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A Glance at the Past, a Gaze at the Present, a Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes

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Child abuse used to be called an ugly secret. It remains ugly but it is no longer a secret.

Child abuse is not a phenomenon of the Twentieth Century. Children have been physically traumatized, neglected, molested and deprived since the dawn of man's earliest recorded history. It was not until 1962, however, that it was formally identified as an observable, clinical condition, and, it was not until the early 1970's that America accepted it as a problem of devastating proportions.

To believe that child abuse can ever be completely eradicated is naive. It is possible, however, to reduce its incidence. To accomplish this will require a different perspective, a more creative delivery system and a more coordinated effort.

America and its institutions have a nasty habit of reacting to problems. Remedial solutions are often viewed as prudent solutions; they are not. A reaction to the problem after the fact is cruel; cruel in terms of human suffering and dollars spent. Institutions, if they are to be effective, must become more adept at anticipating solutions.

To successfully anticipate solutions requires a careful planning process. American institutions, however, usually do not plan. They labor under a different assumption. In child abuse, for example, the federal government funds numerous demonstration programs, resource programs and research efforts. There is a belief that these diverse programs will magically coalesce at some future point in time. From this amalgam of services and programs, it is believed that a comprehensive, coordinated national program will develop, a program which will evaluate its needs and define future goals and objectives. It will not.

Today, America faces a glut of large and costly social problems. Its resources are scarce and taut. To believe that the federal and state

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governments will continue to appropriate ever-increasing resources to
deal with these problems is simplistic. They will not. To meet current
and future needs, America has two options. It can cast a critical eye,
evaluate the distribution of current resources, draft priorities and redis-
tribute those resources. Or, alternatively, it can critically evaluate the
distribution of current resources and attempt to make the system more
efficient. Realistically, the first alternative is not likely to occur. The
second could.

If, over the next decade, America is going to be successful in re-
ducing the incidence of child abuse, a different perspective is necessary.
A system is needed which is geared to anticipate solutions and not
merely react to problems. It must begin to plan prudently and learn to
become more efficient. This article deals with child abuse legislation,
particularly the reporting statutes. Reporting statutes evolved in the
early 1960's as a reaction to the problem. During the late 1960's and
into the early 1970's the reporting statute began to go through a period
of metamorphosis. It began to broaden its scope and address tangential
issues. Today, child abuse legislation could be described as standing
on the threshold. Legislation could begin to address the issues of plan-
ning, coordination, allocation of resources and prevention. On the
other hand, it could stagnate.

To know where you want to go and how to get there, it is some-
times wise to determine where you have been and where you are now.
This article deals with where we have been and where we are now. It
is a chronological review of the reporting statute and the factors which
have had a substantial impact on its form.

CHILD ABUSE

The mandatory reporting statute has been substantially affected by
three factors: the problem itself; the delivery system; and the federal
government.

The Problem

Child abuse was originally defined in 1962 as a non-accidental
physical injury. It was a simple and narrow definition which reflected
what was known at the time. In recent years our knowledge of in-

flicted trauma has increased. As our understanding of the incidence, medical pathology and family dynamics involved increased, our definition grew.3

Today, the term child abuse has a much broader meaning. It is a generic term.4 In the simplest of terms, it is damage to a child for which there is no reasonable explanation. Child abuse is usually not a single physical attack or a single act of molestation or deprivation.5 It is typically a pattern of behavior.6 Its effects are cumulative. The longer it continues, the more serious the damage.7

Each state defines child abuse differently. Although definitions vary, all are a combination of two or more of the following elements: a non-accidental physical injury;8 sexual molestation;9 emotional abuse or mental injury;10 and neglect.11

The elements of non-accidental physical injury and sexual molestation can be defined specifically (although they often are not). Neglect and emotional abuse cannot; they are standards of behavior.2 They reflect community values and cultural biases and are standards which should reflect the level of care and support that a child is entitled to receive or the level of care and support a parent is required to pro-

5. A number of courts have formally recognized the fact that child abuse is a series of injuries or a pattern of behavior. State ex rel. Thaxton, 220 So. 2d 184 (La. App. 1969); In re Young, 50 Misc. 2d 271, 274, 270 N.Y.S. 2d 250, 253 (1966); In re K.D.E., 210 N.W.2d 907, 910 (S.D. 1973).
6. Thirty to forty per cent of the parents involved in a case of child abuse have been involved in a previous case of child abuse. In twenty-seven per cent of the families involved in a case of child abuse, siblings of the most recent victim also have been victims of child abuse. Gil, Violence Against Children: Physical Child Abuse in the United States 114 (1972).
7. One respected authority in the field of child abuse has suggested that fifty per cent of the children who are hospitalized for child abuse will be dead within a year—victims of another episode of child abuse. Fontana, Somewhere a Child Is Crying 109 (1973).
It is estimated that between 665,000 and 1,675,000 children are physically abused, sexually assaulted or seriously neglected each year. Nationally it is estimated that between 2,000 and 5,000 children die each year as a direct result of child abuse.

It is impossible to characterize the abusing adult by the color of his skin, his ethnic heritage, his religious preference, his income or his educational background. Child abuse cuts across the complete spectrum of American society.

Child abuse is a complex and eclectic problem. It does not belong to the medical profession, the legal profession or the social work profession. No one discipline provides a complete solution. No one has been able to determine with any specificity why child abuse takes place. At best, it can be said that there are four factors which seem to be indigenous to child abuse. (1) Child abuse seems to be a learned or conditioned behavior. In most cases of child abuse, it is likely that one or both parents were physically abused, neglected or deprived as children. (2) The parents are isolated. They have no friends, relatives or neighbors who can be called upon in times of crises. (3) The parents have unrealistic expectations for their children. (4) There is a crisis of some sort which precedes and precipitates the abusive incident. When these four factors come together and coalesce in a family, child abuse is likely to occur.

If child abuse legislation is to be effective, it must respond to all of the above problems. It must provide a mechanism to identify the child in peril at the earliest possible point in time. The various elements of child abuse must be defined as specifically as possible. Standards, as far as is possible, must be reasonable, readable and applicable. Effective child abuse legislation must remain cognizant of the extent of the problem. It must pragmatically weigh the sheer number of persons...

13. See text accompanying notes 68-69, infra.
15. See Kempe, Approaches to Preventing Child Abuse, 130 AM. J. DISEASES OF CHILDREN 941, 945 (1976).
18. For a more complete discussion of how the system deals with child abuse, see Fraser, Independent Representation for the Abused and Neglected Child: The Guardian Ad Litem, 13 CAL. L. REV. 16, 22-25 (1976-77).
affected against the limited resources and define what can be reason-
ably accomplished. Legislation which requires treatment for every
abused child and his parents, when no resources exist, is shortsighted
and self-defeating. Effective legislation must account for and make pro-
vision for different cultures and different values. It must create a
mechanism which combines different disciplines and different forms of
expertise. By combining disciplines and expertise, a more effective de-
livery system will be obtained and the complex issues involved in child
abuse will be resolved. Finally, legislation which deals only with the
final result is a remedial approach and has limited value.

The System

The successful resolution of any case of child abuse requires three
steps. The first is the identification of the child believed to have been
abused. The second is an investigation to determine if the child has
indeed been abused. And the third is the delivery of services and treat-
ment to the abused child and his family. The current child abuse sys-
tem is a remedial system. It becomes operational only after the child
has been abused. What resources are available are used to alleviate
the damage which has already been inflicted.

Identification

The first step in resolving any case of child abuse is to identify the
child in peril. To ensure that reports of child abuse are made and to
facilitate the reporting process, every state has enacted into law a
mandatory reporting statute. Unfortunately, there is little uniformity.
Every state has enacted its own reporting statute. As a result, defini-
tions, standards and procedures vary from state to state. Although
definitions and standards vary, all reporting statutes have a common
purpose and a common format.

The purpose of each reporting statute is to identify the child be-
lieved to have been abused. To accomplish this all states have adopted
a similar format. Child abuse is defined. Selected individuals, usually
professionals, are mandated to report when they believe a child has
been abused. At least one statewide agency is designated to receive
these reports and investigate them. To encourage reporting, immunity

19. The State of Colorado has attempted to address this problem by making provision for
representatives of different minoritites and the general public to serve on county child protection
20. See EDUCATION COMM'N OF THE STATES, REPORT NO. 106 TRENDS IN CHILD PROTEC-
is provided for good faith reports, or criminal or civil provisions are provided for non-compliance and the status of certain privileged communications is abrogated.

Since the first reporting statute was enacted in 1962, the number of reported cases has increased on a yearly basis. Although reports have increased dramatically, it is generally believed that the majority of cases of child abuse still go unrecognized and unreported. Effective child abuse legislation must provide a mechanism to ensure that all cases of suspected child abuse are properly identified and reported. At the same time, however, the goal of increasing the number of reports must be tempered with the knowledge that our present system is already functioning at or over capacity. Any concerted effort to increase the number of reports must be matched with an effort to increase the capacity of the system to deal effectively with those reports.

While it is true that the development of reporting statutes and the growth of reports have been somewhat parallel, this does not necessarily imply a causal relationship. Reporting statutes have for the most part focused on professionals. The majority of reports, however, come from non-professionals—the relative, the next door neighbor, the co-worker. If reporting is to increase in the future, it will come from an increased awareness of the general public, not the professional. If increased reporting over the next decade is to be a principal aim of the reporting statute, it will be necessary to focus on the awareness of the general public, not specific duties of the professional.

The Investigation

Every state has identified at least one statewide agency to receive and investigate reports of suspected child abuse. In most states that agency is the Department of Social Services.

When a report of suspected child abuse is received by the Department of Social Services, it is screened (the intake process) and assigned to an agency caseworker for investigation. It is on the basis of this investigation that all future actions will hinge. Unfortunately, the majority of child abuse investigations are not thorough nor properly made.

Over the past few years the number of reports of suspected child abuse have increased dramatically. Agency personnel which must investigate the reports, on the other hand, have not increased substantially. The result is an ever decreasing amount of time available to investigate each case. Since only a small amount of time can be spent investigating each case, there is a tendency to focus on the reported injury. But child abuse is a pattern of behavior. The reported injury
in all likelihood is just one small piece of a much larger puzzle. The investigation which focuses on the reported injury creates a still life portrait of the child at the time the report was received. The proper investigation needs to focus on the child's life, not on a single event. The proper investigation should create a moving picture of the child's life.

