III. The Laws on Child Abuse and Neglect: A Review of the Research

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Introduction

It is a cherished American tradition that the individual has the right to raise his children according to his personal dictates. Law sanctifies the tradition by granting to parents legal custody of their children and by the legal presumption that parental love and concern will provide children with all necessary care and protection. The privacy of parents to raise their children by their own standards is questioned only when evidence to the contrary reaches a court or a wide and horrified public. The first instance of a public aroused by child abuse was the cruel death of Mary Ellen in 1874, which eventually led to the passage of the Protective Services Acts and the Cruelty to Children criminal acts at the turn of the century. The most recent example was the medical evidence of the battered child syndrome documented by Kempe et al in 1962 that stimulated the passage of the child abuse reporting acts.

During the last fifteen years child abuse and neglect has been of high legal concern. Next to divorce it is the most frequently discussed topic in the legal literature on parents and children. Nevertheless, the legal response to abuse and neglect has been inconclusive except for a profound shift in emphasis, from the legislative desire to punish evidenced in the Cruelty to Children statutes of the late 1800's to the legislative hope for parental reform in the reporting acts of the 1960's and 1970's. The legal literature clusters around two poles: the need to intervene, on the one hand, and the failure of the law and the courts to evolve an effective and fair method for intervention, on the other. There has been a sophisticated presentation of an old problem which, because of its complexity and of the nature of the legal system, cannot easily be solved.

Difficulties and Limitations of Legal Research

Legal research differs from that in the social sciences in both its scope and method of investigation. The study of the law is a review of the legislation and case holdings in fifty states. To speak, then, of the law of child abuse and neglect is not to refer to a body of law but to fifty sets of laws and their judicial interpretations. The field is further complicated by: (1) the classification of abuse or neglect as a crime or civil wrongdoing; (2) the difficulty of defining instances of abuse and neglect (especially the latter); (3) the great variations in such definitions among even the jurisdictions of a single state; (4) the complexities of intra- and interstate jurisdiction; (5) the exclusion of some Indians, military personnel and the latter's dependents from state law; (6) the problem of balancing parents' and children's rights; and (7) the efficacy of applying the legal system to the solution of intricate human problems.

The law, furthermore, must be understood as primarily a conservator of accepted values. By tradition, law stresses precision and stability; it is a responder to situations, not a creator of social solutions. The method of legal research, therefore, tends either to elaborate the needs for new legislation or to focus on existing laws, cases or legal and judicial institutions. Legal research generally falls into four broad categories:

A. the need, where a statutory framework or an expanded right is suggested as an answer to a demonstrated problem;

B. descriptions or analyses of current laws;

C. implications of particular laws or case holdings; and

D. descriptions and evaluations of the operations of particular laws and the relevant legal and judicial agencies.

The first three are "first generation" articles that attempt to judiciously apply legal principles to foresight. They deal with the promise. The last is "second generation;" it concentrates on the reality. These articles ask whether a law and its enabling institutions is accomplishing its stated aim. The usual methodology is either the use of questionnaires or of personal interviews and observations. Occasionally the evaluating article attempts to integrate data on legal performance with that from the social sciences. This interdisciplinary approach may result in either a deeper examination of underlying premises, or a healthy skepticism towards the efficacy of laws to mitigate child abuse or neglect.

This analysis of the research will focus on the law as a system of several parts: the legislation: its contents, implementation, operations and effectiveness; the courts: their structure, jurisdiction and operations; the relationship between the legal and social services institutions; and the conflict between parents' and children's rights. It will deal mainly with the legal literature and make references only to the major case holdings.

The Legislation

Legislation on child abuse and neglect falls into four categories:

A. criminal statutes that permit a state to prosecute those who harm or cause harm to befall children;

B. juvenile or family court acts that permit such courts to assume protective custody or supervision over "neglected" children. (In some states, evidence of abuse will establish a court's "neglect" jurisdiction. In addition, all states grant juvenile courts emergency jurisdiction to order the temporary removal of a child from a dangerous home.);

C. legislation that establishes protective services for abused and neglected children as part of a comprehensive program of public child welfare services;

D. reporting statutes that encourage or mandate the reporting of actual or suspected abuse or neglect for the child's protection and the family's treatment. Occasionally the reporting statutes will also contain criminal sanctions, as for failure to report by a mandated class of reporters.

All four types of legislation exist in many states.

The mode and history of legislative response to abuse and neglect was studied by Thomas (1972). He found it to be cyclical and greatly affected by the prevailing attitudes and knowledge of the times. The nineteenth century punished; the twentieth century treats. Although no single category has proved either a complete success or failure, each has its strengths and weaknesses. These are best outlined by Paulsen in his 1966 analyses of the legal forework for child protection.

A. Criminal Laws

Criminal laws are the oldest type of laws dealing with child abuse. They are perhaps the least effective and certainly the most criticed. In every state an abusing or neglecting parent can be charged with the traditional interpersonal crimes, such as murder, manslaughter, and assault and

battery. Paulsen describes the difficulties of proving either the requisite intent to kill necessary for murder convictions or the degree of force in excess of a parent's recognized privilege to discipline his children which is needed for assault and battery. Consequently, prosecutors move cautiously, and deaths are usually tried under manslaughter.

The criminal laws against abuse and neglect also include cruelty (or wrong) to children statutes that provide penalties for abandonment; torture, torment, impairment of morals and other injuries to children; child labor or laws forbidding commercial exploitation of children; penalties for desertation or nonsupport of minors; and a host of laws protecting children from sexual abuse. A parent or adult may also be prosecuted for "contributing" to delinquency or dependency of a child below a statutory age.

Despite this arsenal of laws, criminal prosecution of parents is rare (Paulsen, 1966; Goodpaster and Angel, 1975), and the whole process has been criticized repeatedly as being ineffective and even detrimental to the treatment or prevention of abuse and neglect (e.g., Fraser, 1974a; Delaney, 1972). Criminal prosecutions are lengthy and final civil disposition on the child's future is usually delayed until the criminal process is completed. The result is that the child either spends an extended period of time in foster care or, if left with the family, is subjected to unusual tension.

The criminal process, furthermore, seems to do little to rehabilitate the parent. It only serves to further alienate him from his family and from those who seek to provide treatment for them or reinforces the parents' sense of frustration and inadequacy (Terr and Watson, 1968). If a parent

is acquitted, he may feel his conduct to be vindicated and have his battering tendencies strengthened, although his ordeal will cause him to be more subtle and cunning (Delaney, 1972). If he is convicted, the whole family may suffer from the separation of imprisonment or the diminishment of family income by a fine.

The literature is unanimous in recommending prosecution only in cases which result in death, sadism, or serious injury to the child (e.g., Allot, 1972; Fraser, 1974a; Delaney, 1972). Existing legislation appears adequate for such instances. However, Allot (1972) and our conversations with representatives of Parents Anonymous and police departments nationwide suggest that, although criminal penalties are an ineffective remedy to abuse and neglect, the threat of prosecution may be necessary to induce some parents to have treatment.

The procedures and effectiveness of the criminal approach to abuse and neglect have been extensively investigated, but it might be helpful to know:

1. the effects of threat-induced treatment;
2. the effects of prison separation on the family and the parent imprisoned;
3. the effects of the return of an imprisoned parent;
4. provisions for the treatment of the imprisoned parent and members of his family;
5. provisions for the child(ren)'s care in the event of the imprisonment of a single parent and the long-term effects on the child(ren).

