



# **Differential Response Approach in Child Protective Services: An Analysis of State Legislative Provisions**

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## Background

A number of States have authorized a “differential response” approach for child protective services (CPS). The approach allows CPS to respond differently to accepted reports of child abuse and neglect allegations, based on factors such as the type and severity of the maltreatment, number and sources of previous reports, and willingness of the family to participate in services.

The National Quality Improvement Center on Differential Response in Child Protective Services (QIC-DR) describes core elements of differential response systems:

1. Use of two or more discrete response pathways for cases that are screened in and accepted;
2. Establishment of discrete response pathways is codified in statute, policy or protocol;
3. Pathway assignment depends on an array of factors, such as the presence of imminent danger, level of risk, number of previous reports, source of the report, and/or presenting case characteristics, such as the type of alleged maltreatment and the age of the alleged victim;
4. Original pathway assignment can change, based on new information that alters risk level or safety concerns;
5. Services are voluntary in a non-investigative pathway;
  - a. Families can choose to receive the investigation response or
  - b. Families can accept or refuse the offered services if there are no safety concerns;
6. Families are served in a non-investigative pathway without a formal determination of child maltreatment; and,
7. The name of the alleged perpetrator is not entered into the central child abuse registry for those individuals who are served through a non-investigative pathway.

Lawmakers in Illinois, Kentucky, Louisiana, Minnesota, Missouri, Nevada, New York, North Carolina, Ohio, Oklahoma, Tennessee, Vermont, Virginia, and Wyoming have enacted measures authorizing or requiring the child welfare agency to consider or implement differential response approaches that meet the criteria described above.

This report, prepared for the QIC-DR, provides a statutory analysis of the major provisions identified in State differential response legislative enactments in those States. It is intended to present information for State policymakers, State child welfare agency administrators and others on the scope of State legislative activity around

differential response as a component of the QIC-DR's comprehensive needs assessment. It is hoped that this will be valuable information for policymakers and others seeking information and guidance on important statutory elements to consider for inclusion in legislation, policy and programs related to differential response.

The analysis is divided into 10 sections, corresponding to the 10 major provisions (described in the next section of this report) identified by National Conference of State Legislatures (NCSL) staff through a thorough review of the legislation. Each section discusses the provision and relevant policy implications. Following the analysis, the report presents a list of key questions for policymakers' consideration when crafting differential response legislation.

## Analysis of Statutory Provisions

State legislatures play a key role in child welfare policy and, as such, can have an enormous impact on improving outcomes for children and families. Legislators are responsible for defining child abuse and neglect, funding CPS, and outlining agency roles and functions via statutory provisions. In this capacity, they have been very active in crafting policy related to State differential response initiatives. An examination of the legislation indicates the following major categories of legislative activity:

- legislative intent;
- the development of demonstration or pilot projects;
- evaluation or assessment of the approach or demonstration;
- the nature and scope of the investigation and assessment as authorized in statute;
- provision of services to families;
- specification that families that are assigned to the non-investigative pathway are not placed on the central child abuse registry;
- coordination with law enforcement;
- ability to change pathway response, should risk of harm to children increase;
- training; and,
- caseworker immunity.

The provisions selected are those found in a majority of statutes reviewed. The provisions are listed in the order in which they are found in statute. The first four categories — legislative intent, the development of demonstration or pilot projects, the nature and scope of the investigation and assessment as authorized in statute, and evaluation or assessment of the approach or demonstration — are found in the opening language of statute. These provisions

appear to set the overall rationale and goals, as identified and/or described by the legislature, for the differential response approach in each State. The remaining provisions - service provisions central registry, law enforcement, reassignment, training and immunity - are also important components that legislatures considered depending on specific needs and concerns in their states. Appendix A (located at the end of this document), Chart of Major Statutory Provisions, lists each provision by State.