When the investigation has been completed, the caseworker must resolve three issues. (1) The diagnosis. Is this a case of child abuse? Can the child's injuries or the parents' behavior be characterized as child abuse under state law? (2) The prognosis. What are the chances that treatment for the child and his parents will ultimately prove to be successful? (3) The treatment plan. What services and treatment would be appropriate and are available? Unfortunately, because of the limitations of Departments of Social Services and individual caseworkers, the resolution of these issues is, at best, minimal.

Furthermore, it is usually an individual caseworker who must resolve the issues of diagnosis, prognosis and treatment. But child abuse is a bit medical pathology, a bit psychiatry, a bit legalese and a bit social work. To assume that any one individual has substantive expertise in all of these disciplines is naive.

If child abuse legislation is to be effective, it must address the twin issues of limited resources and limited expertise. To do less is to provide for identification but to overload the system. Good child abuse legislation can provide for a more efficient allocation of resources. It can provide for cooperation and coordination between agencies, training and education for caseworkers, and the pooling of expertise of different professionals.

Intervention

Intervention simply means the implementation of the treatment plan. In the majority of cases of child abuse, the implementation of the treatment plan is on a voluntary basis. It is simply an agreement by the parents and the Department of Social Services. Voluntary implementation is monitored by the caseworker. When the caseworker believes that the home environment has stabilized, he will withdraw.

In some cases, however, voluntary intervention is not appropriate. In cases in which the parents are unwilling to cooperate, the prognosis is poor, the injuries are severe or there is a pattern of past abuses, another intervention strategy must be used. Involuntary intervention simply means that the treatment plan is implemented and monitored by a court.
Both voluntary and involuntary intervention rest on one assumption: treatment and services are available within the community. In most communities treatment and services are not available. To the degree possible, child abuse legislation must encourage new treatment and services. To the extent that this is not possible, good legislation must make every effort to ensure that what resources are available are used efficiently.

The Federal Government

On January 31, 1974, the President of the United States signed into law the Child Abuse Prevention and Treatment Act. The Act allocated $85,000,000 for the identification, the treatment and the prevention of child abuse. Of the sums allocated by this Act, not less than five per cent and not more than twenty per cent of the total were specifically earmarked for state use. For a state to be eligible for these funds it must meet ten conditions. The state must: (1) Provide for the reporting of known or suspected child abuse. (2) Provide for, upon receipt of a report of known or suspected child abuse, an investigation by a properly constituted state authority. The investigation must be made promptly. And if, after the investigation has been completed, there is a finding of child abuse, the state must provide immediate action to protect the health and welfare of the abused or neglected child or any other child in the same home. (3) Demonstrate that there are in effect administrative procedures, trained personnel, training procedures, institutional and other facilities and multi-disciplinary programs and services sufficient to assure that the state can deal effectively and efficiently with child abuse. At a minimum this must include provisions for the receipt, investigation and verification of reports; provision for the determination of treatment and ameliorative social services and medical needs; provision of such services; and where necessary recourse to the criminal or juvenile court. (4) Have in effect a child abuse and neglect law that provides immunity for persons

22. 42 U.S.C. § 5104. This sum was allocated over a four year period: $15,000,000.00 for the fiscal year ending June 30, 1974; $20,000,000.00 for the 1975 fiscal year; and $25,000,000.00 for the 1976 and 1977 fiscal years.
23. 42 U.S.C. § 5103(b)(1). This figure is calculated on the basis of $20,000.00 to each state, plus an additional sum based upon the ratio of the number of children under 18 years within the state to the total number of children under 18 years in the country. See also 45 C.F.R. § 1340.3-6 (1976).
who report in good faith (civil and criminal).\(^{28}\) (5) Preserve the confidentiality of all records concerning reports of child abuse and neglect by having in effect, a law that makes such records confidential and makes any person who permits or encourages the unauthorized dissemination of such records or their contents guilty of a crime.\(^{29}\) (6) Establish cooperation among law enforcement officials, courts of competent jurisdiction, and all appropriate state agencies providing human services for the prevention, treatment and identification of child abuse and neglect.\(^{30}\) (7) Ensure that in every case of child abuse that results in a judicial proceeding, there is an appointment of a Guardian Ad Litem to represent the child.\(^{31}\) (8) Show that the aggregate of state support for programs or projects related to child abuse are not reduced below the level provided during the fiscal year 1973.\(^{32}\) (9) Provide for public dissemination of information on the problem of child abuse as well as the facilities and the prevention and treatment methods available to combat it.\(^{33}\) (10) To the extent feasible, insure that parental organizations combating child abuse and neglect receive preferential treatment.\(^{34}\)

It is not necessary for a state to meet all of these conditions by statute to receive federal support. Some may be satisfied by simply having a program in place or an attorney general's opinion noting that certain practices are followed. Nevertheless, the passage of the Act has had a substantial impact on state reporting statutes.

### THE REPORTING STATUTES

#### A Quick History

The concept of a child abuse reporting statute was first explored in 1962. In 1963, a model reporting statute was proposed by the Children's Bureau of H.E.W.\(^{35}\) and in 1965, two other models were developed and offered to the general public.\(^{36}\) By 1964, twenty states had

\(^{36}\) AMERICAN MEDICAL ASSOCIATION, PHYSICAL ABUSE OF CHILDREN—SUGGESTED LEGISLATION (1965) [hereinafter cited as AMERICAN MEDICAL ASSOCIATION]; COUNCIL OF STATE GOVERNMENTS, PROGRAM FOR SUGGESTED STATE LEGISLATION (1965).
adopted a reporting statute and by 1966, forty-nine states had enacted such a statute. Today all fifty states, Washington, D.C., Puerto Rico and the Virgin Islands have such laws. In very few areas have legislative concepts met with such universal acceptance.

The first generation of reporting statues had a rather simple focus. Their purpose was to mandate certain professionals to report suspected cases of child abuse. It was an identification function. It was believed that if a case of suspected child abuse could be identified and funneled into the system, appropriate relief would be provided. It was an erroneous assumption. As a result, a second generation of reporting statutes began to emerge. The focus of these statutes was identification and investigation. It was believed that, if the needs were clearly identified and if standards were clearly established, existing agencies would provide the appropriate relief. That too proved to be an erroneous assumption. As a result, a third generation of reporting statutes began to emerge. In addition to identification and investigation, these statutes began to address the complex issues of intervention. These statutes began to address the issues of limited resources, limited expertise, lack of coordination, a need to involve the general public as well as the professionals, and the need to establish a planning component.

Every state has enacted into law a mandatory reporting statute. Unfortunately, every state has enacted its own law, and, as a result, there is little uniformity in the language. There is, however, a common format.  

40. See generally AMERICAN MEDICAL ASSOCIATION, supra note 36; CHILDREN'S BUREAU, supra note 35.
41. See B.G. FRASER, THE EDUCATION COMM'N OF THE STATE, REPORT No. 44, CHILD ABUSE AND NEGLECT: ALTERNATIVES FOR STATE LEGISLATION (1973) [hereinafter cited as ALTERNATIVES FOR STATE LEGISLATION].
44. See text accompanying notes 251-54, infra.
45. See text accompanying notes 210-11, infra.
46. See notes 251-254, infra.
47. See note 72, 113, 228, infra.
48. See notes 103-11, 210-12, infra.
49. See note 252, infra.
50. See Pragmatic Alternative, supra note 4, at 104.
51. See generally F.B. SUSSMAN & F.S. COHEN, REPORTING CHILD ABUSE AND NEGLECT:
REPORTING STATUTES

General Format

The Purpose Clause

The purpose clause in reporting statutes has little intrinsic value. At the most, it reflects the aspirations of the individuals who drafted it. At the least, it represents standards which were never achieved.

The real purpose of any reporting statute is threefold. First, the child in peril must be identified as quickly as possible. Second, an agency to receive and investigate reports of suspected child abuse is named. Third, the reporting statute offers, where appropriate, services and treatment. The stated purpose is often somewhat more grandiose than what can be delivered. Perhaps foreseeing the widening gap between what was offered and what could be delivered, the American Medical Association warned in 1964 that such legislation should be realistic.

The number of states which include a purpose clause in their reporting statute has increased over the past few years. In 1973, thirty-four states included such a clause. In 1977, as reporting statutes became more complex, the number had grown to forty.

The Definition of Child Abuse

Every state reporting statute requires that suspected cases of child abuse be reported. However, every state defines child abuse differently. Child abuse, as stated earlier, is a generic term that can combine up to four elements: non-accidental physical injury, neglect, sexual molestation, mental injury. Every state defines child abuse as a combination of two or more of these elements.
Non-Accidental Physical Injury

Every state includes non-accidental physical injury in its definition of child abuse. Non-accidental physical injury means inflicted trauma. It includes, but is not limited to such things as cuts, bruises, abrasions, broken bones, strangulation, subdural hematoma and burns.

Most states are not specific; they simply require that non-accidental physical injuries be reported. A few states, however, are somewhat more specific. They limit non-accidental injuries to serious ones and provide specific guidelines. \(^6^0\) Colorado, for example, defines non-accidental physical injury as “evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture to any bone, subdural hematoma, soft tissue swelling. . . .” \(^6^1\)

Corporal punishment is by definition inflicted non-accidental physical injury. No state, however, prohibits parents from using corporal punishment in the upbringing of their children. The issue is what is reasonable. \(^6^2\) Eight states have felt that the term non-accidental physical injury is so ambiguous in regard to corporal punishment that they have attempted to distinguish corporal punishment from non-accidental physical injury. Four states specifically permit reasonable corporal punishment and note that it is not child abuse. \(^6^3\) Four states reverse the wording and state that excessive corporal punishment is child abuse. \(^6^4\) Unfortunately, neither reasonable nor excessive is defined.

Neglect \(^6^5\)

Neglect, unlike the element of non-accidental physical injury,

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62. What is reasonable and what is not, involves a balancing of four factors. One: How old is the child? Two: What part of the body was struck? Three: What was used to strike the child? Four: How much damage was inflicted?


