Juvenile Justice
Textbook Series

Child Abuse and Neglect

by
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Chapter 1

The Scope of the Problem

by Robert W. ten Bensel, M.D., M.P.H.

1.1 Current Concern for the Neglect and Abuse of Children

In 1962, Dr. C. Henry Kempe et al. published a landmark article in the *Journal of the American Medical Association,* titled "The Battered Child Syndrome."[1] This was the result of a survey of district attorneys who reported more than 700 children were severely beaten and referred for criminal prosecution. This article heightened both the general public and professional awareness of the problem of child abuse for the first time on a widespread basis. The initial response of the states was to pass laws mandating physicians and other health professionals to report children whom they had "knowledge to believe" or "suspicion" were being abused or neglected. By 1968, all 50 states had passed such laws. Reporting mandates were expanded in the 1970s to include any professional or person who came into contact with such children. Adults, in essence, became the conductors of information for the children who could not or would not call for help on their own.

Child neglect and abuse reporting legislation is the most changed piece of legislation in the country's history. The continuing debate over state laws regarding these changes and media exposure keeps public and private awareness at a high level. The reporting laws have given society the opportunity to educate people about the problem thus increasing the awareness and attempts to confront and resolve these difficult cases. It is well recognized that child neglect and abuse is a problem of major, if not epidemic, proportions in the United States.

1.2 Extent of the Problem

Because of the problems in defining child neglect and abuse, precise incidence or prevalence data has not been available. All states report cases but only 39 of the 50 states have complete functioning reporting systems. Expanding definitions to include caretakers other than parents have increased in some states. Sexual abuse is currently the most rapidly growing category of reported cases.

Using broad definitions, some estimates go as high as 4 to 5 million children per year who are neglected and/or abused. In addition, 2.2 million are runaways or missing children. There are 50,000 estimated abducted children of whom 4,000 to 5,000 are estimated to be killed. In 1979 the official estimate of neglect and abuse cases was 1.1 million children and, in 1982, 1.3 million.[2] There has been a 123 percent increase in reported cases since 1976, or an increase of 20 percent per year. Of dramatic note is an increase of 35 percent in sexual abuse cases in 1983. In one study, 40 percent of the children examined had been seen by public/private agencies in the preceding year and had not been reported as possible abuse cases.[3]

1.21 A Detailed National Study. A National Study of the Incidence and Severity of Child Abuse and Neglect (1980) was the first national study that looked at "relatively clear cut and serious maltreatment" and used common and consistent definitions.[4] They also included those cases where the parents or other adult caretakers had been made aware of the problem and made no effort to correct it. Using their strict criteria, which was "demonstrable" physical or emotional harm, 10.5 new cases occur per 1,000 children (age 18) per year for a minimum of 652,000 children a year in the United States (1979-1980).

This report showed that only one of five known cases of child abuse or neglect were reported to child protective services. The majority of known but unreported cases were being handled by chemical dependency programs, the health care system, public health nurses and mental health and social work professionals and schools. This study estimated that there were at least 1.1 million children in the United States who were victims of neglect and abuse. Rates for abuses were 5.7/1,000 children per year, with 3.4/1,000 representing direct physical assault, 0.7/1,000 sexual abuse and 2.2/1,000 for emotional abuse. Other data on sexual abuse run as high as 10 percent of males who are abused under 18 and up to 26 percent of females. Finklehor's (1979) surveys indicated that for 4 percent of females under 18 the sexual abuse was intercourse, 20 percent sexual touching and 38 percent exposure.[5]

Neglect rates overall are 5.3 per 1,000 children per year with 1.7 being physically neglected, 2.9 educationally neglected and 1.0 emotionally neglected.[6]

1.3 The Economic Costs to Society

The economic costs of child neglect and abuse are staggering for our society. The initial costs for child protective services per case are estimated at $10,000 for a case which is opened. For physical abuse the medical costs are estimated at $10,000 per case and no one has accounted legal or court costs for the various types of maltreatment.

Long-term costs for psychological care in sexual abuse or emotion al neglect and abuse cases run as high as $24,000 per year. Social agencies' support services such as temporary foster care run $5,000 to 15,000 a year. Home visits or home-based services run an average of $50 a visit (average 40 visits per year). Thus, a conservative estimate is given at $50,000 a year per case.

1.4 The Social and Psychological Costs to Children

The long-term social costs have not been calculated but long-term follow-up studies, with controls of children of alcoholics (a form of emotional neglect), show more of these children as adults to be on welfare, have more mental health problems and become over-utilizers of the health care system. Girls who were victims tend to have more gynecological visits. Learning and substance abuse problems are frequent, as is truancy and school failure.

Because these individuals have not had their basic developmental needs met they tend to be distrustful, angry, manipulative and isolated as adults. One can appreciate that a high percentage of neglected and abused children have job difficulties. Only now have employee assistance programs realized the need to look at abuse within the business community context in order to help these families. Private corporations pay an increasing share of the health care costs and thus, by becoming involved in intrafamily violence of all types, can cut costs by preventive action in allowing for help before physical and emotional harm becomes manifested. Just as the alcoholic impacts negatively upon the world of work, so does intrafamily violence and the neglect of families and children.

1.41 Relationship of Neglect and Abuse to Developmental Disorders. Norman Polansky states, "Nothing stirs so great a sense of urgency that we move to do something about neglect and abuse as when we review what is known about its consequences."[7] Victims of neglect and abuse have "missed" their childhood. Some authors refer to neglect as "the theft of childhood" or as a legacy in which children grow old before their time. Normal development does not occur for many of these children, especially for children who are more vulnerable to harm. Dr. Ruth Kempe writes,

"By far the most disturbing and consistent finding of observation of young children who have been abused and neglected is the delay, or arrest, of their development."[8]

Based on her data, Kempe describes the effects of neglect and abuse on the child's development for four age groups.

> In the *first 6 months* of life, abused and neglected children may have feeding problems, colic, and an irritating cry. The child may have a delay in motor and social development.
>
> During the *6- to 12*-month-old period, abused and neglected children may have a lack of discrimination of the environment, show apathy ("frozen watchfulness"), and lack the capacity for play.
>
> Abused and neglected *preschool* children are anxious or fearful and expect punishment, disapproval, or criticism. Also, these children manifest speech delay, avoidance of feelings, or an aggressive mode of coping.
>
> *School-age* children who are neglected and abused have difficulty in relating to and trusting others, lack the capacity to enjoy play, are unable to show pleasure, have a poor self-image, and are preoccupied with fears and delays of maturation of speech and verbal expressions of feelings.

Abused children have high dependency needs that were never satisfied in childhood and remain with them as they grow into adulthood. The anxiety found in abused children may manifest itself in adulthood in a number of compulsive or addictive behaviors including: gambling and excessive spending; oral gratification through excessive intake of food, alcohol and drugs; and indulgence in smoking. Physical and sexual violence may be an outcome of an impulsive and addictive personality.

It is becoming more evident that neglected and abused children are at a considerably greater risk for having learning disorders than are non-abused children. Harold Martin comments in his book *The Abused Child,* "school personnel have reported . . . that children assigned to education in handicapped classes are overrepresented by abused and neglected children."[9]

The emotional outcomes of neglect and abuse fall into one of two patterns of behavior—withdrawal or aggression. Aggressive children often will receive help since their behavior is disruptive, while withdrawn children may go unrecognized as they internalize the feelings of anger and distrust in the form of self-hatred and, in doing so, become a threat to themselves (suicide) or their families (violence).

Studies now being published indicate that abused and neglected children may not reach the I.Q. of their birthright. Some studies on physically abused children show 30 percent of these children to be retarded or have neurological deficits. Dr. Henry Kempe reported, "At our Kennedy Mental Retardation Center, 20 percent of all retarded and cerebral palsy [sic] children examined are found to be victims of abuse. At our child guidance clinic, the number is even larger."[10] A recent study (1983) of 86 cerebral palsied children showed 17 (20 percent) had been physically abused with severity sufficient to warrant custody by the juvenile court, seven had been voluntarily placed under court jurisdiction and another 12 children were considered "at risk" for abuse.[11] For eight of the children, abuse was the documented cause of the cerebral palsy. These studies seem to emphasize what Harold Martin says: "The toll children pay in terms of mental retardation, learning disabilities, unhappiness and emotional conflict is immense."[12]

Well-designed prospective studies which have followed children to school-age and beyond are not available at this time. However, psychologists do report that children who are brought up in neglecting, abusive, unpredictable environments do not perform to their capacity in school. Their energies are preempted by survival efforts and are not directed toward learning. The cause of poor performance is not primarily that they have developmental delays. Rather, the basic problem is that it is difficult for them to learn in school when they are being neglected or abused at home.

1.42 The Relationship of Neglect and Abuse to Later Juvenile Delinquency and Adult Violence. When one looks at juvenile and adult violent acts there is both a pattern of early neglect and abuse as well as school failure. Alice Miller in her experiences with violent offenders feels the central issue to be "disrespect of the child" which is clearly a manifestation of emotional neglect.[13]

Physically abused children, especially, may manifest their feelings in a *general hostility* toward the adult world and become more of a threat to the community through their violent behavior. This is referred to as the process whereby the child victim becomes the juvenile or adult offender.

Murray Straus comments in *Sexual Inequality, Cultural Norms,* "If one is truly concerned with the level of violence in America, the place to look is in the home rather than in the street."[14] Children who murder other children and adolescents who murder have almost always been the target of physical and verbal violence in their families. At a very young age, they have often had to take care of themselves and their siblings (referred to as role reversal). The parent has been unavailable to meet the child's needs. Either there is an absent father or demanding, domineering mother. These children may feel very little guilt or remorse, lack empathy and are detached from their feelings. They act out rather than communicate their anger and frustrations and tend to be poor in mathematics and are retarded in their learning skills.

Studies have been conducted on the critical effects of abuse upon later development. It appears that the younger the child is when abused, the more aggressive behavior the child exhibits. Also, the child who is abused under the age of three has more "fantasy" aggression. Boys seem to react aggressively and hit back more than girls do. Girls tend to show more inner conflict and anxiety about being abused than do boys.

A number of studies have been done on adolescents who have committed murder. Easson and Steinhilber studied eight boys found guilty of murder and learned that most came from families that were "normal" in all respects except that a parent had habitually beaten them.[15] A. Buttons in the *Journal of Clinical Child Psychiatry* stated that there is "a near perfect correlation between the amount and severity of physical punishment suffered by a child during the ages of 2 and 12 and the amount and severity of adolescent anti-social aggressiveness displayed by the same child."[16]

A study comparing delinquents and "normal" adolescents was done and the results published in 1979 by Amsterdam.[17] He found that violent delinquents had been spanked more than once a month and slapped more than six times a year. Delinquents also were more likely than other adolescents to have been hit with a fist, to have had their arms twisted, to have been choked and to have had their bones broken. These adolescents tended to deal with punishment by hitting back or by having temper tantrums.

Dr. Weston, who was the Philadelphia medical examiner in 1970, commented that of 100 juvenile offenders, 82 had been abused children and 43 recalled being knocked out by their parents.[18] In 1972 in Denver, Joan Hopkins and Brandt Steele conducted a study of 100 documented cases of delinquency. They learned that 83 children had been abused before entering school and 92 had been bruised, lacerated, or fractured by their parents within 18 months prior to arrest. In their study only one family was on welfare.[19]

The largest study done to date was conducted by Jose Alfaro, Director of the New York Select Committee on Child Abuse in 1978. Alfaro did a large follow-up study of over 5,000 children who had been reported as abused and neglected in the 1950s. Overall, approximately 35 to 40 percent of these children were subsequently adjudicated to be delinquent or ungovernable. Sixty percent of the families had at least one child adjudicated as delinquent or ungovernable. He could find no predictors to future violence and concluded, "Every abused and neglected child is in need of treatment services, and the potential social cost of ignoring any of these needs is equally great."[20]

Studies have indicated a 100 percent correlation between child abuse and deviant behavior among violent juvenile delinquents, adults who had committed violent crimes and who were in San Quentin prison, and all assassins and people who had attempted assassinations without success in the United States in the past 20 years.[21]

The first study showing the relationship between abusive child rearing and murderers was conducted by Dr. Duncan of the Mayo Clinic in Rochester, Minn. Six adult males convicted of first-degree murder were studied, and it was found that they all had come from middle-class families respected by the com-

munity. However, all had suffered brutality during childhood from one parent, with the acquiescence of the other parent.[22]

There is ample data to show that severely abused children may well become tomorrow's murderers. "You can almost be certain that the man who has committed violent crimes has been treated violently as a child," writes Karl Menninger in *The Crime of Punishment.* Thus, "violence breeds violence."[23]

A recent study by Dr. David Ward of 100 violent prisoners and controls shows the key variables for physical violence are the severity of the abuse as a child, compounded by early school failure which is measured by dropping out of school. The victims of child abuse often become the offenders and they are often punished again by society.[24] A fateful question is: Can our systems change? "Sow the wind and reap the whirlwind. Meet violence with violence, and you will have more violence."[25]

Wooten, Seal and Chambers in *Social Sciences and Social Pathology* stated, "That those who are not loved are likely themselves to hate rather than to love is hardly a discovery for which modern science can take the credit. Man has known this truth in theory for as long as he has disregarded it in practice."[26] The goal of intervention is to break the cycle of poor and unavailable parenting and neglect for these children and their families.

1.5 Intervention and Prevention of Future Abuse

Identification and reporting of cases are the beginnings of intervention and prevention of child abuse. Local welfare departments and law enforcement have the responsibility for assessment of the child and family and investigation for possible criminal intervention.

The goal of this process is to protect the child and improve the parents' capacity for responsible child care and thereby meet the basic needs of the child. By protecting the child and helping the family, future abuse can be reduced and the intergenerational cycle broken.

The juvenile court and its resources that have fostered family system approaches have shown recidivism and sibling delinquency can be reduced.[27] There is every reason to believe these approaches can also work for child physical and sexual abuse. Neglect is the core, central issue for which clear and documented intervention is not often available.

The courts can, and need to, coordinate with the community agencies and professionals involved with child neglect and abuse. For example, coalitions of private business groups, schools and community professionals are developing new ways of coordinating prevention, treatment and financing of child abuse and neglect programs. The workplace is supportive in providing families the opportunity for health promotion and prevention services. Society in general is more cognizant of the fact that victims of child neglect and abuse drain heavily upon health care systems, reduce productivity, and cause mental pain and suffering for children, parents and their families.

Professionals have become aware of the complexity of the roots of child abuse and are realizing that it is necessary to take a multidisciplined approach to understand the problem. The juvenile and family court system, by working with social services, police, health, psychology, education, chemical dependency and community professionals, can bring about effective intervention and prevention.[28]

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Chapter 2

The Needs of Children

by Robert W. ten Bensel

2.1 The Development of the Concept of the Needs of Children

Since the beginning of recorded history there has been an acknowledgement that children have basic needs. The word "alpha" comes from the Greek and means food and "beta" means shelter. Our language origins refer to the basics of food and shelter. The Judaeo/Christian religions and other religions have, toward protection of innocent and vulnerable children, worked specifically against infanticide and abandonment.

In the fourth century A.D. Constantine the Great introduced the concept of *parens patriae* which is the precedent for the legal principle of the state's intervention in family life when care falls below an established minimum. He articulated the principle of the government's role to provide for basic vital needs of maintenance (food, clothing and shelter) for children, and a need for an education and for the state to set legal standards against exposure and infanticide. The Germanic tribes of the fifth century A.D. brought with them the concept of "reasonableness" in dealing with children. The word "evil" (Old German—sixth and seventh centuries A.D.) means "exceeding the boundary" or "causing harm." Thus, the evolution of conceptual thinking of humans contained the concept of a boundary within which parents could deal with their children and beyond which would require the intervention of other societal institutions. A child's needs stood in relationship first to the family and secondly to the government.

The law of the 13th century was "if one beats a child until it bleeds, then it will remember, but if one beats it to death, the law applies." In the renaissance the law admonished, "approval of beating judiciously applied, hit him upon the sides . . . with the rod, he shall not die thereof." The acceptance of physical punishment was very high in Western society, such that of the 200 surviving biographical statements of individuals' only three were not beaten prior to the year 1690.[1]

During the mid-18th century there was a gradual rise in understanding of pain and suffering and there was a beginning decline in severe physical punishment of animals, women and children.[2] In the 19th century, whipping generally went out of style but continued in some cultures. The Oriental, Jewish, and African cultures have always felt children should not be severely punished and "whipped" only with either a "strand of straw" or "a feather." Those cultures which have continued the longest with the use of physical punishment have espoused the early "breaking the will of the child" and teach their children high self-denial[3] through making sure that their children do not touch their genitals. The analysis of high physical punishment also shows correlations with

more fundamentalist religious beliefs and high authoritarian, father-ruled families which may misuse corporal punishment.