It should be noted that the statutory analysis provided in this report reveals a wide variation in the scope of legislative guidance and information. In some States, the legislature directs the department to promulgate rules and regulations for the development and implementation of States' differential response approaches. Such statutes do not contain much detail regarding goal and purpose of the approach and even less information on investigations, assessments, provision of services, or other provisions. In other States, statutory authority may be very specific, with a child welfare practice focus, particularly regarding provisions related to the nature and scope of investigations and assessments. Additionally, still other State statutes contain provisions not found elsewhere, as States attempt to craft policy unique to their own needs and experience. As a result, statutes may appear to be more or less comprehensive in scope. Nevertheless, the categories listed above and described below appear to be core components found in most of the legislation that was reviewed for this report. The table in Appendix A (located at the end of this report) identifies these categories by State.

**Legislative Intent.** A few States provide a policy framework and legislative intent for the development of the differential response approach. Tennessee's 2005 enabling statute stated legislative intent 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." Further, the Department of Children and Families was to perform its duties 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 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."<sup>1</sup>

Other States provide more general language to express the overall purpose of implementing a differential response approach, with an emphasis on meeting families' needs for services and supports. Minnesota's legislation describes a voluntary system that "may include a family assessment and services approach under which the local child welfare agency assesses the risk of abuse and neglect and the service needs of the family and arranges for appropriate services, diversions, referral for services or other response."<sup>2</sup> North Carolina's enabling statute required differential response to provide for a family-centered approach to child protective services in which local departments of social services utilize family assessment tools and family support principles when responding to selected reports of suspected child neglect and dependency.<sup>3</sup> Virginia's 1996 authorizing statute provided that "The multiple response system is designed to protect children at risk by effective use of available community resources. When appropriate, families will be offered services through the local department or through community agencies to promote safe, positive relationships within families by emphasizing prevention and assistance..."<sup>4</sup>

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**Policy Implications:** Overall, language describing the intent of a differential response system can provide useful guidance to legislators, the public child welfare agency, families and other important child welfare system stakeholders responsible for further development and continued oversight of differential response approaches. Additionally, as legislative leadership and committee assignments change, statutory language stating intent can be useful to policymakers new to child welfare by providing clear information on the original goal and intent of the legislature.

**Demonstration Projects.** An important strategy that legislators continue to authorize has been the development of pilot or demonstration projects to determine the feasibility, outcomes, and effectiveness of a differential response approach. Lawmakers in Illinois, Minnesota, Missouri, North Carolina, Ohio, Tennessee, and Virginia have authorized pilot projects with specified time frames and demonstration sites; statewide expansion is/has been dependent upon results from the demonstrations. The 2009 Illinois statute allows the Department of Children and Family Services to implement a 5-year demonstration of a differential response program in accordance with criteria, standards, and procedures prescribed by departmental rule.<sup>5</sup> North Carolina's enabling legislation required the department to implement a dual-response system of child protection in a limited number of demonstration projects statewide.<sup>6</sup> Ohio's lawmakers required pilots in no more than 10 counties and limited the pilot program to 18 months.<sup>7</sup> Tennessee's statute required the establishment of a demonstration program in three to five areas of the State for a multi-level response system that makes effective use of available community-based services. The major goal of the pilot was to reduce the incidence of child maltreatment. The legislation also required the gradual statewide expansion of the pilot.<sup>8</sup> Virginia's enabling statute required a 3-year pilot in three to five areas of the State.<sup>9</sup>

**Policy Implications:** Demonstration programs or pilot projects appear to be an important area of interest for lawmakers considering the differential response approach. Valuable information can be obtained from the projects that will assist States in their decisions to adopt or expand differential response approaches. A major consideration for lawmakers will be the costs associated with the development of a demonstration or pilot project. Lawmakers will want to carefully weigh the benefits of testing the approach; evaluation results and lessons learned from other States' pilots will be invaluable tools in the decision-making process.

