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House Education Committee  
Testimony on HB 498  
Teresa Lampl, Associate Director  
December 5, 2016

Chairman Brenner, Ranking Member Fedor, and members of the House Education Committee, thank-you for the opportunity to testify on HB 498. I am Teresa Lampl, Associate Director with The Ohio Council of Behavioral Health & Family Services Providers. My organization represents over 150 community mental health, addiction treatment and prevention, and family services providers statewide. Our members provide services to children, families and adults across the lifespan in a variety of settings including in schools.

We are here today to express our concerns with HB 498 and its proposed amendments and urge you to delay further action so the impact of this proposal can be properly considered. The safety of all our children when they are at school or participating in school activities is a shared value and of the utmost concern. Current law already provides several tools for school districts to use when a student makes a substantial threat of harm. Attached to my testimony is a timeline comparing existing law to SB 297/HB 498.

Ohio law currently allows school districts to: 1) suspend or expel a student making threats for up to 80 days, 2) engage the county mental health crisis system to immediately refer a student for an emergency mental health crisis evaluation when there is imminent risk of danger to self or others, or 3) refer the incident to law enforcement and the juvenile court system. In addition, police officers, school resource officers, and sheriffs have the authority under Ohio's involuntary emergency hospitalization statutes in ORC 5122.10 to transport any person, including a child, to a hospital for a mental health evaluation without parental consent. Furthermore, Ohio law has very strong "duty to protect" standards (ORC 2305.51) for mental health professionals and organizations when evaluating individuals that have expressed threats of violence toward persons or property.

Students who make substantiated threats must be held accountable and school districts must take actions to keep all of their students safe. However, the approach taken by SB 297/HB 498 is problematic because it:

- Opens the "pink slip" process for modification, which applies to all Ohioans across all settings. The pink slip process is outlined in ORC 5122.10 for the involuntary commitment of an individual for a mental health evaluation during a mental health emergency. Currently, the pink slip process allows law enforcement and certain health care professionals to transport someone involuntarily for mental health evaluation and admission for inpatient hospitalization. Proposed amendment to HB 498 will add school superintendents and school psychologist to the list of professionals who may transport a person for involuntary mental health evaluation or hospitalization. A school superintendent does not have professional training or experience to identify, evaluate or respond to a person who may be experiencing a mental health crisis. School psychologists, specifically those licensed by the Ohio Department of Education, have a narrow scope of practice that is limited to services provided in school settings. Further, the authority being granted to school superintendents and school psychologists is NOT limited to this specific school threat situation or the evaluation of students, and has consequences for Ohioans beyond the intent of HB 498. Any changes to the pink slip process that may result in the involuntary commitment of an individual to a hospital should be thoroughly vetted with input from a much broader group of stakeholders, including health care professionals and licensing boards in Ohio responsible for

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the health and safety of adults with mental health conditions. SB 297/HB 498 is rushing significant changes to Ohio's law through the legislative process.

- Does not provide for access to mental health services. Although the goal of HB 498 seems to be to increase mental health services for students, HB 498 does not address known barriers to accessing care and further stigmatizes mental illness. HB 498 provides authority for a school superintendent to require the completion of a mental health evaluation during the initial 60 day expulsion and makes completing the evaluation a condition to return to school. This may create undue hardship on the student and their family or caregivers and does not consider the known barriers such as the shortage of available mental health services, insurance coverage issues, and waiting lists. Furthermore, students experiencing a mental health crisis may feel further stigmatized and fear expulsion if they seek out help from school personnel. Research shows that individuals with mental illness are 10 times more likely to be the victim of violence, bullying, and crime than the perpetrator of violence.<sup>1</sup>
- Creates a problematic school safety risk assessment panel and "readmission process" for students with a mental illness. There is no question that a child who has been found to have a mental illness would be subject to the federal IDEA and the due process provisions under that statute, making this section directly conflict with federal special education law. In addition, the "school safety risk assessment panel" that is created to determine whether a student should be "readmitted" includes membership of individuals – such as the school administrators and law enforcement – who are not trained or equipped to make these health care decisions. The school safety risk assessment panel's role is to advise the superintendent, who is the ultimate decision maker as to whether the student has attained "sufficient rehabilitation" not the treating healthcare provider. The panel does not include the student, parents, or representation for the student. Furthermore, any discussion of the student's mental health treatment by this panel may also violate medical privacy concerns under HIPAA.