Jean-Jacques Rousseau (1712-1778) in his book *Emile* was the first person who advocated rights to protect children when he said, "Let us speak less of the duties of children and more of their rights."[4]

2.11 The "Little Mary Ellen Case." The result of the Little Mary Ellen Case in New York in 1874[5] was the first case law granting children a right to be free from unreasonable physical discipline.

Mrs. Wheeler was called by a woman dying of tuberculosis. Through this woman she heard the story of a child being beaten by her relatives and of her crying in the next room. She first turned to the police who said there was no proof of a crime. She then went to the New York Department of Charities which refused aid on the grounds that the agency did not have legal custody of the child. She then went to Henry Bergh, founder and president of the Society for the Prevention of Cruelty to Animals (S.P.C.A.). Bergh responded that Mary Ellen would have "the same rights as the stray cur in the street." Bergh acquired a lawyer by the name of Elbridge T. Gerry (1837-1927) and the case went to court on April 10, 1874.

Jacob Riis, a young police reporter, wrote in his report, "I saw a child brought in, carried in a horse blanket, at the sight of which men wept aloud, and I heard the story of Little Mary Ellen told again, that stirred the soul of a city and roused the conscience of a world that had forgotten; and as I looked, I knew I was where the first chapter of the children's rights was being written."

Mary Ellen's testimony gives some insights into the dynamics of isolation and lack of knowledge operating in child neglect and abuse. When she stated, "I don't know how old I am . . . I have never been allowed to go out of the room . . . I have never been allowed to play with any children . . . Mama has been in the habit of whipping and beating me almost every day . . . I never know for what I was whipped. Mama never said anything. . . ."[6]

As a result of the Mary Ellen case, the Society for the Prevention of Cruelty to Children (S.P.C.C.) was founded in 1875. In 1876 The S.P.C.A. and S.P.C.C. were combined into the American Humane Association (A.H.A.) which has been a leading agency for setting standards for protection of both animals and children since that time. "Prevention, Rescue and Punishment cover the ground of our work."[7] The initial response was one of "rescuing" children from neglecting or abusive environments and has evolved to a philosophy of attempting to help rehabilitate families whenever possible. Even though punishment of the parents was used, it was realized that "the child would go back to his home, perhaps to be tortured in many ways. Which would not be recognized by the law."[8]

Private, voluntary agencies provided most services until recently. The first county to establish a public responsibility for the protection of neglected and abused children was Hennepin County (Minneapolis), Minn., in 1944.

2.12 The Role of Child Labor in Establishing the Needs of Children. Concerns about child labor originated in England in the 18th and 19th centuries. The concept of the *exploitation* of children resulted in protections against children being used by another person for economic reasons.

In America children were often viewed as objects or in a role where they were expected to work for and take care of parental physical and emotional needs. As the industrialization of America took place, children were readily employed in the work system. The North Carolina textile industry in 1906 saw more than 15 percent of children under the age of 16 employed in that state. Studies showed that children who worked in child labor had a 52 percent illiteracy rate as well as an extremely high accident rate.

More important was the perceived moral ills that impacted upon the child. John Spargo's book, *The Bitter Cry of the Children,*[9] made a persuasive argument for the moral harm done to children by child labor. He stated: "The moral ills resulting from child labor are numerous and far-reaching. When children become wage earners and are thrown into constant association with adult workers, they develop prematurely an adult consciousness and view of life. About the first consequence of their

employment is that they cease almost at once to be children."

This heightened child advocacy reached a peak at the turn of the century for the "right to a childhood." Public awareness grew and President Theodore Roosevelt convened a White House Conference on children in 1909 which lead to the establishment of the Federal Children's Bureau in 1912. The issues of the needs of children, juvenile courts, and child labor were prominent in these discussions.

2.2 The Needs of the Children as Defined in the 20th Century

The White House Conferences on Children and Youth are held every 10 years. From the 1930s to the present the meetings have been concerned with the needs and rights of children and families. For instance, at the 1960 White House Conference these needs and rights were articulated as follows:

1. To be wanted.
2. To be born healthy.
3. To live in a healthy environment.
4. To have their basic needs and rights met.
5. To have continuous loving care.
6. To acquire the intellectual and emotional skills necessary to achieve individual aspirations and cope effectively in our society.
7. To receive care and treatment through facilities which are . To receive care and treatment through facilities which are appropriate to their needs.
8. To keep children as close as possible within their normal social setting.[10]

Abraham Maslow placed the needs of children within a hierarchical framework as follows: provisions for food, clothing and shelter; supervision against illness and accidents (protection of children); a family loving and supportive of the child; an environment in which the child can develop esteem for himself and others; and experiences that allow the child to reach his/her full potential.[11]

Recent studies of the developmental needs of children and families are given in the following two tables. A developmental framework of thinking about children and families is essential. Table 2.1 includes developmental milestones that children undergo at various stages, the developmental tasks that they must undergo, the dimensions of the supportive environments as required by parents or other caretakers and the basic stages that must be accomplished according to Erikson and Paiget.[12] Physicians, psychologists and other professionals use these models as a constant guide to determine the needs of children and whether or not there is the presence or lack of sensitive, cooperative, accepting and available caretakers at each of these stages. These developmental schemas become the basis for the expert witness regarding child development.

Table 2.2 is a model of healthy, midrange, and severely disturbed families as given by W. Robert Beavers.[13] These family qualities are also helpful in giving professionals guidelines to aid in making judgments as to the types of families they are dealing with and when children may be required to be removed because of an unsafe, physically or sexually abusive environment, or because of neglect.

2.21 What are Acceptable Community Standards for Child Care, Including Corporal Punishment? Community acceptable child care and corporal punishment standards are not well defined. How is it possible to define for a parent or caretaker what is "reasonable use of physical force to restrain or control the behavior of a child" when a community condones the use of corporal punishment by school teachers or in other areas of communal living?

One of the basic needs children have is consistent guidance, discipline, control and security in their lives. It is often interpreted that the only major type of guidance or discipline is, in fact, "corporal." Individuals or groups may believe that children need physical pain in order to change their ways. Some of the most subtle forms of child control occur very early in life and are often geared toward "breaking the will" rather than correcting behavior. For instance, in some societies children are disciplined not for bad behavior, but for opposing the will of parents.[13] Acceptable guidelines for use of corporal punishment are as follows:

a. There is no available data that supports the use of corporal punishment under the age of 2. Most deaths under the age of 2 are related to either hitting or shaking.

Table 2.1

Ages	Developmental Tasks	Developmental Tasks	Dimensions of Supportive Environments	Eriksonian (psychosocial) Piagetian (cognitive)
Infancy (0-18 mos.)	Social smile (3 mos.) Differential response to specific persons Stranger anxiety/ separation anxiety Sit alone Crawl, walk	Establish social bonds w/caregivers (attachments) Acquire sense of trust and security	Warm, sensitive and responsive caregivers	Basic trust v. mistrust Sensory motor intelligence
Toddler (1-3 yrs.)	Speech Toilet Training Physical independence Self-assertion Object permanence	Develop sense of autonomy Separate from caregiver to explore environment; continuing to use caregiver as source of support Impulse control	Tolerance for self-assertion Consistent limit setting Structured environment	Autonomy v. Shame, Preoperational thought
Preschool (4-6 yrs.)	Acquisition of social/ sex roles Assimilation of social values/beliefs	Integrating perceptual and motor control Improving communication skills Mastering self-care activities Estab. peer relationships Learning right v. wrong	Exposure to a variety of socio-cultural	Initiative v. guilt Preoperational thought
School age (7-12 yrs.)	Elaboration of intellectual skills Establishment of same sex peer relations Game playing	Increasing domain of social and intellectual competence beyond home and family to school, clubs, sports, etc. Acquire sense of productivity Acquire sense of mutuality/ reciprocity in social realms	Opportunities to experience success Opportunities to interact w/peers Intellectual stimulation	Industry v. inferiority (competence) Concrete operational thought
Adolesence (13-19 yrs.)	Physiological changes accompanying puberty Transition from same-sex peer groups to mixed-sex peer groups Future orientation	Achieve a sense of identity Achieve independence from family Elaborate system of values Develop intimate relationships	Consistent expectations Willingness to let go Respect and encouragement of individual and autonomy	Identity v. role diffusion Formal operational thought

Table 2.2

FAMILY QUALITIES

LEVELS OF FAMILY HEALTH	POWER STRUCTURE	AUTONOMY (CONTROL)	AFFECT (FEELINGS)	PERCEPTION OF REALITY	ACCEPTANCE OF LOSS
Healthy	Flexibility Husband/wife share Democratic w/husband slightly ahead in leadership	Strong sense of self Respect for uniqueness of others Ability to listen to others and hear and respond	Warm Expressive Empathetic Deals with conflict directly	Good sense of reality Humorous Tenderness Warmth Hopefulness	Graceful
Midrange	Rigid Authoritarian (feelings are threatening)	Rigid control of behavior of members "Shoulds" Impermeable to others' feelings, thoughts	Sadness Depression Criticism Bickering	Distortion of reality; not as distorted as severely disturbed	Remain caught in frustrating conflict-ridden (intergenerational) relationships
Severely Disturbed	Extremely chaotic Parent/Child coalitions No one in control at times	"Groupthink" Undifferentiated ego mass	Negative Pervasive Cynicism Open hostility Deprecating attitudes	Greatly distorted reality regarding family and its individual members	Maladaptive defenses against losses

Some national studies show that 41 percent of infants under 6 months and 87 percent of children under age 2 have been physically punished by their parents.

b. If one is to use corporal punishment it should be only an open hand on the buttocks. The danger of striking children beyond the buttocks boundary is risky. The second most common cause of death in child abuse is from abdominal injuries and is usually associated with toilet training in children from age 2 to 3.
c. Leaving bruises is excessive punishment. Bruising requires a great deal of force. The size differential between an infant or child and an adult is often enormous. It is the equivalent of an adult being hit by somebody 13-14 feet tall and weighing 3,000 pounds. Consider the abusive episodes from the viewpoint of the child and the fear of assault by such a large and all powerful individual as one's parent.
d. Instruments are not acceptable as one loses any reasonable regulating control over one's use of corporal discipline. The adult's hand hurts when the boundary is exceeded.
e. Based on available studies, the only advantage to using corporal punishment rather than alternatives is that it relieves or dissipates the anger of the parent. Spanking is hitting and poses a threat of physical or emotional harm to children if it goes uncorrected. The expectation is for parents to be *reasonable* in dealing with their children and not *perfect* at all times.

2.22 Emotional Needs of the Child. There are many emotional needs of children. The Mental Health Association in 1981 listed these needs as love, security, protection, acceptance, faith, independence, guidance and control. The current available research data indicates the availability of a sensitive and respectful parent(s) is critical in order for a child's basic emotional needs to be met. Permanency planning decisions which ensure the availability of a constant person in a child's life is critical. A child's sense of time is infinitely shorter than that of the adult so even minor moves, such as removal to a hospital or temporary foster care, have a lasting impact upon the emotional development of a child. The most critical time that separation from the parents affects a child are from 8 months to 4 or 5 years of age. If separations are required, it is best under 8 months of age or later in life when a child may be able to understand why the separation is needed. Early return to the family, if the child is safe, is best for the child.

2.3 The Basis for Caring Relationships

Attachment begins relationships and care maintains them. Bonding or attachment is the process that releases the caretaking instinct in human parents. It has been defined as "the extent to which the parent feels that the infant or child occupies an essential position in their life."[14] The components of caring are a feeling of warmth and love, a sense of possession, devotion and protectiveness and concern in an infant's well being. With this feeling comes the feelings of acceptance of a child and availability of the caretaker to meet a child's basic needs. This attachment may occur at any time immediately following birth to as much as nine weeks later. Other studies show that first-time mothers may be exhausted by three months and, thus, there is the need for extra support during the first three months. Not only are parents fatigued with the demands of parenting but they also have anger toward their small infants. In the first six months of life, first-time parents get angry on the average of three times a month to the point of wanting to strike their baby and from six months to one year the anger increases to an average of six times per month. It is a rare parent who feels no anger toward even a wanted, loved and cared for child. Thus, intervention and prevention programs need to deal with the "normal crazies" of being a parent.

If attachment does not occur there is a reported increase in physical abuse of children, non-organic failure to thrive, childhood behavior problems, an increased divorce rate between the parents and more children relinquished voluntarily for adoption.

The concept of attachment and availability of parenting helps us in making judgements about caretaking attitudes and when children

are at risk. Attachment is important in not only understanding neglect and abuse, but when the attachment process is *strong* and *secure* these children have accelerated mental and physical development.

2.4 Children with Special Needs

There are a number of studies which document that children who are "unwanted," premature, multiple birth (twins or triplets or more), have biological defects, or are in some ways perceived as "different" or "bad" compared to their perspectives of normal, are at even greater risk for abuse. There are also studies which would indicate that young adolescent mothers, mothers with chronic illness and special health needs, single parents, isolated parents, and parents with multiple social problems are also vulnerable and at risk for abuse and neglect and need special support systems.

Children who are handicapped not only produce more stress for the parent but also may deprive the parent of fulfillment of their desire to have a normal and healthy infant. Studies have shown that public health nurses or visits to high-risk families can reduce physical abuse, neglect and accidents by providing in-home support for these families.

Children with special needs as they grow older are also at risk for abuse and neglect in day care, foster care or institutional settings. Those children with mental illness, mental retardation or communication disorders are particularly vulnerable as they cannot clearly communicate the abuse that is happening to them. They are often "picked" as victims since they are not well understood or believed by the adult society.

Thus, one has to be cognizant of the needs of all children and consider at risk the normal child, the special-needs child, and the child in, as well as outside, the home. It is disturbing to look at normative data on how our childrens' basic needs are being met in America today. Some studies would indicate that only one-third of our families have healthy, caring and sensitive relationships, with parents available to their children. Approximately one-third of parents are ambivalent toward their children and one-third are hostile and rejecting toward their children. Changes in the American family that have not allowed extended family relationships for support of vulnerable families (particularly single mothers and young families) may all be factors in the rising reported problem of neglect and abuse.

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See Chapter 1

Notes

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Chapter 3

Judicial Procedures

by Lindsay G. Arthur

3.1 Constitutional Requirements

3.11 Full Due Process Required. Parents have a basic right to provide the care, custody and control of their children, a right which is protected by the full weight of the Constitution.[1] No person, no government or governmental agency may intrude upon this right without first clearly convincing a court with a full panoply of due process procedures that the parent's behavior shows them to be unfit to have the custody and rearing of their child. Since actions for abuse may grow into actions to terminate parental rights, the most serious of all possible juvenile court actions, the abuse action must provide the maximum protections required for termination actions.[2]

> . . . a parent who is not found to be unfit has a fundamental right, protected by the Due Process Clause of the United States Constitution, to the care, custody and control of his or her child. . . .[3]

The issue is always the best interest of the child, but it is always presumed that the child's best interests are to live with its parents; that presumption must be clearly overcome before any other placement can be considered. The Utah Supreme Court epitomized this concept by holding unconstitutional a statute which allowed termination of parental rights solely in the child's best interest without regard to parental fitness. The issue is not whether a child will be better off with natural parents or with foster parents, the issue is whether the parents meet minimum standards of care.

> . . . when a judge is hearing a dispute between the parents . . . and a third party, the question still is, what is in the child's best interest? However, the parties do not start out even; the parents have a prima facie right to custody, which will be forfeited only if convincing reasons appear that the child's best interest will be served by an award to the third party. Thus, even before the proceedings start, the evidentiary scale is tipped, and tipped hard, to the parents' side.[4]

Thus where court intervention is sought because it is alleged that a child has been abused or neglected, the party seeking the court order must prove not only that the child was abused and harmed by the abuse, but that the child is still being harmed or that there is a strong likelihood that the child will be harmed by future abuse.

> The statutory grounds for coercive intervention on behalf of endangered children . . . should authorize intervention only where the child is suffering, or there is a substantial lik[e]lihood that the child will imminently suffer, serious harm.[5]

3.12 The Adversarial System. If there is no dispute, there is no need for a court proceeding. If there is a dispute, the Anglo-American judicial system has developed into a finely tuned and highly effective system of finding the truth.