B. The Reporting Statutes

The latest hope for a legally wrought change in the age old problem of abuse are the reporting statutes, with the help of which cases are to be found and treated. However, since the legislative process is involved, the statutes will succeed only if they are appropriate to the purpose, based on adequate and accurate information, understood by all involved, adequately implemented, and provided with an enforcement mechanism that is continuous, well-funded and able to provide the training, supervision and coordination of services. The current information on these factors as they relate to the reporting laws paints a mixed picture.

1. Content of the Legislation

The work of DeFrancis and Lucht (1970, 1974) is the definitive bible of the legislative provisions of the reporting laws in the fifty states, the District of Columbia, Guam, and the Virgin Islands. Along with the digest of the laws themselves, the authors provide an analysis of trends, duplications and unnecessary (or dangerous) provisions. Their work covers the legislation through 1973. Katz et al's examination of the neglect laws (1975) includes the reporting laws and amendments through 1974. Our review of the last year's efforts showed few significant changes other than an increase in the number of mandated reporters (Sawitsky, 1975, unpublished).

Sussman and Cohen (1974, 1975) have made the most comprehensive examination of the problems and implications of the types of reporting legislation. Their book (1975) is to date the best examination of the implications and operations of these laws.

2. Precipitation Factors

The rush towards the enactment of reporting laws started with the publication of a model statute by the Children's Bureau in 1963. A year earlier, the Bureau had held a conference of medical and social work professionals to discuss the implications of the Kempe et al Battered Child Syndrome. Appalled at the apparent increase in abuse and fearful of the consequences, these professionals felt a legally sanctioned casefinding tool was necessary in order to break the cycle of abused child becoming abusing parent or delinquent. The assumption behind the reporting laws was that state intervention was essential and successful treatment of both parents and children possible.

The immediate stimulus for a reporting law tends to be a reaction either to a tragic death, such as that of 3-year old Roxanne Fulmero in New York in 1969, or to statistics suggesting an increase in the incidence of abuse or neglect. Yet the figures of incidence and distribution themselves vary greatly. They will depend on the definition of abuse and the predictive model (cf. e.g., Gil, 1970; Light, 1973; and Lauer et al, 1974). Sussman and Cohen (1975b) surveyed the use of "official" figures of abuse and neglect over a decade and concluded that they should be viewed with great caution.

That many of the laws were hasty responses to inadequate information is demonstrated by the great number of amendments. Between 1967 and 1970, 18 states and the Virgin Islands changed their laws. In the next three years, 37 states followed suit (DeFrancis and Lucht, 1974). Another ten made amendments in 1974-75, but as stated these are minor in nature, except for Vermont which revamped its entire child abuse procedure (Sawitsky, 1975 unpublished). Perhaps the most publicized amendment occurred in New York State after the Fulmero death when the state legislature established a special factfinding committee

that held meetings throughout the state on the operations of the act and ultimately made provisions for the appointment of a counsel for all abused children (Comment, Cornell Law Review, 1970, 1972; Comment, Columbia Journal of Law and Social Problems, 1971).

The Revised Model Child Abuse and Neglect Reporting Act attempts to remedy some of the troublesome provisions of the first decade of reporting laws. It is included in the appendix. (See also Sussman and Cohen, 1975).

3. Translating the Legislative Mandate into Action

a. Education of reporters

Little is known about the process whereby the requirements of legislation are made known to the public. The legislative system itself does not assume this responsibility and leaves it instead to the media or special interest groups to spread the information. Cohen (1975a) surveyed the opinions and attitudes of 1496 individuals engaged in abuse or neglect services in all 50 states. He found the respondents generally familiar with their state's reporting requirements. However, in a later study on the actual operations of reporting laws in California, Colorado, New York, and West Virginia, he discovered extensive ignorance on the problem of abuse and neglect as well as the specifics of legislation (1975b). Some of this confusion arises from the absence of a responsible single source of dissemination; some, from legislative provisions that require reporting to more than one source (DeFrancis, 1974) or a lack of legislative clarity in delegating the responsibility for abuse and neglect investigations (Zawisza et al, 1974).

b. Implementation

How is the social policy of abuse legislation translated into an effective operation? How is it followed through from act to action? From the start, many commentators, among them Paulsen and Johnson, warned that without adequate goals, organization and funding the best of legislative intentions would be futile. Although there is an increasing literature that urges limited intervention because the services or disposition have not proved beneficial (e.g., Wald, 1975; Mnookin, 1973), there have been few studies of the actual implementation procedures that followed the reporting laws.

Davoren (1973), Hoshino and Yoder (1973), and Theilsen (1973), have conducted inquiries into the implementation of a reporting statute within a state. Hoshino and Yoder and Theilsen concluded that the policy behind a newly enacted law is given its final form through administrative decisions, and is often created with no guiding criteria. Policy will be further confused if the law's operations involve several agencies that work at cross purposes (Goodpaster and Angel, 1975) or who compete for the same monies.

4. Operations: The Services

a. Structure of services

Several investigators have concentrated on the law in practice: S. Cohen (op. cit.); Goodpaster and Angel (California, 1975); Johnson (Southeastern states, 1973) and Zawiska et al (10 states, 1974). Johnson's work is unusual in that it compares relative success in operation with structure of operations. For example, she discovered that the best functioning operations were those centralized in a state agency because they were able to follow through policy, supervise training and

local consultations, provide better statewide services, keep tabs on reported cases (since all records were in one place), and evaluate results.

Centralization alone, however, is no guarantee of success. Newberger et al (1973) found the Massachusetts Department of Public Welfare, given sole responsibility for abuse and neglect reports by the legislature, unable to cope with the burgeoning number of cases. They recommended a subcontracting of some of its cases.

b. Funding of services

Funding is a critical variable in the success of any organization. In abuse, only Johnson (1973) has studied funding patterns and their optimal use. She concluded that the best use of money occurs where there is a single agency in charge of both policy and program and when the funds themselves are a mixture of state and federal funds. No work has been done on the amounts necessary for successful programs, or the timing of funding necessary for viable planning. This is especially important since the passage of the 1974 National Child Abuse Prevention and Treatment Act that seems to stress the use of federal money for research at the expense of programs, newer organizations at the expense of old. This topic will be discussed in greater detail in the conclusion and recommendations for research.

5. Operations: The Reporting Process

a. The Protected Individual

The trend in recent years has been to increase the age of the child protected by statute. Most states cover minors through 18 years. The new Child Abuse Prevention Act and the Revised Model Abuse and Neglect Reporting Act covers children through the age of 18. A few states also include

within the protection of abuse persons other than minors who cannot protect themselves, such as the mentally retarded (Delaware and Washington) or the physically disabled (Ohio and Nebraska).

b. The Reporter

(1) Mandatory and permissive reporting

Virtually all the states mandate the reporting of abuse by certain professionals. This imposition of a legal duty to report is a reflection by legislatures that conscience alone will not result in official notification. The Revised Model Reporting Act mandates only suspected cases of physical abuse and leaves suspicions of physical or emotional neglect permissive in recognition of the greater cultural and observational difficulties in defining neglect, the less critical need for intervention and the non-court alternatives for help.

All states today expressly or by implication require physicians to report suspected abuse. State laws now also require that abuse be reported by hospital workers and administrators (38), practitioners of the healing arts (8), chiropractors (17), pharmacists (5), nurses (39), teachers (25), other school personnel (20), social workers (32), law enforcement officials (16), coroners or medical examiners (10), psychologists (7), optometrists (8), podiatrists (11), religious healers (8), and child care institutions (11). All these categories have continued to increase with the years, as has the category of "any person," now included in the reporting laws of 31 states. Mindful of the traditional privilege of confidential relationships of attorney/client and clergyman/parishioner, only three states mandate reporting of abuse by clergymen and two by lawyers (DeFrancis, 1974 and our figures). The broadened scope of mandated reporting is a significant trend of the early 1970's.