**Evaluation.** Illinois, North Carolina, Ohio, Tennessee and Virginia legislators required an evaluation or assessment of the approach (or pilot) in their enabling statutes in order to determine whether the approach should be implemented statewide. It should be noted that other States have conducted evaluations absent State legislative mandate. Illinois' 2009 statute requires an independent evaluation to determine whether or not the demonstration is meeting the goals of: protecting the health, safety, and best interests of vulnerable children; offering protective services to prevent further harm to the child; stabilizing the home environment; and preserving family life.<sup>10</sup> North Carolina lawmakers required an assessment of differential response to include "the pilot's impact on child safety, response and timeliness, coordination of services and cost-effectiveness."<sup>11</sup> Ohio required an independent evaluation of its 18-month pilot.<sup>12</sup>

Tennessee's statute specified outcomes and performance indicators that were to be included in the yearly evaluations of the "program's effectiveness." These include numbers and types of cases; numbers of cases closed; reduction in the incidence of child maltreatment; amount,

types, and timeliness of community-based services received by families; how quickly families received responses; coordination with service providers, and cost-effectiveness of the approach. The reports are to be submitted to the governor and the legislature each year until differential response is implemented statewide.<sup>13</sup>

Virginia lawmakers require the department to evaluate and report on the impact and effectiveness of the multiple response system in meeting the purposes of the system. The evaluation is to include information on: turnover rate of CPS workers; changes in the number of investigations; the number of families receiving services; the number of families rejecting services; the effectiveness of the initial assessment in determining the appropriate level of intervention; the impact on out-of-home placements; the cost-effectiveness of the system; the availability of needed services; community cooperation; successes and problems encountered; information on the overall operation of the multiple response system; and recommendations for improvement.<sup>14</sup>

**Policy Implications:** A number of States authorized pilot or demonstration projects to test differential response. Evaluations of the pilots have provided critical information on lessons learned and challenges associated with this approach for State lawmakers and child welfare agency administrators nationwide. Issues such as cost, the extent of services necessary to support families involved in differential response, and difficulty engaging families (and family and worker satisfaction despite family engagement issues) have been addressed through demonstration projects and have provided information on which to base statewide implementation plans. Legislators who are in the process of considering adopting a differential response approach in their States would certainly want to consider working closely with the child welfare agency and other key stakeholders to consider whether or not the approach should initially be piloted and include an evaluation component.

Tennessee lawmakers specifically required statewide implementation of the approach, upon a positive evaluation, as part of the development of the approach. Legislators expressed concern that the State would conduct a pilot project but not advance the practice statewide despite good evaluation results. This was based on their past experience with authorizing a variety of child welfare reform initiatives that never developed beyond the pilot or demonstration phase.

#### **Nature and Scope of the Investigation or Assessment.**

Many of the State legislative enactments explicitly define the investigation and the assessment to be used in the differential response approach. For example, Illinois' statute defines "family assessment" to mean 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." The statute further states that an "investigation" means fact-gathering related to the current safety of a child and the risk of subsequent abuse or neglect that determines whether a report of suspected child abuse or neglect should be indicated or deemed unfounded and whether child protective services are needed.<sup>15</sup> Kentucky authorizes an immediate determination of the risk of harm to the child, and based on the level of risk, requires an investigation, an assessment of family needs, or a referral to a community-based service.<sup>16</sup> Oklahoma's statute defines an assessment to mean a systematic process to respond to child abuse allegations that do not constitute a serious, immediate threat to a child, according to priority guidelines. The statute also defines "investigation," "services not needed," "services recommended," "services recommended but court intervention not required," and "court intervention required."<sup>17</sup>

Several States specified the major elements to be included in investigations and assessments. Illinois provided detailed statutory guidance in its 2009 legislation on information to be included in the assessment<sup>18</sup>:

- information on the reporter and nature of the reporter's relationship to the child;
- information on the child, the caretaker, and prior reports;
- the alleged offender's age;
- criminal background check results;
- prior medical records relating to the alleged maltreatment;
- interviews with the child's caretakers, child care provider, teachers, family members, and anyone else who may have knowledge of the alleged maltreatment; and
- information on domestic violence or substance abuse in the child's home.

