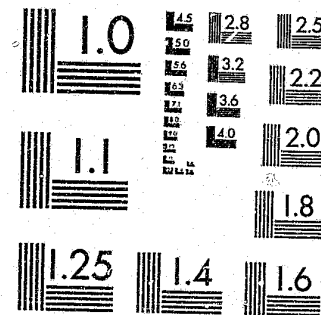


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Senate Office of Research
Issue Brief

Title

THE SILENT VICTIM:
CHILD ABUSE IN CALIFORNIA

Date APRIL 1984

NCJRS

INTRODUCTION

ACQUISITIONS

In California alone, more than 60,000 cases of child abuse are reported each year. Experts estimate that at least 3 times that number goes unreported, and they fear that the incidence of abuse, which includes physical and sexual abuse as well as severe neglect, is on the increase.

Although the papers occasionally break news about an abused child, the stories of most victims are never heard. That's because child abuse is almost always a private crime, a crime with a dependent, silent victim. Last year, 32 children died as a result of abuse in Los Angeles County alone. With the breakdown of the nuclear and extended family, a growing number of our children are at-risk.

What can we do to stem the rising tide of child abuse in California? To begin with, we can identify the cause of the problem. However, this is no easy task. Child abuse occurs within all social, cultural, racial and occupational groups. Because it is not limited to any one group, it taxes our ability to understand its causes and to develop reasoned cures. Researchers do know that children mistreated by their parents often grow up to abuse their own children.¹ This generational pattern is difficult to break which makes prevention of child

¹Magri, Michele R. "Breaking the Cycle of Child Abuse," State Legislatures, March 1983, pp. 14-17.

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abuse all the more important. Researchers also know that economic and environmental stress, family problems, social isolation, and parental attitudes can all contribute to the incidence of child abuse, but we are still a long way from understanding this complex and disturbing social problem.

Fortunately, there are steps that we can take to prevent and limit child abuse. California already has a system of intervention and treatment programs in place that reach more than 10,000 families per year. In recognition of the growing problem, the California State Legislature is working on other strategies to decrease both the possibility and the incidence of child abuse.

In the second half of the 1983-84 Session, more than 50 bills have been submitted for consideration, including a 28-bill package spearheaded by Assemblyman Vicencia. These bills aim to curb child abuse through public education, increase coordination and funding of children's services, and expand mandatory reporting requirements. In addition, there are a number of legislative proposals that affect court proceedings, including measures that would expand or enhance criminal sanctions and increase the likelihood that an offender is arrested, brought to trial, and prosecuted. This issue brief presents an overview of the major child abuse legislation now before the California State Legislature, and an appendix including a short synopsis of each bill.

PREVENTING CHILD ABUSE THROUGH PUBLIC EDUCATION

Public education is an essential strategy for preventing child abuse. This year, the Legislature has declared April as Child Abuse Prevention Month (ACR 114, Chapter 29, 1984). Throughout the state, local child abuse councils and related agencies are spearheading a public awareness campaign, with televised announcements, information booths in shopping centers and other public places, "family fun" events, and other activities designed to educate the public about child abuse. Because of the perceived need, this year's campaign is even more intensive and ambitious than those in prior years. There is also a legislative proposal to declare 1984 as the Year of Prevention and Elimination of Child Abuse, Neglect and Sexual Assault (ACR 105).

Other legislation still pending before the Legislature would work to educate victims, potential victims, and their caretakers. Under AB 2696, family court mediators would be required to have a working knowledge of child abuse and the effects of domestic violence on children as part of their minimum qualifications for employment. Continuing instruction on these subjects would also be mandated by AB 2696. AB 2699 would require child abuse education for both students and teachers. Outreach in our public schools is intended to teach young victims of child abuse that they are not at fault for a crime they did not cause. AB 2699 would also require that teaching education institutions offer courses on child abuse and neglect, beginning in 1986. With this training, teachers would then be able to assist law enforcement and child protective services by identifying abused children.

Under AB 3031, the Department of Education (SDE) would develop a statewide curricula for parenting education. If

children are taught basic childcare skills, they will be better equipped to recognize and deal with the inevitable stresses of parenting.