(2) Identification of perpetrators

Reporters are in a difficult position when the legislation requires report of an injury inflicted by parents, caretakers, or others named by group. This makes the reporter an accuser, a particularly hazardous situation in the five of the twelve states using the above language where abuse is also part of the criminal code. Identification has been soundly criticized as a betrayal of the spirit of reporting as well as a futile exercise in affixing blame.

A separate problem with isolating reports to injuries or neglect committed by those responsible for a child's care is that the law may unwittingly exclude from liability abuse perpetrated by a person not responsible for that care, such as a parent's lover, an institution, teacher, babysitter, or sibling. Such limitations have been criticized by Daly (1969) as creating an unnecessary loophole, which the Revised Model Act tries to close with a broader definition of those responsible and the use of "family" to include custodial setting where the harm occurred.

(3) Facilitations to reporting

All states grant immunity to the reporters. A few grant immunity only from civil actions; most grant immunity from civil and criminal liability. The tendency is to increase the scope of immunity so long as the report was in "good faith" (DeFrancis, 1974; Sussman, 1974; our figures).

Twenty states impose penalties for failure to report. These range from $500-1,000 fines to simple misdemeanors to imprisonments of up to one year. It must be remembered that most of these sanctions (and imprisonment is a criminal sanction) are placed within the context of civil laws. Many commentators, therefore, have urged their abandonment, since the identification of child abuse or neglect is not as simple as that of an ordinary crime. Those in favor, and this includes the Revised Model Reporting Act, claim that the prospect of a penalty may help to overcome other barriers to reporting, and that mandatory reporting without a means of enforcement is a contradiction. Although the number of states with penalties has remained constant for the last few years, it is interesting to note that Illinois removed its original penalty provision because the legislators felt prosecutors would have difficulty in determining whether failure to report was caused by willfulness or bad judgment. Probably a greater risk for physicians and other mandated reporters is prosecution under a negligence *per se* theory (Fraser, 1974). At least two suits have been filed on this theory, and one was settled out of court for $600,000 (Sussman, 1974; Fraser, 1974; Kohlman, 1974).

c. The report: what, how, and to whom

Critical to well-functioning legislation is facility in the reporting process and utility by the receiving agency. The great majority of states (31) require only an initial oral

report, followed in writing by information such as the name and address of the child and his parents or guardians, the child's age, nature of injuries, evidence of prior injuries and additional relevant material. The other states require only written reports, a combination of written and oral reports, or leave the method to the reporter's option.

Written reports have been criticized as a deterrent to reporting, since many reporters, especially physicians, do not have the time to write reports or may not wish to "go on the record." Although easiest on the reporter, oral reports do require substantiation. Florida's WATS line, considered the most efficient reporting system in the United States, has experienced a sixty percent rate of validity (Nagi, 1975). This means that a good deal of time and money is expended on false leads which might have been prevented with the requirement of some written verification.

Ideally, reports should be made to a central source and maintained by the group responsible for substantiation and follow-through. In practice, the states require the reports to be made to three general sources: county or state departments of social services or public welfare (42); juvenile or family courts (10); court-designated agencies (2); law-enforcement officials such as district attorneys, police departments, sheriffs and state police (35). Only 19 states and the District of Columbia limit the incoming reports to a single source. Thirty states allow reporting to more than a single agency; and eight give the reporter a choice of four separate groups to which to report (DeFrancis, 1974).

d. Central registries

(1) Background

Central registries for the reporting of cases of abuse are required by law in 34 states (DeFrancis, 1974; and our figures, 1975). They exist for neglect in 39 states

(Katz et al, 1975). Similar records are maintained by the appropriate agency as a matter of administrative policy in several states.

Five major purposes for registries have been suggested: First, when properly cross-indexed, registries can be used to flag repeated incidents involving the same child or family. This is designed to prevent parents from avoiding detection by bringing the child to a different hospital for each injury. Second, the registry can provide a source of data into the research on the causes and patterns of child abuse and neglect. Third, ready access to this information can help a doctor make a diagnosis in cases where the physiological evidence may be inconclusive. Fourth, the reports can be used as evidence in proceedings brought to protect the child or to prosecute his caretakers. And fifth, the registry can facilitate management through a speedy distribution of case load and follow-up. The legislation varies greatly. Some specify the above registries and leave the rest to administrative discretion (Fraser, 1974b and our figures, 1975).

(2) Operations

With the exception of Johnson's in-depth study of the operations of reporting laws (1973) and S. Cohen's four-state investigation (1975b), the literature on central registries is primarily descriptive. Fraser (1974b), Cohen and Sussman (1975c), and Katz et al (1975) provide the most recent surveys of the current state of the legislation.

Elements for efficient registries are thought to be location at the state agency responsible for the child protective services, accurate records, a cross-indexing system, speedy filing of local reports, procedures for the initiation and monitoring of immediate follow-up for repeat cases.

Cohen's four-state investigation (1975b) discovered the use of central registries to be the most misunderstood provision of the reporting legislation. Users were confused on requirements of the report and for access. Only serious cases were communicated and the registries themselves seemed to perform few of their intended services. Since no track was kept of the hospital-hunter, Cohen's preliminary conclusion is that registries fail in their diagnostic function. He found that New York State did try to use registries as an insurance for the receipt of services. Our own inquiries in Massachusetts

produced the information that the so-called Massachusetts Central Registry is in fact a two-drawer file of the overworked director of the Inflicted Injuries Unit of the Department of Public Welfare.

Johnson has been alone in concentrating on the requirements of reports for research purposes. She suggests they contain background information along with a record and evaluation of all services rendered. Fraser (1974b) and others want reports to include information such as the time of the incident, socio-economic background of the family, unusual child or parent characteristics, size of family, number of siblings, and other possible contributing factors such as unemployment or the use of alcohol or drugs by a parent information not now usually included.

(3) Access

Access to registry records poses the legal problem of invading the privacy of those reported. There is no consistent pattern in the legislative treatment of this confidentiality. Some laws contain vague statements stressing the importance of confidentiality; others limit registry use to specified professionals and purposes. A few states make unauthorized use a misdemeanor.

Biederman (1975) and others criticize the mere use of a registry as an invasion of privacy, the fear being that the filed report will produce a stigma on both the abuser and abused. Fraser's (1974b) and Cohen and Sussman's (1975a) concern is that many listings are actually only the reporter's suspicions, that are recorded without due process to those reported and [illegible] be damaging if made public. Facile access by phone or computer aggravate the threat to confidentiality in their view. However, here the right to privacy (really an aspect of the parent's right) must be weighed against the value of information leading to a diagnosis of a developing syndrome of abuse.

(4) Expungement

It has been argued that since the overall purpose of the central registry is to aid in the protection of the child, there is no need to maintain these records after the child has reached the age of emancipation and is thus able to protect himself. Yet only four states have statutory provisions for automatic expungement. Fraser (1974b) suggests the records be removed from registries, sealed but not destroyed, since abuse or neglect can involve more than one child in a family.

(5) National Registries

A few states suggest the need for voluntary interstate exchange of records and the creation of a national registration system. Those who see state registries as threats to personal privacy would find the power of a national file doubly alarming. The argument on the other side urges a coordinated system as an essential case-finding tool for a mobile society.

6. Problems

a. Definitions of abuse and neglect

Definitions are important in the law of abuse and neglect because they affect the reporter, the report, the jurisdiction, the quantity and quality of the evidence, and the duty of the protective services. Only 19 of the reporting statutes include definitions of abuse, while others speak in terms of omissions of commonly held parental duties. Even this is of little help, for the ambiguity-laden words of neglect and abuse present several problems in definition.