Intermediate- and high-level risk reports in Louisiana are to be investigated immediately; the investigation is to include an interview with the child and parents to determine the "nature, extent, cause of the abuse and identity of the person...responsible for the child's condition." The statute also provides guidance on the assessment process. The assessments are to identify family needs and match them with available local resources.<sup>19</sup> Minnesota's statute requires that a "chemical use assessment" be conducted in cases on both the investigative and family assessment pathways. The department must also gather information on domestic violence.<sup>20</sup> Nevada requires an immediate investigation if a report indicates the child is under 5 years of age, there is a high risk of serious harm, or the child or another child in

the household has suffered a fatality. No investigation is warranted if a child is not in “imminent danger of harm,” the child does not have any injury or condition that threatens his immediate health or safety, or the alleged abuse or prenatal drug exposure of the child or newborn could be eliminated if the family received appropriate community services.<sup>21</sup>

Missouri’s statute allows for multidisciplinary teams — to include law enforcement, public school liaisons, juvenile court, and other agencies — to participate in investigations as determined by CPS and law enforcement. The statute also requires a “chief investigator” for each local division office to direct the response on any case involving a second or subsequent incident involving the same child or alleged perpetrator. The chief investigator must notify the local public school district liaison of the investigation.<sup>22</sup>

New York legislation allows districts outside of cities with populations of more than 2 million people to establish a differential response program. Authorization by the New York State Office of Children and Family Services is required to “create a family assessment and services track as an alternative means of addressing allegations of child abuse...”<sup>23</sup> The district must develop a plan to address:

- how the district is to determine which cases will be handled through the assessment path;
- the types of services to be offered families and how services will be monitored;
- the enhancement of child safety;
- how family support and family involvement principles will be utilized;
- the reduction of government agency involvement with families;
- staff resources and training; and
- domestic violence.

Tennessee’s statute required the use of an approved screening instrument (developed by the department and submitted to the legislative Select Committee on Children and Youth for comment) to make an initial screening decision upon receipt of a report of a harm. Upon determination that the child is at risk, the department is to determine the appropriate level of intervention. If an assessment is determined to be appropriate, the department must provide the family with an explanation of the assessment process which is to be completed within 45 days of receipt of the report.<sup>24</sup>

**Policy Implications:** As mentioned previously, there is a wide variation in the nature and scope of statutory authority related to differential response. While some statutes allow the child welfare agency to develop appropriate regulations, others may provide very specific

guidance. For example, Tennessee’s enabling statute required the child welfare agency to develop a screening instrument — to be submitted to the legislative Joint Committee on Children and Families — to be used for initial screening decisions.

Illinois and Minnesota also require that information gathered in the investigation and assessment process include domestic violence and substance abuse, which were not mentioned in other statutes reviewed. Legislators, in collaboration with the child welfare agency, will want to closely examine a wide range of State statutes for appropriate examples of legislative language to best meet the needs of children and families in their States.

**Pathway Assignment.** Changing “pathways” is another major provision that lawmakers have incorporated into legislative policy to provide flexibility to the child welfare agency, as conditions warrant, during the investigation and assessment process. It is also seen as critical to ensuring child safety by providing for an immediate response should children’s safety come into question. Illinois and Minnesota allow a family assessment to be conducted for reports that were initially screened for investigation.<sup>42</sup> Louisiana requires an immediate intensive investigation if a child is determined to be at “immediate substantial risk of harm” during an assessment.<sup>43</sup> Illinois and Minnesota also require an investigation of family assessment responses where it determines substantial child endangerment or serious threat to a child’s safety.<sup>44</sup>

Missouri allows a family services approach to be used in a case originally designated for investigation if it is determined that an investigation is inappropriate. If a family on the assessment and services approach continues to refuse services, or if the child is in danger, the department may begin an investigation.<sup>45</sup> Nevada’s statute allows for reversals of both investigations and assessments, as warranted. If a family refuses services from an agency, the agency must notify the child welfare agency.<sup>46</sup> New York and Vermont laws allow family assessment cases to be reassigned to investigations. New York’s statute requires workers to notify parents and guardians participating in the family assessment and services track that workers are mandated reporters who must report new information regarding reasonable cause to suspect abuse of a child in the family.<sup>47</sup>