FUNDING AND ADMINISTRATION OF CHILDREN'S SERVICES

In May 1977, the Office of Child Abuse Prevention (OCAP) was established within the Department of Social Services (DSS) to administer and fund child abuse programs. Until 1982, most of the funding for OCAP was provided through the federal Child Abuse Prevention and Treatment Act. During the past two years, the California Legislature has supplemented the federal funds with state monies, making a substantial commitment to maintain and create child abuse programs.

1982 was a banner year. \$10 million was appropriated to the Department of Social Services to encourage public and private prevention and intervention programs (Chapter 1398, 1982). The Children's Trust Fund Program was established which authorized county boards of supervisors to create county children's trust funds (Chapter 1398, 1982). It also created a general statewide fund for those counties that did not start up their own. Monies for the funds are secured through increased birth certificate fees and are used by the counties for child abuse prevention and intervention services. In 1983, a checkoff on the California Income Tax Form was established to make it easier for taxpayers to donate a portion of their personal income tax returns to the state Children's Trust Fund (Chapter 1082, 1983).

1984 has the potential of carrying on the good work begun in the previous two years. Legislation has been proposed in three general areas: coordination of existing programs, expansion of services, and placement of abused children.

Currently, children's services are provided through the State Department of Health Services (DHS), the State Department of Education (SDE), and various private and public local agencies. In 1978, a report by the Auditor General called for improved coordination in the planning, budgeting, administration and evaluation of these programs (Report No. 816.2). This year, state-level coordination of children's services is the focus of three bills: AB 1934, AB 2100, and SB 1526. Coordination at the local level would be encouraged by AB 3745, AB 3843 and SB 2124. In addition, counties would have more flexibility to use private contracting for children's services under SB 2115.

The need for expansion of child abuse prevention services would be partially met through another series of bills. AB 2443 would appropriate \$23.45 million to fund child abuse prevention and training programs. The Children's Trust Fund would receive additional funding through SB 1453, which would establish the Infant and Toddler Protection Act and authorize \$15 million for various child care and development programs. SB 2256 would augment the Fund by raising the divorce filing fee from \$2 to \$17.

A number of bills propose to expand the Office of Child Abuse Prevention. Under AB 1562, OCAP would receive additional monies to create pilot projects for at-risk families and latchkey children. OCAP would be required to establish a pilot counseling program for child abuse offenders under AB 3831, and would be allowed to carry over program funds from year to year under AB 3610. Finally, AB 3684 would provide additional funding to expand "Parents United," a national program that provides training to teams of professionals who work with child abuse victims and their families.

Two of the child abuse bills introduced this year provide follow-up to SB 14, legislation successfully enacted in 1982 (Chapter 978, 1982). SB 14 reformed the county system of child

welfare services for abused, neglected and abandoned children by placing an emphasis on reunification of families whenever possible and permanent placement of the child outside the home only when absolutely necessary. SB 14 also shifted the "burden of proof" from parents to the courts; the parents need not prove their home is fit, the courts must prove it is unfit.

This year, SB 1293 was introduced to make additional reforms and to clarify some of the provisions in SB 14. AB 2703 would facilitate the permanent removal of infants (under age 2) from families where severe physical abuse occurs. In these extreme cases, if an initial court hearing placed a child outside the home, AB 2323 would require parents desiring the return of their child to prove that they can provide a "fit" home. Thus, AB 2323 would reverse the SB 14 mandate.

MANDATORY CHILD ABUSE REPORTING REQUIREMENTS

California has had some form of mandatory child abuse reporting requirement since 1965. After substantial revisions in 1980, these statutes now specify that child care custodians, medical and nonmedical practitioners, and employees of child protective agencies must report suspected or known instances of child abuse. Reporters must consider neglect, sexual assault, and nonaccidental injury as incidents of child abuse. Current law protects reporters from civil liability, sets forth a method for reporting, and establishes sanctions for failure to report (Chapter 2, Article 2.5 of the Penal Code).