First is the fact that any assessment of abuse or neglect must involve facts and values, physical or emotional acts or impacts, intended and unintended movements. These will vary with the individual and his professional outlook. Nagi (1975) asked professionals involved with abuse and neglect to react to the statement, "It is difficult to say what is and what is not child mistreatment." Respondents from protective service agencies representing 56 percent of the population surveyed and from police departments representing 64 percent of the same population agreed with the statement. Even higher percentages of judges and physicians indicated a similar uncertainty. Tamilia (1971), a judge, notes that this uncertainty is shared by both the legal and social work professions.

The second problem in definition is the classification of abuse or neglect as a crime or civil wrongdoing. In crimes, the state is the moving party and the remedy, a form of punishment by either imprisonment or the payment of a fine. In civil actions, the opposing parties are generally individual citizens or corporations and the remedy, monetary damages. The difference is important: parents found guilty under a civil law may risk losing temporary or permanent custody of their children. Those guilty under a criminal law may be removed from their children by imprisonment. Either way, the remedy may disrupt a family, or substitute punishment for therapy. Some argue that civil termination of parental rights is severe enough a sanction to transform a civil act into a crime without the necessary due process requirements (Comment, Columbia Law Review, 1970).

This classification significantly affects the quality of due process of the defendant. Crimes require clear definition of the criminal act or omission of a legal duty, else they may be void for vagueness. They require willed acts within the criminal concept. (Unconscious acts or those committed by persons deemed incompetent fail as crimes for lack of the necessary intent.) And they require the highest level of due process which includes proof beyond a reasonable doubt of every element of the alleged crime. Civil wrongdoing only requires a preponderance of the evidence for guilt. Although difficult to define quantitatively, preponderance generally refers to more than half, or 51 percent, of the evidence.

The criminal standard provides the greatest safeguard for the parent by placing the greatest burden on the prosecutor. But this concern for the parent's rights may be at the expense of the child's welfare or safety if it results in the retention of custody by an unfit parent. After considerable legal debate the alternative "clear and convincing"

standard is now being advocated in such cases--more than "preponderance," but less than "beyond a reasonable doubt" (Comment, Emory Law Journal, 1975; Unpublished Model Termination of Parents Right Act, 1975).

The rules of civil and criminal evidence themselves can differ and often present special problems in abuse and neglect cases (Brown et al, 1974; Plaine, 1974). There seems to be a slight trend towards increasing the type of permissible evidence in criminal cases. Other complications, such as the child's age, intrafamily and professional immunities from testimony, are dealt with in waiver of privileges in state legislation. Twenty-eight states have abrogated both the husband/wife and doctor/patient privilege, the two greatest roadblocks to the establishment of a prima facie case. Sixteen others waive one or the other. The Revised Model Reporting Act would abolish all privileges but that of the attorney-client, so that parent and child can secure a fair trial.

The last definition problem is the determination of the degree and type of injury necessary to warrant outside intervention. Should it concentrate on the injury itself or on current or future harm?

Physical injury and harm is the least complicated. It involves visible proof that can be diagnosed with the backlog of medical data on the battered child (e.g., Silverman, 1975). The same is generally true for the severely neglected child, whose symptoms fall into the well-documented failure to thrive syndrome.

The debate surrounding physical harm is the degree necessary for reporting. Those arguing for only "serious" injuries seek to protect family privacy (e.g., Daly, 1969). Those arguing to the contrary claim that taking note of suspicious

"non-serious" injuries early may prevent later and more serious harm (McCoid, 1965). The problem facing the reporter is the lack of correlation between the degree of injury and real danger (Newberger et al, 1973a; Helfer and Kempe, 1968) and, as will be discussed later, the efficacy of his reporting in any event.

Neglect, on the other hand, is a complex phenomenon, very difficult to circumscribe legally and etiologically different from abuse (Polansky et al, 1972b). At the least it is an absence of care or caring by parents or their substitute. Its definition is difficult in an heterogeneous society that stresses the privacy of parents' childrearing patterns. A few states attempt a listing of parental duties whose non-performance can be prosecuted. Others have tried to incorporate neglect into their definition of abuse.

Emotional or psychological harm, long known to have as important an impact on child development as physical harm, is beginning to receive legal attention. Most neglect or reporting statutes concentrate on physical harm, moral deprivations or environmental deficiencies (Katz, 1971). Because the law traditionally deals with provable conditions or commonly held standards, emotional abuse or neglect without physical manifestations is an uncomfortable concept to many legislators and judges. A few states, however, have expanded their juvenile court jurisdictions to include emotional neglect, and the concept is creeping into the reporting laws, too, where as of July 1975, seven states included emotional abuse or neglect as reportable events. So stated, emotional abuse or neglect need not have immediate physical ramifications. Even without the statutory designation, protection from emotional abuse or neglect could fall under laws designed to protect a child's well-being or the court's power to prevent the social, physical or psychological deterioration of children (Stoetzer, 1975).

Because of these definitional problems, an approach that concentrates on actual harm to the child seems preferable. Should suspicions prove adequate, they can be relayed to the proper authorities who have the experience and resources to determine whether or not abuse or neglect exists. This child-centered approach is used by some courts with the application of res ipsa loquitur (the thing speaks for itself) principle of the law of torts. From proof of the child's age and condition, courts avoid a verdict of not guilty by an inference of abusive or negligent conditions (Plaine, 1975; In Matter of S. 259 N.Y.S. wd 169, Fam. Ct. Kings Co., 1965). The focus on the manifest harm to the child, rather than on the acts or omissions of those responsible for the child's care, is the approach of the Revised Model Child Abuse and Neglect Reporting Act, Section 2-A:

> An abused child shall mean a person under 18 years of age who is suffering from serious physical harm or sexual molestation caused by those responsible for his care or others exercising temporary or permanent control over the child.

b. Underreporting

Physicians and other professionals involved have experienced conflicts in reporting. Some statutes required the harm to be "intended," "malicious" or "non-accidental," an impossible decision for the reporter, since he is a professional, not a jury. In addition, much of the research suggests that abuse or neglect is not intentional in the criminal law use of the term, but a pattern of learned behavior passed from parents to children and aggravated by crises such as unemployment or the lack of supportive friends or relatives.

Fear of a loss of confidentiality is a reason for non-reporting by social workers and physicians (Davoren, 1973). Helfer (1975) and Sanders (1972) also attribute the physician's reluctance to

report to poor training, fear of losing patients or testifying in court, inadequate community resources for treatment, and hard-to-define rewards. Cohen (1968) described the failure of a neighborhood center, staffed by para-professionals, as due to the staff's reluctance to "tattle" on neighbors.

Physicians have also been criticized for not reporting sexual abuse, i.e., evidence of sexual intercourse between a child and a close blood relative (Sgori, 1975; Kempe and Schmitt, 1975).

c. Funding and Structure

Some of these problems have been discussed under the operations of the law. They bear repeating. The diffuse legal arrangements for the responsibility for receipt of the report and provision of the services may serve to undermine the purpose of the laws. None of the state investigators of the operations of the reporting laws found them smooth. Though few studied funding as such, it is well-known that money is scarce in child protective services and that the recession has made matters worse. It is an elemental fact of organization and planning that nothing can be done until a budget is established. Without a fairly assured source of money, even the best organization will falter, and without the organization, all laws will come to naught.

Organizational confusions stem partly from the laws themselves that, as mentioned, allow several sources for reports, do not establish a single source of responsibility or even a clearly defined aim. Some of these failings can and are being corrected; the rest require a clearer definition of ends and the means for achieving those ends.

