandatory response pathway assignments for specified types of reports, and authorizing the assignment of other reports to either FAR or IAR at the discretion of the PCSA, based on guidelines articulated in rule. This provision should also allow for the reassignment of cases from the FAR pathway to the IAR pathway as required for child safety or other circumstances specified in rule, and for reassignment from the IAR pathway to the FAR pathway where, upon investigation, it is deemed appropriate.**

## Rationale

Most states with a differential response practice model specify by statute certain types of reports that must receive mandatory assignment to a traditional or investigative pathway. Ohio's interim rule incorporated mandatory pathway assignment for specified reports as well. The interim rule, however, included cross-reference to criminal code provisions for many categories of reports. To eliminate confusing cross-references and allow for consistency of application, the following report categories are proposed for mandatory assignment to the IAR pathway<sup>6</sup>:

- Reports of physical abuse that results in a serious injury or that creates a serious and immediate risk to a child's health and safety
- Reports of sexual abuse of a child
- Suspicious child fatality or homicide
- Reports requiring specialized assessment
- Reports requiring a third-party assessment

The five categories for mandatory assignment to IAR are based on the Ohio Alternative Response Pilot Project rule, O.A.C. 5101:9-14-03(E),<sup>7</sup> and by reference to other state codes and Oklahoma's administrative rules. The recommended code provision for pathway assignment under a differential response approach is designed for application to all accepted reports of abuse and neglect. For cases that are not subject to mandatory pathway assignment, it is recommended that discretionary pathway assignment guidelines be included in the OAC.

Legislating pathway reassignment is critical to ensuring the stability of the process, while maintaining the integrity of the system and the family. The Pilot Project interim rule provides for reassignment from the alternative response pathway to traditional response where a family requests a track change or the level of family engagement is insufficient to allow for the completion of the assessment process.

It is recommended that reassignment from an FAR to an IAR be statutorily authorized in the circumstances specified in the interim rule and, in addition, in cases where a new report is made in relation to the family and that report requires an IAR. Further, it is recommended that there be statutory authority for reassignment of a case from an IAR to an FAR if, upon further

---

<sup>6</sup> These recommendations are consistent with the conclusions and proposed revisions contained in the Final Report of the AIM team in relation to mandatory pathway assignment (see page 97).

<sup>7</sup> The Ohio Alternative Response Pilot Project interim rule also specified that reports that require the involvement of a Child Advocacy Center be investigated. It is suggested that this requirement be reexamined.

review, the case does not require an investigative approach. Such provisions will allow for greater case flexibility and ongoing responsiveness to family needs.

### National Statutory Research Findings

Of the eight differential response states studied, five -- Minnesota, Missouri, Louisiana, Tennessee, and Wyoming — address mandatory pathway assignment in statute; only Oklahoma addresses that topic in administrative rule. All six of these states mandate that certain reports must be assigned to the investigation pathway, but only Wyoming mandates other reports that must be assigned to the assessment pathway. Examples of state mandatory pathway assignment criteria include:

- Minnesota Stat. § 626.556, subdivision 10, requires reports that allege substantial child endangerment to be placed in the investigative pathway. Substantial child endangerment is further defined to include 13 categories, including egregious harm, sexual abuse, abandonment, murder, and various other crimes.
- Missouri Rev. Stat. § 210.145 requires rules to outline “structured decision-making protocols to be utilized for all child abuse and neglect reports,” but also requires that reports linked to certain crimes must be investigated while all other cases may be assessed or investigated. The administrative rule sets out additional factors the agency must look to when making the pathway assignment decision. These include whether there are siblings remaining in the home, whether physical abuse is currently occurring, whether the child’s injuries require medical attention, and whether the child is currently in a protected environment.
- Louisiana Child Code Ann. Art. 612 requires the agency to assign a level of risk to each report of child abuse and neglect. Reports deemed to be a high or intermediate level of risk must be investigated, while low-risk reports may be assessed.
  - Tennessee Code Ann. § 37-5-604 requires a report that “alleges a child has actually been harmed or sexually abused” to be investigated.
  - Wyoming Stat. Ann. § 14-3-204(a)(iii) requires the agency to assign a report for investigation if the report indicates criminal charges could be filed, the child is in imminent danger, it is likely the child will need to be removed from the home, a child fatality, a major injury, or sexual abuse. The statute requires the agency to assign all other reports for assessment.
  - Oklahoma Administrative Code § 340:75-3-7.3 states, “An investigation is conducted on a report that constitutes a serious and immediate threat to the child's health or safety. An assessment is conducted when a report of

abuse or neglect does not constitute a serious and immediate threat to the child's health and safety.”