65. See generally Areen, supra note 11; Gil, Legal Nature of Neglect, 6 N.P.P.A. J. 1 (1960) [hereinafter cited as Legal Nature of Neglect]; Wald, Realistic Standards, supra note 11; Wald, Standards for Removal, supra note 11.
seems to defy definition. Neglect denotes a standard of care or behavior. It is the standard of care that a child is entitled to receive, or it is the standard of care and support that a parent is required to provide. There is no agreement of a common standard. At best, the result might be described as chaotic.

There are two general schools of thought regarding the standard of neglect. One school believes that a child is entitled to the care and support that a reasonably prudent parent might provide. The other school believes that the child is only entitled to the care and support that the community accepts as a minimum. For all practical purposes the standard probably lies between these two extremes and fluctuates from community to community.

Since neglect cannot be defined, great emotionalism surrounds it. Standards must be applied by individuals and the application of a standard is a subjective process. In cases of child abuse, it is the social worker and the judge who apply the standard. The application of the standard is often criticized as being culturally emasculated with a middle class orientation. It is. A few states have attempted to address community values and cultural differences by creating child protection teams with lay and minority representation in each community.

Today, forty-seven states include the element of neglect in their definition of child abuse. All forty-seven have attempted to develop their own standards. As a result, there is little uniformity. Only in recent years has there been an attempt to develop reasonable standards for neglect that could be used by all states.

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67. Cf. In re Stacey, 16 Ill. App. 3d 179, 183, 305 N.E.2d 634, 638 (1973) ("... no fixed standard for neglect, so each case must be judged on its particular facts ... ").
68. Legal Nature of Neglect, supra note 65, at 6.
70. See Young, Wednesday's Children 141 (1964); Mnookin, Foster Care—In Whose Best Interests? 43 HARV. EDUC. REV. 599, 605 (1973).
72. See, e.g., COLO. REV. STAT. § 19-10-103(2) (Cum. Supp. 1976) ("When any racial, ethnic, or linguistic minority constitute a significant portion of the population of the jurisdiction ... a member of such minority group shall serve as an additional lay member of the child protection team").
73. Only Wisconsin, Indiana and Maryland do not include the element of neglect in their definitions of child abuse. See TRENDS IN CHILD PROTECTION—1977, supra note 20, at 18.
74. See Areen, supra note 11, at 888 n.5.
75. There has been a concerted effort to develop reasonable standards for neglect. The project was the joint undertaking of the American Bar Association and the Institute for Judicial Administration. For the results of that project see Wald, Realistic Standards, supra note 11;
have been criticized. 76

Sexual Molestation

There is a common belief that the terms sexual molestation and sexual abuse are self-explanatory. They are not. At a minimum both terms would include sexual intercourse between a child and an adult. Beyond that the lines of demarcation are not clear. As a factual matter it is often difficult to distinguish between appropriate displays of affection or fondling and other possible disturbing behavior. 77

Forty-two states include the element of sexual molestation in the definition of child abuse. Although it could be defined, thirty-four states fail to do so. 78 Eight states do attempt to provide some guidance. 79 Seven of these states do so by referring to another provision in their codes which provide a definition. 80 Maryland has defined it in its reporting statute as "any act or acts involving sexual molestation or exploitation, including but not limited to incest, rape, a sexual offense in any degree, sodomy or unnatural or perverted sexual practices on a child.. . ." 81

Wald, Standards for Removal, supra note 11. There seems to be some question as to whether or not these standards will be accepted by the American Bar Association.


80. Minnesota, Nevada, New York, Ohio, Oklahoma, South Carolina and Wyoming.

Mental Injury/Emotional Abuse

As early as 1958 it was suggested that mental injury should be included in any definition of child abuse. The same suggestion has been echoed by various commentators for the last twenty years.

There is little doubt that physical trauma or a hostile psychological environment can cause mental injury. There is equally little doubt that the mental injury can be quite severe and the effects can have a pronounced effect in later years. It cannot, however, be said with any surety that a hostile or neglectful environment will result in mental injury. And this has prompted at least one commentator to suggest that mental injury and possible intervention should be "" premised solely on damage to a child" and not on a harmful environment which might result in psychological damage and mental injury.

Mental injury or emotional abuse is by far the most intangible of all of the elements that compose the definition of child abuse. As a term it almost defies definition. Because it is so hard to define and is so intangible, there is great feeling that, if it is included in a state's definition of child abuse, it will lead to selective intervention and over-reaction.

Nevertheless, thirty-two states have included the element of mental injury in their definition of child abuse. Twenty-two of those states have made no attempt to define it. Since these terms are de-

85. See MacFarlane, National Inst. of Mental Health, The Mental Health of the Child—Project Reports, Childhood Influences Upon Intelligence, Personality and Mental Health 131 (1971).
86. See Goldstein, Solnit & Freud, Beyond the Best Interests of the Child 20 (1973); Robertson, Mothering as an Influence on Early Development, 17 Psychoanalytic Study Child 245 (1962).
87. See Wald, Realistic Standards, supra note 11, at 1017.
88. See DeFrancis, Protective Services and Community Expectations 13 (1968).
89. In some states mental injury is called emotional abuse, in others it is called emotional neglect, emotional maltreatment or psychological abuse.
fined and are reportable in other sections of the code, many states feel no obligation to define mental injury. Several states, however, have attempted to define the term. New Hampshire, for example, defines mental injury to be "such that said child exhibits symptoms of emotional problems, generally recognized to result from constant mistreatment or neglect. . . ." Rhode Island is more specific, defining mental injury as:

a state of substantially diminished psychological or intellectual functioning in relation to but not limited to such factors as: failure to thrive, ability to think or reason; control of aggression or self-destructive impulses; acting out or misbehavior including incorrigibility, ungovernability; or habitual truancy; provided, however, that such injury must be clearly attributable to the unwillingness or inability of the parent or other person responsible for the child's welfare to exercise a minimum degree of care for the child.

Who Must Report

The first generation of reporting statutes singled out the physician as the mandated reporter. Physicians were singled out because it was felt that they had the necessary training and expertise to identify child abuse. As a profession, they were mandated to report because it was felt that they often saw the child abuse case but chose not to report. While it was true that some physicians consciously chose not to report, the majority of physicians did not report for other reasons. Many were unaware of the clinical aspects of child abuse while others were unaware of their obligation to report. And many, even if they did identify a case of suspected child abuse, did not know whom to report to.

94. See Pragmatic Alternative, supra note 4, at 110.
96. See Berlow, Recognition and Rescue of the Battered Child, 41 HOSPITALS 58 (1967).
During the past two decades the group of professionals mandated to report has been expanded broadly. A few commentators have disagreed with this trend and have argued that the obligation to report should rest solely with the medical profession. A critical evaluation of the dynamics of child abuse, however, strongly supports the contention that there should be a broad base of mandated reporters. Child abuse is a pattern of behavior. The longer the abusive behavior continues, the more severe the damage to the child. In most cases a physician only sees the child when the injuries are so severe that they require immediate medical attention. The physician in these cases has the opportunity of identifying the severe case of child abuse. A more prudent approach would seem to dictate a system which identifies the child before the damage becomes too severe.

Accordingly, the second and third generation reporting statutes have substantially broadened the base of mandated reporters. Since 1974, all fifty states have required that physicians report. The inclusion of other professionals in this mandated base has been sweeping. In 1974, thirty-four states required nurses to report, twenty-four required teachers to report, twenty-five required social workers to report and nine states required police officers to report. Today, forty-eight states require nurses to report, forty-nine require teachers and school officials to report, forty-nine require social workers to re-

99. See Fontana, Somewhere a Child is Crying 159 (1973); Gromet, The Plaintive Plain-tiffs, Victims of the Battered Child Syndrome, 4 Fam. L.Q. 296, 305 (1970); Hansen, Doctors, Lawyers and the Battered Child Law, 5 J. Trauma 826, 827 (1965) [hereinafter cited as Hansen].
100. See McCoid, The Battered Child and Other Assaults on the Family, 50 Minn. L. Rev. 1, 27 (1965); Paulsen, supra note 38, at 113.
102. See Pragmatic Alternative, supra note 4, at 109.
103. See Pragmatic Alternative, supra note 4, at 109; A Review of the Literature, supra note 42, at 272.
104. See Pragmatic Alternative, supra note 4, at 109 n.24.
105. Id. at 109 n.26.
106. Id. at 109 n.25.
107. Id. at 109 n.27.
108. States requiring nurses to report include: Alabama; Alaska; Arizona; Arkansas; California; Colorado; Connecticut; Delaware; Florida; Georgia; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Michigan; Mississippi; Missouri; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Ohio; Oklahoma; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Utah; Vermont; Virginia; Washington; Wisconsin and Wyoming.
109. States requiring teachers or school personnel to report include: Alabama; Alaska; Arizona; Arkansas; California; Colorado; Connecticut; Delaware; Florida; Georgia; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Ohio; Oklahoma; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Utah; Virginia; Washington; West Virginia; Wisconsin and Wyoming.
port and forty states require law enforcement officers to report. Additionally, in 1974 sixteen states required "any person" to report in addition to the specified professionals. Today twenty states require "any person" to report.

The expansion of the base of mandated reporters simply reflects the reality of the problem. Physicians do not have daily access to young children. They see the child when immediate medical care is necessary. Other persons—nurses, teachers, social workers, relatives and next-door neighbors—do have almost daily access to young children. These persons have the unique opportunity of identifying the child in peril long before the damage becomes severe.