This year, several bills designate additional professions as "mandatory child abuse reporters", including employees of various state and county agencies (AB 1927), psychological assistants

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(AB 2702), and licensees, administrators and employees of children's community care facilities (AB 2706). AB 2704 would require reporting by all persons. Reporters would be required to report incidents of attempted sexual assault under AB 1927 and cases of sexual exploitation or failure to provide adequate medical care under AB 2706.

AB 2702 would raise the criminal penalty for failure to report a known or suspected case of child abuse. Under 2698 and AB 2702, persons who do report abuse would be protected against civil liability and financially reimbursed for any reasonable court costs they incurred.

CRIMES AND COURT PROCEDURES

Because many victims of child abuse are very young and the perpetrators may be their parents, it is often difficult to arrest, try and convict an offender. Testimony from the victim may be inadmissible evidence, due to the child's age. Even when there are obvious physical injuries to the child, he or she may be unwilling or unable to testify against the perpetrator. Furthermore, testifying before a court of law is often an emotional trauma for the child who has already experienced tremendous stress.

Three bills have been introduced that would make it easier to obtain a child's testimony and would protect the child from the possible negative effects of testifying. AB 3840 and SB 1899 would allow greater use of a child's reliable, out-of-court statements. SB 2007 would allow a young abuse victim to be accompanied in court by a supportive parent, guardian, or sibling; authorize preliminary examinations to be closed to the

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public; and allow a child's preliminary hearing testimony to be videotaped and used as evidence during the trial. It would also permit leading questions to be asked during the direct examination of an abuse or molestation victim under the age of 11. AB 2708 would allow law enforcement officers to detain a child abuse victim without letting the parents know of the child's whereabouts, presumably to protect the child from further abuse. SB 1678 would prohibit the courts from imprisoning a sexual abuse victim who chooses not to testify.

Legislation affecting the sentences of convicted offenders has also been proposed. While imprisonment sometimes seems the only answer for what is a repugnant crime, counseling and educational programs are viable alternatives for many offenders. There are five bills now pending before the Legislature that would permit greater use of counseling and other educational programs for offenders (AB 2700, AB 2701, AB 2712, AB 3841, and SB 1536). In contrast, AB 2562 would extend prison sentences for willful child abuse. Under SB 1899 and SB 2007, child abuse that results in the death of a child would be tried as first degree murder. Two other bills (AB 3140 and AB 3260) would require prison sentences when abuse leads to a child's death.

Finally, two bills would affect judicial custody decisions. AB 2697 would direct judges to consider instances of abuse against a child or spouse when making a custody decision; AB 3320 would make easier to exclude a noncustodial parent from the custodial parent's home if there is a risk of emotional or physical harm to the child.

This issue brief was written by Teresa Rooney and edited by Kate Karpilow. The author welcomes comments and questions at (916) 445-1727.

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APPENDIX A

SUMMARY OF PENDING CHILD ABUSE LEGISLATION

I. PREVENTING CHILD ABUSE THROUGH EDUCATION AND PUBLIC AWARENESS

AB 2696 (Klehs and Vicencia) Amends family court mediators qualifications to include knowledge of and continuing education in child abuse and domestic violence. Status: Assembly Ways and Means.

AB 2699 (Klehs and Vicencia) Mandates education in child abuse awareness and prevention in K-12 schools. Requires that teacher training institutions accredited by the Commission on Teacher Credentialing after June 30, 1986, offer courses on child abuse and neglect. Status: Assembly Ways and Means.

AB 3031 (Vasconcellos) Requires SDE to develop parenting education curricula by April 1, 1985; awards up to \$20,000 to districts implementing such programs. Funding: Appropriates \$300,000 to SDE. Status: Assembly Education.

ACR 105 (Hauser et al) Declares 1984 as Year of Prevention and Elimination of Child Abuse, Neglect and Sexual Assault. Status: Senate Rules.

ACR 114 (Vicencia et al) Declares April 1984 as Child Abuse Prevention Month. Status: Adopted.