7. Future Research

Our knowledge of flaws in the reporting laws is quite adequate. It is virtually non-existent as to their accomplishments. It might be useful to have information on:

a. The relation between legislature and child protective services in lawmaking. How does the legislature get the information? How does it establish its priorities? How are budgetary items drawn? What feedback does it receive on performance? How does that affect its decisions?

b. The relation between the legislation and performance. Which statutory provisions have been the most successful? the least successful? Is performance related to geographic or population size? to education? To the organization of the administrating agencies? Do public and private agencies differ in performance? How? Why?

c. How is success defined? What are the goals of the reporting laws? Is there an accurate index of a follow-up to the reports?

d. In states with penalties for non-reports, are there prosecutions? If so, are they of use in fulfilling the goal of prevention and treatment of abuse and neglect?

e. How does the system of reporting operate from start to finish? Is it effective? Is there adequate education of reporters? Is there feedback on disposition of a report to the reporters? Is there a central source for the report? A single agency responsible? What are its criteria and procedures for handling cases? How does it train its personnel, formulate policy, create policy and supervise programs and personnel?

f. How do the central registries operate? What type of information do they require and how is it used? What is the normal time lag between incident and registry filing? Methods for updating and sharing information, cross-indexing, follow-up for repeated cases, policies on access and expungement? Does this infringe on individual rights? Does the registry help or hinder prevention and treatment of abuse and neglect?

In short, while research on the specifics of the legislation is ample, more is necessary now on the functioning of the legislation as part of a system and an analysis of whether that system is succeeding in accomplishing its overall preventive mission.

C. Neglect Statutes

1. Content of Legislation

Although the constitutional right of parents to raise their children, as articulated in Pierce v. Society of Sisters (268 U.S. 510 (1925)), Meyer v. Nebraska (262 U.S. 390 (1923)), and Griswold v. Connecticut (381 U.S. 479 (1965)), leads to the presumption that a child's place is with his parents (natural, adopted, others who hold themselves out as such), dire circumstances will force a court to intervene for the child's protection. The basis of the court's power is the common law parens patriae doctrine that makes the state the protector of last resort and the codification of the doctrine in neglect statutes and emergency jurisdiction and custody provisions contained in some of the reporting laws. Katz' work (1971, 1975) with the legislation of the 50 states, D.C., Guam, and the Virgin Islands found them to be "pronouncements of unacceptable child rearing practices" (1971 at 57). These include abandonment, failure to provide the necessary food, care or shelter, allowing a child to beg. Occasionally the neglect laws will be broadened to include "unfit"

parents--those who are mentally or physically unable to care for their children; parents who refuse to conform to the state's compulsory education or health laws; or those who refuse, on religious grounds, to consent to lifesaving procedures for their children. Such a finding enables the courts to name guardians who will assure the necessary care or medical procedure.

2. Vagueness and the Neglect Laws

a. Adjudication

Much debate has centered around the neglect laws and their interpretation at the beginning and end of neglect hearings. Hearings are conducted in several stages: adjudication, where a finding of "neglect" (which can include evidence of abuse) established the court's jurisdiction; factfinding, where the facts are ascertained; and disposition, where the "guilt" of the parents is announced in terms of whether their actions (or inactions) were enough to warrant separation from the child. At the initial stage the court must adjudicate the seriousness of the situation. It cannot exercise its authority without some quantum of proof, which will vary with the state's classification of abuse or neglect. Proof may flow from an examination of the parental act, or of the effects of that act or the parental environment on the child. Wagner (1971), a former juvenile court judge, interprets this initial duty as:

> . . . a fair determination of the issue of neglect and/or abuse . . . and of the child and the treatment of the parents. (p. 58)

Some provisions of neglect laws, such as abandonment, are fairly clearcut; others, such as "neglect," "emotional neglect," or "detrimental to the well-being of children," far less so. For the others, the test of "minimum level of

parental care tolerable" has been advanced (In re Adoption of H., 330 N.Y.S. 2d 235, Fam. Ct., 1972). Critics argue that such a test is far too vague a standard in view of the circumstances (See p. 21. Also Comment, Yale Law Journal, 1973; Comment, Columbia Law Review, 1970). Katz and Barron, however, argue for the necessity of general standards because the area demands a maximum of judicial flexibility. General definitions are held essential to allow a case by case approach to a subjective phenomenon imprecise by nature. Barron analogizes this "permissible vagueness" to obscenity, another subject where precision has eluded both the legislature and judiciary. His review of the recent challenges on overreach to the neglect laws found them generally unsuccessful (1975, unpublished background papers to Model Termination of Parental Rights Act). Opponents of the general terms claim an unwarranted intrusion into the constitutionally protected right of privacy unless the standard be clear and reasonably related to a legitimate state purpose. Yet this fear must be reconciled with the parens patriae doctrine which established a state's duty to maintain minimum standards for child protection. One important case, State v. MacMaster (486 P. 2d 567, Oregon, 1971; also, Note, Williamette Law Journal, 1972) held legitimate the state's scope of neglect provisions because:

> What might be unconstitutional if only the parents' rights were involved is constitutional if the statute adopts legitimate and necessary means to protect the child's interest. (p. 569)

The "best interests of the child" test, often employed in neglect hearings, is criticized at this stage as violative of the parents' rights, subjective and a further aggravant to the problems of vagueness. It should be used only at the disposition hearings (Law & Tactics in Juvenile Courts, 1974).

b. Disposition

Proponents for specificity make their strongest argument for the dispositional stage of neglect hearings. Wald (1975) and Mnookin (1973) base their arguments on their research into the consequences of judicially wrought separations of children from their parents. They surveyed the legal, psychological and social welfare literature and concluded that more harm resulted than if the children had remained at home. Mnookin is particularly critical of the court's use of the "best interests" test because: (1) It ignores the interests of the parents and the pain they may suffer with the loss of their children (See work of Jenkins et al, 1966 and 1972). (2) It is subjective. (3) It forces a holding on inadequate information since the judges cannot compare the consequences of the home environment with that at placement. Mnookin substantiates the last criticism with research pointing to a general failure of foster care and suggesting that long-range personality predictions based on troubled childhoods have been inaccurate or exaggerated (MacFarlane et al, 1964; and Skolnick, 1973). He advocates removal only as a last resort. Should removal be necessary, Mnookin would have the state help parents so that the child can be returned. If this is not possible within a reasonable time, he proposes viable alternatives, such as adoption, to avoid placing the child indefinitely in foster care. Wald favors statutory standards that favor parental autonomy, and his criteria would focus on the "basic harm" from which the child should be protected. Under his scheme, intervention would occur only when the harm is "serious" and the court remedy would do more good than harm. Of course, it is possible to argue that "serious harm" or "more good than harm" or "reasonable or indefinite" time periods are terms equally as vague as "neglect" or "abuse." Nevertheless, the merit of the evaluative research done by Wald, Mnookin and others (notably Burt,

1971, who first introduced principles of psychology into a description of juvenile court proceedings) is that their tests would force a court to consider both the aggravating situation and the plausible alternatives.

The most recently published criticism of the "best interests" test is that of Goldstein, Freud and Solnit (1973). The authors propose that dispositions reflect the "least detrimental alternative," taking into account the child's psychological as well as biological attachments, his age and his need for continuity. Such a test, for example, would give preference to a long-term foster parent's wish to adopt over a natural parent's right to reclaim custody. This is a departure from the traditional presumption in favor of the natural parent.

Jurisdiction

A. Juvenile Court Structure and Operations

Problems and issues under jurisdiction center on two basic questions: (1) what is a state's definition of actionable abuse or neglect, just discussed, and (2) which is the proper forum for its hearing.