The fact that a particular statute broadly increases the number of mandated reporters is no guarantee of success. Language like that contained in the California Penal Code: "physician, surgeon, dentist, resident, intern, podiatrist, chiropractor, religious practitioner . . . registered nurse . . . superintendent, any supervisor of child welfare and attendance, or any certified pupil personnel employee . . . principal . . . teacher . . . licensed day care worker . . . administrator of a public or private summer day camp or child care center . . . social worker . . . (must report) . . ." is not enough. Until those mandated to report suspected cases of child abuse know that they have an obligation to report, know what child abuse is, know how to identify it, know to whom to report, there is little chance that it will be any more successful than the older more narrowly-drawn statutes. A broadened base of mandated reporters, coupled with an effective public awareness and ed-

110. States requiring social workers to report include: Alabama; Alaska; Arizona; Arkansas; California; Colorado; Connecticut; Delaware; Florida; Georgia; Hawaii; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Ohio; Oklahoma; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Utah; Virginia; West Virginia; Washington.
111. States requiring police officers to report include: Alabama; Alaska; Arkansas; Arizona; California; Connecticut; Georgia; Idaho; Illinois; Indiana; Iowa; Kansas; Kentucky; Louisiana; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nebraska; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Oklahoma; Pennsylvania; Rhode Island; South Carolina; South Dakota; Tennessee; Texas; Utah; Vermont; Virginia; West Virginia and Wyoming.
112. See Pragmatic Alternative, supra note 4, at 109 n.28.
113. States which require "any other person," or "any person" to report include: Alabama; Delaware; Florida; Idaho; Indiana; Kentucky; Louisiana; Maine; Maryland; Montana; Nebraska; New Jersey; New Mexico; North Carolina; Oklahoma; Rhode Island; Tennessee; Texas; Utah and Wyoming.
115. See text accompanying notes 226-29, infra.
ucational campaign will, however, make a substantial difference in re-
porting.

When Must a Report Be Made

It is commonly believed that a mandated reporter must report 
when he knows that a child has been abused. The belief is incorrect. 
Individuals are mandated to report when they believe or suspect that a 
child has been abused. The actual determination of abuse is made by a 
caseworker after the child abuse investigation has been completed.

Language which describes the degree of certainty necessary before 
a report is made varies from state to state. In some states it is “cause 
to believe.” In other states it is “reasonable cause to suspect” or 
“reasonable cause to know or suspect.” While the language may 
vary from state to state, for all practical purposes, the meaning is sub-
stantially the same.

There are some instances, however, in which the different lan-
guage is very important. Language which includes the word reason-
able—reasonable cause to believe—denotes an objective test for 
reporting purposes. It is what reasonable men in similar circumstances 
would believe to be the case, whether or not the individual in question 
(the reporter) actually formed the belief. The word belief or suspect, 
on the other hand, standing alone denotes a subjective test for reporting 
purposes. It is a test under which only the reporter is required to hold 
the requisite opinion or belief. The distinction between an objective 
test and a subjective test is of paramount importance in resolving the 
issue of civil liability for a failure to report.

The first generation reporting statutes required that a report be 
made when there was reason to believe or suspect that a child had been 
abused. A number of states have substantially broadened that require-
ment. Today twenty-four states require that a report be made when 
there is reasonable cause to believe that a child has been abused or the 
reporter observed the child being subjected to circumstances or condi-

116. For an excellent discussion of the degree of certainty, or the reporter's state of mind, see A 
Review of the Literature, supra note 42, at 276.
117. ALASKA STAT. § 47.17.020 (1975).
120. See DEFRANCIS & LUCHT, CHILD ABUSE LEGISLATION IN THE 1970'S, at 8 (Rev. ed. 
1974).
121. See A Review of the Literature, supra note 42, at 277.
122. See A Review of the Literature, supra note 42, at 277.
123. See generally Brown & Truitt, Civil Liability in Child Abuse Cases, 54 CHI.-KENT L. REV. 
753 (1978) [hereinafter cited as Brown].
tions which would reasonably result in abuse. The intent is to provide a mechanism to identify the child in peril before serious damage is inflicted.

How, When and to Whom a Report Must Be Made

Every state requires that an oral report of suspected child abuse be forwarded to the appropriate agency. Almost every state requires that the report be made immediately or promptly. Forty-two states make provision for a written report to follow the oral report, usually within forty-eight to seventy-two hours. The purpose of the oral report is to permit the receiving agency to take immediate protective action, if the child’s life or health is in danger. The purpose of the written report is to provide a foundation for the investigation and a written record of the report.

Historically, three different agencies have served as the repository for reports of suspected child abuse. Each agency has inherent strengths and weaknesses. The first generation of reporting statutes identified the police department as the most appropriate agency to receive and investigate reports of suspected child abuse. Proponents of police departments as the receiving agency argue that child abuse in serious cases is a crime and that the police are available twenty-four hours a day and seven days a week. Furthermore, the proponents argue that people are accustomed to reporting acts of violence to the


126. There are eight states which have no provision for a written report. They are Alaska, Idaho, Indiana, Montana, New Jersey, Oregon, South Dakota and Tennessee.

127. The contents of these written reports are remarkably similar. They include: the name of the child suspected of being abused; the child’s age and address; the name of the child’s parents; the parents’ address; the names and ages of other children in the same home; the nature and the extent of the injuries and any other information the reporter believes might be important.


129. Id.
police and that police have the unilateral right to enter a home without court permission if they believe that a child is in imminent danger. Opponents, on the other hand, argue that once the parents have been arrested and charged with a crime, it is very unlikely that they will cooperate with the Department of Social Services and begin voluntary treatment. Furthermore, a successful conviction for child abuse in the criminal court is rare and even if a prosecution is successful, it only addresses the need for retribution and not the issue of treatment. Opponents to police departments being the repository of reports of child abuse also argue that child abuse is a very complex problem and police officers do not have the necessary expertise and training to deal with it. Also, the police are viewed as a punitive agency and this punitive ambience will inhibit abusive parents from seeking help. Opponents also argue that police are not viewed with respect by the other agencies and it is unlikely that a police department would be able to develop a cooperative approach.

A few states and a few commentators have suggested that the juvenile court is the appropriate agency to receive and investigate reports of suspected child abuse. They argue that the juvenile court's chief purpose is to protect the child's interests and to provide treatment and that when the court reaches a decision on behalf of the child, it has the power to ensure that the decision will be upheld. Others, however, argue that it is inappropriate for the juvenile court to investigate a case it may later have to hear and that the juvenile court, like the police department, is often viewed as being a punitive agency. Furthermore, the juvenile court is already overcrowded and if another function

131. Id.
134. See Pragmatic Alternative, supra note 4, at 107.
138. See Boardman, A Project to Rescue Children from Inflicted Injuries, 7 SOC. WORK 43, 49 (1962) [hereinafter cited as Boardman].
141. See Boardman, supra note 138, at 49.
were added it would be swamped.142

Over the past few years the majority of commentators and the majority of states have isolated the Department of Social Services as the most appropriate agency to receive and investigate reports of suspected child abuse. They argue convincingly that to prevent child abuse from recurring, it is necessary to provide treatment and the Department of Social Services is uniquely qualified to provide that treatment.143 Furthermore, personnel in the Department of Social Services are the best trained and the best qualified to handle these cases.144 Also, the local department is viewed as being non-punitive. They are likely to obtain the necessary cooperation from parents to make treatment successful. The Department of Social Services also is the agency most likely to be able to develop cooperation with other agencies and professionals.145 The Department of Social Services can provide treatment in addition to the receipt and the investigation of reports and, in many cases, the Department is already involved with the parents and the child and can intervene before serious injury is inflicted.146

There are critics of the Department of Social Services,147 but when all the factors are weighed it is apparent that the Department is the most appropriate agency to receive and investigate reports of child abuse. Today, twenty-four states require that reports of suspected child abuse be made to the Department of Social Services.148 Four states have identified two agencies for receipt of the report, but ensure

142. See Paulsen, supra note 38, at 47.

143. See D. Besharov, The Epiilogue in Fontana, Somewhere a Child is Crying 255 (1973); DeFrancis, The Status of Child Protective Services, Helping the Battered Child and His Family 140 (1972).


146. See Hael, Protective and Preventive Services—Are They Synonymous (1969); A Review of the Literature, supra note 42, at 289.


that all reports ultimately flow into the Department of Social Services.\textsuperscript{149} Finally, one state has identified three agencies\textsuperscript{150} and one state, four agencies\textsuperscript{151} as possible repositories for reports, but again ensure that all reports flow to the Department of Social Services for ultimate disposition.

Unless one state agency is provided with ultimate responsibility to oversee reports of suspected child abuse there is confusion, fragmentation and inefficiency. Today, twelve states permit reporting to two separate agencies\textsuperscript{152} and eight states permit reporting to three separate agencies with no provision for coordination or ultimate responsibility.\textsuperscript{153} The result, as expected, is chaotic.\textsuperscript{154}

**Immunity**

Individuals who are mandated to report suspected child abuse often fear that if their report proves to be erroneous they will be sued.\textsuperscript{155} In an effort to encourage reporting, every state provides immunity from criminal and civil liability if the report is made in good faith.\textsuperscript{156} In an effort to give an impression of even more protection,

\begin{itemize}
\item 150. ALA. CODE tit. 26, § 26-14-1(4) (1975).
\item 154. See Besharov, Juvenile Justice Advocacy: Practice in a Unique Court, 1974 PRAC. L. INST. 131.
\item 155. Possible liability might include libel, slander, defamation of character, invasion of privacy and breach of confidence. See McCoid, The Battered Child and Other Assaults Upon the Family, 50 MINN. L. REV. 1, 36-37 (1965).
fifteen states presume the good faith of the reporter. For all practical purposes the inclusion of an immunity provision in a reporting statute is cosmetic. To successfully sue a person who made a child abuse report, the plaintiff would have to show that the reporter acted with a malicious purpose. To successfully block a suit such as this, it would only be necessary to show that the reporter reported in good faith. Although immunity provisions are cosmetic, they do have value. They are reassuring to that group of individuals who must report, who are afraid to report and who do not know how the legal system functions.

The Abrogation of Privileged Communications

It is often quite difficult to establish child abuse in the juvenile court. It is even more difficult to establish culpability in the criminal court. To offset some of the problems which are inherent in the child abuse case, most states abrogate the status of one or more types of privileged communications in a child abuse case. When the status of a privileged communication is abrogated, the result permits a mandated reporter to report as required by law, cooperate with the Department of Social Services in the child abuse investigation and give evidence in a judicial proceeding.

Seventeen states abrogate the status of privileged communications between husband and wife and doctor and patient. Twenty states


157. These states are: Arkansas; Colorado; Florida; Illinois; Maine (rebuttable presumption); Michigan; Mississippi; Montana; New Mexico; New York; North Dakota; Pennsylvania; South Carolina (rebuttable presumption); Tennessee and Wyoming.