It is based on the most fundamental of human emotions: greed. Its premise is that if each party brings in all the evidence it can find favoring its position, between them they will bring in all of the evidence. The European courts place primary reliance on the investigation of an independent public investigator with no interest in the outcome, a procedure advocated by the ABA/IJA *Standards* for abuse and neglect proceedings here.[6] But investigators have biases and no motive other than professionalism for thoroughness. The American adversarial system requires "due process" to ensure its effectiveness:lawyers for proper investigation and advocacy, rules of evidence to eliminate gossip and inexpert opinion, impartial judges or juries to sift the credibilities. The American system is not particularly efficient, it is often quite slow and messy with its insistence on hearing everyone. But it is effective, and it is fair.

3.13 The Right to Counsel. There can be little doubt that in the years since *Gault*[7] it has become fully recognized that parents have a right to counsel at all stages of an abuse or neglect hearing, including illegitimate parents[8] and psychological parents in states where they have standing to appear. However, failing to provide a lawyer may not be fatal if the lawyer would have been of no help[9] particularly if no penalty was possible.[10] If the parents are indigent they have a right to court-appointed counsel and investigative assistance at public expense. A less obvious question is the right of a child to counsel in an abuse case. It has been held that the child is adequately represented by the district attorney who represents the welfare agency that commenced the proceeding on behalf of the child.[11] On the other hand it has also been held that the attorney for the parent cannot represent the child because of a conflict of interest.

> . . . this Court does not consider that the interests of the child were or can be represented by counsel for any of the parties.[12]

3.14 Guardians Ad Litem. The use of *guardians ad litem* is in flux. Should they be used in every abuse case to ensure that the child's best interests will be heard? Are they needed when the child has a lawyer to advocate his wishes? Does the welfare department sufficiently enunciate the child's best interests? If a *guardian ad litem* is appointed, should it be a lawyer who is trained to advocate what the client wants rather than what is best for the client? Should a *guardian ad litem* be paid? By whom?

Courts have ruled differently on each of these questions. A Mississippi court said that a *guardian ad litem* must be appointed if the statute so provides;[13] a Texas court implied that a *guardian ad litem* would not be necessary despite a statutory mandate if the parents were not concentrating of their personal interests;[14] an Illinois court held that it is not error not to appoint a *guardian ad litem* if the guardian would not have changed the outcome;[15] a federal district court held that a *guardian ad litem* is entitled to a reasonable fee;[16] a Wisconsin court held that the county should pay this fee;[17] and a Missouri court held that the loser must pay,[18] programs in Seattle and Minneapolis rely on highly trained volunteers.[19]

While traditionally *guardians ad litem* performed perfunctorily, the Utah Supreme Court stated,

> Our statute is silent as to the role to be played by the guardian ad litem other than that he is to 'protect the interest of the child.' If he is to do that he then must be active in seeking information and evidence, and based thereon arrive at a conclusion as to what course will best serve the children. In fulfilling this role he is not required to remain neutral between the two positions taken by the parties.[20]

Or as the Nebraska Supreme Court said with its usual succinctness,

> If the empty formality of a signature was all that was sought, the court itself could provide it.[21]

3.2 Pre-Court Procedures

3.21 The Petition Must Give Details. A petition alleging that a parent has abused a child must state the facts in words a layman can understand and in sufficient detail that the parent will know what specific instances will be raised so that a defense may be prepared. When juvenile courts were first organized, the rule was the opposite: ". . . the petition's allegations were to be set forth in rather general terms lest the details provide the basis for publicity harmful to the child."[22] It is now however universally recognized that the risk of harm to

the child from possible publicity is far less than would result from being wrongfully separated from the parents. Thus the petition must set out the facts: the time and dates and places; the specific acts, or omission thereof, which harmed the child; and the reasons why the conduct is causing the child to be suffering presently or why it will cause the child to suffer in the future.[23] And the petition must state this in understandable language.

> (A petition alleged that a child was) suffering from developmental deviation. At the hearing a staff psychologist . . . testified that the term 'developmental deviation' is defined in 'Psychopathological Disorders in Childhood, Theoretical considerations and a proposed classification' as a 'deviation in personality development which may be considered beyond the range of a normal variant in that it occurs . . . in a degree not expected for a given age level or state of development.'
>
> . . . (The Court of Appeals in reversing said that) we find that the petition served on the mother was adequate to notify her of the pendency of the custody proceedings. However, the petition would not inform her of the charges against which she would need to defend. The language, 'suffering from development deviation,' apparently has some meaning to psychologist. Even if such condition is one requiring care, there is no allegation in the petition that this condition arose due to the mother's neglect or that it could have been corrected if the mother had taken appropriate measures.[24]

3.22 Notice Must Be Given To The Parents. The petition must get to the parents by the most effective means available. This means personally handing the petition to the parent, or leaving it with a responsible person at the parent's residence, or, if no other way is possible, by publishing it in a newspaper.[25] The word "parent" now includes illegitimate parents,[26] which raises problems when the mother refuses to disclose the father's name, or doesn't know it, or doesn't know his address or purposely dissembles. A couple lived together and conceived a baby in California. The mother then moved to Kansas without telling the father. He was notified of an abuse action where termination of his parental rights was sought by publication in a Kansas newspaper. The Kansas Supreme Court ruled:

> We do not question the validity of publication service under proper circumstances but fundamental due process requires a factual showing that, after the exercise of reasonable diligence, other service calculated to give actual notice to the party sought to be served is not practical. In the instant case, the record is totally lacking of any showing of the effort made to ascertain the address of (the father) so that actual service might have been made on him. We will not here attempt to establish the minimum requirements for a showing of due diligence and, hence, due process. Each case must rest on its own particular facts.[27]

It is possible of course to require the mother to give her information, or lack of it, under oath, but she may fear the father's retribution more than the law's or she may be so adamant about his being allowed any involvement that she will risk the perjury for what she conceives to be the good of the child. Possibly the most efficacious means is to assure her that the child can have no permanent home until the father has been notified.

The various states are divided as to whether "parent" includes foster parents and psychological parents so as to require service of notice or to allow intervention. Most juvenile court acts require notice to persons having physical custody. Because the trend seems clearly toward allowing foster parents to intervene, the wiser course is probably to notify all custodians and to allow them to present evidence in the proceedings.[28] Holding that foster parents have standing before the courts if their relationship with the child has developed into a psychological bonding, the New Hampshire Supreme Court said:

> It is the foster parents who would be at home when Diana gets off a school bus, prepare her meals, read to her, tuck her into bed at night, calm her fears, give her medicine, and hold her in their arms. It is they, not the division of Welfare, who take her on trips, answer her questions, bandage her cuts, and see that she is clean and dressed appropriately.[29]

3.23 May Remove Child Before Trial In Emergency. Where a child is in imminent danger of physical harm from which the parents cannot or will not protect him, he may be involuntarily removed from his parents by an appropriate professional subject to a court hearing in the

immediate future. Such is the law in probably all of the states. But there are problems of application:

- How urgent is "imminent?" Presumably sooner than a court order could be drafted, signed and served.
- What is "danger of physical harm?" The ABA/IJA *Standards* would allow only death or serious bodily injury.[30] At the other extreme, the Arizona Court of Appeals held that a sheriff had not only a right but a duty to enter a house without a warrant if he had reasonable cause to believe that a child's health, morals or welfare were being endangered.[31] The Connecticut Supreme Court disallowed a removal of five children because their 9-month-old brother had died of unknown causes.[32]
- "Appropriate professionals" probably include the police and governmental social workers and physicians and may be relatives, but probably does not include well-meaning neighbors, the clergy or lawyers.
- A "court hearing" has been held sufficient if it is held within two or three business days and is of the quality of a probable cause hearing in criminal law with a parent present represented by counsel and enough evidence for a reasonable belief of imminent danger if the child is returned to the parents.[33]

3.3 Hearings

3.31 No Right To Trial By Jury. There is no constitutional right to trial by jury in abuse and neglect actions[34] though many states provide for it by statute. The rationale for denying a constitutional right to jury is that jury trial would bring delays and formalities and end the juvenile court's intimate, informal protective proceeding.[35]

3.32 Expeditious Hearing. "Children grow old, learn to walk, are toilet trained and matriculate at Yale while lawyers file their requests to revise and motions to strike and interrogate and depose witnesses . . ."[36]

> While some jurisdictions set strict time-tables for adjudication and disposition, at least where the child has already been removed from the home, it is not rare in other places for eighteen months to pass before the judge enters a jurisdictional and dispositional order. Even in the stricter jurisdictions, the time limits are often waived by the parents or may not be strictly enforced.
>
> Protracted litigation is devastating to families and children, especially those in foster care, and delays in adjudication and disposition generally mean delays in the ultimate resolution of the case. Where adjudication is delayed, the case is in a holding pattern. No firm planning can take place because the court may find that neglect never occurred, or the children may be returned home against the wishes of the agency and prosecutor. Likewise delays in disposition can mean delays in resolving the plan for return of the child, including what is expected of the parents and agency to facilitate the child's return. It is a misconception to think that delaying adjudication and disposition facilitates progress for children in foster care. Getting adjudication and disposition completed *facilitates* progress.[37]

3.33 Bifurcated Hearing. There are two aspects of litigation. The first is what happened and what to do about what happened. The second is the adjudication hearing and the disposition hearing in juvenile court, or the trial and the sentencing in criminal court. Increasingly it is required that these be separated.[38] As an Ohio Court stated:

> . . . there were clearly different substantive inquiries to be undertaken in each phase, with concommitant differences in evidence and standards of review. As such, the record must clearly disclose when the emphasis of the inquiry has shifted from an adjudicative to a dispositional phase.[39]

Or as phrased by the ABA/IJA *Standards*:

> It is of central importance that the dispositional hearing be held separately from the adjudicatory hearing, even if they are held on the same day. At the dispositional hearing the court will be provided with substantial information about the family and the child. Some of this information might be very prejudicial if considered at the adjudicatory stage. For example, a trier of fact might be influenced by knowing that a family was the recipient of welfare services or that a parent was a drug addict; yet such information might be irrelevant on the factual issue of whether a child had been sexually abused, needed medical care, etc.[40]

3.34 Parents Must Be Advised Of Rights. Some statutes and many judicial decisions require that the judge must advise parents of

their due process rights at the start of the hearing,[41] and the judge must be satisfied that they understand their rights, including that an abuse proceeding might develop into termination of their parental rights,[42] unless there is a lawyer standing next to the parent.

> Proceedings in dependency or neglect affect important rights, so there must be substantial compliance with statutory requirements for conduct of these proceedings. In order to assure the effectiveness of the statutorily mandated advisement and to provide a basis for informed appellate review, the trial court should explain the constitutional and legal rights of the parties to them orally on the record. In this case that was not done. However, counsel . . . represented her throughout the proceedings. We perceive no prejudice . . . resulting from any imperfections in her advisement.[43]

3.35 Clear and Convincing Proof Required. In *Santosky v. Kramer,*[44] the United States Supreme Court clearly enunciated the reasons for requiring a higher burden of proof in proceedings which may result in termination of parental rights . . . and thus presumably in abuse and neglect proceedings which may be preliminary to later termination proceedings. The decision held:

> . . . a natural parent's desire for and right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty, but to end it.
>
> The fact finding bearing (pits) the State directly against the parents. The State alleges that the natural parents are at fault. The State marshalls an array of public resources to prove its case and disprove the parents' case. Victory by the State not only makes termination of parental rights possible; it entails a judicial determination that the parents are unfit to raise their own children.
>
> The State's ability to assemble its case almost inevitably dwarfs the parents' ability to mount a defense. No predetermined limits restrict the sums an agency may spend in prosecuting a given termination proceeding. The State's attorney usually will be expert on the issues contested and the procedures employed at the factfinding hearing, and enjoys full access to all public records concerning the family. The State may call on experts in family relations, psychology, and medicine to bolster its case. Furthermore, the primary witnesses at the hearing will be the agency's own professional caseworkers whom the State has empowered both to investigate the family situation and to testify against the parents. . . .
>
> An elevated standard of proof in a parental rights termination proceeding would alleviate the possible risk that a factfinder might decide to (deprive) an individual based solely on a few isolated instances of unusual conduct (or) . . . idiosyncratic behavior. . . . Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate termination will be ordered.

3.36 Can Only Admit Reliable Evidence Showing Detriment To Child. To prove abuse it is necessary to prove that the child was abused, not merely that the parent's conduct was abusive.[45] It is not necessary that the conduct be intentional[46] nor is it necessary to prove past harm if it can be clearly shown that future harm will result from present conditions.[47] It has been held that the abuse must be proven rather than merely admitted or stipulated.[48] Hearsay is not acceptable[49] except to repeat a child's statements, not for their truth, but to show a state of mind.[50] The social history is on its face hearsay but it may be possible to qualify it under the business records exception,[51] even if it contains hearsay.[52] Expert opinion is admissible as in any civil proceeding and social workers may be qualified as experts.[53] Psychological evaluations may be useful unless privileged,[54] but it may be necessary that the psychiatrist be available for cross-examination,[55] and a psychiatric evaluation of the parent can probably not be ordered against the parent's will in the absence of a statutory authorization.[56] The evidence must be concerned with whether the parent's future condition will be abusive, not as punishment for past abuse which will not recur;[57] nor can evidence be admitted as to a foster home's superiority to the future parental home[58] since the test is whether the parental home will meet minimum acceptable community standards, not whether a better home can be found. The evidence of course can be of past conduct, evidence of abuse of other children,[59] even conduct considered in a previous abuse proceeding,[60] and evi-

dence of conduct occurring after the petition was filed.[61]

3.37 Privileges Are Often Inapplicable. The four basic privileges, communications with a physician, a priest, a lawyer and a spouse, are based upon the premise that citizens need to have someone with whom they can discuss their problems confidentially. However there are instances where another interest is deemed more important and thus where the privilege does not apply. One such interest is the protection of children.

> . . . the interest of these young children in living in secure surroundings out weighs any possible injury to the. . . physician-patient relationship.[62]

It has been held that medical communications are privileged if the medical examination was involuntary.[63] Such is not the rule in medical examinations in civil litigation on the assumption that such examinations are not for treatment, thus the patient is not pressured by the need for help to disclose confidences.[64] On a similar basis, the marital privilege has been waived[65] and the clerical privilege probably would be. The attorney privilege is protected by the constitution, at least so far as communications pertaining to possible criminal charges are concerned, which would usually include child abuse, and thus probably cannot be waived by the legislature or the courts.

3.38 Social Histories are Usually Admissible. The investigation of the home and family is of great value to the court.[66] It is admissible as a business record[67] though most courts require the maker of the report to be in court and available for cross-examination,[68] and that the report be available to the parents:

> (The mother was not denied her right to cross-examination and) the unrestricted statutory right to inspect and have disclosed the contents of pertinent juvenile court records. When exercised, this right provides ample opportunity to gain information which will aid in preparing for hearing. Such records should reveal the evidence and the names of persons whose reports or statements are relied on by the State to prove its case. Inspection of these records will afford both a basis for readiness for cross-examining witnesses and for determining the witnesses to be called to rebut the State's evidence or to support the contentions of the parent, guardian or custodian.[69]

3.39 Child May Testify if Qualified. Children of any age may testify, but only if it is ascertained in advance that they appreciate that there will be punishment if they tell a lie,[70] and the child has the ability to observe events and testify as to them.

> . . . it is obvious that the capacity of child at the time of the occurrence about which he asked to testify enters into the consideration of his competence. A child who has sufficient intelligence to be competent as a witness concerning a recent event is incompetent as a witness concerning an event which occurred when he was so young that he does not have an accurate recollection of it.[71]

The examination of a child may in most states be held in chambers provided that counsel for the parents is present and a record is made. However, one court requires that the examination be put through a speaker in the courtroom:

> We are satisfied that under the circumstances the procedure utilized was in the best interests of the child. It is evident from the record that the child was emotionally disturbed. The trial judge described him as 'rigid'. We conclude that the judge reasonably found that a certain degree of privacy would be more likely to elicit a genuine and reliable response from the child. We are satisfied that the trial judge acted reasonably in balancing the needs of the child for protection as against defendant's need to see her child when the child answered the judge's questions or answered questions submitted by the attorneys for cross-examination.[72]

3.4 Accountability

3.41 The Court Order Should Prescribe Goals. The findings and order of the court must not only describe the facts proven in the case[73] and set out the court's order in understandable language, they should also set out clearly what is expected of the social agency and, particularly, of the parents so that there can be no doubt in the future as to whether there was compliance with the order.