As a parallel comparison, if a student had a physical health condition or communicable disease like HIV, measles, or whooping cough, the idea that school superintendent, with the advice of panel that consisted of law enforcement and other school officials, would be the primary decision maker about that child's health and ability to safely return to school would be widely seen as inappropriate and unacceptable.

HB 498, with the proposed amendments, opens up the pink slip process without proper vetting, allows students to be isolated from the school environment for indefinite periods of time, and creates a re-admittance process for students with mental health conditions that does not provide sufficient due process for students or their families and may violate medical privacy concerns under HIPAA. Ohio's school administrators have a range of supports available to them in the existing statutory framework. Any bill to address threats in schools should not replicate existing processes, but should instead focus on building critical relationships between school districts and community resources that can increase prevention, early detection, and research-based interventions that support student success and school safety. When schools are aware of and properly use the existing statutory framework and community mental health emergency system, we can achieve the desired safety goals for all our students. We appreciate this requires coordination between schools and community resources and recommend development of a "credible threat response" through the Ohio School Safety Plan as an alternative to this legislation.

The Ohio Council urges the members of the Education Committee delay action on HB 498.

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<sup>1</sup> Mental Health Myth Vs Fact. U.S. Department of Health and Human Services, Mental Health.gov. <https://www.mentalhealth.gov/basics/myths-facts/>. Accessed December 4, 2016.

## SB 297/HB 498 vs. Current Law Timeline of Events

**Scenario:** Student issues threat against students, faculty and/or school district, and takes substantial step towards completion of the threat.

**Conclusion:** By comparing the proposed process outlined in SB 297/HB 498 (see left column) to current options included in Ohio Revised Code (right column), it is evident that SB 297/HB 498 does not enhance current law and instead may increase risk to communities by delaying time to treatment for students and confusing current law. Please note that none of the current law options would preclude law enforcement from also pursuing criminal charges for any illegal activity committed by the student.

<u>SB 297/HB 498</u>	<u>Current Law</u>
<p>Step 1: District Superintendent expels student for 60 days.</p>	<ul style="list-style-type: none"> <li>• District Superintendent expels student for <b>80 days under ORC 3313.66.</b></li> </ul>
<p>Step 2: Superintendent mandates the student undergo mental health evaluation. <b>Time to treatment unknow.</b> Shortage of behavioral health services and insurance coverage barriers; waitlists common - child psychiatrist can be <b>6 months or longer.</b></p>	<ul style="list-style-type: none"> <li>• Student transported by School Resource Officer or local law enforcement to hospital or community mental health center for emergency involuntary evaluation as permitted under <b>ORC 5122.10.</b> Evaluation must take place in <b>24 hours.</b> Emergency mental health services are available in all communities and to all individuals regardless of their health insurance coverage.</li> </ul>
<p>Step 3: Child cannot get into treatment within the allotted 60 days, therefore is unable to show "sufficient rehabilitation". <b>Expulsion/restriction from school</b> is extended for up to <b>1 year</b>, reviewed monthly by the School Safety Risk Assessment panel. Potential mental illness goes untreated. <b>District Superintendent makes final decision</b> on return to school.</p>	<ul style="list-style-type: none"> <li>• Emergency evaluation determines child has a mental illness, clinician develops and initiates treatment plan, which may include hospitalization, residential treatment, and/or intensive community based treatment. <b>Clinician led treatment team</b> works with parents and school to <b>develop safety plan</b> at the appropriate time to reintroduce and <b>return child back to school.</b></li> </ul>
<p>Step 4: During expulsion(s)/restriction from school, child's education continues in "alternative placement."</p>	<ul style="list-style-type: none"> <li>• Initiate a Section 504 or an IDEA evaluation to identify potential mental illness and/or learning disabilities, develop a 504 plan or an IEP that will provide the student the necessary support to continue their education in a typical school setting.</li> </ul>
<p>Step 5: School district seeks restitution from parents for costs of investigation and actual damages.</p>	<ul style="list-style-type: none"> <li>• School can recover any damages made by student under <b>ORC 3109.09.</b></li> </ul>