Oklahoma can conduct assessments on cases that were initially investigations; if a family refuses services or a child needs to be protected, an investigation may be conducted.<sup>48</sup> Tennessee’s statute allows an immediate investigation if necessary; the department can also consider future action if a family does not cooperate with the community-based agency that is providing the services.<sup>49</sup> Virginia allows families to decline services. The department can close the case unless it finds “sufficient cause that the case needs to be investigated.”<sup>50</sup>

**Policy Implications:** Reassignment from an assessment pathway to an investigation pathway appears to be addressed in most statutes. Several States also allow for moving investigation cases to assessment, although legislators in Tennessee, for example, have expressed concern that their State has only focused on moving from assessment to investigation pathways. This is another important area for States to continue to address in statute. However, statutes examined do not appear to address issues related to families' information gathered during an assessment, except for the New York statute, which requires workers to advise families that they are mandatory reporters and will report any new information that indicates child abuse.

**Provision of Services.** A few States describe the general types of services to be offered to families as part of their differential response approach. Louisiana's statute allows the department to offer information, referrals, or services to families, focusing on children at highest risk.<sup>25</sup> Missouri's statute provides voluntary and time-limited services.<sup>26</sup> Nevada legislation allows the child welfare agency to "provide counseling, training or other services," or "conduct an assessment of the family to determine what services are necessary."<sup>27</sup> Oklahoma requires that the department identify prevention and intervention services in the community and arrange for the provision of voluntary services.<sup>28</sup> Wyoming's statute requires the county to offer services on a voluntary basis to the child's family.<sup>29</sup>

**Policy Implications:** This statutory review revealed that while most statutes provide some mention of the provision of services, the statutes do not appear to offer further guidance on the scope of services that might be necessary to implement differential response. Legislators

examining the differential response approach might want to consider a more in-depth discussion of service provision in statutory language, particularly around guiding and/or assisting the State child welfare agency in the development of a more comprehensive array of services and supports for families. Legislative oversight could be important in guiding an assessment of existing services, enhancing coordination of such services, identifying and addressing gaps in services, discussing issues associated with engaging families, and identifying or cultivating innovative venues for service provision. For example, Tennessee's State and local advisory committees could be important community entities that other States might want to consider as a way to not only guide the development of differential response in States, but also to gain insight into existing community services and resources. Such committees can be utilized for other human service needs beyond child welfare; Tennessee's local advisory committees (described later in this report) are now involved in discussing critical community mental health needs.

Service provision is central to the differential response approach; however, no State addressed issues related to provision of services during times of State economic downturn. In addition to families needing additional services during such crises, cuts in services could potentially result in more families being placed on States' investigation pathways. Legislators have expressed concern that differential response initiatives will suffer during the current economic crisis. Others fear that evaluations which they have authorized will not be possible due to budgetary concerns. While States' experience in differential response cannot likely provide solutions to States' current budgetary situations, it is

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possible that a better coordinated array of services and the use of local community advisory committees can serve as “early warning systems” for families and communities in need. Legislative oversight in this area, through differential response and other human service initiatives, can be of great potential benefit to children and families.

**Central Registry.** While all of the States described thus far prohibit central registry placement for cases on the assessment pathway, several outline these requirements in statute. This is a key issue for policymakers concerned that alleged perpetrators involved in lower-risk abuse are as adversely affected — especially in the area of employment — as perpetrators of more egregious abuse. Illinois specifies that family assessment cases are not reported to the central registry.<sup>30</sup> Missouri mandates documentation of both investigations and assessments and that investigation report information be contained in the central registry.<sup>31</sup> New York specifies that local social services districts participating in approved differential response programs must notify the central registry regarding reports that are part of the family assessment and services track. The reports are to be legally sealed and maintained at the registry for 10 years.<sup>32</sup> North Carolina requires the maintenance of a list of “responsible individuals” identified through an investigation.<sup>33</sup> Vermont established a tiered child protection registry (individuals placed on the registry are assigned to one of two child protection levels related to the risk of future harm to children) to “balance the need to protect children and the potential employment consequences of a registry record.”<sup>34</sup> Virginia statutes specify that family assessment reports and information are not to be placed on the child abuse registry.<sup>35</sup>

**Policy Implications:** Placement of investigation cases on State central child abuse registries (and no placement of non-investigation pathway cases) is a core component of the differential response approach as identified by the QIC-DR. However, it is not clear from a review of statutes that information gathered during States’ family assessment processes is retained by States in cases where CPS determines that the case must be reassigned to an investigation pathway. This is another area where State lawmakers, working with child welfare administrators, might want to consider issues related to retention and tracking of such information and what the implications of such tracking might be for families.