> The record here is utterly devoid of any judicially-prescribed norms of conduct to which the father was required to conform in order to avoid a loss or further impairment of his status. The proceed-

> ings here simply fail to give a person of ordinary intelligence—and particularly someone with the father's psychological impediments—a reasonable opportunity to know what was expected of him. The record in the suit reveals no more than a stipulation that the child stood in a deprived status. 'Norms for parental conduct are designed to advise parents of what is expected of them *qua* parents and to guide them in avoiding patterns or a level of behavior that may trigger official intervention. Without knowledge of the expected norms of conduct—as balanced by community norms and by the socio-economic in lieu of the parent—a parent would be unable to set in motion an effort of compliance with society's expectations, i.e., to rectify the problems which caused the child to become the subject of a public law-proceeding and to remove all residue of a clouded status.[74]

3.42 The Court Must Monitor Obedience To Its Order. The order should provide for progress reports at appropriate intervals, usually three to six months, wherein a social worker reports to the court, with copies to the parties, as to the progress or lack of it, being made toward each of the goals and to prevent the child from being forgotten. If the goals are accomplished, the case can be dismissed. If there is no progress, a petition for termination of parental rights can be considered. If the goals have become obsolete or inappropriate, a modification hearing can be scheduled to consider changing them. The report should of course show not only what the parents are doing or not doing, but also what the agency is doing or not doing. And the parents should be encouraged to criticize and comment on the report in order to maintain the reporter's accuracy.

3.43 The Agency Is Responsible For Proper Supervision. The social agency charged with carrying out the court's order must provide the assistance and supervision required by the order. If it does not, it cannot later seek termination.

> . . . by discouraging family visits during the years the children were living in foster homes, (the agency) did not comply with the requirements of (the statute) to strengthen the parental relationship and is thus precluded from seeking to terminate the rights of the (parents) on the ground of permanent neglect.[75]

The agency may be sued for damages for negligent execution of its non-discretionary responsibilities,[76] such as not finding or supervising an adequate foster home.[77] Actions against workers personally are possible, though difficult.[78]

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Notes

[1] *Meyer v. Nebraska,* 43 S.Ct. 625 (1923), *Pierce v. Society of Sisters,* 45 S.Ct. 571 (1925), *Prince v. Massachusetts,* 64 S.Ct. 438 (1944), *Stanley v. Illinois,* 92 S.Ct. 1208 (1972), *Quilloin v. Walcott,* 98 S.Ct. 549 (1978), *Lassiter v. Dept. of Soc. Serv.,* 101 S.Ct. 2153 (1981), *Santosky v. Kramer,* 102 S.Ct. 1388 (1982).

[2] *In re J.P.,* 648 P.2d 1364 (Utah 1982).

[3] *Sheppard v. Sheppard,* 630 P.2d 1121 (Kan. 1981).

[4] *In re Desiree B.,* 450 A.2d 1003 (Pa. Super. 1982).

[5] *Standards Relating to Abuse and Neglect,* Standard 1.3, Tentative Draft, (1977), Juvenile Justice Standards Project, Institute of Judicial Administration, American Bar Association, (Cambridge, Mass.: Ballinger Publishing Co.).

[6] *Standards,* 5.2, supra n.5.

[7] *In re Gault,* 87 S.Ct. 1428 (1967).

[8] *Stanley v. Illinois,* 92 S.Ct. 1208 (1972).

[9] *Brown v. McLennan County,* 627 S.W.2d 390 (Tex. 1982); *Lassiter v. Dept. Soc. Serv.,* 101 S.Ct. 2153 (1981).

[10] *State in Interest of Dronet,* 417 So.2d 1356 (La. App. 1982).

[11] *In re Laura F.,* 662 P.2d 922 (Cal. 1983), *State In Interest of Dronet,* 417 So.2d 1356 (La. App. 1982).

[12] *Moon v. Moon,* 621 S.W.2d 767 (Tenn. App. 1981), *In re T.M.H.,* 613 P.2d 468 (Okla. 1980).

[13] *Luttrell v. Kneisly,* 427 So.2d 1384 (Miss. 1983).

[14] *Barfield v. White,* 647 S.W.2d 407 (Tex. App. 1983).

[15] *Knudsen v. Arlington Heights Fed. S. & L. Ass'n,* 427 N.E.2d 865 (Ill. App. 1981).

[16] *Friends for All Children, Inc. v. Lockheed Aircraft,* 533 Fed. Supp. 895 (D.C. 1982).

[17] *Matter of T.R.M.,* 303 N.W.2d 581 (Wis. 1981).

[18] *B.S.H. v. J.J.H.,* 613 S.W.2d 453 (Mo. App. 1981).

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[21]*In re Guardianship of Sain,* 319 N.W.2d 100 (Neb. 1982).

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[24]*In the Interest of M.R.H.,* 622 S.W.2d 15 (Mo. App. 1981).

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[43]*People in Interest of A.M.D.,* 648 P.2d 625 (Colo. 1982).

[44]*Santosky v. Kramer,* 102 S.Ct. 1388 (1982).

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[49]*Matter of McDermid,* 630 P.2d 913 (Ore. 1981).

[50]*Kallas v. Kallas,* 614 P.2d 641 (Utah 1980); *Melton v. Dallas County Welfare Unit,* 602 S.W.2d 119 (Tex. App. 1980).

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[52]*Interest of Calkins,* 420 N.E.2d 861 (Ill. App. 1981).

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[54]*c f.* following section.

[55]*In re T.L.S. and M.J.C.,* 425 A.2d 96 (Vt. 1981).

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[62]*Matter of A.M.,* 292 N.W.2d 103 (S.D. 1980).

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[68]*Custody of a Minor,* 432 N.E.2d 546 (Mass. App. 1982).

[69]*In Interest of Long,* 313 N.W.2d 473 (Iowa 1981).

[70]*In re M.W.R.,* 458 A.2d 1132 (Vt. 1983).

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[74]*Matter of C.G.,* 637 P.2d 66 (Okla. 1981).

[75]*In re LaFreniere,* 420 A.2d 82 (R.I. 1980).

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Chapter 4

Definitions of Child Neglect and Abuse

by Robert W. ten Bensel

4.1 Definitions

4.11 Conceptual Models of Child Neglect and Abuse. An old Chinese proverb states, "The beginning of wisdom is to call things by their right name." One must acknowledge that there is not consensus between various disciplines as to how child neglect and abuse are defined. Historically, incest has been prohibited by all written laws from the Code of Hammurabi (circa 2200 B.C.) through the Laws of Moses (circa 1300 B.C.) to the Roman Law of Twelve Tablets (circa 460 B.C.) and down through western criminal and religious laws.

Religion is defined as vigilant care or a "binding of humans to God." Religions work against neglect which is the indifference to the basic needs of humans, including children. Criminal laws have, in general, reflected religious laws.

Within the past 20 years, the primary conceptual models of neglect and abuse have dealt with the concept of neglect as an *omission,* a lack of care, combined usually with an unintentional *chronic behavior pattern* of the parent(s) toward the child. Abuse is considered a *commission,* intent or excessive punishment or sexual activity with the child so that it leads to harm or a threat of harm to the child. When physicians become involved in child abuse (1962), the concept of *maltreatment of children* evolved including both neglect and abuse. The "community standard" of "reasonable" or "acceptable" became the standard upon which professionals judged child care for reporting purposes to intervention and prevention services (Figure 4.1).

This model represents boundaries of excessiveness attributed to abuse similar to that of driving under the influence of alcohol, speeding, etc. where there is a concept of harm or threat of harm. Neglect is "going too slow" and not providing the basic needs of the child.

It is of interest that child neglect and abuse concepts include not only the definition of harm but "threat of harm." This arose originally from a case in which a mother held her child from a window and threatened to drop the child if she was evicted from her building.

Figure 4.1

NEGLECT	COMMUNITY STANDARDS	ABUSE
Indifference	"reasonableness"	Commission
Harm or Threat of Harm	"acceptable"	Intent
		Harm or Threat of Harm

The mother and child were safely rescued from the situation and there was no demonstrable harm to the child. However, there was a "threat of harm" to the child so the juvenile court ruled that protective services could be given to the child and family. Society had generally set the "reasonableness" of parents in dealing with children with perhaps wider boundaries than those for caretakers outside the family. Where the boundary is drawn depends upon the standard in a given community, laws of a given state, nature of the harm and the alleged perpetrator. This model has the advantage of emphasizing that abuse is a "loss" or "theft of childhood" and that something essential has been taken from the child. Neglect, because of the indifference shown toward the child, results in an "uneven" or "incomplete" development in which intervention and rehabilitation is more difficult.

Social workers have often viewed all child neglect and abuse as *neglect*. This model places neglect as the foundation or centerpiece of an intervention and prevention model as diagramed below.

The advantage of this model is that it keeps the emphasis on neglect, the primary condition that leads to other manifestations of abuse and dysfunctional families.

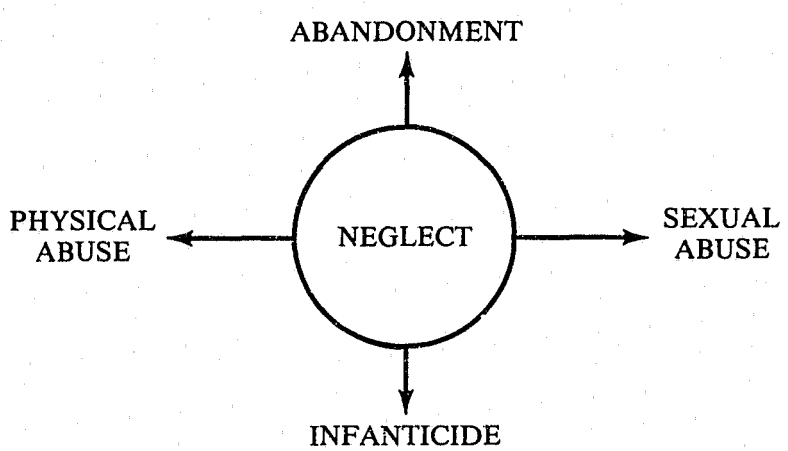
4.12 Defining the General Dimensions of Child Neglect. Neglect is a *pattern* of care either of the *child* or of the *environment* which causes harm or poses a threat of harm to the child. Norman Polansky defines neglect as "chronic, pervasive, resistant to specific treatment, and is transmitted in intergenerational cycles."[1] A pattern means that it is generally pervasive and affects many areas of the individual's life. There is usually substantiation or evidence from a wide spectrum of observers from within and outside the family. There may be total lack of attention to protecting the child from harm such as repeated sexual vicitimization; lack of attention to basic food and clothing; and not seeking and following through with prescribed medical care for the child. Some of the circumstances often seen are: delays in seeking medical attention; lack of proper supervision; and an unsafe environment.

Recent statistics show that approximately 50-60 percent of all case reports are of neglect.[2] Of this number, approximately 25 percent are *hard-core families* which consume a large percent of the time and effort of public welfare agencies, the health care system and the juvenile court. These families often show little if any progress. Family members are often resistant to specific treatment because they are indifferent to the situation with their children. They do not participate in intervention strategies. They are often described as having the *apathy/futility syndrome,*[3] making motivation difficult.

4.2 Abandonment Still Occurs in our Society

Even today there are outright cases of abandonment of infants along highways, ditches,

Figure 4.2



under bridges, or near police or health facilities. Occasionally newborns are found in trash cans or in restrooms. Adolescent mothers have delivered in their own homes without their parents ever knowing their daughters were pregnant. Some of these babies have birth defects, while others are healthy. These children generally fit into a unique category and immediate termination of parental rights is advised due to the extreme denial the mother had toward the pregnancy. Abandonment is considered the most extreme form of neglect.

4.3 The Most Common Form of Neglect is the Lack of Supervision and Basic Necessities

4.31 Lack of supervision. This form of neglect is most often reported by friends, relatives and neighbors who observe children left alone for long periods of time. They may be "latch key" children who are in an empty house with a radio or television acting as baby sitter. Over 80 percent of parents use television as a baby sitter. Teachers may notice the behavior changes in these children. Children need human interaction and a human non-mechanical voice in order to develop.

Those children who need supervision include: any infant, children with certain handicaps, children under age 7 and children under 12 during the hours after 6-7 p.m.

The category of *lack of necessities* includes nutritional neglect and medical neglect. These children are usually identified by educators or health professionals because the children appear malnourished or have suffered an accident or have an illness in which there is a long delay in seeking treatment. They may be absent from school without documentation of medical care.

4.32 Nutritional neglect. The lack of food or the withholding of food from a child as a form of punishment is nutritional neglect. Religious dietary instructions may result in the withholding of food and keeping a child heavily clothed so they are not able to manufacture vitamin D from the sun's ultraviolet rays. Cases of failure to grow, due to strict vegetarian diets including no protein, have also been reported.

4.33 Medical neglect. This centers around the parents' unwillingness to provide consent to medical treatment which would cure, alleviate or prevent their children from suffering physical harm. There is great variance among states regarding the balance of childrens' rights to be healthy versus the parents' rights to decide these matters. The Baby Doe and Baby Jane Doe issues are current examples of a broadening of the definitions of medical neglect with involvement of child protective services and the juvenile court system. In 1984 Amendments of Federal Child Abuse Prevention and Treatment Act have defined medical neglect to include Baby Doe cases.

4.4 Emotional Neglect as the Primary Issue

The central issue in child neglect and abuse is the concept of emotional neglect. The terms "mental suffering," "mental harm," "mental injury" and "mental abuse" are gaining attention and awareness. There is again the difficulty in finding a consensus of definitions between various professionals.

The professional must focus upon the behavioral changes in children over time as well as the refusal or lack of cooperation by parents to provide help for their children. These two issues provide a basis for understanding intervention and prevention of emotional neglect. Emotional neglect implies a change in behavior, a retardation in behavioral development or regression in behavior of a once "normal" developing child. Day care workers and school teachers are in the most advantageous positions to observe behavioral changes since they see children daily.

The concept of harm may be as specific as a consistently declining I.Q., missing school for non-justified reasons, or lack of follow-up for a wide variety of care, which includes educational remediation, medical care and mental health care. Some states include in their definition of neglect the rejection of help by a professional person who has specific behavioral or physical regards for children. Children who have been involved with lighting fires, being aggressive or withdrawn in school, or excessive psychosomatic illness in which the parents have refused help have been referred to child protective services for assessment. Petitions have been made to juvenile court for neglect of children where parents have actively denied and rejected help.

The definition of emotional neglect that highlights the unavailability of parents is the one given by the National Institute of Alcohol Abuse and Alcoholism (1974)[4] "The child cannot communicate with his parent(s), he gets no emotional support from them, he does not get the feeling that they care about him as a person; the parents ignore the child's basic emotional needs, they do not make an effort to understand him, they spend little or no time with him, they give him no affection or warmth, they build a wall around themselves blocking any communicable interaction."

The most common causes that have to be considered in emotional neglect are mental illness, alcohol and other drugs. Recent studies indicate that approximately one-third of the children who live in homes where there is chronic alcoholism will have measurable behavioral changes in their school work and intellectual functioning in their behaviors. All children show some behavior problems as a result of living in a family where there exists chronic alcoholism or other drug addiction. The concern for Children of Alcoholics (COA) and alcohol use among children is growing. There are an estimated 28 million children who live in homes where there is abuse of alcohol. The drinking patterns and abuse of alcohol is being reported at younger and younger ages and is increasing in the 12 to 13 age group.

Emotional neglect also includes the concept of *emotional abuse.* This is the active rejection of children through constant verbalization of criticism, disapproval, disrespect, and denial of the worth and sensitivity of children. It is a form of *active* shame, a developing of childrens' self-esteem. We have little data about emotional assault of children. Children who live in homes where there is constant fighting and yelling show more withdrawn behavior as a means of accommodating. Those children who are often targets of verbal assaults, as well as aggressive physical acts, generally show behavior patterns of aggression.

If the basic needs of children and their parents were being met, the other forms of child neglect and abuse *would not occur.* They represent the symptoms of the dysfunctional family. Threats to leave or abandon children should never be used as punishment. Even worse is to tell a child "I wish you were never born."