Child abuse or neglect can be a civil or criminal misdeed. As a crime it will be heard in a local district court. As an alleged violation of a civil code it will fall under the jurisdiction of a juvenile or family court. Occasionally it can be both a crime and civil action, and concurrent actions in both district and juvenile courts will be possible. The exercise of the juvenile court jurisdiction, as mentioned, is a matter of judicial discretion.

Still another complication is that juvenile courts differ in structure.

They can be special sessions of district courts held before the usual roster or specially appointed judges, as in California. They can be independent statewide systems, as in Connecticut or New York. Or they can be mixed systems, as in Massachusetts, where some cities have independent juvenile courts and the rest hold weekly juvenile sessions in the district courts.

The criticism of juvenile courts stresses their operations, not their necessity (e.g., Polier, 1974; National Crime Commission Report, 1965). Their informality, originally meant to insure the child's welfare, too often worked to his detriment. A series of Supreme Court cases sought to overcome this development by increasing the child's procedural due process rights of notice, counsel, privilege against self-incrimination, and proof beyond a reasonable doubt for alleged crimes (Kent v. U.S., 383 U.S. 541, 1966; In re Gault 387 U.S. 1, 1967; In re Winship 397 U.S. 358, 1971). The sequence has its limitations. Gault, the landmark case, is limited to procedural guarantees to juveniles facing possible commitment in a state institution; it speaks only to the adjudicatory stages of the juvenile process, not the disposition, and it did not specifically include others thrust into the juvenile courts, such as abused or neglected children. Many argue that it should (e.g., Faber, 1971). Second, the due process rights do not include jury trials (McKeiver v. Pennsylvania 403 U.S. 520, 1971). The McKeiver rationale for refusing to accord juveniles a constitutional right to jury trials was that it was unnecessary, since these courts' intake procedures took the place of juries as "buffers to corrupt or overzealous prosecutors" (Some states do allow jury trials for juveniles, Katz et al, 1975). The skepticism exhibited by the Gault court has turned into a reluctance to transform courts entirely into adult-like forums and

has raised some doubts as to the role of the attorney in juvenile hearings. The current interpretation of the Constitution seems to require an advocate but not an advocacy system (Note, Georgetown Law Review, 1973).

B. Intrastate Conflicts

Intrastate jurisdictional problems arise when two courts can hear the same action (or have concurrent jurisdiction as when abuse is both a crime and civil action) or when two or more state or out-of-state courts are involved with the same family. The latter is the more usual, since non-juvenile courts are given jurisdiction over divorce, custody, guardianship and adoptions in many states. Thus, if a child is already under another court's authority when neglect proceedings are begun, two or more courts can enter decrees affecting a child's care and custody.

There is no clear resolution to such conflicts in either the legislation or the case law. A few states, such as Michigan and Oklahoma, give exclusive jurisdiction to the court with the earlier action. Most, however, subordinate an earlier district court determination to that of a juvenile court, and a few will allow the district court proceeding to continue simultaneously with the juvenile court action. In effect, this suspends the implementation of a district court order until the juvenile court hearing is concluded (Law and Tactics in Juvenile Courts, 1974). What is unclear is the resolution of contrary dispositions.

Venue determines where in a state a case will be heard. It is almost totally dependent on state law, since the case law is limited. There are five possibilities: where the petition is filed, the child is found, the act is committed, the child resides, or the parent resides.

States vary in the number of permissible alternatives. None of the states restrict venue exclusively to the county court of the child's residence, although there is a growing recognition that it may be the most appropriate (Uniform Juvenile Court Act, Section 11, 1968). Twenty-four states permit change of venue (Note, Washington University Law Quarterly, 1973).

C. Interstate Conflicts

1. Interstate Compacts

Children placed beyond a state's borders, or those who have left a state before or after an adjudication of neglect, are problems in our federalist system of government that grants states sovereignty over its citizens or those in its territory in matters not covered by national law. (Exceptions are discussed below.) Two interstate compacts, one on the placement of children and the other on juveniles, can assuage the difficulties. For member states, the compacts provide a mechanism for retention of jurisdiction and supervision. The Compact on Juveniles, adopted by all states but Kentucky by 1974, provides for the return of non-delinquent and delinquent runaways. There is no way of gauging the effectiveness of these compacts, however. To file a requisition for return under the Compact for Juveniles, the home state would have to know the fleeing party's destination. Thus, although jurisdiction skipping is well-recognized, its magnitude is not known.

2. Emergency Jurisdiction

A state can legitimately exercise authority over non-residents under emergency jurisdiction that allows a hospital or physician to gain temporary custody of children deemed in danger. Out-of-state residents who seek the help of hospitals or physicians

may unwittingly subject themselves to the jurisdiction of a state court not their own, and remain under that court's authority until the case is disposed to the judge's satisfaction unless transfer arrangements are made. Such emergency provisions are common features of the reporting laws.

D. Nations within a Nation

1. Indians

A state's jurisdiction extends to all within its geographic boundaries except for members of the diplomatic corps who are granted immunity, of Indian reservations, or of military installations. So long as the latter two remain within the confines of the base or the reservation, they may--note, may--be subject only to the laws of the Federal Government, U.S. Military Code or the respective Indian Tribal Council.

Section Seven of Public Law 280 (U.S.C. 1162 et seq.) and the 1968 Indian Civil Rights Act created three categories of Indian jurisdiction. In 22 states, there is no distinction between Indian and non-Indian residents. In another three states, there is partial jurisdiction and all Indians (except in the Red Lake, Minnesota and Warm Springs, Oregon Reservations, whose inhabitants lobbied themselves exceptions) can be prosecuted for child abuse or neglect under the relevant state laws. The other 25 states can exercise their jurisdiction over Indian-committed abuse or neglect only if it is committed off the reservation or if it results in the death of a child. The latter, as a "major crime," would be tried in a federal district court applying state law under the Erie doctrine. Child abuse or neglect on the reservation, where it is most likely to occur, would be subject to the tribal council if it is considered a violation of Indian law or custom. Occasionally the council laws are patterned after state laws but interpreted according to tribal customs.

2. The Military

Even more complicated than Indian jurisdiction is that applying to members of the armed forces and their dependents. Military bases fall under four types of jurisdiction: (1) exclusive, in which all on-base military personnel are considered federalized citizens and subject only to federal and military laws; (2) concurrent, in which the state has reserved the right to exercise its legal power concurrently with the federal and military authorities; (3) partial, in which neither the federal nor the state government has complete jurisdiction and (4) proprietorial, in which the federal government has ownership but not legislative power over an area within a state. The most difficulties occur in exclusive jurisdictions where, absent a military regulation or program on abuse or neglect, no authority will be responsible. The problem is particularly serious if abuse or neglect is caused by military dependents, who are subject only to federal jurisdiction. Such dependents cannot be heard in a military court or a state court, if they live on base. Generally federal courts will not entertain such cases for lack of the necessary Congressional mandates or procedures (Allen, 1975).

The U.S. army is aware of the problem and has several programs in operation. One is at the Beaumont Medical in Texas (Miller, 1972 and 1974). It has formulated Draft Regulation No. 608-XXX to provide a mechanism for child advocacy and the reporting and treatment of abuse and neglect on army installations of 2,000 or more, whose implementation is expected by mid-1975 (Allen, 1975). At the moment only the army is providing thought and programs for child abuse, although both are known to exist in other branches of the armed services (Wells, 1972; Lehman, 1973; Allen, 1975).