**Coordination with Law Enforcement.** Several State statutes outline interaction with law enforcement for accepted allegations placed on the investigation pathway. Illinois’ 2009 legislation requires notification of local law enforcement or State Police conducting a joint investigation when the department determines that an investigation is to be terminated.<sup>36</sup> Kentucky requires a written report to local law enforcement or the State Police on investigation actions.<sup>37</sup> Minnesota requires the local child welfare agency and local law enforcement to coordinate their investigations; each is to prepare a separate report.<sup>38</sup> Missouri’s statute requires that local offices immediately contact law enforcement regarding reports determined to require an investigation. The office is to provide law enforcement with detailed information on the report and is to request law enforcement assistance in the investigation. Law enforcement must either assist the investigation or provide an explanation as to why it will not assist. The department must also notify law enforcement when it decides that the report no longer requires an investigation and switches to a family assessment response.<sup>39</sup> Serious abuse in North Carolina, Tennessee, and Virginia requires co-investigation by the department and local law enforcement.<sup>40</sup> Virginia’s pilot enabling legislation required the development of memoranda of understanding (MOUs) with law enforcement to appropriately investigate child abuse or neglect allegations.

The legislation also required the department to determine whether the law enforcement MOUs were effective and to assess each area's plan for community involvement. Wyoming's statute requires that sexual abuse cases be referred to the sheriff or police department.<sup>41</sup>

**Policy Implications:** It is clear from the statutes reviewed that coordination with law enforcement in the differential response approach is important to policymakers. Depending on the existing State policy regarding law enforcement involvement in CPS investigations, policymakers will want to clarify their role in differential response approach investigations, including former assessment cases that warrant an investigation. This would be especially relevant in those States which mandate joint CPS-law enforcement investigations or those which authorize law enforcement investigation of CPS cases.

**Training.** Vermont requires the development of a training program for all staff involved in differential response.<sup>51</sup> Tennessee also required training prior to implementation of the demonstration project. The training was to include information on staff roles and cultural diversity and was also to be offered to attorneys, providers, guardians ad litem (GALs), judges, prosecutors, and law enforcement.<sup>52</sup> Virginia's statute also authorized a training program for all staff.<sup>53</sup>

**Policy Implications:** Statutory guidance in this area would be helpful to States adopting the differential response approach. Only the States listed above required training related to differential response in statute, and none appeared to offer additional resources (beyond what might be appropriated for general child welfare-related training needs) to assist States with accomplishing this goal. Additionally, States might want to consider training for other child welfare system stakeholders, such as law enforcement and judges, following the example of Tennessee lawmakers.

**Caseworker Immunity:** Statutes reviewed revealed caseworker immunity specific to differential response in three States. Louisiana's statute grants child welfare workers immunity from "civil and criminal liability in any legal action arising from the department's decisions made relative to the setting of priorities for cases and targeting of staff resources."<sup>54</sup> Minnesota provides immunity from civil and criminal liability for workers acting in good faith.<sup>55</sup> North Carolina lawmakers grant immunity to an array of persons who might be involved in the differential response system. These include reporters of child maltreatment, anyone cooperating with the county in an assessment, and persons testifying in a judicial proceeding related to a report or an assessment.<sup>56</sup>

**Policy Implications:** As discussed above, caseworker immunity specific to differential response is referenced in statutory language in three States. Child welfare administrators can advise lawmakers on the need for additional immunity for caseworkers and others involved in differential response.