Perhaps Eric H. Erikson is correct: "Someday, maybe there will exist a well considered and fervent public conviction that the most deadly sin is the mutilation of a child's spirit."

4.5 Criteria and Assessment

4.51 Non-Organic Failure to Thrive and Psychosociogenic Dwarfism. The cases that have the most severe emotional neglect are those in which children are under 1 year of age. The cases are often accompanied by *non-organic failure to thrive* (NOFT).

Non-organic failure to thrive links the concept of emotional neglect to the physical and mental development of children and is a medical diagnosis. For diagnosis, the child must have dropped at least two standard deviations in their weight, height, and/or head size or physical development. To meet the criteria children must be of normal birth and not have any other attendant medical problems. Thus, medical testimony is mandatory to document no other existing medical causes. Over 200 medical conditions can be present as NOFT. Height and weight charts are important evidence that should be submitted either by a physician or public health nurse. Children can be diagnosed as early as 1 or 2 months of age. The longer neglected children wait to be identified, the more damage will occur to the growing brain. These children, once in the hospital, have a dramatic reversal in weight and height and mental gains with proper nurturing and feeding. If children are perceived as "bad," "ill," or "different," the pattern may repeat itself again. A home trial is warranted if the mother shows some strengths in maintaining a relatively safe environment and is willing to accept help with the care of her child. Where there is physical abuse (10-30 percent of cases) temporary foster care and further assessment should be considered to determine the mental status and treatability of the parent(s). These families are very prone to high mobility and the court needs to be concerned if a family has a history of frequent moves. A neglectful home environment includes the presence of animal excreta, environmental hazards and excessive

clutter. Physical neglect of the child with non-organic failure to thrive has a very bad prognosis. It is usually indicative of a *severely dysfunctional family.* Other children having run away from the home environment is indicative of more serious degrees of neglect.

Older children with non-organic failure to thrive are referred to as psychosociogenic dwarfs. These children have retarded bone growth and are short, and may be either under or overweight. Some of these children have voracious appetites, but do not grow because of the emotional deprivation in their environment. All children need proper nutrition in order to grow. Calories alone may not be enough. Some of these children have grown as much as six inches in six months while in foster care, their I.Q.'s have gone up as much as 50 points and they have gained as much as 40 pounds. Follow-up of these families is difficult, but necessary.

4.52 Physical Abuse. Physical abuse of children is reported in approximately 35 percent of the cases of child neglect and abuse. Of these cases 80 percent are considered mild to moderate and are usually the result of excessive physical punishment. Most states define physical abuse as a "non-accidental injury" or a condition "where the history does not explain the child's injury." Thus, one must look at both the nature of the injury, as well as the history, to explain the injury.

In order to make that judgement, one always has to keep in mind the developmental level of the children and the contextual situations children find themselves in at that particular time, whether in the home or not. One must ask: is the nature of the injury explainable by the developmental and daily activities a child is normally engaged in at that particular developmental stage? It is not plausible that a child of 6 months would stand up in the middle of the room, fall, fracture his skull and have a serious brain injury—there is no data to suggest that falling from that height will result in serious brain injury. A study of children who have fallen from tabletops or beds at heights of 36 inches shows they *do not* sustain serious brain injuries.[5] A small percentage have fractured arms or legs or skulls, but they do not have serious brain damage.

On the other hand, a dislocation of the elbow is *not abuse* as this can happen from "normal" pulling on the arm of a child age 1 to 3. Children may fracture their femurs (large thigh bone) by falling from a chair and catching their leg in a position that rotational forces produce a fracture. Competent medical services will alleviate many unfounded cases from entering child protective services or juvenile court. Professionals must consider together the injury, the story and the caretaker in making their judgements of whether the injuries were intentional or unintentional. If one sees changing stories, i.e., one parent may tell the other parent one story, and the nurse and the doctor a different story and the police officer a third story, the discrepancies must be reported if the injury is moderate or severe.

Suspicion of abuse has to be linked to a *pattern* along with other evidence. For instance, if a child has three fractured ribs at different stages of healing, the parents may use explanations such as: the dog jumped on the child three times, the child was in three car accidents or the baby brother kept hitting him with a brick. These explanations are not consistent with the child's history, but are consistent with child abuse. Physicians, in their testimony, are not making judgements about "who did it" at this phase, but are judging the nature of the injuries and whether the injuries could be non-accidental. Beyond "reasonable medical certainty" is an issue at a juvenile hearing, but not at the reporting stage.

Childrens' behavior toward parents is a factor in abuse. One of the basic dynamics of abuse is that parents expect children to take care of them. This is known as "role reversal." Small children at the age of 1 or 2 may be clinging to their parents and saying "mommy didn't do it." They protect their parent and feel they are responsible for the abuse because they are "bad" children.

The physician or other professional needs to be able to explain whether the injury is non-accidental, at variance with the explanations given, or admitted as deliberately inflicted (a confession). Children who are beaten repeatedly are usually withdrawn but male children

who are victims of moderate to severe abuse are often aggressive.

The definitions of degrees of abuse are as follows:

a. Mild abuse is generally a once-in-a-lifetime episode, even if the instance is moderate or severe.
b. Moderate abuse usually refers to open-hand spankings, slaps, hair pulling and ear jerking, which usually stop by age 8 or 9.
c. Severe beating usually includes beating with an instrument, such as a belt, paddle, hair brush, kitchen implements, closed fist and usually continues from childhood through or past puberty.
d. Extreme abuse usually results in substantial injuries such as broken bones, extensive burns, lacerations, mutilation of sex organs, head injuries or internal injuries.[6]

4.6 The Major Age Groups of Physical Abuse and the Risk of Severity for Protection

Occurrances of child physical abuse are broken down into four major age groups that include: 0-1, 1-3, school age and adolescent. The first of these is infant abuse from birth to 1 year. These children are often highly valued or "wanted" by the parents but are perceived as "bad" or "willful." Formerly it was mothers who were inflicting injuries, but present statistics show a shift toward the mother's male friend or the child's stepfather. The mother may be failing to protect her child by spending time away from home and "picking" people who will abuse her child. Ninety percent of the deaths related to abuse occur when the child is under 1 year of age and the deaths are usually caused by head injuries. This group is of highest priority for child protective services and juvenile court protection.

Within the infant abuse category is the "whiplash shaken infant syndrome" (WLSIS) which was described in 1974.[7] Generally, these are children who have no bruises on the skin, but have signs of bleeding over the brain (subdural hematoma) or bleeding into the eye (interocular hemorrhage). Occasionally finger marks are present due to shaking. The neck muscles cannot prevent the head from being rapidly accelerated and deaccelerated because of weak muscles relative to a large head size. A rapid accelerating-deaccelerating motion will rupture the bridging veins crossing through the skull to the brain. This condition is one of the most serious and yet preventable conditions of child abuse. X-rays are very important and may show disruption of the metaphysical avulsions which are specific (pathognomonic) of an acute twisting or shaking of the arms and legs. The periosteum (covering of the bone) is fixed down at the ends of the growing bone (metaphysics). With twisting, pulling or shaking, small "chips" or avulsion-type fractures are seen.

The next most common group which is abused is the toddler from age 1-3. In addition to shaking injuries and other types of inappropriate discipline, hitting in the abdomen, particularly around the genitals during toilet training, is included. It is only two to three inches from the anterior abdominal wall to the backbone and an adult's fist can easily crush and rupture a bowel leading to inflammation, shock, hemorhage or death.

Anger marks are often seen in small children from birth to age 4 or 5. These may include pinch marks, bite marks and burns. Or marks may be left on the mouth by food, bottles or passifiers which have been shoved into the mouth. Shutting of the child's airway (nose and mouth) with a hand in an attempt to shut off the child's air supply will also leave a mark. Every physical injury imaginable has been perpetrated against children. There appears to be no end to the abuses of children. One of the newest syndromes is "Munchausen's syndrome by proxy" in which parents give their children medicines such as insulin, aspirin or other drugs in an attempt to poison them. It has been reported that parents have actually injected feces into childrens' skin resulting in multiple boils. The parent is, in fact, using the child (their proxy) to meet their unmet psychological needs for attention and care in an attempt to manipulate the medical profession. The death rate is reported as high as 20 percent.

Abuse during the school age from 4-12 generally involves disciplinary practices and instrumentation. Some studies report a high degree of mouth or dental injuries because these children are more verbal with their parents.

Adolescent abuse occurs more in intact families with drugs and alcohol rarely involved. Approximately half of the cases are situational stress in which parents lash out at children in anger. The other half are due to a continuation of the childhood pattern of abuse. Death is rare. School age children and adolescents should be asked where they wish to live for their own protection. They sometimes know their safety needs better than adults.

4.7 The Battered Child Syndrome

The "battered child syndrome" (BCS) is a condition where the child has injuries which have medical evidence of *repeated* and *devastating* injury to the nervous, skin or skeletal system. Again, it is critical that the history of the child's injury, as given by the caretaker, does not adequately explain the occurance of the injury. The BCS carries a death rate as high as 20 percent. One of the reasons for the mandatory laws is to provide services to prevent recurrence. If, in a case of BCS, there is failure to report the case by a hospital or physician, there is a 40 percent chance the child will die. These children are usually withdrawn, have multiple bruises in different stages of healing and have x-ray evidence of repeated fractures. This group makes up approximately 7 percent of the total number of reported cases. Today, BCS is used as a specific medical diagnostic identity to include the repeated and severe injury. Generally the victims are under 3, but it can occur at all ages.

In summary, approximately 85 percent of physical abuse cases are mild to moderate with 15 percent being severe or extreme. Approximately 5,000 children a year die at the hands of their parents. It is estimated that of the 50,000 children who are missing each year, 5,000 may be killed.

4.8 The Sexually Abused Child Syndrome (Child Sexual Abuse)

The American Bar Association, Young Lawyers Division, has suggested that the use of "the sexually abused child syndrome" be analogous to the "battered child syndrome" to simplify communication between the legal, medical, and social services.[8]

Child sexual abuse was made part of the child neglect and abuse spectrum in 1979. The Federal Child Abuse Prevention and Treatment Act was amended to include "obscene or pornographic photography, filming, or depiction of children for commercial purposes, and the rape, molestation, incest, prostitution, or other such forms of sexual exploitation of children under circumstances that indicate the child's health or welfare is harmed or threatened thereby. . . ."

The media has been a major factor in the recent awareness of sexual abuse. Television specials have been geared toward public awareness, school awareness programs and professional education. All caused a marked increase in reporting of child sexual abuse situations, which, for the most part, probably already existed. Most people (84 percent) learn about sexual abuse from the media.

The definition of child sexual abuse must be considered within the context of the great disparity between victims and offenders in regard to power, knowledge and resources. Adults or older children often use their ability to psychologically manipulate younger children through withdrawal of affection or giving approval. Adults have knowledge of what sexual activity is and the children do not understand the meaning or significance of a sexual act. Children are dependent upon adults for food, shelter, education and basic emotional needs. These basic needs are controlled by adults and children are "dependent" upon their caretakers. This combination of factors leads to *sexual exploitation* when adults become sexual with children to either have their own adult sexual needs met (as occurs in incest) or to work through their sexually-arrested development (as in extrafamilial sexual abuse or pedophilia). Pedophiles are reported in 80-100 percent of the cases to have been sexually abused as children. Over half of sexual offenders start their crimes as adolescents, thus intervention by the juvenile court offers some hope for preventing adult perpetrators.

Many states have changed their sexual abuse laws to reflect the concept of sexual contact as well as penetration. *Sexual contact* refers to contact with intimate body parts including breasts, buttocks, or mouths. *Pene-*

tration is the entry of the rectal or genital areas by penises, fingers or instruments.

Finkelhor states that 10 percent of males and 25 percent of females have had sexual contact or sexual penetration as children.[9] It is estimated that less than 20 percent of these cases involved sexual intercourse. At the present time there is a trend toward reporting persons who are not a part of the nuclear family, including people in positions of authority such as teachers, youth leaders or other adults who have access to children. Many hold respected positions in the community. The cases involving intrafamilial sexual abuse or incest are only beginning to come to light. Allegations of sexual abuse may appear in divorce or custody matters. These allegations regarding sexual abuse by one spouse or the other are often difficult to verify. Emotions are often intense. Sexual abuse of children is often seen in chaotic family systems with chronic neglect. In a recent case, the mother failed to protect her 2-year-old child who had been assaulted by at least 13 different men. The mother was retarded and emotionally deprived herself and thus was unavailable, unattached and unaware of her child's need for protection.

4.81 Dynamics of Child Sexual Abuse. A recent article by Roland Summit titled, "The Sexual Abuse Accommodation Syndrome," is helpful in summarizing some of the issues. The five categories of this syndrome are: secrecy; helplessness; entrapment and accommodation; delay, conflicted and unconvincing disclosure; and retraction.

In the *secrecy phase,* abused children are intimidated, helpless and blame themselves for what has happened. The secrecy and privacy of the situation are made clear to children by the adults. Children believe that what is happening is "bad" and this is a source of fear to children. Most children never tell anyone about sexual experiences. This seems to be more true of males than of females.

In the *helplessness phase,* children will comply to more powerful adults. Perpetrators know where victims are at all times and will increase intimidation or use real force or abuse on children if there are any threats that the secret will be disclosed.

In the *entrapment and accommodation phase* children may develop certain behavioral characteristics which will allow them to survive. The children subconsciously ask for help by manipulation and through their behavior. They may have aggressive behavior, including self-mutilation, or they may withdraw or become depressed. This sometimes is referred to as the "victim becomes the offender" and the children may receive further punishment by society for their "acting out," truancy, running away or drug misuse. These accommodation behaviors are often an attempt to survive. Males are more likely than females to be aggressive and resort to drugs as a way of coping with their pain.

Most ongoing sexual abuse cases are never disclosed, treated or reported. Investigated cases are the exception, not the rule. Victims often seek understanding by self-reporting at the very time they are least likely to find help. The victims are in so much pain and have waited so long that the disclosure has a flat affect. Thus they may not be convincing during the *disclosure phase.* It is usually one to three years before disclosure occurs.

In the final category of *retraction* it is important to remember that "whatever a child says about sexual abuse, she is likely to reverse it."[10] Child sexual abuse is a psychological emergency and must be dealt with as such by all members of society. Cases which have an immediate investigation by trained professionals, either the police or social workers, are handled best.

4.82 Coordinating Community Service for Child Sexual Abuse. Solutions to child sexual abuse attempt to bring together the best of the criminal justice system, the juvenile court system and the therapeutic community. Philosophies range from those that only punish the perpetrator to those that provide primary family intervention. Intervention, treatment and prevention programs are in the early stages of evolving and changing. Many therapists will not accept families or individuals for treatment unless they are under criminal court jurisdiction. Denial is very high and there is a real risk that the child may be further assaulted without proper safeguards.

Present treatment guidelines are for those individuals who are married, have meaningful and supportive work, take responsibility for acting out their sexual needs with their children, have not been overtly violent toward their children and have a high success in treatment. Those individuals who are more violent, act out against children in the larger community, are pedophiles, have few if any other means of support, and strong denial, often receive prison terms. Many communities are realizing that even if a sex offender of children goes to prison, therapy programs need to be available within that environment or the offenders will simply return to the community and continue their abusive patterns.

It is important that each community work out a consistent understanding of the psychological patterns involved in child sexual abuse. The society must let its children know that it will act upon their disclosures and that something will be done. Studies indicate that no more than two to three children per thousand have ever been found to exaggerate, lie or invent claims of sexual molestation.[11] The younger a child and the more explicit the sexual information, the more the child must be believed. Most professionals believe that when a child makes an allegation of sexual abuse by a parent, this in and of itself is "clear and convincing evidence" to open a child protective service case. One may not be able to prove the allegations in a criminal court, but an assessment of the family and children is recommended. If problems are uncovered in the investigation during the assessment phase, appropriate services are required.

The juvenile court is in an ideal position to develop safe, competent services in the community for the victims of child sexual abuse and their families. Coordination between the criminal justice system and child protection is happening more and more. Those perpetrators under the criminal justice system make better treatment progress than those not under court control. The juvenile court may be required to remove children temporarily or permanently if parents cannot protect them.

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Notes

[1]Norman A. Polansky et al., *Damaged Parents: An Anatomy of Child Neglect,* (Chicago: University of Chicago Press, 1981).

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[4]Ibid.

