



**STATEMENT OF THE OHIO STATE BAR ASSOCIATION
IN OPPOSITION TO SENATE BILL 216**

Before the Ohio Senate Judiciary Committee
Senator Nathan Manning, Chair
February 8, 2022

Chairman Manning, Vice-Chair McColley, Ranking Member Thomas, and members of the Ohio Senate Judiciary Committee: On behalf of the Ohio State Bar Association (“OSBA”), thank you for the opportunity to present testimony in opposition to Senate Bill 216.

I am Michelle Edgar and I am a Magistrate in Fairfield County Juvenile and Probate Court. I have been working with families involved with child welfare for the past 20+ years in some capacity. I began as a CASA/GAL in Franklin County while I was in law school. I then went on to private practice where I was a GAL, attorney for children and attorney for parents in CPS cases. I am also on the Advisory Committee for Children and Families and the Subcommittee on Respond to Child Abuse Neglect and Dependency at the Supreme Court. I am also the Juvenile Practice Area Chair for Ohio Association of Magistrates and teach GAL courses for the Judicial College.

For the past 8.5 years I have had the privilege of being a magistrate that oversees CPS cases and preside over our Family Drug Court, which is our specialized docket where parents with substance use disorders appear before me on a weekly basis to begin and we work as a team to help them become sober by getting rid of any barriers they have to treatment or testing and supporting them in making the next right decision. This experience has allowed me the opportunity to see firsthand the amazing changes parents can make when given the right support and encouragement to become involved in services and to build their support system to become sober and substance free. Addiction affects everyone from all backgrounds, races, and classes. It is not only those living in poverty – I have seen it in my own life with friends from college, family members, work colleagues. Addiction does not discriminate. Even though people are from all these backgrounds they have two things in common: an addiction and their desperate desire to recover and be parents to their children.

The people that come before me are parents, just like many in this room, they love their children, just like everyone here. They have the ability to make changes in their lives so that they are able to safely parent their children. All they need is support and hope to get them to that point. This bill would halt all the progress that has been made in the area of child welfare – to increase engagement with families, to concentrate on risks, protective capacities and vulnerabilities to determine if a child should be removed; to allow parents to parent as long as the safety of their children can be maintained. Rather than giving parents hope of reunification, this bill puts even more roadblocks in the way for parents to even see their children. This bill will increase separations of parents and children. This separation would cause immense harm to the children identified in this bill. In effect, a parent could have a one-time relapse of use, which is common in recovery, and not be able to see their newborn child for six months. This lack of contact would cause attachment issues in that infant and unnecessary trauma. Many protections could be put into place to allow safe contact between the parent and infant.

Parents have a fundamental right to parent their children. That has to be respected, even as we make orders to keep children safe. Ensuring their safety can be done without going to the drastic measures included in this bill. The current laws already provide adequate protections for children and allows courts to use their discretion in making orders that are in the best interest of children after hearing all the evidence and circumstances of each family.

What happened to Dylan is a tragedy, no one is disputing that fact. And it is a wonderful that it has sparked people to look at different ways to approach cases involving children and parents with substance use disorders. And changes have already been made in this area. The landscape in Ohio and across the country has changed and continues to change significantly in how child welfare cases are handled both by PCSAs and the courts. Many advances have been made over the past several years to help engage parents and keep families together whenever possible.

One of these changes is the passages and implementation of CAPTA (Child Abuse Prevention and treatment Act)/CARA: (Comprehensive Addiction and Recovery Act). These federal laws include provisions regarding children that are affected by or exposed to alcohol/drug abuse in utero. Funding was provided to Children and Family Futures to work with sites around the country to develop processes to implement plans of safe care for children in this area as a collaborative team. Three sites in Ohio were chosen: Fairfield, Tuscarawas, and Coshocton. These sites developed community plans to engage these families and pregnant mothers in services and to help link the mother with providers to ensure the safety of the children. This law also requires that a PCSA is notified is a mother/child tests positive at birth. PCSAs are then required to open an investigation to determine if there is a plan of safe care and if the child will be safe to be in the home and under what conditions.

Child Services Transformation is another change taking place in Ohio. It is a statewide initiative through the Governor and ODJFS. One of the things the Advisory Committee did was take testimony around the state from stakeholders and made many recommendations as to changes that should be made within the child welfare system, including with courts and GALS as well as agencies. Those recommendations are now being implemented, include increased collaboration within community.