States address the flexibility to change pathway assignment during the course of a case in a variety of ways; no consistent approach was identified. Some states include pathway reassignment directives in rule, others in statute, and yet others in policy. The following are examples of some of the approaches taken:

- Missouri’s practice manual states:

“3.4 Track Change

In a small percentage of reports, it will be determined that a report screened for a Family Assessment would be more appropriately handled as an Investigation or vice versa. One of the primary goals of Child Protection Practice is to perfect the initial screening function to assure that this transfer is kept to an acceptable minimum. However, some reports will change tracks due to information obtained during the Investigation/Family Assessment. The statute requires reports to be transferred, as appropriate. When changes in the response are made they are to be done in the least disruptive way possible for the family and should minimize service delivery interruption.”

- The laws of Minnesota and Virginia provide as follows:

*Code of Virginia § 63.2-1506(4) and 22 VAC 40-705-150(B)*

“4. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family. Families have the option of declining services offered as a result of a family assessment. If the family declines services, the case shall be closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services;

B. Families may decline services offered as a result of a family assessment or an investigation. If the family declines services, the case shall be closed unless there is an existing court order or the local department determines that sufficient cause exists due to threat of harm or actual harm to the child to redetermine the case as one that needs to be brought to the attention of the court. In no instance shall these actions be taken solely because the family declines services.”

## Literature Review Findings

The criteria for pathway assignment vary across states and are frequently delineated within authorizing legislation or departmental policy (QIC-DR, 2009). Generally, states will require an investigative response for certain categories of reports. In their national review, Merkel-Holguin, Kaplan, and Kwak (2006) found that virtually all 15 differential response states at that time placed limitations on case assignment to the non-investigation pathway for at least some categories of reports. Across states, an investigative response is typically required for reports alleging serious harm, such as allegations of sexual abuse; physical abuse resulting in hospitalization or significant injuries, such as broken bones; severe neglect; child fatalities; or other behaviors that could result in a felony prosecution (QIC-DR, 2009). Additionally, some states, such as Minnesota, require an investigation of reports alleging institutional abuse, for example child maltreatment by an employee of a licensed facility (Sawyer & Lohrbach, 2005; Yuan 2005). Virginia requires an investigation for allegations regarding child maltreatment in “an out-of-family setting of any kind” (Yuan, 2005).

In addition to certain mandated investigative categories, states frequently identified additional criteria used to assess risk and determine the appropriate pathway assignment. Criteria reported by the states included such factors as the age of the child, the number and nature of previous child maltreatment reports, or the presence of other concerns that suggest increased risk, such as domestic violence (Kaplan & Merkel-Holguin, 2008). While policy and procedural frameworks guide pathway assignment decisions, systems often establish worker and supervisory discretion to support case-specific decision making (Kaplan & Merkel-Holguin, 2008). As described by Johnson, Sullivan Sutton, and Thompson (2005), “Counties conduct an additional screening beyond the statutory exclusions for risk factors such as past substantial endangerment reports, flight risk, or risk of violence in selecting reports appropriate for a family assessment.”

Given the wide array of potential presenting circumstances of families, systems require some degree of flexibility to support effective decision making on a case-by-case basis. The pathway assignment decision adds another layer of complexity to the screening process. Protocols for pathway assignment vary widely and may involve the use of preliminary safety and/or risk assessments during the screening process, supervisory review and approval of decisions, or group decision-making models such as the “RED team” (Review, Evaluate, Direct) approach utilized in Olmsted County, Minnesota (QIC-DR, 2009; Sawyer & Lohrbach, 2005). The proposed statutory provision is consistent with mandated investigative categories identified by other states that have implemented differential response. Additionally, the provision supports the development and application of discretionary criteria that will guide pathway assignment decisions in a systematic framework while providing some flexibility for case-specific determinations.