[5]Ray E. Helfer, Thomas L. Slovis, and Mary Black, "Injuries Resulting When Small Children Fall Out of Bed," *Pediatrics,* (1977), *60*(4), pp. 533-535.

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[10]H. Giarretto, Personal communication as quoted by R. Summit. "The Child Sexual Abuse Accommodation Syndrome," *Child Abuse and Neglect: The International Journal,* (1983), *7*(2), pp. 171-193.

[11]R. Summit, "The Child Sexual Abuse Accommodation Syndrome," *Child Abuse and Neglect: The International Journal,* (1983), *7*(2), pp. 171-193.

Chapter 5

Assessing The Dynamics of Child Neglect and Abuse

by Robert W. ten Bensel

5.1 The Basic Conceptual Models of the Dynamics of Neglect and Abuse

For the past 20 years, various models have been used to explain child neglect and abuse. It cannot be seen as something that has a single etiology or causation. It is not merely the inevitable consequence of children being born into violent and disturbed families. Each case must be assessed individually. There is always a sequence of interrelated events that lead up to a case of physical abuse, sexual abuse or an all-pervasive pattern of neglect.

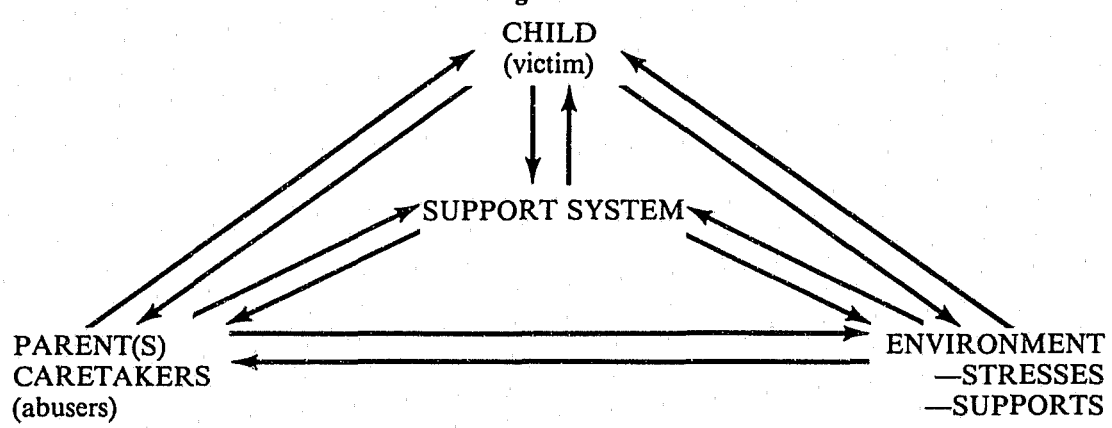
The relationships among forces that produce change within a system are called dynamics. This basic system is an interactive model and is diagramed in Figure 5.1.

This model helps to analyze the characteristics of a child, an abuser and environmental stresses, as well as those support systems that have a positive influence upon the family and environment. "We must recognize that this is an interactive system in which both the parents, the child, and the physical, social, and cultural environments play a role."[1]

5.2 The Child Factors in Physical Abuse

Approximately 50 percent of abused children are under 3 years of age and 90 percent of the deaths are under 1 year of age. Approximately the same number of boys and girls are abused in this early age group. Most children who are abused are the first child in the family,

Figure 5.1



since 60 percent of children born are "firstborn children." Firstborns are most common as the average number of children per family is 1.7, but they also produce more stress than subsequent children.

There are two major patterns of abuse. In some families only one child is singled out for physical abuse (the target child) and in other families all the children may be receiving physical abuse. In the initial phase of investigation all children in the family are assessed: histories of disciplinary practices are noted; physical exams are performed for signs and symptoms of physical or sexual abuse; and evaluations of heights and weights is completed to determine the presence of any developmental delays or failure to thrive. It is important to emphasize that most (80 percent) early child abuse revolves around the activities of daily living including feeding, toilet training, crying and sleeping.

Children who are physically abused are often "wanted" and "loved," yet may not meet some parental standards or expectations. Abuse can occur in infants only a few days old, where a parent perceives a child's behavior as "willful." Other reported factors of abuse include children born too close together (within 16 months), or physical features of the infant, such as prematurity, birth defects or multiple births (twins, triplets, etc.).

The second most common peak of child physical abuse is in the 13-to 15-year-old age group. Adolescence is a term coined by G. Stanley Hall in 1904 as that period of growing up from dependence to independence, gaining one's identity and reaching adult maturity. During this time there is a great deal of risk-taking and perceived invulnerability by adolescents which may get them into difficulty within or outside the family. Male children are more likely to be physically abused during adolescence than females, whereas females tend to be more sexually abused. Male sexual abuse victims tend to be pre-pubertal.

The adolescent who is involved in running away, truancy, drug abuse, etc., may in fact be acting out from victimization of neglect or physical or sexual abuse. The correlation between abuse and adolescents' acting out their behavior is high enough that it should be a consideration in each case that comes before the juvenile court. Intervention programs should attempt to involve the family.[2]

5.3 The Characteristics of Abusing Parents and Caretakers

Until recently, child abuse and neglect has only been defined as occurring within families. Thus 95-98 percent of all reported abusers were parents. Other relatives or siblings made up the rest. However, within the last several years there have been broadening definitions of child neglect and abuse to include those outside the family, such as personnel in school, foster care, day care, institutions, etc.

Overall the average age of abusive parents tends to be 28 for mothers and 30 for fathers. When parents reach age 30, they usually begin seeking their own identities and are subject to economic and other stress factors. Child neglect and abuse is not an issue of legitimate versus illegitimate births, but is determined by whether children are cared for appropriately.

Child physical neglect and abuse appear in all segments of society, but is reported more in lower socioeconomic and minority groups. Some middle-class parents are described as having the *slick but sick syndrome* in which they look healthy externally but various psychological tests show psychopathic traits. There is strong pressure for families to look good and not talk about their problems to the external world. Thus, in the middle- and upper-classes there are many factors which inhibit identification, reporting and involvement by government agencies. Upper- and middle-class individuals are usually aware of other intervention resources in such areas as health, mental health or chemical dependency.

Even though 90 percent of people who physically abuse children have been abused themselves, it is important to remember that most people who have been abused do not become abusive as adults. Approximately 17 percent of adults have been abused as children, but only 2 percent become abusive as adults. Most victims can resolve their abusive behavior by working through their own childhood with their own children, working with other children, receiving treatment, etc.

5.31 Single Mothers. There has been a marked shift in neglect and abuse from families with parents who are married, to single-mother heads of households. Forty to 50 percent of cases now seen involve single mothers. In the past, mothers were the primary abusers of children from birth to age 3 while fathers tended to be the primary abusers of children in the 13 to 15 age group. These statistics are shifting somewhat in that there now appear to be subgroups of abusers of different ages. Often mothers with children under 1 year old are working. Frequently, a boyfriend is involved in the home situation. Young mothers may be unable to protect their children during the young vulnerable years. About one of three births in the United States today involves a teen-age mother, about half are married. Ninety-five percent of unwed mothers keep their children. Reported abuse is lower in this group even though the risk of abuse may be higher. The reasons are: there is more family support, public health nurse support and most babies are wanted and cared for by extended families.

5.32 Men in the House. Particular emphasis for child safety has to be given to the *man-in-the-house syndrome.* It is extremely important to carefully investigate cases of suspected physical or sexual abuse to determine what males, permanent or transitory, are in the home. Major problems with a man living in the home occur when the child is being toilet trained. Mothers may be protective of the man. These families tend to be isolated, live on the fringes of the community and move frequently.

5.33 Stepparents. Stepparents generally make up the third most common group of abusers. This relates to the fact that divorce rates are 40-50 percent. Most divorced people remarry. Since second marriages have higher divorce rates than first marriages, similar family stresses are present. Stepfathers tend to be more involved in both physical and sexually assaultive behavior. There is not a great deal of data to substantiate the "wicked stepmother syndrome," although many times a defense attorney will try to place the blame on the mother who may have had a history of neglect and abuse in her own background.

5.34 Siblings. Sibling abuse is also a form of child abuse. *Target children* when baby-sitting siblings may, in turn take their aggressions out upon the other children.

5.35 Baby Sitters. Outside the nuclear and extended families, the most common people who are reported for physical and sexual abuse are male and female baby sitters. In Seattle, 28 percent of sexual abuse cases are attributed to adolescent baby sitters. These studies indicate more male than female baby sitters are abusive. The same dynamics of families apply—these individuals have often been victimized at home and are acting out this violence on others. Violence tends to beget violence, whether it is physical or sexual.

5.36 Institutional Staffs. *Institutional abuse* refers to abuse occurring in schools, day care, foster care and other institutions. *Foster parent and day care abuse* are increasing concerns. In New York City (1978) there were 35 children killed in foster care and 128 children made pregnant by foster fathers. The selection of safe foster parents is an important part of the entire child welfare system and most states define clearly the expectations and are determining the process of selecting foster and day care parents.

5.4 Patterns of Adult Behavior Associated with Abuse

There are various categorizations of behavior associated with abuse. Any of these behaviors may be present in an individual or family.

5.41 Family Lifestyle. There is a family lifestyle pattern in both neglect and abuse which is intergenerational. Abuse may be tied to very strongly held cultural or religious views which condone or encourage the use of corporal punishment.

5.42 Stress Mismanagement. Some individuals have an inability to handle stress. These individuals are chronically angry, hostile, passive-aggressive, become overwhelmed with stress and may show lack of guilt or remorse for their behavior. They may have abnormal psychological testing. Assessment of the family

for these characteristics is important. When things go well for abusing families, life is more stable. When there are stresses, they become abusive very quickly. They lack normal external controls that prevent most human beings from becoming excessively aggressive.

5.43 Low Self-Esteem. Almost all individuals who are abusive or neglectful have low self-esteem or inadequate self-identity. Because of the abuse or deprivation in their own backgrounds, they may turn to their spouses, other adults or children to fulfill their needs. This is referred to as "external locus of control" versus "internal locus of control." Often they will turn to children with inappropriate expectations that children cannot possibly meet. This condition is sometimes referred to as a "shame-based child," and results in a chronic pattern which engenders low self-esteem. The fear of being left alone produces panic, anger and a high degree of manipulation in these individuals.

5.44 Mental Illness. Severe psychiatric pathology seen in 4 to 10 percent of cases is similar to other violent conditions. There is the same pattern of neurosis and psychosis in abusers as in the general population. Some abusers have normal psychological behavior as measured by psychological tests. Those with good community standing and normal psychological profiles are not necessarily devoid of violent tendencies. It is recommended that psychiatric or psychological consultation be required in the analysis of each case of child neglect and abuse. It is particularly important that competent services are available from those who have had experience in dealing with these families. The most severe cases of pathology deal with denial, projection and protestation. Some families have denial which is so great that to expect a confession, remorse or sincerity is not possible.

5.5 Role Reversal as a Major Dynamic in Child Neglect and Abuse

Normally, parents and other adults take care of children. When adults are confused about their role, and because of their own deprivation or abuse expect their children to take care of them, a situation is created in which neglect and abuse can occur. This is referred to as *role reversal.* The two major types of role reversal are active or passive.

5.51 Active Role Reversal. Active role reversal occurs when a child is forced to meet an adult's high expectations. The most severe forms begin at birth and continue on a long-term basis. Brandt Steel described role reversal in the following way: "Basic in the abuser's attitude toward infants is a conviction largely unconscious that children exist in order to satisfy parental needs. Infants who do not satisfy these needs should be punished . . . to make them behave properly. . . . It is as though the infant were looked to as a need-satisfying object to fulfill the residual, unsatisfied infantile needs of the parents."[3]

Role reversal may include physical abuse, sexual abuse or emotional abuse. Emotional abuse occurs if parents give positive feedback only when children please them. The child is always looking for outside rewards. This may actually lead to high-achieving children. An excellent book on this subject has been written by Alice Miller and is called *The Drama of the Gifted Child.*[4]

5.52 Passive Role Reversal. Passive role reversal occurs when parents are unavailable physically or psychologically to meet the needs of children. This has been described under emotional neglect and occurs when there is mental illness, alcoholism, lack of attachment or the physical absence of parents. This passive form of role reversal may be more harmful than the active form when there is more reality in dealing with physical or sexual abuse.

5.6 Understanding the World of Abnormal Rearing (W.A.R.)

One way of looking at the dynamics of child abuse and neglect is through the writings of Dr. Ray Helfer, shown in Figure 5.2.[5]

The cycle begins when the child is conceived and depends on whether the pregnancy is wanted or unwanted. After birth, the child may be wanted or unwanted. However, because a child is unwanted at birth does not mean the child will not be wanted later in life and cared for appropriately. The child may become involved in role reversal and, with this, a mis-

trust of the parent may develop. If trust is not learned, one becomes isolated and unable to use and help others, which results in low self-esteem. Children cannot blame their parents for what is happening to them. This has been referred to as *identification with the aggressor.* Children feel they are bad and caused the abuse. Sometimes this inability to blame their parents is projected upon the school or other authoritarian figures in the community.

Finally, there is a "picking process" in how children select their friends. They may later select mates with similar backgrounds. These mates often offer little help in forming a healthy relationship. The individual has *missed childhood* and does not know how to deal with the children of the next generation without appropriate help. When a child is conceived, the cycle is perpetuated.

The more isolated and self-denying the individual or family unit feels, the less likely they are to be amenable to treatment. They will often manipulate juvenile justice systems and authoritarian figures. They may have an aggressive attitude toward the whole world. They may internalize their self-destructive behavior and show self-mutilation, depression or suicidal tendencies.

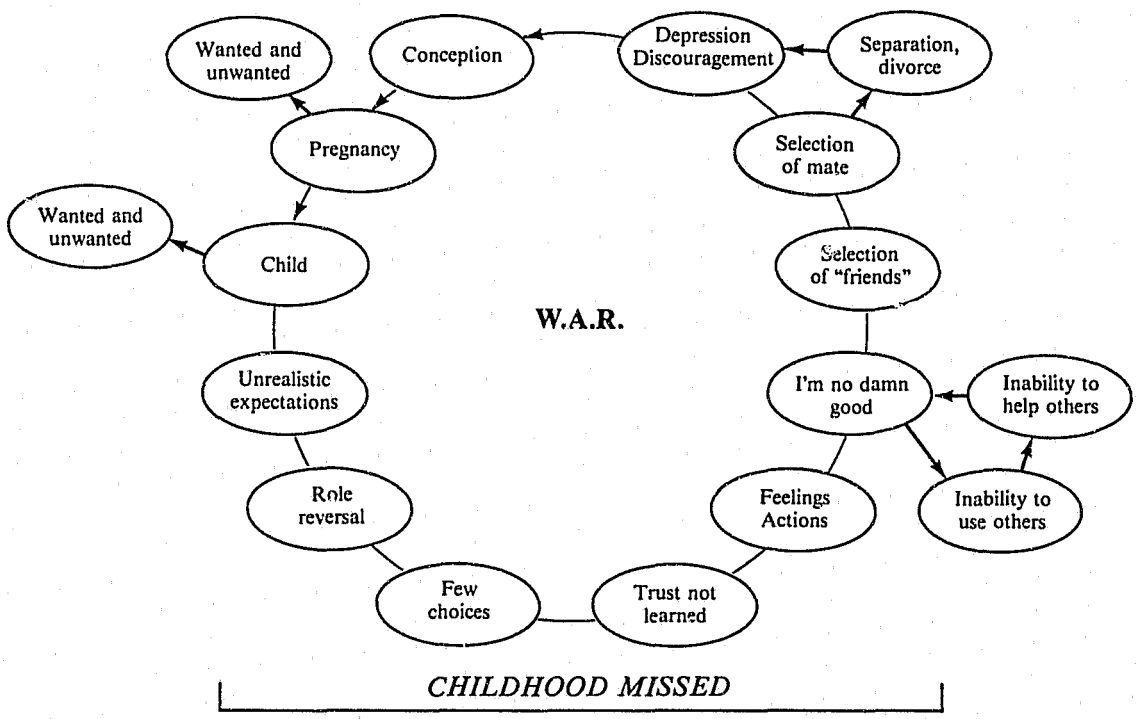
5.7 Factors in Physical Abuse

5.71 Alcohol. The awareness of the connection between the use of alcohol and physical abuse has risen in the past five years. Child neglect occurs in almost every family with alcoholism. Because these children are forced prematurely into adult roles, they are the innocent victims of their parents' unfulfilled lives.