Family First Prevention Services is a federal law that began being implemented in Ohio last fall. This includes allowing agencies to utilize funding for payments of services to prevent removal of children from the home, allowing families to stay together. This Bill would directly contradict this legislation by requiring removal of a child and a filing of a Complaint thus eliminating a PCSA's ability to work with the family pursuant to their individual strengths and needs.

Many counties in Ohio also participated in a Quality Hearing Study for CW Cases which provided feedback on how the courts can better engage families to help with reunification. As part of the work done for this project, we were able to create a uniform court report for all cases that provides courts with the information needed to make an informed decision about CW cases. We were also able to create a toolkit for courts to help them in engaging with families and utilize the report, because we know that the more engaged families are in the process, the better the outcomes for families and children.

In Family Drug Courts – new standards were released that encourage all programs to make our programs more incentive based, and less sanction based to try to engage the parents and support them in their recovery. In Fairfield County we modified our program to better support our families. We realized we do not need to be another entity/person yelling at them and telling them they do not matter and cannot parent. They need to feel supported. They need to know that we are trying to help them achieve sobriety and recovery.

This is hard work. Think about if someone came into your home, told you that your child was being removed, that you needed to change who you see, even if it is your family, where you go, what you do. We are asking them to change the coping mechanism they are using to numb themselves from dealing with either mental health issues or trauma. There are ways to protect these children while continuing to work with the families to help them make the changes they need to parent safely.

Improving the outcomes for these families and wrapping preventative services around them saves resources too. Foster care is very expensive and can be extremely detrimental to children – it affects their ability to attach. And Ohio does not have enough foster homes to care for all the children currently in agency custody. This bill will increase foster placements exponentially. Where are these foster homes going to be found? There are long term costs as well as many of the youth that enter foster care, even for a short time, end up involved in the juvenile justice system. The work we do to help these children and families now will allow us to see less and less of these families involved in juvenile justice matters.

Some of the general concerns for the bill are as follows:

The reality of the disease of addiction/substance use disorder is that there are many ups and downs to that treatment and recovery. No two people's journeys or treatment are the same. Relapse, lapses and slips are part of the recovery process. It is rare that a parent will, just because a complaint is filed in court, suddenly and abruptly stop using substances. It takes time, it takes patience, it takes a willingness to continue to attempt to engage that parent. It has been shown time and again that any type of "scared straight" program just does not work. We see that in Juvenile Justice and we see that in child welfare. Many times, the filing of a complaint in court is not the every parents rock bottom. A person suffering from the disease of addiction must make the choice to work recovery and obtain sobriety.

One of the most engaging and powerful things for a parent trying to reunify with the child is parenting time and contact with that child. In fact, many treatment providers allow for parents to have their children with them while going through the program. It is imperative that courts are able to maintain their discretion in how to proceed in cases, what orders are appropriate for each individual situation after hearing all the evidence and information presented rather than being required to do specific things based on one piece of information before us.

Treatment providers need to be able to continue to assess individuals to determine what level of care they need to be successful. Sometimes the parent may not agree with that level of care. It is then up to the treatment team to continue to engage with that parent and meet them where they are in the recovery process to help them to be successful. Requiring inpatient treatment due to a statute

would put a roadblock in place for parents that is almost insurmountable. Very few inpatient facilities are available for the people that need that level of care currently. If this bill would pass, there would be a massive increase in wait list for those facilities and they would be filled with parents that may not require that level of care – assuming these facilities would even accept these parents into their facilities.

Even parents that have a substance use disorder, which is a brain disease, love their children and are bonded to their children. Infants have a bond with their parents at the time of their birth as they have heard their voices while in utero. Instantly removing an infant from their parent affects attachment. It is a trauma. Some children never recover from this trauma/attachment issue. I have seen time and again children adopted at a young age, some born testing positive, others not, where later in life they begin having behavior issues. Many of these are caused by attachment disorders or other underlying issues that the adoptive parents no longer wish to deal with anymore. These children are then returned to the PCSA and there is a disruptive adoption. By the time this occurs, the children are typically in need of a much higher level of care to include congregate care.