In addition to an amplified focus on family-centered practices, all systems provide some flexibility to change response pathways or tracks in response to changing family conditions. Virtually all systems allow for pathway changes from the non-investigative track to an investigation when needed to assure child safety (QIC-DR, 2009). Several jurisdictions also provide the flexibility to change from an investigation to the non-investigative pathway in circumstances where a worker finds less risk than initially presented. Seven of the 15 states identified as differential response jurisdictions in 2006 self-reported as having the systemic flexibility to change pathways in both directions, from non-investigation to investigation and vice versa (Merkel-Holguin, Kaplan, & Kwak, 2006).

### Field Research Findings

#### *Pathway Assignment*

- The majority of county participants agreed that sexual abuse, with some exceptions<sup>8</sup>, and severe physical abuse should be required to be placed in an investigative pathway. Other suggestions for required investigation included heroin cases, drug cases, domestic violence with a weapon, any felonies, and third-party investigations.
- Many participants expressed approval of the Pilot Project pathway assignment structure, and most indicated that counties should have maximum flexibility in making pathway assignment decisions.
- Some participants also believe that there are types of reports that might be appropriate for an assessment response that currently require investigation, including out-of-home perpetrators, “Families in Need of Services” cases, certain types of sexual abuse cases, and dependency cases. One participant suggested that counties should be able to decide which pathway a report of sexual abuse should be assigned to on a case-by-case basis.
- One participant suggested that every case should initially be assigned to assessment, allowing the worker to decide, after meeting the family, if the case needs to go to an investigation.
- Policy staff suggested that all cases with law enforcement involvement, sexual abuse, and severe abuse should be assigned to an investigative pathway. Other suggestions for mandated investigation included severe domestic violence, severe mental illness, child trafficking, child death, and threats. The participants suggested factors that the Ohio Administrative Code should include for guidance in pathway determinations, including the

---

<sup>8</sup> Suggested exceptions to mandatory assignment in sexual abuse cases included those cases in which a report, or a new report, of sexual or physical abuse is based on conduct by a non-caregiver, such as a coach or relative; cases in which an 18-year-old is having sex with a non-related 15-year-old; cases in which the perpetrator is out of the home and the family is adequately dealing with the sexual abuse; and cases in which two young children commit sexual acts with each other.



severity of harm, previous family contact with the system, and the severity of the risk of harm.

### *Pathway Reassignment*

- An overwhelming majority of participants stated that they believe counties should have the ability to reassign cases from the alternative response pathway to the traditional response pathway and vice versa, although some expressed concerns about reassignment from a traditional to an alternative response pathway. Without specific guidelines, one noted, this option could result in alternative response becoming a “dumping ground” for traditional response cases. One participant stated, “There needs to be some kind of criteria for a switch, so every report that is going to be unsubstantiated doesn’t get transferred to alternative response.”
- Concern was also expressed that SACWIS cannot support a pathway switch from traditional response to alternative response. A small minority did not think that agencies should have the ability to switch a case from traditional response to alternative response, stating that it would not be compatible with alternative response to switch a family after it had already been engaged with an investigation, in which terms like “perpetrator” and “alleged child victim” and “disposition” are used. Another dissenting participant stated that allowing these pathway switches “... will start to get very murky and that after a while you won’t be able to differentiate between what is best for families vs. what is best for workers.”
- Some policy staff stated that they were unsure how the families would benefit from such a pathway reassignments. Another policy staff member indicated that pathway changes in both directions should be permitted for cases still in the assessment/intake process.

## **6. Ohio Revised Code Sec. 2151.4211 (suggested citation). Family Assessment Response; purpose and procedure**

**A new section outlining core principles and components specific to the FAR pathway, including a statement that such assignment will not result in a formal determination or finding that child maltreatment has occurred and setting contact initiation protocol should be added to the ORC.**

- The FAR statute, a free-standing provision, should outline the core goals served by assignment to the FAR pathway, including:
  - Fostering family decision making in relation to whether to participate in a FAR or be served by an IAR response.
  - Assessing child safety through practices that are child-centered and family-focused.
  - Removing labels such as “perpetrator” or “victim” in order to foster family engagement.