159. See Pragmatic Alternative, supra note 4, at 117.

160. The most common types of privileged communication are those between husband-wife, doctor-patient, social worker-client, priest-penitent.

161. There is some question as to whether there is really a need to abrogate the status of privileged communication between doctor and patient in cases of child abuse. See Note, Extrajudicial Truthful Disclosure of Medical Confidences: A Physician's Civil Liability, 44 Den. L.J. 463 (1967).
abrogate the status of all privileged communications except that of attorney and client. 162 Five states abrogate the status of all privileged communications in cases of child abuse. 163

Penalty Provisions for a Failure to Report

A number of states now provide in their reporting statute a specific penalty for a failure to report suspected cases of child abuse. Penalty provisions, like immunity provisions, were drafted with the specific intent of encouraging reports. Immunity provisions were drafted to reassure hesitant reporters that they would not be held liable if they made a good faith report. Penalty provisions, on the other hand, were drafted to ensure hesitant reporters that they would be held liable if they chose not to report.

The purpose of the reporting statute, of course, is to identify the child in peril. It is argued that if a report is made, and if the child truly is in danger, the protective mechanisms of the state will be triggered. The person who consciously fails to report, short-circuits the system and prevents the protective mechanism from being triggered. In effect, the person who chooses not to report, personally assures the child's future safety.

Thirty-four states now include in their reporting statutes a criminal penalty for a failure to report. 164 The penalty in almost all of the


164. ALA. CODE tit. 26, § 26-14-13 (Supp. 1976); ARIZ. REV. STAT. § 13-842.01(A) (Supp. 1976); COLO. REV. STAT. § 19-10-104(4)(a) (Cum. Supp. 1976); CONN. GEN. STAT. § 17-38a(b)
states is designated as a misdemeanor. It provides for a short jail sentence or fine or both upon conviction. The requirement of proving a willful failure to report beyond a reasonable doubt makes the likelihood of a successful prosecution very unlikely.165

Commentators have split evenly on the utility and value of a penalty provision in the reporting statute. Some feel that the provisions are deleterious and unenforceable.166 Others believe that they are necessary and prudent.167 While both arguments have some merit, there is very little doubt that the emergence of civil liability for a failure to report has had and will continue to have a substantial impact on the reporting of child abuse.

In 1967, it was suggested that a physician who failed to report a suspected case of child abuse could be held civilly liable for subsequent injuries to the same child.169 The same theme was echoed a number of times over the next decade.170 The cause of action most often mentioned as a possibility was based on the doctrine of negligence per se. Negligence per se is possible if there is a criminal statute in existence in the state with a criminal provision attached, if the person harmed was a


165. In a criminal action it is necessary to establish a criminal act (actus reus) and a criminal intent (mens reus). In a criminal action for a failure to report, the element of intent is extremely difficult to establish. See Bonfield, The Abrogation of Penal Sanctions by Nonenforcement, 49 IOWA L. REV. 389 (1974).

166. See Brieland, Protective Services and Child Abuse, 40 SOC. SERV. REV. 369, 375 (1966); Shepard, supra note 158, at 192.

167. See Daly, supra note 132, at 336; Hansen, Doctors, Lawyers and the Battered Child, 51 J. TRAUMA 826, 828 (1965); McCoy, supra note 95, at 43.


169. See Paulsen, supra note 38, at 34.

member of the class of persons the statute was intended to protect and if the harm suffered was a harm the statute was enacted to prevent.

Theories have a nasty habit of becoming reality. In 1970, the first civil action for a failure to report was filed. Although the case was settled out of court, it did serve notice to the medical community that civil liability was indeed a reality.

Six years later another civil suit was filed. This case was successful. The court in *Landeros v. Flood* ruled that a physician who failed to report a suspected case of child abuse could be held civilly liable for subsequent damages to the same child. The case was argued successfully on the basis of medical malpractice. Today, it has been suggested that civil liability for a failure to report could be successfully argued on three separate theories: medical malpractice; statutory negligence; or liability per se.

The possibility of civil liability for a failure to report coupled with an expanded reporting statute raises a number of interesting issues and possibilities. In the past, discussion of civil liability for a failure to report has centered around physicians. There is little doubt, however, that other professionals who are mandated to report—nurses, teachers, social workers—and who do not do so could also be held civilly liable. In the past, language which described the degree of certainty required before reporting—reason to believe, reasonable cause to suspect—was regarded as meaning substantially the same thing. The different language, however, gives rise to different types of tests (objective and subjective) and the issue of whether or not a report should have been made becomes the pivotal issue in questions of civil liability. Previously, definitions of child abuse have been drafted in a rather cavalier manner. But now, since a failure to report child abuse can result in civil liability, the definitions of child abuse take on a new significance. Reporters are caught in the awkward position of having to report child abuse but finding that some of the elements of child abuse seem to defy definition, i.e., neglect and mental injury. In any event, five states have adopted a penalty provision which provides for the possibility of civil liability for a failure to report.


173. For an excellent article dealing with civil liability see Comment, *Civil Liability for Failing to Report Child Abuse*, 1 Det. L. Rev. 135 (1977); Brown, supra note 123.

Broadening the Impact and the Scope: The Investigation

Over the past few years, reporting statutes have begun to address issues beyond the process of identification. In a number of states there has been a realistic recognition that identification by itself is virtually useless. As a result, some reporting statutes have become more comprehensive. Some states have begun to show concern for issues that flow from and come after the identification process has been completed.\textsuperscript{175}

The Mandated Investigation

Every state has identified at least one statewide agency to receive and investigate reports of suspected child abuse. These agencies have been criticized for hiring untrained staff, for not providing in-service training, for keeping poor records, for keeping too many records, for having too few minority workers, for intervening too late, for intervening capriciously, for failing to provide coordination, for failing to budget properly and for not creating adequate treatment programs.\textsuperscript{176} Nowhere has criticism been more severe or more focused than on the agency’s investigation of the report of suspected child abuse.

The first generation reporting statutes were rather simplistic in their approach to the investigation. They simply required that an investigation be made when a report was received. No guidelines were provided for the when, the what and the how. Predictably, results were tenuous at best. Today, only a few states have retained such simplistic language. Indiana, for example, states that:

\begin{quote}
upon receipt of a report . . . the law enforcement agency or county department of public welfare receiving such report shall immediately cause an investigation into the facts contained therein and, upon completion, if the facts so warrant shall submit a written report to the prosecutor in the county where the injury or injuries were inflicted.\textsuperscript{177}
\end{quote}

The majority of states have recognized that piecemeal, fragmented and tardy investigations do not provide enough data to make prudent decisions. The trend in recent years has been to develop specific guidelines for the child abuse investigation. Arkansas,\textsuperscript{178} for example, requires the investigating agency to determine the nature, the extent

\begin{flushleft}
\textsuperscript{(Cum. Supp. 1976)}; \textsuperscript{175} As the scope of the reporting statute has broadened, the name has changed. Today these statutes are called Child Abuse Acts, Child Protection Acts, or Protective Service Acts. \\
\textsuperscript{176} \textit{See generally} Fischer, supra note 147; Campbell, supra note 147. \\
\textsuperscript{177} \textsuperscript{177} \textsuperscript{178} \textit{IND. CODE} \textsuperscript{12-3-4.1-2 (Cum. Supp. 1976).}
\end{flushleft}
and the cause of child abuse, the identity of the person(s) responsible for the abuse, the names and conditions of other children in the same home, the condition of the home environment, the condition (by an evaluation) of the persons responsible for the child and the type (quality) of relationships that the child has with his parents and other persons responsible for his care.

To accomplish these objectives, the investigating agency is required to make a visit to the child’s home and permitted to make a physical, psychological or psychiatric examination of the child in question. Other states have provided for an even more comprehensive and timely child abuse investigation.

Legislative provisions such as these presume that a good child abuse investigation can be mandated. The presumption is not true. The availability of trained staff in adequate numbers with sufficient resources is a condition precedent to mandating any type of comprehensive investigation. In most jurisdictions, it is lacking.

Psychological/Psychiatric Examination of the Parents

A psychological or a psychiatric examination of the child's parents coupled with a social history can be quite valuable in helping to determine the probability of culpability and the best dispositional alternative. Such examinations have been used rather routinely by juvenile courts. In most cases, however, they have been used after the issue of abuse has been resolved but before the issues of custody and treatment have been decided. In these cases the results of the examination are used to help determine the most appropriate disposition. Since the issue of abuse has already been resolved, it cannot be argued that the examination is being used as a fishing license to establish culpability.

Nevertheless, a number of courts now provide for a psychological or psychiatric examination of the parents before the issue of abuse is resolved. Seven states have now drafted provisions into their reporting statute which encourage and permit such examinations before the adju-

179. A psychiatric evaluation in this sense is really a determination of whether or not the parent has a high potential for abuse. A high potential for abuse coupled with unexplained injuries could be regarded as circumstantial evidence to show culpability. A number of predictive questionnaires or parenting profiles have been developed and are quite accurate. See Helper, The Predictive Questionnaire, Helping the Battered Child and His Family 271 app. A (1974).

180. The psychiatric evaluation in this sense is used to determine the feasibility of offering certain kinds of treatment. In certain cases it indicates that treatment per se would be futile and another disposition must be sought, i.e., termination of parental rights.

181. In juvenile court to resolve the issue of child abuse there are two separate hearings. The first is the adjudication. At the adjudication, there is only one issue to resolve: Has the child been abused? The second hearing is the disposition. At the disposition hearing there are only two issues to resolve: What treatment should be offered and who will have custody of the child?
dicatory hearing.\textsuperscript{182} Provisions such as these are subject to criticism.

The criticism that is most often leveled against such provisions is that a forced examination before a finding of abuse has been made is tantamount to forcing the parent to testify against him or herself. Proponents of such provisions argue, however, that the juvenile court is not a criminal court.\textsuperscript{183} The purpose of such proceedings, they argue, is to determine if the child has been abused, not who abused him and to determine what treatment ought to be offered to protect the child’s safety and interests. The parent is not forced to testify against his interests because his interests are not in question and not in jeopardy. While the argument may be technically correct, the actual result can be somewhat different.