The correlation between child physical abuse and alcohol use range as high as 83 percent of all cases. Possible alcohol and other drug abuse must be assessed and intervened within every family with occurrances of child neglect and abuse. All types of sexual abuse, except pedophilia, have high associations with drugs and alcohol.

Figure 5.2

WORLD OF ABNORMAL REARING CYCLE



5.72 Crisis and Stress Factors in Physical Abuse. Stress is a term taken from physics referring to the stress factors leading to the breaking of metals. Good mental health has been described as a state of "bending without breaking." Stress is assuming a more central position in our understanding of human well-being.

Stress is primarily related to physical and verbal abuse. Reports show stress has manifested itself in the form of child sexual abuse. However, not all people who are under severe stress will become abusive. Alcohol ingestion may parallel stress, as well as causing stress itself because it releases adrenalin. Alcohol may have a relationship to wife-beating, depression and utilization of mental health and medical resources.

. Stress fosters an abusive situation. Sometimes the stress of a child crying in the middle of the night "breaks" an individual who may be having trouble with the marital relationship or job stability. Unemployment and underemployment are major stress factors. Sometimes a job will restore a person's self-esteem and prevent abuse. Brenner has shown that the impact of major recessions may not become fully manifested for 10 years following the recession. Unemployment and recessions are related to increased physical abuse, alcoholism, prison admissions, heart and liver cirrhotic deaths.[7] If a husband hits a wife there is a 50-80 percent chance that they will hit the children in the family. Even if children are not physically abused, the witnessing of intrafamily violence may be a form of emotional abuse as these children may manifest behavioral changes such as withdrawal, disturbed sleeping patterns, poor school work, etc.

Other identified stress factors include children born too close together (closer than 16 months), isolation, high mobility and erratic authoritarian parental behavior. Parents in the military show higher rates of abuse. Studies show that fathers particularly have more difficulty in handling stress.[8]

5.8 Assessment of Causation

.31 Individual and Family Support Systems. Normal support and nurturing of children comes primarily from the family. Next to the family, the school is the most important support system in the social development of children. Other support systems include health care, public protection (police, fire, child services, etc.), religious institutions, voluntary organizations and the general neighborhood organization (safe houses, etc.).

These are called *natural support systems* and are built into the extended family, neighborhood and religious communities. In recent years, however, these have weakened. Some authors consider it not so much the change in the individual personality, but a change in social support environments, which has led to neglect and abuse.

There is mounting evidence that characteristics of individuals may be less important than an appropriate support or networking system. Support systems show positive outcomes in early childbirth education, parenting groups and self-help groups. There are more than 500 different self-help groups, such as Alcoholics Anonymous, Parents Anonymous and Sexual Abuse Anonymous, that deal with neglect and abuse. These programs are not only therapeutic resources which judges and social services can use, but can be important in preventing neglect and abuse.

A basic checklist of the weaknesses and strengths of families is important in assessing risk of neglect and abuse of children. If people can learn to reach out for support, this is a strength. Teaching children to learn their names, use a telephone, child-abuse hotline (or 911) are important steps toward prevention. Children need to know there is a *network* of responsible adults available to help them. Asking children who they would turn to for help gives some insight into how much isolation and mistrust they experience. Preventive programs emphasize how children would help a friend. This helps develop the ability to feel empathy for another's pain and to show that person how to get help. Sensitivity and empathy seem to be basic regulators in preventing neglectful and abusive behavior, and are learned through relationships with others. The basis of these relationships has its origins in early childhood through the interactive process between children and parents.

5.82 How to Communicate with Victims and Perpetrators. Communicating with neglected and abused children and their families is important. Many of these families are not skilled in good communication. They may not understand what a social worker, physician or judge is telling them. It is important that case plans and orders be given not only verbally and written but, if possible, in diagram instructions. Some neglectful and abusive parents appear "pseudo-retarded" because they have had to "act dumb" in order to survive. It is a form of withdrawal. Although they may have innate intelligence, they are constantly scanning the environment rather than staying focused upon the spoken or written word. This explains, in part, why there may be learning problems in both the victims and perpetrators of abuse. They are referred to as "hypervigilant." There is some data which suggests appropriate diagrams, animated drawings and art therapy may be effective ways to communicate both in intervention and prevention programs.

5.83 Practical Pointers in Assessing Neglectful and Abusive Parents. Even though a large percentage of parents were neglected and abused as children, parents who show some sensitivity or empathy for the needs of children have greater chances of success with intervention. Where parents deny and project blame upon their children or others, the prognosis is poor. Even with intervention, it is not clear which parents can be rehabilitated. There is *no* available data that is predictive. Certainly those parents who are motivated to change (80 percent) can learn alternative child-rearing patterns, more communicative approaches, and are able to work through the issues. Communication is the opposite of violence. There can be no child neglect or abuse if there are no secrets.

Talking and being sensitive with children, and asking parents how they would wish to be treated if they were children, provides insight to how children are perceived in an individual family. Expert testimony from child care professionals, including social workers, mental health and health professionals working with the juvenile courts, can help reach better decisions in dealing with these very difficult problems.

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Notes

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Chapter 6

Reporting Child Abuse

by Robert W. ten Bensel

6.1 The Basis of the Reporting System

The two major reasons for reporting child neglect and abuse are: (1) the child needs to be protected, and (2) the family needs help. Many reporting laws have, as their purpose, provision of temporary foster care, reviewal mechanisms for children in foster care and procedures for termination of parental rights.

6.2 Persons Required to Report

Most states have taken the necessary steps to remove the barriers in reporting systems so that anyone who is suspicious of, or has reasonable cause or knowledge to believe that a child is being neglected or abused, is mandated to report. There have been, in the past, conflicting statements in the federal chemical dependency laws, which have inhibited reporting of child abuse if a person is undergoing treatment. Some states resolved this conflict by stating that reporting must be made for the protection of the child, but how this information is used in either a juvenile or criminal proceeding must be dealt with on a case-by-case basis. States have made serious efforts to ensure that all cases are reported by extending the range of professionals mandated to do so. In some states all citizens are mandated to report.

6.3 Sanctions for Failing to Report

Sanctions against reporting include criminal penalties and civil liability. Initially, criminal sanctions were included against those who knowingly failed to report. Even though reporting laws have been in existence for over 20 years, to date no professional has been convicted for willfully failing to comply. There are, at the time of this writing, several law suits being instituted against physicians and other professionals for failing to make a report. The issue in part revolves around *willfully failing* or *negligently failing* to make a report.

There have been civil suits for personal injury where a physician has either failed to diagnose or report child abuse. *Robison v. Wical, M.D., et al.* was a suit that was settled out of court for $600,000.[1] This case involved a mother and a boyfriend who brought her young son to a hospital twice in a 12-hour period with severe injuries. Neither time did the hospital report abuse. A day later they brought the child to a second hospital with what turned out to be permanent brain damage. The boy's father sued the first hospital and others for negligence based on the hospital's failure to report the case.

In *Landeros v. Flood,* the California Supreme Court ruled that a doctor in a hospital may be liable for malpractice for failing to report suspected child abuse.[2] The court stated that "as a matter of law the hospital and the doctor could be liable for damages if they

could be proven that (1) the doctor was negligent in not properly diagnosing and treating the battered child syndrome, or (2) it was apparent that the doctor had knowingly failed to report the case that he actually suspected and that the girl's injuries were the result of abuse, or (3) that an ordinary prudent physician who had correctly diagnosed the battered child syndrome would have foreseen the likelihood of further serious injuries to the girl if she were returned directly to the custody of her caretakers."

Even with these criminal and civil sanctions, there has been hesitancy among the private medical community to report cases of physical and sexual neglect and abuse. The closer the patient is to the socioeconomic status of the physician, the more likely cases will go unreported and instead be designated as "poor parenting." It is important to report because it is the law to set standards for protecting *all* children and support *all* families.

6.4 No Privileged Communications

In every state there is an obligation to report child abuse or neglect. Neither husband-wife nor physician-patient confidentiality hold for not reporting suspected child neglect and abuse.

6.5 Underreporting and Overreporting

Large numbers of obviously neglected and abused children are not reported to the authorities. The National Study of the Incidence and Severity of Child Abuse and Neglect[3] estimates that in 1979, there were over 50,000 children with observable injuries severe enough to require hospitalization not reported. The Texas study, published in 1981, revealed that during a three-year period, more than 40 percent of approximately 270 children who died as a result of neglect and abuse was not reported to the authorities even though they had been seen by a public or private agency at the time of death or had been seen during the previous year.[4] Of 10 deaths consulted on by the author, all had been reported before the final fatal episode. In none of the cases was the casework opened.[5]

Since 15 percent of the cases are "unfounded" by the agencies that investigate them, it has led some authors to consider "overreporting."[6] Whether a report is unfounded or unsubstantiated depends on the quality of investigation. If social services are overburdened, as they have been the past several years, they may have their own internal priorities in deciding which cases must be investigated. If a physician writes on the final line of his report that he is willing to go to court and testify that a case has "clear and convincing evidence" that it is a case of neglect and/or abuse, it is more likely that the case would be opened. If one wrote the same report without a conclusion, then the case may not be opened. Constant training is needed for professionals to review and update the risk factors involving abuse.

6.6 The Test is Whether the Child was Harmed

In general, the proof of neglect and abuse is based on the effects of the parent's acts and not the reason for the act itself. The issue is not whether the child deserved discipline or whether it was done out of "love," but that harm that was done to the child. Intent usually is not relevant as most cases are considered "well-intentioned" by the parent or caretaker.

In making judgements about risk, one must take into consideration the age of the child, any special needs of the child (such as handicapping conditions), the characteristics of the alleged perpetrator and environmental support factors. In making risk assessment there are several guidelines one can follow. They include:

6.61 The Younger the Child the Greater the Risk. Children under 1 are particularly vulnerable to head injuries. Their skull is thin — their bones are not fused to create a solid vault protecting the brain until approximately 18 months of age. The brains of children under six months are more likely to tear, causing more serious brain injury. The bones of smaller children are more membranous (contain more cartilage) and thus tend to bend rather than break. Broken bones in small children are a sign of excessive force except where there is a spiral fracture of a femur which can be due to rotational forces.

6.62 The Nature of the Injury. Those blows or forces aimed at the head, such as a hand slap or shaking of a small child under 2, are extremely

likely to cause high risk for brain damage and/or death. Occluding a child's airway is extremely hazardous. Small infants must be able to breathe through their noses in order to live. Thus, a hand over a mouth and nose can cause the asphyxiation of a child.

6.63 The Pattern of the Injuries. Is a single episode of abuse as much of a risk as a pattern of abuse? The "beyond a reasonable doubt" standard applies if there is a *pattern* of repeated blows to the head at different stages, multiple fractures, or multiple or a combination of multiple skin and internal organ injuries (the battered child syndrome). However, a single violent episode against the child can result in death or disability (child physical abuse). There is potential for repeat episodes and professionals must have as much information about the perpetrator before one can feel comfortable about returning a child to the home environment.

6.64 The Characteristics of the Perpetrator. If the alleged perpetrator is a baby sitter, male friend or caretaker, one must ask the question, "Are there other children involved?" A child who has been victimized, identified and reported may be only *one* in a series of children who may be victimized. This is particularly true in sexual abuse cases where there are often multiple victims. Aggressive case investigation, including other child contacts, will usually reveal additional children who are victims of sexual abuse, especially in an out-of-home facility or with baby sitters. Many times the initial case is looked at in isolation and no further investigation is conducted for other possible victims, leaving many children unprotected and at risk for harm.

6.7 Level of Proof Required

The clear and convincing standard would take into account the factors of age, nature of injury and history given by the caretaker. A documented *changing story* would meet the criteria. Admission of the abuse (not uncommon if tactfully approached) or eyewitnesses (rare) will generally meet the standard. Most parents know what happens to their children *or* it will come to them with careful questioning. Most parents who physically abuse their children know when they have crossed the boundaries of reasonableness because it doesn't feel good to them and they will accept help. Drugs may impair memory. Extreme denial or disassociation ("splitting off" of their behavior) is seen most commonly in sexual abuse cases.

Clear and convincing evidence in a courtroom often translates to "a reasonable medical certainty" in the physician's mind. Most physicians are taught to be very cautions in making absolute judgements. They wish to leave a remnant of hope even in the most serious cases. Physicians generally are advocates for children and the family, and may have strong feelings regarding governmental interference in the family. They are often more likely to downplay the significance of neglect and abuse and they feel that they have the resources within their own practice environment to handle the situation. Most physicians are not well trained in the principles of the law, its processes or the field of child abuse and neglect. Recent studies of physicians in private practice show they are hesitant to make referrals because they may not have positive experiences with child protective services, may not get follow-up as to what happens to their patients and may feel that they carry the burden of substantiating the medical findings in a court of law. On occasion, physicians have written statements they totally retract once they've entered the courtroom.

6.8 Substantiation of Reports

For reporting purposes, a case is generally placed into one of three categories: unfounded, unable to substantiate or substantiated. Unfounded cases mean there is absolutely no basis for a report being made. Most often this is done by a neighbor who has heard a crying child, but there is no evidence the child is being neglected or abused. When one is unable to substantiate a case, there is difficulty in obtaining further evidence to establish a pattern of harm or threat of harm to a child. For instance, a person may have observed another person striking a child on the buttocks with a stick. However, no bruises are found, no pattern has been established, and there are no other documented problems apparent in the family. It is

up to social service to decide whether such a case warrants service. Substantiation of a case generally means there is data to support the harm or threat of harm to a child. The child is at risk for repeated abuse and intervention services are needed. Some counties use the criteria for substantiation that the abuse be referred and proven in court. Since there are many counties in any given state, there is great variability in the substantiation requirements. The non-uniformity found also creates the problem of interpreting statistics.

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See Chapter 1

Notes

[1]*Robison v. Wical, MD, et al.* Civil no. 37607 (Calif. Sup. Ct. 1970).

[2]*Landeros v. Flood,* 17 C.3d-399 (Calif. Rptr. 1976).

[3]U.S. National Center on Child Abuse and Neglect. *National Study of the Incidence and Severity of Child Abuse and Neglect,* at 11 (DHHS 1981).

[4]Region VI Resource Center on Child Abuse. *Child Deaths in Texas,* p. 26, Univ. of Texas, Graduate School of Social Work, 1981.

[5]Personal data, R. ten Bensel.

[6]Douglas J. Besharov, "Child Protection: Past Progress, Present Problems, and Future Directions," *Family Law Quarterly,* (1983): *17*(2), pp. 151-172.

Chapter 7

Agency Procedures With Abuse Reports

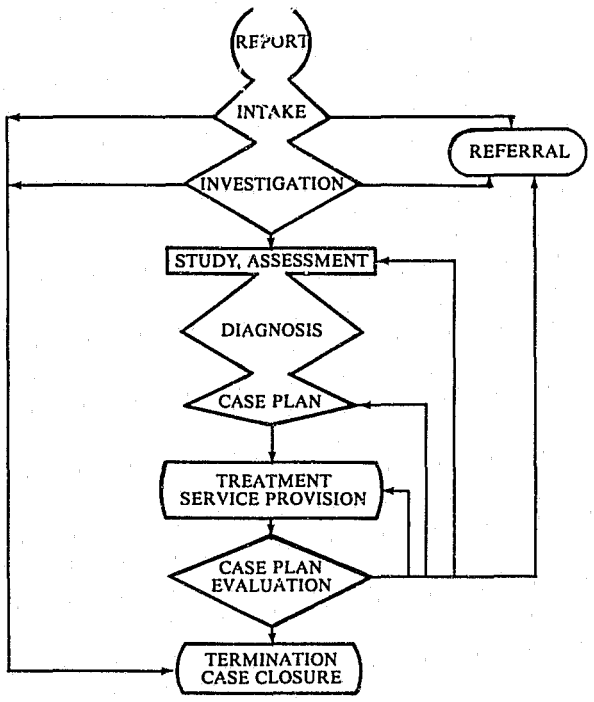
by Larry Brown and Jules Riley

7.1 Investigative Procedures

7.11 Purposes. An investigation is mandated by statute in all 50 states for every reported case of suspected child abuse or neglect. The purposes for conducting investigations are to: (1) ensure the immediate safety of the child, (2) determine if the allegations made in the report are appropriate for intervention under state child abuse laws, (3) make a finding regarding the validity of the allegations, (4) offer appropriate ameliorative services in support of the family, and (5) ensure that these services are being rendered effectively in conjunction with a specific treatment plan. The process used to receive reports, conduct the investigation and provide services is not a vague or intuitive one, but rather a systematic and sequential series of steps that should occur regardless of the type of abuse reported. This process is illustrated in the following diagram. The five critical decision points in the process are represented on the chart by diamonds.[1] The casework process consists of seven basic steps.