Specific Concerns with sections of proposed statute are as follows:

- 2151.011(A)(5) – says a child “subject to” alcohol or other drug abuse. What does “subject to” mean? Does this mean that if a grandparent or father who are alcoholics, this child was “subject to” them? If the “subject to” is while in utero – why is the statute including children up to 12 months old? Who determined if a person is experiencing alcoholism or drug addiction?
- 2151.031(F) – this allows the definition to not include a mother in a medical assisted treatment program, but what about if it is the father or other person in the home and they are receiving MAT services? Does it still fall under this abuse definition?
- 2151.261 – requires a PCSA to drug screen a mother and infant – what if the mother refuses, for herself and the infant. She has the right to do this. What happens then?
- 2151.353 – precludes a court from hearing all the evidence and making a determination as to what is in the best interest of the child
- 2151.461 – requires a court to make specific orders for BOTH parents if child adjudicated. What if the concerns for the other parent are not about substance use? That parent also required to attend an inpatient program?
 - About the caring for newborn with withdraw – not all babies exposed to drugs go through withdrawal. All parents being required to take this class does not account for those instances. Further, these parents are not even allowed to have contact with their child – it should be any caregiver that is required to take this class if a child is experiencing withdraw. And if the withdraw is that severe, hospitals are already providing this information to the caregivers and parents prior to the child leaving the hospital. Will that be sufficient for this provision? Who else will be providing this service? Will it be available everywhere?
 - With regard to BOTH parents having to do an INPATIENT program – Where are these programs going to be? Are they going to even take these parents if they are not in current use? Many today won’t even take them if they are in current use, there are no beds, many are hours away from their homes/community. This may

not be the level of care recommended for the parent. It should be up to the treatment provider to determine the level of care – not a statute, or a court.

- 2151.462 – requires a court to NOT make certain orders of disposition in cases – including temporary custody to either parent or a person living with the parents. This is concerning as it precludes the ability of the court to look at all the facts and evidence and determine if one of the parents is able to be the temporary custodian or a close relative of the child and parents that may be allowing a parent to stay in the home while supervising the interaction between the parent and child. Housing is such an issue for our parents – this would force them to live in unsafe situations, where they cannot work on their recovery and sobriety in an appropriate environment. The court has to consider family in making placement decision as does the PCSAs. This would preclude them from considering families members that could be appropriate for the child and be able to protect the child while allowing the bond to continue between the parent and child.
 - It also precludes the granting of COPS orders – but if the court is able to place in the temporary custody of a relative/kinship (that does not live with the parent), the court also makes a COPS order allowing the agency to remain involved in the matter. This would preclude that practice and force the court to place in the temporary custody of the agency.
- 2151.463 – requires the court to issue an order precluding any contact between the parent and child until every item in .461 is completed. This is contrary to every single thing a court is trying to accomplish with families. Parents and children need to have contact with each other. They need to continue to build a bond with each other. This is the motivation that keeps our parents moving forward. To take this away will further destroy families. This provision does not focus on the child and what is best for that child. It focuses on punishing a parent for a disease for which they are seeking treatment. Certainly if they are still in active use and there is a safety threat – that would need to be taken into consideration. But to be forced to order no contact in any manner is certainly contrary to the best interest of children.
- 2151.465 – requires certain drug testing to be done; but it does not say what should happen if the tests are positive or missed; does the timing start over? It talks about orders following reunification – but it does not define what that means. Does that mean that the child is placed back with parents? Or That custody is terminated and the case is closed in court? Reunification means different things in different contexts.
- 2151.466 – requires courts to “permit” parents to transition to “full time parenting”; it also requires that parenting time to be supervised by PCSA – what about supervision by appropriate family members? This would be a large burden on PCSAs and would limit any contact with parents and children.
- 2151.468 – requires a court to order “reunification” – again this needs to be defined. What does “no pending criminal action” mean – does it mean a driving under suspension charge? A misdemeanor? Felony? A parent only has to pass 3 tests for reunification? It would likely be many more and the court is able to look at all the circumstances to determine what is in the best interest of the child.

- 2151.469 – this requires certain orders following reunification – again, this needs to be defined. Is the case then closed out? And the parents are continually subject to these orders? That would mean these cases never really close. If the agency is still working with them for the screening and home visits etc – why would the court case close? The provision regarding the child being taken to the doctor monthly for 6 months – not every child will need this kind of medical attention – doctors are not likely to even see them if it is not medically necessary. And it would likely not be covered by any insurance if it is not medically necessary.
- 2151.4611 – this requires a court to award legal custody of a child to a father if he is deemed “fit”. This is without a motion filed? Without the consideration of the court as to what is in the child’s best interest? This is at what stage of these proceedings? Initial disposition? Without a finding of reasonable efforts to reunify?

The OSBA appreciates the intent of this bill – to ensure the safety of children – and we stand ready to assist the bill sponsors and the committee with making necessary revisions to this legislation. Thank you for the opportunity to testify. I would be happy to answer any questions the committee may have.