Medical Examination of the Child

Contrary to popular belief, child abuse is not an easy condition to diagnose.\textsuperscript{184} This is particularly true in cases of neglect\textsuperscript{185} and mental injury, but can also be true in cases of non-accidental physical injury.

In a case of non-accidental physical injury, the actual injury is quite easy to identify. The difficult issue is whether it was non-accidental. To determine if an injury was non-accidental often requires a careful analysis of the child’s injuries in relation to the parents’ explanation (is it reasonable) of how or when the injury occurred. This type of examination and analysis requires specific medical expertise. It is an expertise that the vast majority of caseworkers investigating a case of suspected child abuse do not have.

A good child abuse investigation includes a complete physical examination of the child by a qualified and licensed physician. Since children’s injuries mend with remarkable speed, it is imperative that the examination be made quickly. Each injury should be examined individually and characterized according to its type, extent, severity and age.\textsuperscript{186} The results of such a medical examination should be en-


\textsuperscript{183} While it is true that the juvenile court is civil in nature, many would argue that the court's authority to separate the parent from the child (temporarily or permanently) gives the court a punitive dimension. The penalty involved is a loss of the child.

\textsuperscript{184} Reporters are asked to report their suspicions or their beliefs. They are not asked to make a final determination of abuse. There is a great difference between a suspicion and the diagnosis.

\textsuperscript{185} \textbf{See Sgroi, supra note} \textsuperscript{9, at 18.}

\textsuperscript{186} \textbf{See Fraser, Independent Representation for the Abused and Neglected Child: The Guardian Ad Litem, 13 CAL. W. L. REV. 16, 37 (1977) [hereinafter cited as Independent Representation].}
tered into the child's official medical records immediately.\textsuperscript{187}

Five states have recognized the limitations of individual caseworkers and the value of medical expertise. These states provide in their reporting statute for the medical examination of a child suspected of being abused, regardless of whether the parents agree.\textsuperscript{188}

Color Photographs and X-Rays

In order to facilitate the investigation and to preserve evidence, a number of states now make provision for the taking of color photographs and X-rays in cases of child abuse. X-rays are used as a diagnostic tool and a means of preserving evidence. Color photographs, on the other hand, have little diagnostic value. They are used to preserve a pictorial explanation of the suspected trauma. In the vernacular, a picture is worth a thousand words.

X-rays are taken when they are ordered by a physician. They are always taken by a qualified and usually licensed technician. If proper medical procedures are followed, there is little problem in introducing them as evidence.\textsuperscript{189} The same is \textit{not} true, however, of color photographs. Color photographs are usually not taken by qualified technicians but are taken by social workers, nurses, teachers, physicians and police officers.\textsuperscript{190} While these photographs can be submitted as evidence,\textsuperscript{191} the shortcomings of the photographer often limit the picture's probative value. A color photograph is not always an accurate portrait of the suspected injuries. Issues such as the type of film used, the shutter speed, the type of lighting and perspective in relation to the picture can be troublesome.\textsuperscript{192} A picture is worth a thousand words, but the picture must be accurate and the photographer must be prepared to tell

\textsuperscript{187} See Brown, Fox & Hubbard, \textit{Medical and Legal Aspects of the Battered Child Syndrome}, 50 Chi.-Kent L. Rev. 45 (1973) [hereinafter cited as \textit{Medical and Legal Aspects}].


\textsuperscript{189} See \textit{Medical and Legal Aspects}, supra note 187, at 74.

\textsuperscript{190} Iowa, for example, permits physicians, dentists, nurses, social workers and psychologists (among others) to take color photographs. IOWA CODE ANN. § 235A.11 (Cum. Supp. 1977-78).

\textsuperscript{191} The usual rule of thumb for color photographs is that they will be admitted into evidence if they are relevant and material to issues of fact and are not so gruesome as to be inflammatory. See Albritton v. State, 221 So.2d 192 ( Fla. App. 1969).

However, even if a picture were gruesome or inflammatory, it might be admitted into evidence if it would throw light on a vital issue of the case and resolve a conflict in evidence. See 221 So.2d at 197.

The Illinois Court of Appeals ruled that color slides of a dead baby showing numerous bruises were admissible. See People v. Brown, 83 Ill. App. 2d 411, 228 N.E.2d 495 (1969).

why the picture is accurate.  

Today, fourteen states permit the taking of color photographs and X-rays in cases of suspected child abuse with or without the parents' consent. Another four states mandate that such color photographs and X-rays be taken.

A Statewide Central Registry

A central registry is a repository for reports of suspected child abuse. Reports in central registries are listed alphabetically and chronologically. Central registries were originally conceived to provide accurate statistics and help determine the proper diagnosis.

Because child abuse is a pattern of behavior, it is not easy to diagnose. It is not unusual for parents to switch doctors and hospitals as injuries progress. Unless the physician (or the social worker, nurse or court) has some indication of the other injuries, only a one-dimensional picture of the child will emerge. If access to a repository of reports of suspected child abuse were available, it is possible that a pattern would be discernable. The central registry is that repository of reports and it is used by the physician to help determine the proper diagnosis.

A central registry which is properly conceived and properly structured can provide four functions: (1) it can provide statistics on a monthly or a yearly basis; (2) it can provide raw data for research purposes; (3) it can be used as a diagnostic tool; and (4) it can be used to measure the effectiveness of an agency mandated to receive and investigate reports of suspected child abuse.

If a central registry is to be effective, it must contain reports of suspected child abuse as well as adjudicated cases of child abuse.

193. Id. at 14.
198. Some have argued, however, that there is a danger that the reporter might give too much weight to the previous report. See Daly, supra note 132, at 333.
While it is necessary to retain reports of suspected child abuse, it is also important to weed out the malicious bad faith reports and the unfounded reports. The difficulty lies in determining the line of demarcation between founded and unfounded reports. Some states have attempted to draw this line of demarcation by defining the term “unfounded.” Colorado, for example, defines an unfounded report to mean “. . . any report . . . which is not supported by some credible evidence.”\textsuperscript{199} The problem, of course, is that credible evidence is not defined. Putting aside definitional problems, a majority of states list all reports in the central registry except those that do not meet the credible evidence test. The majority of reports in a central registry are reports which are supported by some credible evidence, but which do not have enough evidence to support an adjudication. In effect, the central registry contains a list of suspected parties, who are listed without notification, without representation and without a formal hearing. The fact that some central registries are housed in computers magnifies the possibility of unauthorized access and unauthorized disclosure of such names.

The issue pertaining to central registries is relatively straightforward: does the demonstrated value of a central registry for the purpose of statistics, research, diagnosis and quality control outweigh the possibility of unauthorized access and disclosure? The answer is yes, but with a caveat. Legislation creating central registries must be drafted in such a way as to minimize the possibility of such abuses.\textsuperscript{200}

A number of states have attempted to do exactly that. These states require an extensive investigation with a follow-up report to the central registry. The follow-up report is used to identify malicious reports and weed out unfounded reports. These states have narrowly defined who may have access to the records\textsuperscript{201} contained in the central registry and under what conditions. They also provide a criminal provision for unauthorized disclosure, a process for notification of the listed party,\textsuperscript{202} a process for appeal, expungement and the sealing of records.

The first generation of reporting statutes made no provision for the creation of central registries. In 1964, only four states had functional


\textsuperscript{200} See A More Practical Central Registry, supra note 196, at 515-16.

\textsuperscript{201} “Narrowly defined” can, however, be very subjective. New York permits disclosure to a physician examining the child, a person authorized to assume protective custody, duly authorized agency personnel, a court, a grand jury, and persons doing bona fide research. N.Y. SOC. SERV. LAW § 422(4)(a)-(h) (McKinney Cum. Supp. 1977-78).

\textsuperscript{202} States which permit the subject of the report (person suspected of abusing the child) to review the report’s contents usually allow the state department of social services to remove the name of the person making the report.
central registries. Today, forty states have created central registries by statute while another six have created central registries by administrative fiat.

**Temporary Protective Custody**

A recent innovation in the reporting statute is the provision for emergency removal or temporary custody of the child. The first generation of reporting statutes made no provision for temporary custody. In 1974, only six states made such a provision. Today, twenty-eight states provide for temporary custody or emergency removal. The provisions list who may assume custody, when, and under what circumstances.

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203. See *A Review of the Literature*, supra note 42, at 300.


205. The following states have created central registries by administrative fiat: Georgia, Indiana, Kentucky, Minnesota, West Virginia, Wisconsin. See also *A More Practical Central Registry*, supra note 196, at 5.

There is no clear reason for the popularity of these provisions. Ostensibly, there are three separate purposes: (1) There is often a need to remove a child from his home before serious damage is inflicted. (2) There is often a need to keep a child in a hospital under the guardianship of a designated agency because there is a strong possibility that the child would be reinjured if returned home. (3) The child is in need of additional medical care, but there is a fear that the parents will not return with the child for the needed care and it will be impossible to locate them.

Consequently, authority to remove a child or to keep a child in protective custody is given to three groups of people: those who must decide if it is necessary to remove the child from the home; those who must decide if the custody of the child should be retained by the hospital or other institution; and those who must decide if additional necessary medical care is required for the child. Every state which permits emergency removal or temporary custody limits that authority to one or more of the following groups: social workers, police officers, officers of the court, physicians and hospital administrators.

Conditions or circumstances which would justify such removal or custody are rather broad. Colorado, for example, permits removal or custody if there "is an imminent danger to the child's life or health."208 Michigan permits temporary custody if a return to the child's home "would endanger his health or welfare."209 While it may be argued that an imminent danger to a child's life is a narrow standard for intervention, the same cannot be said for an endangerment of the child's health or welfare. To provide some balance and safeguards, most states require that the parents be notified immediately and that there be a formal hearing within some fixed period of time.

The Child Protection Team210

When the investigation has been completed, there are three issues which must be resolved: (1) Has the child been abused (diagnosis). (2) What are the chances of treatment being successful (prognosis). (3) What treatment is available and should be offered to the child and his family. These are complex issues to resolve and in most cases they are not resolved properly.