## Other Provisions

**State and Local Advisory Committees.** Tennessee legislators required the establishment of a State advisory committee to consist of representatives from corrections, education, health, human services, mental health, children and youth, and other provider agencies. The committee's purpose is to guide implementation and statewide expansion. The statute also requires the development of independent local advisory boards in each demonstration site to include representatives from families, local schools, health departments, juvenile court, the district attorney's office, and law enforcement. The goal of the local advisory board is to recommend better local coordination and to assist with the development of additional community-based services. The board is also allowed to review individual cases, as long as confidentiality is maintained.<sup>57</sup>

## Key Questions for Policymakers

The following policy questions and considerations might be helpful for State child welfare agencies and legislators considering crafting legislation to implement or test a differential response approach for handling allegations of child abuse and neglect:

- **Service array** is a concern for States hard hit by the current economic crisis, isolated or rural populations, or inconsistencies in the availability of services. An examination of the existing services — formal and informal — is a critical component of differential response. Identification of service gaps can result in service development and/or creative responses to needs of families and communities. A consideration of flexible State and local funding would be critical to the discussion.
- **Safety issues.** Lawmakers will want to be confident that children and families diverted to an assessment pathway are safe and that they have been properly assessed for current harm and future risk of harm. Data support the assertion that children whose families are assigned to the differential response pathway are no less safe than other children. The assessment of safety and risk remains of paramount importance.
- **Family participation in services.** What happens to families that refuse services? A number of States require a switch to the investigation pathway. Other States close a case if the services are finished or refused (as long as the child's safety is not compromised).

- **Definitions of abuse and neglect, and determinations of levels of risk.** State statutes provide defining criteria for how CPS agencies assign families to each of the pathways in a differential response system. Lawmakers will want to review the existing research on differential response and talk with State and county child welfare leaders in determining or revising these criteria.
- **Recurrence:** Do we know if families are returning to the system? Are they returning at higher levels of risk? Are families that are provided services on the assessment pathway returning to the CPS system at a greater rate than those on the investigation pathway? Are families voluntarily returning or “self-reporting” back to the assessment pathway? If so, does this indicate a new level of comfort and/or trust with the child welfare system?
- **Cost savings.** Initial data indicate that while initial costs increase in the use of differential response, there are long-term gains in money, material, and human costs. An assessment by the State, local, and tribal child protection system must include the determination to manage increased costs in order to achieve the potential long-term cost savings.
- **Community resources.** Consider the development of community structures that can benefit the child welfare system beyond differential response, such as Tennessee’s local community advisory board that now works on a wide range of child welfare-related issues. Partnerships between the public/tribal child welfare agencies and community-based agencies and civic organizations are of great import in the success of differential response.
- **Other issues.** These include confidentiality, families’ comfort with revealing personal information that might be used against them if their assessment turns into an investigation, and involvement of key child welfare system stakeholders.

## Conclusion

Comprehensive State legislation can provide a framework for legislative oversight of State differential response approach initiatives. While current statutes provide guidance in a number of important areas, there are issues related to differential response that warrant consideration in the development of statutes that address the development, implementation, and evaluation of differential response. Each State legislator must evaluate the likely benefit to children and families with specific legislative provisions, whether they

address definitions and scope of investigations and assessments, service provision, evaluation, coordination with law enforcement and others, training, or pathway reclassification. Existing statutes provide a rich source of information and legislative language from which State lawmakers can craft relevant policy.

Such an examination would necessarily require a partnership between State legislatures, child welfare agencies, and others charged with the protection of children and the strengthening and support of families. Close legislative attention and commitment to State differential response approach initiatives will serve to strengthen this partnership and further benefit vulnerable children and families in States.