Dual systems of jurisdiction create technical and personal problems. The technical problem is to find, if possible, the judicial authority to induce help. The personal, the conflicts

experienced by those who travel in both the Indian or military and state worlds, especially the mandated reporters who see abuse or neglect on the base or reservation. A current approach is the creation of child programs such as the Beaumont Center that involves state and military authorities, or those on reservations that combine Indian and non-Indian resources, parents and professionals, and use education as an alternative to the judicial process. (e.g., Makah Child Development Center, Washington, funded by the Office of Child Development, 1975). The Revised Model Reporting Act restricts the possibility of permanent removal of Indian children from the reservation in view of unhappy experiences in the past.

E. Future Research

There is much to learn about jurisdiction:

1. What is the true extent of judicial activity? The only available juvenile court statistics are published by the Office of Youth Development of HEW. They are incomplete and give no information on dispositions in abuse and neglect. A standard statistical form should be designed and administered to all juvenile courts or court sessions so that an annual index of activity can be compiled. The form should contain questions on: basis for finding of neglect; participants, ages and relationship; type of disposition and agency involvement; reviews and results of follow-through; repeaters.

2. How can intracourt confusion be minimized? Can courts be reorganized so that a single type handles most family related problems? Can laws be clarified on venue?

3. How can interstate confusion be minimized? What are systems for finding and hearing out-of-state offenders? sending them home? Effect on child? Are there current efforts at interstate cooperation?

4. How do court organizations facilitate (or retard) effective disposition? What is the time between adjudication and disposition? How long does the court retain supervision? How does it organize its investigation and follow-up? What is the role of probation officers? How does it coordinate its activities with other agencies? How are the judges educated? How do they and others keep up with current research? What is the system for inter or intracourt record storage and transfer?

5. What are the problems experienced with military and Indian jurisdiction? Are there effective programs?

6. What do judges see as their biggest problem? Some work is being done on judicial decisionmaking process by the Judge Baker Clinic in Boston and others on the factors in reaching an adjudication (e.g., Sullivan, 1968). This is probably less illuminating, however, than an examination of the judges' frustrations and the methods by which these can be overcome.

7. What are the effects of various dispositions? The National Council of Juvenile Court Judges has embarked on such a study. This type of investigation is time-consuming and difficult but essential if we are to understand how the courts can best function in the area of abuse and neglect.

The Relationship of Law and Other Disciplines

The literature is filled with the need for attorneys and judges to understand social and emotional dynamics (e.g., Issacs, 1972 and 1973; Delandy, 1972) and for social workers and others to understand legal procedures and principles (Wagner, 1972). Parents Anonymous' major recommendation is for this type of education. The problem is to devise means whereby such cross-pollination will regularly and effectively be used. Abuse and neglect is not a regular part of family law courses or of the orientation

of legal aid attorneys, who handle many of the cases. Nor is instruction in legal principles a part of the social or medical curricula. Occasionally the government will grant funds to schools of social work or social agencies to perform this service. Other groups simply use their good offices to bring various groups together. A better alternative would be to include the necessary interdisciplinary information as part of the curricula of involved professions and to encourage others, such as professional groups, to hold regular seminars.

Parents' Rights and Children's Rights

Any discussion of abuse and neglect is permeated with disputes over parents' and children's rights. Those favoring the parent urge the most rigid procedures; those favoring the child, the most flexibility. Yet, the law's preference for the parent, though differently phrased, is not unlike the psychologist's emphasis on the importance of a family--even a "bad" family--to a child. It is the social worker who is probably the most frustrated by the legal process. Being closest to the scene of abuse or neglect, his normal instinct to "rescue" the child from this misery is frequently met with the judicial insistence on "proof" or available alternatives. The social workers are joined by advocates of children's rights (Rodham, 1973; Foster and Freed, 1972). The most important comment may be that the adversary system is totally inappropriate in this context (Delaney, 1972), for it seems to pit child against parent when the main concern should be the preservation of the family. And in this light the most encouraging signs are the willingness of some courts to soften the adversary procedures by informal sessions and other devices (Delaney, 1972;

Wagner, 1972; private conversations with juvenile court judges), and the new definition of family being offered by Goldstein, Freud and Solnit that emphasizes the psychological, not the biological, bond.

Summary of Future Research

A great deal of research has been conducted on child abuse and neglect. The most comprehensive bibliography contains more than 1500 entries--and it barely touches the legal literature (Urban and Rural Associates, 1975). Much of this underscores the need for time, patience, and understanding of the enormous problems besetting the abusing or neglecting families (e.g., Report of the Bowen Center Project of 1965-71). Therefore, the first need would seem to be for a presumption in favor of funding the successful program, rather than embarking on more experimentation.

The research in the law of abuse also illuminates the difficulties that are inevitable with any attempt to legislate a change in the human condition. This review has shown the clash between the first generation of writers that urged broader legislative and judicial intervention and the second generation that advocates less. What is needed now is a third generation of writers to concentrate on the positive side. This research should fall into several categories. The first is the continual survey of legal and court operations (such as that done by DeFrancis) to provide an objective baseline of changing activity and trends. The second should be in-depth examinations of key topics to lend perspective to legal endeavors of the future, since unreasonable or unrealistic laws serve neither the profession nor the public. Specifically, we need a better idea of:

A. What are reasonable goals? Some of this may come with a better understanding of the nature of abuse and neglect. If the cause is societal, then laws should move to improve conditions. If the cause is personal, then the law should consider whether protection or rehabilitation is the more productive or feasible.

B. What is a successful legislative model? What were its definitions of abuse and neglect? What structure did it provide for enforcement? What funding? What pattern of dissemination of legal provisions? Implementation of policy?

C. What is a successful structure for services? How is it organized? Funded? How are its services coordinated with other groups involved with abuse and neglect? How does it train? Supervise? Does this differ for remote or urban areas? How does it integrate disciplines?

D. What are adequate records? For Registries? For Courts? For statistical, research and exchange purposes?

E. What is a successful funding pattern? Who disperses funds and how? What is the best mix of private, local, state, and federal funds? How should such funds be allocated among involved agencies? Private and public? Old and new? Service and volunteer? How should money be divided between programs and research? Innovation and replication?

F. What are successful case treatments? Of children? Of parents? Effects of personality? Of worker? Of client? Of type of organization (public, private, volunteer)? How can this be effectively communicated to legislators, attorneys, judges?

G. What are successful court programs? How are they conducted? What is the role of the judge? Probation officer? Volunteer? Other professional? How does it relate to other courts? Community agencies?

H. What is a successful disposition? What alternative did it involve? Short-term? Long-term? Foster care? For child? Child and parent? Termination of parental rights? In conjunction, there is a need for judges to know more about the effects of separation on children of different ages and backgrounds.

I. What is an effective method of education? For judges? Lawyers? Social workers? Others involved? How should judges be selected for juvenile bench?

J. What is an effective method of dissemination? Of legal provisions? Of psychological data? Of programs in abuse and neglect? Or relevant interdisciplinary information?

K. What is an effective method of replication? How can the successful program or law be replicated? By traveling teams? By federal funds? Other?

There is no guarantee, of course, that the research listed above will improve a condition that has been with us throughout history. But, by utilizing the framework we have discussed, there may at last be a real possibility for improvement.

APPENDIX

REVISED MODEL CHILD ABUSE AND NEGLECT REPORTING ACT

Section 1 - Purpose

It is the purpose of this Act to protect the health and welfare of children by encouraging the reporting of suspected child abuse and child neglect in a manner which assures that appropriate protective services will be provided to abused and neglected children and that appropriate services will be offered to families of abused and neglected children in order to protect such children from further harm and to promote the well-being of the child in hi home setting, whenever possible.

Section 2 - Definitions

A. An abused child shall mean a person under eighteen years of age who is suffering from serious physical harm, or sexual molestation, caused by those responsible for his care or others exercising temporary or permanent control over the child.