II. FUNDING AND ADMINISTRATION OF CHILDREN'S SERVICES

SB 1293 (Presley) Authorizes the court to transfer care of a child who cannot be placed in adoption from the welfare or probation department to a licensed homefinding agency. (Provides clarification of SB 14, Chapter 978, 1982). Urgency measure. Status: Senate Floor.

SB 1364 (Presley) Increases the marriage license fee from \$13 to \$18 to fund domestic violence centers. Status: Senate unfinished business.

SB 1453 (Hart) Establishes the Infant and Toddler Protection Act and provides funding for various child care and development programs, including hospital-based programs, in-home services for high-risk infants, and technical assistance to programs. Urgency measure. Funding: Continuously appropriates \$15 million to the State Children's Trust Fund, for allocation by DSS to: SDE

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(\$7.5 million), DHS (\$2.25 million), and OCAP (\$5.25 million). Status: Senate Floor.

SB 1526 (Royce and Beverly) Abolishes the State Advisory Committee on Child Abuse and creates a subcommittee on child abuse within the State Social Services Advisory Board. Status: Senate Finance.

SB 2115 (Russell) Allows counties to contract for all child welfare services. Status: Senate Health and Human Services (April 25).

SB 2124 (Marks) Renames existing county multidisciplinary councils as child abuse prevention coordinating councils and specifies their intent, purpose, and functions. Status: Senate Health and Human Services (April 25).

SB 2256 (Marks) Raises the divorce filing fees from \$2 to \$17 to establish a child care account within the State Children's Trust Fund. Funding: The increased amount of funds to be deposited in the Children's Trust Fund constitute an appropriation. Status: Senate Health and Human Services (April 25).

AB 1562 (Vicencia) Authorizes OCAP to contract for two types of pilot projects: 6 "Homebuilders" projects providing intensive in-home assistance for families facing dependency hearings and thus placement of their children in foster care; and 8 projects to teach self-care skills to latchkey children. Allows the State Registrar to retain a portion of fees collected for the State Children's Trust Fund to cover its administrative costs. Funding: Appropriates \$4.5 million for 3 years from the General Fund, to be administered OCAP. Status: Senate Health and Human Services.

AB 1934 (Papan) Creates a Children's Services Advisory Committee to study all state-funded children's services and make recommendations concerning funding. Administered by the Deputy Secretary of the State Health and Welfare Agency. Status: Senate Floor (Third Reading).

AB 2100 (Farr et al) Directs the Governor to study the desirability of establishing a State Department of Children's Services within the State Health and Welfare Agency. Status: Senate Health and Human Services.

AB 2323 (Speraw) In review hearings to determine the status of dependent children, the burden of proof regarding detrimental home conditions would be shifted from the county to the parents. Status: Senate Judiciary.

AB 2443 (M. Waters) Requires and provides funds for OCAP to establish two child abuse prevention and training centers and to

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contract for child abuse training programs in the schools. Funding: Appropriates \$23.45 million from the General Fund to OCAP. Status: Assembly Human Services.

AB 2707 (Vicencia) Requires that additional federal funds to be received in 1984-85 and 1985-86 be allocated to counties to implement the higher levels of child welfare services required under SB 14 (Chapter 978, 1982). Status: Assembly Human Services.

AB 2711 (Papan, Johnston, Vicencia, Rosenthal) Requires health care service plans, disability insurers and nonprofit hospital service plans to provide comprehensive, preventive care of minors. Status: Assembly Finance and Insurance.

AB 3610 (Papan) Allows carry-over of funds for child abuse and neglect program from one year to the next. Urgency measure. Funding: Carry-over of \$10 million (DSS) that would otherwise revert to the General Fund on June 30, 1984. Status: Assembly Ways and Means.

AB 3646 (Vasconcellos) Establishes community violence prevention and conflict resolution programs. Funding: Appropriates \$1 million to Attorney General. Status: Assembly CLAPS.

AB 3684 (Vasconcellos, Agnos, Vicencia, Garamendi, Presley) Expands "Parents United", a national model program that provides training to teams of professionals who work with child sexual abuse victims, family members, and other children. Provides one-time funding to community organizations that work with victims and families. Urgency measure. Funding: Appropriates \$1 million to DSS. Status: Assembly Human Services.