Child abuse is an eclectic problem. To understand its etiology, it is necessary to have a working knowledge of medical pathology, psy-
chiatriy, social work and the law. To correctly resolve the issues of diagnosis, prognosis and treatment in cases of child abuse, it is necessary to have more than a working knowledge. It is necessary to have expertise. It is unrealistic to expect any one individual to have substantive expertise in all of these areas. In almost all states and state delivery systems, however, there is a presumption that there is one individual who has all of this expertise. In most states it is an individual social worker who must resolve the issues of diagnosis, prognosis and treatment once the investigation has been completed.

An obvious answer to this shortcoming would seem to be the creation of a pool of expertise. These pools of expertise are called *multidisciplinary child protection teams*. A number of states have recognized the shortcomings of requiring one individual—the social worker—to practice medicine, psychiatry and the law without a license. These states have created a child protection team by statute.

Those states which have studied the concept of a team approach, have debated various alternatives and have created such teams by statute, have developed three different models. The first is the creation of an advisory team at the community or state level. The advisory team is a passive participant in the resolution of a child abuse case. The agency worker who is ultimately responsible for the case is given the option of utilizing the team's expertise. The decision to use the team is a discretionary one; the team has no inherent decision-making powers. California, Massachusetts, Michigan, Missouri, Pennsylvania and South Carolina have developed such teams.  

The second type of team is one organized on a county level, with fixed responsibilities. The team reviews each case of suspected child abuse and has some decision-making powers. This second type of team, unlike an advisory team, is an active participant in the resolution of child abuse cases. In Colorado, for example, the child protection team is: (a) specifically defined; (b) created by law in every county which receives fifty or more reports of child abuse in one year; (c)

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212. Colorado has a rather innovative definition for the team. Since neglect is an element of the definition of abuse, and since neglect is really a reflection of community standards, the Colorado definition permits representatives of the community (minorities and lay persons) to serve on the team. **COLO. REV. STAT. § 19-10-103(2) (Cum. Supp. 1977).**

213. The condition precedent to the creation of the team is fifty reported cases, not fifty founded cases, not fifty adjudicated cases. **COLO. REV. STAT. § 19-10-109(6)(a) (Cum. Supp. 1977).**
required to review each report of suspected child abuse within one week of its receipt;\textsuperscript{214} (d) mandated to make recommendations to the local department of social services and the central registry;\textsuperscript{215} (e) permitted to file a petition in the juvenile court on behalf of the abused child if it so desires;\textsuperscript{216} and (f) required to contact the Guardian Ad Litem in writing if a petition is filed. The written notification must include the team’s reasons for initiating the petition, suggestions for optimum disposition and suggested treatment.\textsuperscript{217} The states of Tennessee and Wyoming have adopted a model which is closely akin to Colorado’s.\textsuperscript{218}

The third type of team is one on a regional level, with fixed responsibilities which include the receipt and the investigation of reports of suspected child abuse, the review of each case on a regular basis and ultimate decision-making power. Unlike the Colorado model, this third type of team does not share responsibilities. It is, in effect, not an active participant in the process, but the process itself. Only one state, Virginia, has evolved to this point. In Virginia, the child protection team is: (a) specifically defined;\textsuperscript{219} (b) created by law in each region of the state;\textsuperscript{220} (c) responsible for receiving and investigating all reports of suspected child abuse;\textsuperscript{221} (d) responsible for thoroughly reviewing each case;\textsuperscript{222} (e) responsible for arranging protective services;\textsuperscript{223} (f) responsible, if necessary, for petitioning the juvenile court;\textsuperscript{224} and (g) responsible for providing education about child abuse to the general public.\textsuperscript{225} It is not unreasonable to expect some of the states in the second category to develop a system like Virginia’s.

**Education and Training**

There is very little value in fine tuning the identification and the investigatory processes unless individuals are aware of what the law requires and how the system works. Most individuals are not.

It is rather easy to amend the reporting statute to broaden the base of mandated reporters, facilitate the reporting process, provide immu-

\textsuperscript{218} TENN. CODE ANN. § 37-1207 (1977); WYO. STAT. § 14-2-123 (1977).
\textsuperscript{221} VA. CODE § 63.1-248-6(A) (Cum. Supp. 1977).
\textsuperscript{222} VA. CODE § 63.1-248-6(D) (Cum. Supp. 1977).
nity for good faith reports and liability for no reports. But unless the mandated reporters know that there is an obligation to report, know what child abuse is, know how to identify it and how to report it, there is little chance that the number of reports will increase or become more accurate.\footnote{226} It is easy to draft new and concise standards for the investigation of child abuse and to provide for color photographs and X-rays to be used with psychiatric evaluations, but unless the person who is making the investigation is well-trained and aware of his options, there is little chance that the quality of the investigation will improve.\footnote{227}

Individual states were slow to grasp the need for education and training. Today, eleven states specifically provide for education and training-education for the general public and training for those who must function in the system.\footnote{228} Unfortunately, in most states the agency that is mandated to provide the education and training is the same agency mandated to receive and investigate reports of suspected child abuse. This agency is the agency most likely to be undertrained, understaffed, and overcommitted. Under such circumstances there is some doubt about how successful such a campaign might be.\footnote{229}

\textit{Tinkering with the Most Complex Component: The Intervention}

When the investigation has been completed and the issues of diagnosis, prognosis and treatment resolved, it is necessary to implement the treatment plan. At this stage there can be additional problems. If involuntary intervention (the court) is necessary, the case is difficult to prove. And if voluntary or involuntary intervention is necessary, it is often discovered that treatment services do not exist or are insufficient.

The problems which surround the issue of intervention are the most complex to resolve. As a result, little is attempted and little is accomplished. What states have attempted to do falls into three categories: (1) Making the case easier to prove. (2) Ensuring that the

\footnote{226} In a poll conducted by the National Opinion Research Center in 1965, eighty per cent of the persons interviewed had some knowledge of the problem of child abuse, but less than fifty per cent knew of child protective services in their community. See Gil & Noble, \textit{Public Knowledge, Attitudes and Opinions About Physical Child Abuse in America}, \textit{48 Child Welfare} 395, 397 (1969).

\footnote{227} DAVOREN, \textit{The Battered Child in California} 13 (1973).


\footnote{229} Iowa is more realistic than the other states. Education and training are required \textit{but} within the limits of available funds. IOWA CODE § 235A.10 (Cum. Supp. 1978).
child's interests are fully protected. (3) Getting better mileage out of what is available.

Making the Case Easier to Prove: The Prima Facie Case

Child abuse is difficult to prove because it usually takes place in the family home behind closed doors. The parties who are present are hesitant to testify. The perpetrator cannot be forced to testify. The spouse, although legally permitted, usually will not testify and the victim for a number of reasons also will not testify. What evidence is available is circumstantial. And it is difficult to prove any case using just circumstantial evidence.

In addition, the data which is collected by the social worker during the investigation is often inappropriate and insufficient to support an adjudication. The investigation has focused on the need for protective services not the possibility that a petition may be filed in court. If a decision is made to file a petition, it is often long after the investigation has been completed. What was clear in the minds of witnesses is now cloudy and fragmented. And, finally, attorneys who present these cases in court are often untrained, uninterested, unskilled and unprepared.

A number of states have recognized the difficulty of establishing child abuse in a court of law and have attempted to make it somewhat easier. These states have drafted their statutes in such a way that evidence which is sufficient to establish a non-accidental injury is sufficient to support an adjudication in the juvenile court. These states do not require a showing of who did what to whom. If a non-accidental injury is established by the State with the requisite burden of proof, the


231. "Over 90% of the abuse incidents occurred in the child's home." D. Gil, VIOLENCE AGAINST CHILDREN 34 (19—). For judicial recognition of the same fact see In re Edwards, 70 Misc. 2d 858, 335 N.Y.S.2d 575 (Fam. Ct. 1972); In re S., 66 Misc. 2d 683, 322 N.Y.S.2d 170 (Fam. Ct. 1971).

232. Since the juvenile court is characterized as being civil in nature, there is no real constitutional issue of forcing an individual to testify against his own interests. As a practical matter, you cannot force someone to testify if he/she doesn't want to testify.

233. See text accompanying notes 159-163, supra.

234. There are three reasons why the child will not or cannot testify. One: he is too young. Two: he fears parental retaliation. Three: he fears for his parents' safety. See Comment, Child Abuse—Another Attempt to Solve the Problem, 13 CATH. LAW. 231, 234 (1967); Fontana, SOMEWHERE A CHILD IS CRYING 27 (1973).


236. See Independent Representation, supra note 186, at 32.

burden shifts to the parents\textsuperscript{238} or to the individuals who had custody of the child at the time he was injured and are most likely to know how that injury occurred. In effect, once a non-accidental injury is established the burden of going forward is transferred to the parents.\textsuperscript{239} If the parents cannot provide a reasonable explanation for the injuries, what has been presented will be sufficient to support the adjudication.

Protecting the Child's Interests: The Guardian Ad Litem\textsuperscript{240}

No one would argue that a child's safety and interests are not jeopardized in a case of child abuse. Some would question, however, the need for independent representation.

If a case of child abuse works its way into the juvenile court, there are usually at least three attorneys involved; the judge, the attorney for the parents and the attorney for the petitioner. It is sometimes argued that this collection of legal expertise more than adequately represents the child's interests. The answer is it does not.

When a petition alleging child abuse is filed and accepted by the juvenile court, the child for all practical purposes becomes a ward of the court.\textsuperscript{241} In slightly different terms, the juvenile court becomes the child's guardian.\textsuperscript{242} As the child's guardian, it is the court's responsibility to ensure that the child's safety and interests are fully protected.\textsuperscript{243} However, at the moment that the petition is filed, the issue of child abuse has not been resolved. It is the juvenile court's responsibility to weigh both sides of the argument and render a judicious and equitable decision. The juvenile court that actively pursues and promotes the child's interests, at this point in the proceedings, diminishes its ability to render an equitable decision. The court may, however, appoint a third party to protect the child's interests and temporarily transfer its responsibilities.\textsuperscript{244}


\textsuperscript{239} The constitutionality of such an approach was upheld in the case of \textit{In re S.}, 66 Misc. 2d 683, 690, 332 N.Y.S.2d 170, 177 (1971).