## NOTES:

1. Tenn. Code Ann. §37-5-602
2. Minn. Stat. § 626.5551
3. 1999 N.C. Sess. Laws, HB 168
4. 1999 Va. Acts, HB 36, Chap. 856
5. 2009 Ill. Sess. Laws, SB 0807, Sec. 10, P.A. 096-0760
6. N.C. Gen. Stat. § 7B-300-311
7. Ohio Rev. Code Ann. § 2151.421A
8. Tenn. Code Ann. § 37-5-602; Tenn. Code Ann. § 37-5-603
9. 1996 Va. Acts, HB 36, Chap. 856
10. 2009 Ill. Laws, SB 0807, P.A. 096-0760
11. 1999 N.C. Sess. Laws, HB 168
12. 2006 Ohio Laws, S 238
13. 2005 Tenn. Pub. Acts, HB 447, Chap. 391
14. Va. Code § 63.2-1529
15. 2009 Ill. Laws, SB 0807, § 10, P.A. 096-0760
16. Ky. Rev. Stat. § 620.040
17. Okla. Stat. tit. 10, § 7102
18. 2009 Ill. Laws, SB 0807, § 10, P.A. 096-0760
19. La. Ch. C. Art. 612
20. Minn. Stat. § 626.556
21. Nev. Rev. Stat. § 432B.260
22. Mo. Rev. Stat. § 210.145
23. N.Y. Soc. Serv. Law § 427-a
24. Tenn. Code Ann. § 37-5-602
25. La. Ch. C. Art. 612
26. Mo. Rev. Stat. § 210.145
27. Nev. Rev. Stat. § 432B.260
28. Okla. Stat. tit. 10, § 7102
29. Wyo. Stat. § 14-3-204
30. 2009 Ill. Laws, SB 0807, § 10, P.A. 096-0760
31. Mo. Rev. Stat. § 210.152
32. N.Y. Soc. Serv. Law § 427-a
33. N.C. Gen. Stat. § 7B-311
34. Vt. Stat. Ann. Tit. 33 § 4911
35. Va. Code § 63.2-1505
36. 2009 Ill. Laws, SB 0807, § 10, P.A. 096-0760
37. Ky. Rev. Stat. § 620.040
38. Minn. Stat. § 626.556 Subd. 3e, 3f
39. Mo. Rev. Stat. § 210.152

40. N.C. Gen. Stat. § 300; Tenn. Code Ann. § 37-5-6-1; 1996 Va. Acts, HB36
41. Wyo. Stat. § 14-3-204
42. 2009 Ill. Laws, SB 0807, P.A. 096-0760; Minn. Stat. § 626.556 Subd. 10
43. La. Ch. C. Art. 612
44. Minn. Stat. § 626.556 Subd. 10; 2009 Ill. Laws, SB 0807, P.A. 096-0760
45. Mo. Rev. Stat. § 210.145
46. Nev. Rev. Stat. § 432B.260
47. N.Y. CLS Soc. Serv. § 427-a; Vt. Stat. Tit. 33 § 4915e
48. Okla. Stat. tit. 10, § 7106
49. Tenn. Code Ann. § 37-5-604
50. Va. Code § 63.2-1505 and 1506
51. Vt. Stat. Ann. Tit. 33 §4915e 63.2-1504 (VT 63.2-1504)
52. 2005 Tenn. Pub. Acts, HB 447, Chap. 391
53. Va. Code § 63.2-1505 and Va. Code § 63.2-1506
54. La. Ch. C. Art. 612
55. Minn. Stat. § 626.556 Subd. 10
56. 1999 N.C. Sess. Laws, HB 168
57. 2005 Tenn. Pub. Acts, HB 447, Chap. 391

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## Appendix A

### Chart of Major Statutory Provisions

	LEGISLATIVE INTENT	DEMONSTRATION OR PILOT PROJECT	EVALUATION OR ASSESSMENT	NATURE AND SCOPE OF THE INVESTIGATION AND/OR ASSESSMENT	REASSIGNMENT	SERVICE PROVISION	CENTRAL REGISTRY	LAW ENFORCEMENT	TRAINING	IMMUNITY
IL		X	X	X	X		X	X		
KY				X				X		
LA				X	X	X				X
MN	X	X		X	X			X		X
MO		X		X	X	X	X	X		
NC	X	X	X				X	X		X
NV				X	X	X				
NY				X	X		X			
OH		X	X							
OK				X	X	X				
TN	X	X	X	X	X			X	X	
VA	X	X	X		X		X	X	X	
VT				X	X					
WY						X		X		