- Better identifying family strengths and needs through effective engagement.
- Developing creative solutions, including informal supports and formal services, while ensuring that underlying conditions and factors that could impact child safety are addressed.
- Respecting families' choices in the selection of services.
- The Ohio Administrative Code should contain detailed practice guidelines, based on the recommendations and conclusions of the AIM team regarding the details of critical practice components such as safety and risk assessments, discretionary pathway assignment criteria, timeframes, family service plans, family contact, and forms. This will allow for more flexibility and the potential for evolving practice to inform policy going forward. The use of case timeframes in IAR cases that are comparable to those used in FAR cases should be authorized.

## **Rationale**

### **National Statutory Research Findings**

- In developing an FAR statute, particular attention should be given to Virginia's code, one of the few containing a separate provision, and to the Ohio Pilot Project interim rule. Most states studied do not have a distinct FAR code section; foundational principles are often integrated into the general child protection intent or purpose statement.
- Six of the eight states codify requirements for initial contact, case initiation, and/or family assessment completion timeframes in statute and further detail procedures and expectations either in rule or policy.

### **Literature Review Findings**

In addition to the "core elements" cited earlier in this report, Merkel-Holguin, Kaplan, and Kwak (2006) identified several other foundational components of differential response systems, including:

- No formal determination or finding of child maltreatment in the non-investigation pathway;
- No subsequent listing of a person as a child maltreatment perpetrator in the state's central registry following a non-investigative response;
- Established capacity to reassign families to a different pathway as needed to support child safety; and
- Voluntary family participation in services as long as child safety is not compromised.

In its comprehensive review of the literature, the National Quality Improvement Center on Differential Response (2009) described common areas of emphasis found among non-investigative pathways, including family engagement, cultural relevance, and family-driven service provision. In many jurisdictions, the design and implementation of a FAR is grounded in the respectful engagement of families, strengths-based assessment and intervention practices, and the use of family involvement strategies (QIC-DR, 2009). Lohrbach, et al. (2005) describe a child welfare culture of “participatory social work practice.” Their 2005 article highlights practitioner perspectives illustrating, “The move toward a balanced assessment that incorporates the family view, cultural context, and attention to demonstrated protective factors provides the foundation for the promotion of child safety and well-being.”

In the design and implementation of differential response, systems, agencies, and individual workers employ a number of policy and practice strategies designed to foster family engagement and participation. Some of the approaches used among various jurisdictions include:

- A strong emphasis on transparency in practice and open communication with families;
- The use of clinical consultation frameworks that promote strengths-based inquiry and holistic understanding of family systems;
- The use of various family involvement approaches such as family group decision making or less formalized family team meetings in the home; and
- Flexibility in the provision of services to meet both family and agency-identified needs (QIC-DR, 2009; Sawyer & Lohrbach, 2005; Christenson, Curran, DeCook, Maloney, & Merkel-Holguin, 2008; Comer & Vassar, 2008).

The proposed statutory provisions provide a strong foundation in law that clearly articulates the fundamental principles underlying the FAR. These provisions will create a statutory structure that explicitly supports policies and practices that are aligned with family engagement strategies successfully implemented in other jurisdictions. In addition, the proposed statutory provisions will maximize systemic flexibility to assure that agencies are able to respond accordingly to changing family needs and circumstances.

## Field Research Findings

### *Case Initiation*

- In relation to case initiation procedure, most participants indicated they do not use letters to initiate contact with FAR families. Participants stated that mail takes too much time and noted that families did not respond to letters. Some participants believed that the letters jeopardized safety. However, many workers use phone calls as a means for initial contact with the family. One participant stated, “The phone call is more respectful to the client and

also lets the worker know what they are dealing with before they make a home visit.” Participants noted that phone calls are not always possible, due to incorrect numbers, disconnected phones, and the transient lifestyle of some of the families.

- Many participants found initial engagement of families through a letter or phone call resulted in families being more responsive and cooperative, as it “put the ball in the family’s court” and allowed the family to get emotionally prepared for meeting with the caseworker.
- In addition, participants noted that they liked the flexibility of the Pilot Project rule and the ability of the caseworker to make case-by-cases decisions regarding initiation; for example, if a case warrants immediate contact, the worker can initiate immediate contact, but if the case is less risky, the worker can contact the family via the letter or phone call.