AB 3745 (Bates) Authorizes the Secretary of the Health and Welfare Agency to approve county plans for coordinated, local-level children's services systems. Funding: Appropriates an unspecified amount for disbursement to counties, administered by the State Health and Welfare Agency. Status: Assembly Human Services.

AB 3831 (Condit) Directs OCAP to conduct a pilot project requiring persons convicted of child sexual abuse, who are confined or placed on probation, to participate in counseling programs. Status: Assembly Human Services.

AB 3843 (Mojonier) Requires that priority for child abuse and neglect services be given to children referred by county welfare departments. Requires boards of supervisors to seek recommendations from county welfare departments and multidisciplinary councils regarding funding processes and priorities. Status: Assembly Human Services.

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III. MANDATORY CHILD ABUSE REPORTING REQUIREMENTS

AB 1927 (Costa) Expands the category of mandatory child abuse reporters to include: certain persons who diagnose, examine or treat adults placed in adult residential care facilities; employees of the Department of Corrections, the Youth Authority, the State Department of Mental Health; employees of county probation departments, mental health departments or welfare departments; and employees of certain other governmental agencies. Expands the definition of sexual assault to include attempts at such. Status: Senate Judiciary.

AB 2698 (Klehs and Vicencia) Awards reasonable court and attorney fees to a person who reports a child abuse situation if the person prevails in a civil action based on the report. Status: Assembly Judiciary.

AB 2702 (Davis, Klehs and Vicencia) Requires court to order plaintiff to pay reasonable court and attorney fees to a person who reports a child abuse situation as required by law, if that person prevails in a case brought against them as a result of the report. Raises the maximum penalty for failure to report child abuse from \$500 to \$5,000. Adds psychological assistants to the category of mandatory child abuse reporters. Status: Assembly CLAPS.

AB 2704 (Vicencia et al) Requires any person who is aware of, or reasonably suspects, a child abuse case to report it and makes anyone who fails to report an incident civilly liable for injuries the child receives as a result of the nonreporting. Status: Assembly Judiciary.

AB 2706 (Vicencia) Expands the definition of child abuse under mandatory reporting laws to include sexual exploitation and failure to provide adequate medical care. Expands mandatory reporting requirements related to child pornography. Expands the definition of mandatory child abuse reporters to include licensees, administrators, and employees of community care facilities licensed for children. Prohibits the attorney who presents evidence of child abuse or neglect from being appointed as guardian ad litem for the child. Status: Assembly CLAPS.

AB 2709 (Vicencia) Extends child abuse reporting requirements to include communications subsequent to the initial report. Requires additional information be included in child abuse reports, and that the report be made available to a child protective agency investigator. Makes nonreporting by a licensed healing arts professional or credentialed educator grounds for disciplinary action. Status: Assembly CLAPS.

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AB 2710 (Clute and Vicencia) Requires that anyone who enters into employment in a position that is mandated by law to report child abuse sign a form acknowledging they are aware of the reporting requirements prior to beginning employment. Funding: Appropriates an unspecified amount to Department of Social Services. Status: Assembly Ways and Means.

SB 1578 (Keene) Makes a technical, nonsubstantive change to existing mandatory child abuse reporting requirements. Status: Senate Rules.

IV. CRIMES AND COURT PROCEDURES

SB 1536 (Russell) Allows prosecutor to refer suspected child abuse offender to counseling, without a referral from police. Status: Senate Judiciary.

SB 1678 (McCorquodale) Prohibits imprisonment of a victim of sexual assault for contempt of court, when contempt consists of refusing to testify concerning that assault. Status: Senate Judiciary (May 1).

SB 1899 (Watson) Allows an exception to the hearsay rule for trustworthy statements concerning physical or sexual abuse made by a child under 7 years old. Provides for expanded definitions and increased penalties for various criminal child abuse statutes. Expands child abuse reporting requirements. Status: Senate Finance.