Section 3 - Persons Required to Report: Persons Permitted to Report

A. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, Christian Science Practitioner, religious healer, school teacher or counselor, social or public assistance worker, child-care worker in any day-care center or child-caring institution, police or law enforcement officer having reasonable cause to suspect that a child coming before him in his official or professional capacity is abused shall be required to report.

B. Except as provided in Part A of this Section, any person who has reasonable cause to suspect that a child is abused or neglected may report.

Section 4 - Report to Whom

All reports pursuant to Section 3 shall be made to the State Department of Social Services.

Section 5 - Method of Reporting; Statewide Telephone Number

A. All reports required or permitted by this Act shall be made immediately by telephone to the State Department of Social Services.

B. The Department of Social Services shall establish and maintain a telephone service for the purpose of receiving reports made pursuant to this Act. This telephone service shall receive reports over a single, statewide toll-free number operating at all times.

Section 6 - Emergency Temporary Protective Custody

A. Any police or law enforcement officer or any physician who has before him a child he has reasonable cause to suspect is an abused child, may take emergency temporary protective custody of such child without the consent of the parents or others exercising temporary or permanent control over the child if the officer or physician has reasonable cause to suspect that there exists an imminent danger to the life of the child if he were not so taken into custody.

B. Any person taking a child into emergency temporary protective custody shall immediately notify the parents or others exercising temporary or permanent control over the child and report to the State Department of Social Services. The Department or its designated local agent shall then initiate a child protective proceeding on or before the next working day in the appropriate juvenile or family court.

C. For the purpose of this Section, emergency temporary protective custody shall mean custody within a hospital or other appropriate medical or child protective setting.

Section 7 - Immunity from Liability

Any person required or permitted to act pursuant to this Act, participating in good faith, shall be immune from civil and criminal liability which might otherwise result by reason of such actions. In all such civil or criminal proceedings, good faith shall be presumed.

Section 8 - Penalty for Failure to Report

Any person required to report a case of suspected child abuse who knowingly fails to do so shall be guilty of a misdemeanor.

Section 9 - Abrogation of Privileged Communication

The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client, is abrogated and shall not constitute grounds for failure to report or the execution of evidence in any civil child protective proceeding resulting from a report pursuant to this Act.

Section 10 - Duties of the State Department of Social Services; Creation of Local Child Protective Services Agencies

A. The State Department of Social Services shall establish or designate appropriate local Child Protective Services Agencies, whose duties are set forth in Section 11.

B. Upon receipt of oral reports of suspected child abuse, neglect, and emergency temporary protective custody, the State Department of Social Services shall communicate them immediately to the appropriate local Child Protective Services Agency. Reports of suspected child abuse also shall be communicated immediately to the State Central Register of Child Abuse, the functions of which are set forth in Section 12.

Section 11 - Duties of the Local Child Protective Services Agencies

A. The local Child Protective Services Agencies shall be adequately staffed with persons trained in the investigation of suspected child abuse and neglect and in the provision of services to abused and neglected children and their families.

B. Within twenty-four hours of the receipt of a report of suspected child abuse or neglect, the Agency shall commence an appropriate and thorough investigation to determine whether a report of suspected child abuse or neglect is "Indicated" or "Unfounded." The finding shall be made no later than sixty days from the receipt of the report.

C. Indicated findings shall be based upon a preponderance of the evidence available to the Agency; whenever there is less than a preponderance of the evidence indicating child abuse or neglect, determinations shall be deemed Unfounded. Indicated findings shall include a description of the services being provided the child and those responsible for his care, as well as all relevant dispositional information. These reports shall be updated at regular intervals.

D. Copies of Indicated and Unfounded findings of abuse shall be communicated immediately to the State Register of Child Abuse.

E. The local Child Protective Services Agencies shall be charged with providing, directing, or coordinating the appropriate and timely delivery of services to children found to be abused or neglected and those responsible for their care or others exercising temporary or permanent control over such children.

F. The Agency shall actively seek the cooperation and involvement of all local public and private institutions, groups and programs concerned with matters of child protection and maltreatment within its jurisdiction.

Section 12 - Central Register of Child Abuse

A. The State Department of Social Services shall maintain a Central Register of Child Abuse. The Register shall receive and maintain reports of child abuse from the State Department of Social Services and from local Child Protective Services Agencies, and it shall transmit information to authorized individuals and agencies as provided in Section 13B.

B. Reports of child abuse shall be maintained on the Central Register in one of three categories: Suspected, Unfounded, or Indicated. All initial reports shall be deemed Suspected. Reports of suspected child abuse shall be maintained for no more than sixty days after the date the report was received from the State Department of Social Services. On or before the expiration of that time they shall be converted into either Unfounded or Indicated reports, pursuant to findings communicated by local Child Protective Services Agencies.

1. Indicated reports shall be maintained on the Register only when accompanied by supplemental information as required by Section 11 C and D.

2. Unfounded reports shall be classified "Unfounded by reason of insufficient evidence."

3. If no finding has been made by a local Child Protective Services Agency after sixty days from the date a report was received, it shall be classified "Unfounded for want of an investigation."

C. The names, addresses, and all other identifying characteristics of all persons named in all Unfounded reports shall be expunged immediately. The names, addresses, birthdates and all other identifying characteristics of all persons named in Indicated reports shall be expunged seven years from the date the report was received.

Section 13 - Confidentiality of Reports and Records

A. All reports made pursuant to this Act maintained by the State Department of Social Services, local Child Protective Services Agencies and the State Central Register of Child Abuse shall be confidential. Any person who disseminates or permits the unauthorized dissemination of such information shall be guilty of a misdemeanor.

B. Information contained in reports described in Part A shall not be made available to any individual or institution except:

1. Appropriate staff of the State Department of Social Services and Local Child Protective Services Agencies;

2. Any person who is the subject of a report, subject to the qualifications provided in Part C of this Section.

3. Civil courts of law conducting child abuse or child protective proceedings;

4. Any person engaged in a bona fide research purpose, with written permission of the director of the State Department of Social Services, provided, however, that no information regarding the names, addresses and all other identifying characteristics of subjects of the report shall be made available to the researcher.

C. Any person who is the subject of a report made pursuant to this Act shall be immediately notified of the fact that his name has been recorded by the State Department of Social Services, the local Child Protective Services Agency, and if applicable, the State Central Register of Child Abuse; he shall also be informed of the finding of the investigation and whether or not his name has been expunged from the Register. Any person who is the subject of a report shall be informed of his right to inspect the report and his right to challenge any part of the contents therein. The only details of the report which shall be withheld from the subject's knowledge or inspection are name, address, occupation and all other identifying characteristics of the reporter.

D. For the purposes of this Section, "any person who is the subject of a report" shall mean the child and any person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report or finding.

Section 14 - Information, Training, and Publicity

A. The State Department of Social Services and the local Child Protective Services Agencies shall, on a continuing basis, inform all persons required to report of the nature, problem and extent of child abuse and neglect and of their duties, options and responsibilities in accordance with this Act. The Department and the Agencies shall also, on a continuing basis, conduct training programs for local Agency staff.

B. The State Department of Social Services and the local Child Protective Services Agencies shall, on a continuing basis, inform the public of the nature, problem and extent of child abuse and neglect, and of the remedial and therapeutic services available to children and their families. The Department and the Agencies shall also encourage selfreporting and the voluntary acceptance of available services.

C. The State Department of Social Services shall, on a continuing basis, actively publicize to mandated reporters and the public the existence and the number of the twenty-four hour, statewide, tollfree telephone service to receive reports of suspected child abuse and neglect.

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