\textsuperscript{240} For a complete discussion of the Guardian Ad Litem see \textit{Independent Representation}, \textit{supra} note 186.

\textsuperscript{241} This is true at least in respect to all issues before the court. See \textit{Kingsbury v. Buckner}, 134 U.S. 650 (1890).

\textsuperscript{242} \textit{State v. Ferris}, 369 S.W.2d 244, 249 (Mo. 1963).

\textsuperscript{243} \textit{Sangster v. Toledo Mfg.}, 193 Ga. 685, 19 S.E.2d 723 (1942).

\textsuperscript{244} In effect what the court does is to temporarily transfer its obligations. While it can temporarily transfer these obligations it cannot abrogate them. See \textit{Lovett v. Stone}, 239 N.C. 206, 211, 79 S.E.2d 479, 483 (1954).
In most cases of child abuse, it is the parents who are suspected of inflicting the injuries. It should be obvious that an attorney hired by the parents to protect their interests does not protect the child's interests. In the adjudicatory hearing the child's interests and the parents' interests are diametrically opposed.

In almost all states, the petition alleging child abuse is filed by the local department of social services. The petition is filed by the local department on behalf of the child believed to have been abused. The person who actually files the petition and presents the case is a city attorney, county attorney or corporation counsel. It is argued that the petition filed by the local department through the county attorney on behalf of the child fully represents the child's interests. It does not. The city attorney or county attorney is increasingly becoming a conduit into the court for the local department of social services. It is the local department of social services which receives and investigates the report, analyzes the data, resolves the issues of diagnosis, prognosis and treatment and decides whether or not to utilize the juvenile court. The local department of social services usually does not make an adequate investigation. It often lacks the necessary expertise to resolve the issues of diagnosis, prognosis and treatment. Department decisions are often made on the basis of scarce resources and the cost of expensive treatment rather than the child's needs. Finally, when the proceedings actually begin, the city or county attorney is forced to assume a quasi-prosecutorial role. If he is to reach the dispositional hearing he must establish that child abuse did, indeed, take place. The necessity of establishing culpability or proving the allegations mitigates against the single-minded attention that is necessary to adequately protect the child's short- and long-range interests.

The child's needs are immediate and unique and should be the pivotal issue of a juvenile court proceeding. Neither the judge, the parents' attorney, nor the department's attorney adequately represent those needs. There is a clear and demonstrable need to provide the child with independent representation. In most states that representation is achieved by appointing a Guardian Ad Litem.

The Guardian Ad Litem is a special guardian appointed by the court to represent the child's interests. He is an active advocate for the child. He represents neither the local department nor the parents. He has no power or duties prior to his appointment or after the case has

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245. In many counties it is the local department of social services which prepares the petition, subpoenas the witnesses and prepares them for court.

terminated.\textsuperscript{247} He has no power to interfere with the child’s person or property. He is not the child’s legal guardian and he is not the child’s trustee.\textsuperscript{248} There is no requirement that the Guardian Ad Litem be an attorney.\textsuperscript{249}

In a case of child abuse, the Guardian Ad Litem has four functions: he is an investigator whose task it is to ferret out all of the relevant information; he is an advocate whose task it is to ensure that all of the relevant information is before the court; he is a counsel whose responsibility it is to ensure that the court has before it all of the available options for disposition; and he is a guardian in the simplest sense of the word whose task it is to ensure that the child’s short- and long-range interests are addressed and fully protected.

Today, twenty-six states make provision for the independent representation of an abused child.\textsuperscript{250} Provisions range from the simple appointment of a Guardian Ad Litem to a listing of specific duties and responsibilities. At a minimum, the Guardian Ad Litem should be required to complete an independent investigation. He should have the option of examining and cross-examining witnesses. He should have the option of introducing his own witnesses and his own evidence. And he should be required to make a final recommendation at the end of each proceeding.

A court is under no obligation to accept the recommendations of the Guardian Ad Litem. The degree to which a court will accept those recommendations rests upon the Guardian Ad Litem’s willingness to explore the complexities of the problem, to develop his own expertise, to conduct his own thorough investigation, and upon his ability to articulate to the court the reasons for his recommendations. Unfortunately, few Guardians Ad Litem seem to demonstrate these characteristics.

\textsuperscript{248} Morris v. Standard Oil Co., 192 Cal. 343, 219 P. 999 (1923).
\textsuperscript{249} Maloney v. Dewey, 127 Ill. 395, 403, 19 N.E. 848, 849 (1889).
Getting Better Mileage Out of What We Have: Cooperation and Coordination

The single biggest problem today in the field of child abuse is a lack of adequate treatment facilities for the child and his family. It is a problem that will, in all likelihood, become more severe over the next decade. The number of children identified as being abused and in need of services will continue to grow. Treatment programs and services will not keep pace. The resources which are available will be stretched even thinner than they are today.

There is a popular belief that federal and state governments will continue to increase their appropriation for child abuse services. The possibility of that continuing spiral is quite remote. To expect and to plan for new resources is to plan for failure. If America hopes to increase its current capabilities for dealing with child abuse it has two options: it can cast a critical eye, determine how its resources are now being allocated, establish priorities and reallocate available resources; or it can cast a critical eye, determine how its resources are now being allocated and develop a framework which makes a more efficient use of those available resources. On the basis of past history, it would seem that the first option is not a realistic expectation. The second option is, however, a possibility.

Available resources in the field of child abuse are often characterized as being scarce. When resources are described as being scarce it does not mean that only a few agencies and organizations are dealing with the problem. There are, in fact, a large number of agencies dealing with child abuse. They include departments of social service, protective service, public health, mental health, maternal and child care, police departments, probation departments, the courts, the schools and, of course, hospitals. It often seems as if only a few organizations are dealing with the problem because the organizations and agencies do not communicate with each other. Communication is the first step toward cooperation and cooperation is a condition precedent to coordination. A lack of coordination has just two results: a duplication of efforts in some areas and a fragmentation of efforts in other areas. The overall result is a very poor allocation of available resources. In a word—waste.

A number of states have recognized the need to become more efficient. To achieve this goal, these states have attempted to improve cooperation and coordination between agencies. Sixteen states mandate in their reporting statute cooperation and coordination between
agencies. It is easy to mandate cooperation and coordination, but far more difficult to design a framework to make cooperation and coordination work. Unfortunately, the majority of states who provide for cooperation and coordination have made no attempt to design any framework.

A few states have been somewhat more creative. They have developed (sometimes by design, sometimes by luck) a system for developing that coordination. Five states require that a plan be developed for the delivery of services and presented a specified period of time before it takes effect. Coordination is required and public comment is encouraged. The development of a plan is a condition precedent in these states for the next year's funding. Three states have created state councils or steering committees to monitor child abuse activities. These councils, if used wisely and creatively, could provide an ideal vehicle for coordination. Finally, those states that have created child protection teams have, in fact, laid the groundwork and developed a system which could be used to coordinate activities. This is true even though the original purpose of the teams was diagnostic and not pragmatic. The extent to which they will be used to coordinate services will depend upon the vision and the creativity of their members.

CONCLUSION

Child abuse legislation, especially the reporting statute, has had a remarkable history. Perhaps, no other type of legislation has so quickly gained acceptance, has been so widely proclaimed as a panacea, and has been so often amended and rewritten in such a short period of time.

America has a nasty habit of trying to legislate away its ills. Legislation is liked because it requires little effort to draft, provides a great deal of visibility for the authors, and costs very little unless an appro-


254. See text accompanying notes 210-212, supra (child protection team).
RATION is included. Legislation is not a panacea. It is a mover. It pushes a problem from one group to another and it nudges attitudes from one focal point to another.

Child abuse legislation has moved the problem from the researchers and the commentators to the agencies which must receive the reports, investigate the reports and offer services. It has moved the problem from the airy confines of academia to the trenches of the real world. Unfortunately, the distance between those who dream of solutions and those who must provide answers on a day-to-day basis is enormous. The dreamers believe that legislation is a solution. It is not. It is framework which, if it is properly constructed, can help to develop reasonable and prudent answers.

Child abuse legislation has evolved through three stages. It was conceived with the intent of identifying the child in peril. Its childhood and adolescence was spent tinkering and trying to fine tune the system that must respond to reports. It now stands in the gray area between adolescence and adulthood. It is a dangerous age, an age at which decisions must be made.

The decisions which must be made deal with the future, and the issue of the future is a simple one. Should America continue to devote the majority of its efforts, expertise and resources to a costly system that reacts to the problem or should it shift its focus? The focal point must shift. To the extent that legislation reflects or anticipates that new focal point, it too must shift.

Shifting toward a new focal point requires a different perspective. To be successful will require creativity, tenacity and planning. Its success ultimately rests upon acceptance of the fact that it is too costly to continue to react after the fact. The new focal point must be a commitment to primary prevention. The new perspective must be an anticipation of solutions.

There are three reasons which prompt a shift toward primary prevention. One is philosophical, one is economic and one is just plain common sense. (1) For a society that spends so much time reassuring itself that it is child-oriented and humane, reacting to the problem after the fact is arrogant and cruel. (2) The cost in terms of dollars of reacting to a problem after the fact is devastating. We cannot afford it. (3) The cost of reacting to the problem is creating an ever-increasing residue.

Every year 1 and 1/2% to 2% of our children are reported as suspected victims of child abuse. While social agencies are working to help this year's 2%, they are still trying to figure out what to do with last year's 2% and are pleading with legislators for more money to
deal with next year's 2%. The problems of abuse and neglect *accumulate* at a rate of 1 and 1/2% to 2% more children each year.\(^{255}\)

The mandatory reporting statute has spent sixteen years being buffeted and tossed by what we perceive the problem of child abuse to be, by the social service delivery system which was already in existence and most recently by the federal government's actions. It is legislation which, for many reasons, has been reactive. In a period of expanding problems and contracting resources, perhaps it is time to lay it to rest. Its epitaph should read: "it served in a time of need." Its legacy should provide America with a framework upon which to build a more reasonable and more efficient system for the next decade.

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\(^{255}\) R. HELFER, THE PREVENTION OF SERIOUS BREAKDOWNS IN PARENT CHILD INTERACTION, NATIONAL COMMITTEE FOR PREVENTION OF CHILD ABUSE (Summer 1978).