SB 2007 (Watson) Allows leading questions to be asked of young children during court testimony. Specifies as first degree murder cases involving extreme physical or mental suffering to a child. Allows parent/guardian to be present during specified child abuse victims' testimony. Allows videotaping and closed hearings for child abuse cases. Allows child protective agencies and prosecutors access to court and probation records. Requires that a court-appointed psychiatrist or psychologist consider specified factors in making a sentencing recommendation to the court in child abuse cases. Status: Senate Finance.

SB 2281 (Deddeh and Roberti) Specifies that death of a newborn infant as a result of deprivation of food, nutrients, water or medical care with intent to cause the infant's death is a felony. Specifies circumstances under which medical care may be provided without parental consent. Status: Senate Health and Human Services (April 25).

AB 2323 (Klehs et al) Extends the statute of limitation for bringing legal actions arising out of an incestuous relationship. Status: Assembly Judiciary.

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AB 2562 (M. Waters) Revises the definition of child abuse and increases the penalties for willfully causing abuse. Adds child abuse to the list of violent felonies for purposes of sentence enhancement (i.e., requires an additional three-year prison term if an offender sentenced to prison had received a prior prison term for child abuse). Status: Assembly CLAPS.

AB 2697 (Klehs and Vicencia) Requires judge, in making custody orders, to consider any history of abuse by either parent against the child or spouse, and to consider the nature and amount of contact with both parents. Status: Assembly Third Reading.

AB 2700 (Killea and Vicencia) Allows the prosecutor to refer a person suspected of child abuse or neglect to counseling and other services in addition to prosecuting the suspect. Expands the type of counseling programs to which suspected or convicted offenders can be referred to include parent education. Status: Senate Judiciary.

AB 2701 (Killea and Vicencia) Allows the court to order parents, guardians and /or foster parents to participate in counseling or an educational program along with their child in any dependency or wardship case, including child abuse. Allows the minor to participate in education or counseling programs. Status: Senate Judiciary.

AB 2703 (Sher and Vicencia) Facilitates the removal of a child under age 2 from the parents' home if that child suffers severe physical abuse. In these extreme cases, the parents would have to prove that they can provide a "fit" home before the child would be returned to the home. Requires the probation officer to make a recommendations to the court as to whether or not family reunification would be detrimental to the child. Status: Assembly Judiciary.

AB 2705 (Vicencia) Facilitates allotment of funds from the Victim Witness Assistance Fund to victims of child abuse. Status: Assembly Ways and Means.

AB 2708 (Vicencia et al) Allows child protective agencies and district attorneys access to juvenile court, probation, and social services records of parents and children. Allows a law enforcement officer to make a decision to detain a child abuse victim without letting the parents know of the child's whereabouts. The court would be required to review the police decision. Status: Assembly CLAPS.

AB 2712 (Bates) Authorizes, and in specified circumstances requires, the court to order parents to participate in counseling or treatment as part of family reunification efforts. Status: Assembly Ways and Means.

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AB 3140 (Statham) Requires a sentence of death or life without possibility of parole for murder resulting from or involving child abuse (i.e., specifies that child abuse is a special circumstance for sentencing enhancement purposes). Requires approval by the electors. Status: Assembly CLAPS.

AB 3260 (W. Brown) Deletes existing law that makes homicide excusable when committed in lawfully correcting a child (or servant). Repeals various statutes in the Penal Code. Status: Assembly CLAPS.

AB 3320 (Bates) Allows court to exclude a noncustodial parent from the custodial parent's home upon a finding that physical or emotional harm would result to the custodial parent or child. Eliminates existing requirement for a finding that the party to be excluded has assaulted or threatens to assault the other party or the child. Status: Assembly Judiciary.

AB 3840 (Mojonnier) Allows greater use of out-of-court testimony by a child victim of sexual or physical abuse, by revising the laws regarding unavailability of witnesses, corroboration of testimony, competency to testify, and admission of hearsay evidence. Status: Assembly CLAPS.

AB 3841 (Mojonnier) Requires prosecuting attorney to refer a person suspected of sexually assaulting a family member to counseling and other services, in lieu of prosecution, if that person had voluntarily begun specified therapy or treatment before the case was reported to law enforcement and if other conditions are met. Status: Assembly CLAPS.

END