### *Timeframes*

- Most participants like the Pilot Project case timeframes (4 days to make initial face-to-face contact, 3 additional days to enter the safety assessment in SACWIS, and 45 days to complete the family assessment). However, while almost all supervisors and administrators like the timeframes, many workers do not. The workers stated they often felt that the timeframes are actually too short, impeded their work, and interfered with family wishes. Many workers stated that timeframes should be extended even further. One participant noted, “When you put a number on the amount of time necessary to complete a family assessment, it doesn’t let the family drive the case.”
- Many workers suggested that extra days should be added for both initial contact and assessment completion to allow for greater flexibility.
- The vast majority of participants believed that the current alternative response timeframes should be extended to all cases, including those assigned to the traditional pathway, giving all workers up to 4 days to make face-to-face contact (except in emergency situations) and 45 days to complete the assessment or investigation. One supervisor noted, “The additional time for the assessment leads to fewer cases transitioning for ongoing services.” In addition, participants noted that uniform timeframes would ease confusion, make switching from one pathway to another easier, and aid supervisors who manage workers in both pathways. One supervisor, however, expressed concern about the agency’s ability to handle such a change in case flow.

Policy staff stated that although they are comfortable with extended timeframes for face-to-face contact with low- and moderate-risk cases, that higher-risk cases placed in the alternative response pathway should follow shorter timeframes. Policy staff also believed that 45-day assessment timeframes are appropriate for both pathways.



## ADDITIONAL SUGGESTIONS

Several concerns about other provisions in current Ohio law and/or policy that may challenge effective practice surfaced during the course of legal and practice research. Some of these issues are outside the scope of this project, but are flagged for future study; others relate to next steps to better inform and finalize recommendations for statutory/rule reform.

### Issues to Flag

- Consideration should be given to the treatment of cases currently outside the scope of either alternative response or traditional response within the context of a differential response system, including:
  - Families in Need of Services (FINS) – Rule review and staff interviews reflect that this case category receives inconsistent response from county to county, and that the current practice of tracking a repeat FINS report to a traditional response path may not best serve families.

- Stranger danger – Consideration should be given to removing cases in which there is no indication of parental or caregiver involvement from the PCSA primary jurisdiction, or to automatically track these cases to a family.
- An assessment response path to assess whether parental engagement is warranted.
- Dependency – Consideration should be given to whether dependency should continue to be assigned to an investigative path.
- Related to the above, consideration should be given to establishing additional response pathways for cases which, on their face, require a determination as to whether parental/caregiver engagement is necessary and, if so, whether by an investigative response or an assessment response. Those pathways could include:
  - FINS response pathway
  - Stranger danger response pathway
  - Dependency response pathway
- A number of issues related to the central registry were identified that are either outside the scope of this project or are already under consideration by State and county policymakers. These include:
  - Inclusion/exclusion of reports assigned to a FAR pathway in the central registry
  - Amendment of the central registry to allow for reporting/expunging tiers based on a future risk analysis
  - Inclusion of dependency reports in the central registry

### Amendments to the Ohio Administrative Code

Amendments to existing rules that guide child protection practice, including those related to case timeframes, notice requirements, risk and safety assessment procedures, family assessment processes, services provision, and case retention and management requirements, are required to support practice under the new differential response approach. As with proposed statutory changes, it may be more efficient and allow for easier navigation of the rules if all provisions specific only to the FAR are contained in a single rule, rather than in revisions to the numerous rules that currently apply to traditional response cases.

The AIM Team and the Ohio Alternative Response Pilot Project Leadership Council have undertaken an extensive review of the Pilot Project experience and lessons learned over the course of the project. The AIM Team's Final Report includes recommendations for practice informed by this review and Leadership Council discussions. To the extent that these recommendations impact the Ohio Administrative Rules, NCALP defers to the AIM Team and Pilot Project leadership's conclusions in relation to details of rule content.

## Next Steps

These recommendations were made without benefit of extensive field review. In order to allow for additional input informed by the pilot experience and by stakeholder input, it is suggested that:

- The recommendations be reviewed by the Subcommittee and targeted key stakeholders after the completion and distribution of the Final Report of the AIM team, and modified to reflect any additions or modifications indicated by that report or by subsequent AIM team/Leadership Council decision-making.
- Decisions made early on in the Pilot Project design phase should be revisited, and any modifications to pilot practice suggested by such review should also be considered in drafting the modified recommendations.