7.12 Intake. (1) Receiving the referral. (2) Possibly making collateral contacts and checking records. (3) Exploring the appropriateness of the referral. (4) Deciding to commit the agency to the referral as a report of abuse or neglect. (5) Documenting the record.

7.13 Initial Assessment. (1) Making initial contacts with the child and family. (2) Making subsequent assessment visits. (3) Assessing the damage to the child. (4) Assessing the potential for continuing risk to the child. (5) Evaluating the family indicators of abuse or neglect. (6) Determining if abuse or neglect exists and con-



tinuing the case as open. (7) Determining the need to invoke the authority of the family court. (8) Providing emergency services as needed. (9) Providing feedback to appropriate persons. (10) Documenting the record.

7.14 Diagnostic Assessment. (1) Studying the family problems in more depth from a casual perspective. (2) Individualizing family members. (3) Assessing strengths and areas for improvement. (4) Determining resources available to and needed by the family. (5) Specifying assessment conclusions (diagnostic assessment).

7.15 Case Planning. (1) Specifying the changes that need to occur to assure the child's continued safety (setting the goals). (2) Deciding on the potential for goal attainment and estimating when goals will be attained (prognostic assessment). (3) Deciding what services will be given; to whom, by whom, how often and for how long. (4) Establishing dates for review. (5) Documenting the case plan.

7.16 Treatment. (1) Involving and advising the client on the plan to assure that it is understood. (2) Arranging for and coordinating nondirect services. (3) Providing direct services. (4) Documenting the progress of all services.

7.17 Case Plan Evaluation. (1) Evaluating client progress. (2) Updating the assessment. (3) Making decisions to continue the plan, revise the plan or terminate the plan.

7.18 Termination. (1) Evaluating goal attainment. (2) Analyzing the potential for the case remaining stable. (3) Examining the need for referral to other services. (4) Advising and preparing the client for termination. (5) Advising other agencies or involved persons. (6) Documenting the record with the rationale for termination (case closure).

7.2 Agencies Responsible for Investigation

Statutes in every state designate the agency or agencies that are to receive reports of child abuse or neglect. The primary recipient of reports is the local child protective services unit. However, in 22 states and the District of Columbia, reports may be made to other agencies, including local law enforcement, the district attorney's office or a court of appropriate jurisdiction.[2] Five states which require that reports generally be made to a primary agency also permit reports to the police in cases of emergency or when the designated agency is not open.[3] Twenty-three states provide only that reports be made to the primary agency, a central registry under the auspices of that agency, or a local office of the agency.[4]

In 17 states, statutes specify that reports should be made to an additional body when a reporter suspects that a child's death was the result of abuse or neglect.[5] In most cases this is the medical examiner or coroner.[6]

As stated earlier, however, it is the specialized child protective services (CPS) unit of the state or county department of social or human services that provides the front line of defense for abused and neglected children. Child protection workers provide a service that actually reaches out to confront and deal with the complexities of situations involving families that are either unwilling or unable to adequately care for their children. It is these workers who represent the community's concern for the well-being of children.

By legal mandate and agency policy the child protection worker should be required to:

1. respond promptly to reports of alleged child neglect, abuse or exploitation and determine the validity of these reports;
2. assess the extent and nature of the injury to the child victim;
3. evaluate the risk of further harm to the child or children in the home and determine whether any or all of the children require removal for their protection;
4. identify any family problems which contributed to, or resulted in, abuse or neglect;
5. evaluate the potential for treatment of the family in correct conditions and begin rehabilitation;
6. plan a course of treatment that is calculated to stabilize the family through the services of the child protection agency as well as any other required community organizations to meet the specific needs of the family;
7. initiate and monitor the treatment plan and continue to stimulate involvement of other services as required;

8. invoke the authority of the juvenile or family court in situations where there is risk to the children should they remain in the home or where there is active resistance to child protection intervention.[7]

7.3 Time Frames for Initial Contact and Investigation

An investigation into reports of child neglect or abuse should be initiated within 24 hours of receipt of the report.

The term "initiated" should be interpreted to mean face-to-face contact with the family or, at the minimum, a chance to observe or talk to the child in order to determine the level of immediate risk. If the report does not indicate an emergency situation, the worker should take time to gather any other information that may be helpful in making the initial contact. This could involve collateral contacts with other involved professionals, e.g., teachers, physicians, law enforcement officers, etc., as well as gathering background information previously compiled by the agency in previous reports.

Should the report involve a perceived emergency, e.g., severe physical abuse, abuse of a young child, pathology on the part of the parents or sexual abuse involving physical injury, the worker's response should be immediate. If, upon initiation of an investigation, the child protection worker is unable to locate the family or child, all unsuccessful efforts should be thoroughly documented while continuing attempts to contact the family remain in progress. It should be stated that under no circumstances should an investigation involving allegations of physical or sexual abuse be discontinued without physical observation of or discussions with the child.

7.4 Investigative Authority

Recent years have seen an increase in the involvement of law enforcement personnel in the investigation of child abuse and neglect. These have been primarily situations where social workers and law enforcement officers team up as co-investigators, or in some instances, where law enforcement is given full responsibility to investigate. However, law enforcement has, for the most part, only been involved in situations involving some type of sexual maltreatment or serious physical abuse. In the vast majority of cases it is still the social work professional that is charged with primary investigative and treatment responsibility. The legal basis from which social workers operate is, or should be, specifically defined under state law. Statutes should establish and define the limits of authority, the rights and responsibilities of parents and the rights of the children involved.

7.41 Social Work Authority versus Law Enforcement Authority.[8] The authority exercised by law enforcement agencies and personnel is quite different from that granted the child protection social worker. Generally, the view of law enforcement is as follows:

1. Police normally view the abusing parent as a criminal.
2. Investigations are conducted along criminal investigative lines.
3. The focus is on obtaining evidence that will result in a conviction for the offense.
4. Law enforcement officials are usually not officially concerned with the capacity of the parent to change.

The authority exercised by the child protection social worker is based on certain principles and concepts.[9]

1. It is generally best for the child if his own parents can be helped to meet his physical or emotional needs.
2. Most parents do not maliciously abuse or neglect their children, and their maltreatment is the result of their reaction or response to any number of precipitating factors, such as:
   a. stresses within the living environment
   b. poor impulse control
   c. unrealistic expectations of the child
   d. lack of parenting skills
   e. feelings about being unloved
3. Behavior is learned and can therefore be unlearned.

7.42 Legal Assistance in the Investigation.[10] Although, as stated earlier, the majority of investigations in child protection are done by social work staff, the nature of the job does require legal support. This is true for several reasons.

1. Services being provided are not voluntary or requested by the parents.
2. The parents may believe that their parental rights permit them unlimited control over their children.
3. Corrective action may be required to ameliorate the situation.
4. Legal proceedings may be required on behalf of the child against the wishes of the parent.
5. Parents will be required to change their destructive treatment of the child, regardless of their feelings about changing.
6. When social work methods fail, intervention from legal authorities may be required.
7. Social workers cannot force entry into the parents home. If refused entry and there is reason to believe there is danger to the child, one must obtain the services of the court or appropriate law enforcement agency.

7.43 Judicial Assistance in the Investigation. Judicial intervention should be viewed as a tool by the primary investigator. Based on national reporting data only 20 percent of reported, substantiated cases are referred for court action. Intervention on the part of the judiciary should be reserved for situations where available social work methods have failed or are inadequate to assure the safety of the child. Examples of these situations could include, but are not limited to:

1. Gaining an ex parte order for immediate removal of a child in imminent danger.
2. Obtaining entry to a home where a child is perceived to be at risk and parents have refused entry.
3. All situations where a child has been removed from parental custody.
4. To mandate any required treatment for a child or parent in the absence of parental consent.
5. To obtain any type of restraining order.

Under normal conditions the primary investigator would pursue these remedies through designated channels that would go through agency legal staff or the district attorney, to the family or juvenile court holding jurisdiction. It should be stressed that use of law enforcement or the judiciary should be restricted to situations where suitable social work intervention has proven to be inadequate or where this particular use of legal authority is mandated by statute or policy.

7.5 Removing the Child in Emergency Situations

In situations where there is deemed to be imminent danger of further physical injury to the child, all states have statutory provisions for emergency protective custody. This initial removal can always occur on the authority of law enforcement personnel. The investigating agency, if other than law enforcement, should seek an ex parte protective custody order from the court. The use of emergency protective custody should be reserved only for the most serious of situations where no other reasonable remedy is available. However, under no circumstances should a child be left in a situation where imminent danger is present. These situations could include: severe abuse (multiple injury, extensive burns, abuse of an infant), abandonment, psychotic parent, severe malnutrition and life threatening neglect (medical). Once emergency protective custody is invoked, the court should be petitioned for a hearing within 48 hours to review the decision to remove the child. Documentation of all relevant facts is a critical task for the child protection worker in these situations.

7.51 Foster Care Not Always Better. Before discussing guidelines for the removal of children from their homes and subsequent placement in foster care, it is imperative that one understand what can be realistically expected as an outcome of this service. On the surface, the thought of "rescuing" children from a poor home environment and placing them in a stable, therapeutic situation would appear to be an advisable course of action. However, in recent years it has become absolutely clear that foster care, generally, is not stable and largely not therapeutic.

The emotional trauma and inherent guilt suffered by a child as a result of being removed from the care of its parents should not be minimized and should always be a primary factor in the decision-making process. "Frank (1980), studying 50 children who had been in foster care at least five years, found that all

children demonstrated psychosocial problems. Most of these children had moderate to severe problems, especially in the areas of object relationships or in developmental deficits. Furthermore, these problems seemed to become more severe during the child's stay in foster care. Therapists, rating the care these children had received, felt that psychosocial treatment had been grossly inadequate. They attributed this to the lack of training for case workers, such that psychosocial problems were not identified. They conclude that foster care may have been more harmful for the child than leaving him or her in the home."[11]

In a study done in North Carolina which matched 45 children in foster care with 44 children remaining in home care, the therapeutic outcomes of those placed in foster care were, at best, minimal. These children were between the ages of 6 and 16 and had experienced maltreatment within the past three years.[12] This same study, however, noted that there are subsets of children that can benefit from placement. Younger children (from infancy to age 6), with several documented episodes of abuse, appear to do better in stable homes. Therefore, early consideration of termination of parental rights and vigorous efforts toward adoption of these children seems to be indicated.[13]

To balance what may appear to be a negative view of foster care placement, it should be recognized that recent years have seen marked improvements in the system of alternative care for children. Efforts toward permanency planning have partially decreased the use of short- or moderate-term foster care with the numbers of placements per child being reduced. Also, increased accountability and the improvement of foster care review systems has helped to ensure the foster placement is not prolonged beyond what is beneficial to the child. However, at this time, practitioners should view the use of short- or intermediate-term foster placement as a protective rather than therapeutic service.

7.52 Guidelines for Removal of the Child From the Home. In light of the previous discussion, the following guidelines are offered to serve as criteria for deciding to remove a child from his or her home. These guidelines should be used in conjunction with a thorough assessment (diagnostic and prognostic).

1. Severe abuse (e.g., life threatening abuse, multiple injuries, extensive burns, head or central nervous system injury, sadistic injury, severe malnutrition with inability to immediately correct the cause, etc.).
2. Evidence of repeated and frequent abuse from history, physical examination or x-ray.
3. Repeated abuse after initial report and intervention.
4. Any physical abuse of a child less than 1-year-old.
5. Child exhibits behavior that is unduly provacative or obnoxious to the parents.
6. Child, with valid cause, is extremely fearful to return home.
7. Adolescent refuses to return home and is beyond parents' control.
8. Child is completely rejected or unwanted.
9. Non-perpetrator adult is not protective.
10. Parents deny diagnosis consistently and/or refuse treatment services (with "hostility" or passive-aggressiveness or total indifference).
11. Parent is dangerous (e.g. sociopathic, psychotic, suicidal, homicidal).
12. Parent wants child placed after appropriate counseling.
13. Numerous on-going crisis.
14. Sexual abuse situations where the child cannot be adequately protected while remaining in the home.[14]

Removal of any siblings in the home should be considered if they have been victimized or are felt to be at risk following the removal of the "targeted child." Removing the siblings should also be considered in situations related to numbers 1, 2, 3, 9, 10, 11, 13 and 14.

Although this list only covers general situations, it should be clear that removal of a child and/or siblings should not be taken lightly or used in situations where other options such as homemaker services or therapeutic day care could achieve positive results.

Whenever possible, all efforts should be focused on maintaining the family as a unit.

When removal is deemed the appropriate course of action, every method to prepare the child as well as the natural and foster parents should be employed. Frequent contacts should

be made with the child and family by the caseworker and whenever possible, timely and consistent visitation between the child and his or her natural parent should be encouraged and maintained.

Recent trends in physical and sexual abuse situations have involved removal of the perpetrator from the home rather than the child victim. This approach is certainly valid and should be considered if the parent or caretaker remaining in the home is capable of maintaining the child.

7.6 The Investigative Report

Upon completion of an investigation concerning incidents of child abuse and neglect the primary investigator should prepare an investigative report that specifies all relevant details of the case. This report is essential for several very important reasons. First, should the case be re-opened or transferred to another worker, a thorough record will be available for review by the new worker. Second, if the case should end up in the juvenile or family court a thorough and accurate record of observations and activities is available. Thirdly, the agency or worker should be asked to account for services or related activities surrounding a particular case. There will be sufficient documentation. These reports should always be a part of any case record and should include, at a minimum, the following information:

a. The child and all siblings or other children in the family or household should be identified by name and current age.
b. The identity and relationship of the caretakers of the children and the alleged perpetrator.
c. The birthdates of all family members.
d. The addresses, phone numbers and whereabouts of all parties should be presented.
e. The identification of the primary investigator and all other professionals associated with the case in any manner.
f. The origin and reason for the abuse or neglect referral should be clear.
g. The reason for the current report should be stated in a clear, concise fashion.
h. An accurate log of contacts with the family and others by type, purpose and date should *always* be included.
i. A summary of all activities and findings.
j. A statement of the family's condition (previous and current).
k. A statement of current problems.
l. The problems should be categorized, consistent with state statute, e.g. "physical abuse," "incest," etc.
m. Identification of others who know of the family, e.g., neighbors, relatives and friends.
n. Supporting information, such as affidavits, reports and memos.
o. Conclusions of the primary investigator should be clear and supported by substantive information.
p. Present a clear and specific case plan with recommendations.

Due to the potentially critical nature of these reports they should be subject to supervisory review.

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Notes

[1]American Humane Association, "Helping in Child Protective Services," ed. Holder & Mohr (1980).

[2]These states are Alabama, Arizona, Colorado, Connecticut, the District of Columbia, Georgia, Idaho, Indiana, Louisiana, Maryland, Minnesota, Nebraska, Nevada, New Mexico, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington and Wyoming.

[3]These states are Alaska, Iowa, Kansas, Kentucky and Wisconsin.

[4]These states are Arkansas, California, Delaware, Florida, Hawaii, Illinois, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.

[5]These states are Arkansas, Colorado, Florida, Illinois, Kansas, Maine, Massachusetts, Minnesota, Missouri, Montana, New York, Pennsylvania, South Carolina, Utah, West Virginia, Wisconsin and Wyoming.

[6]Massachusetts requires that the report be made to the District Attorney as well; Utah requires the report be made to a law enforcement agency.

[7]American Humane Association, "Child Protective Services Standards," (Denver, Colo., 1977).

[8]American Humane Association, "Helping in Child Protective Services," ed. Holder & Mohn, (1980).

[9]Ibid.

[10]Ibid.

[11]Carolyn L. Gould, M.D., Desmond K. Runyan, M.D., M.P.H.,
"Foster Care for the Maltreated Child," (1982).

[12] D.K. Runyan, C.L. Gould, F.A. Loda, "Effects of Foster Care on the Development of Maltreated Children," (1981).

[13]Ibid, p. 11.

[14]Numbers 1, 8, 10, 11 and 14 are situations in which workers should invoke the aid of the family court even if parents agree to foster care voluntarily.

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