

Comments

BATTERED PARENTS IN CALIFORNIA: IGNORED VICTIMS OF DOMESTIC VIOLENCE

Recent sociological studies have shown that as many as one and one-half million parents in the United States suffer physical abuse each year at the hands of their children. The legal system has been slow to acknowledge this problem and slower still to provide adequate remedies for these parents. The author surveys the potential remedies for battered parents in California¹ and discusses the problems inherent in each. The Comment concludes with suggestions for more effective remedies, proposing mandatory family counseling or a restructuring of the methods for court processing of abusive children.

INTRODUCTION

Domestic violence is a phenomenon which has received public attention only within the past twenty years.² The 1960's is often considered the decade of the abused child³ and the 1970's the dec-

1. This Comment surveys the problems encountered by battered parents in San Diego County, a large and growing area of California, but it does not necessarily reflect exactly the plight of parents in every part of the state.

2. M. STRAUS, R. GELLES & S. STEINMETZ, *BEHIND CLOSED DOORS* (1980) [hereinafter cited as *BEHIND CLOSED DOORS*].

3. Kempe, *The Battered Child Syndrome*, 191 J. A.M.A. 17 (1972). Kempe's article introduced the problem of the battered child to the medical and psychological communities. One of the earliest articles in the legal literature is McCoid, *The Battered Child and Other Assaults Upon the Family*, 50 MINN. L. REV. 1 (1965), which pointed out the dearth of legal literature on the subject and which provided an overview of legislation designed to combat the problem. Today, less than 20 years later, law library shelves are full of information on abused children. An excellent compendium of nationwide programs to combat the problem is *Child Abuse and Neglect Programs* (1980), a 400-page publication published by the United States

ade of the battered wife⁴ and, to a lesser extent, the battered husband.⁵ All types of domestic violence are believed to be underreported by the victims.⁶ For example, wives often are reluctant to report abuse by husbands because of embarrassment, guilt, and the belief that they are to blame for the assault.⁷ Additionally, police often have failed in the past to take domestic violence seriously. Instead of arresting assailants, police tended to issue them verbal warnings and leave them in the home to batter once more.⁸ One reason that police dislike domestic disturbance calls is that they are dangerous. Police are regularly assaulted themselves, or killed, while responding to such calls.⁹ Also, because the victims rarely press charges against the assailants, police often think that making an arrest is useless.¹⁰

Just as wives feel guilt and embarrassment about reporting instances of abuse by their husbands, so too parents feel guilt about admitting that they are abused by their children.¹¹ Consequently, the subject of parent battering has been shrouded in secrecy. The most recent (and indeed the only comprehensive) study of this problem was conducted by sociologists Richard Gelles and Claire Cornell at the University of Rhode Island.¹² Based upon a survey of 608 families, each of which contained at least one child aged ten to seventeen, their research indicates that eleven percent of the males and seven percent of the females have engaged in some

Department of Health, Education and Welfare, National Center on Child Abuse and Neglect.

4. Parnas, *The Police Response to the Domestic Disturbance*, 1967 WIS. L. REV. 914.

5. BEHIND CLOSED DOORS, *supra* note 2, at 40.

6. CAL. WELF. & INST. CODE § 18290 (West Supp. 1981); *see also* Durant, *Family Violence Unseen by Society*, L.A. Times, Apr. 22, 1979, § 1, at 3, col. 3 (quoting the Federal Bureau of Investigation (FBI) as considering domestic violence the most underreported and yet the most common crime in the United States).

7. E. BARNETT, C. PITTMAN, C. RAGAN & M. SALUS, *FAMILY VIOLENCE: INTERVENTION STRATEGIES* 14, 15 (1980) [hereinafter cited as *FAMILY VIOLENCE*].

8. Parnas, *supra* note 4, at 953.

9. FEDERAL BUREAU OF INVESTIGATION UNIFORM CRIME REPORTS (1979) indicate that 32% of all assaults on law enforcement officers in 1979 occurred while the officer was responding to a family disturbance and 16% of all homicides on law enforcement personnel occurred in the same situation.

10. BEHIND CLOSED DOORS, *supra* note 2, at 17.

11. In BEHIND CLOSED DOORS, *supra* note 2, at 119, the authors stress that the topic of parent beating is taboo, because it runs against the socially acceptable notion that children love their parents. Dr. Richard Gelles, one of the book's authors, stated in a recent television interview: "This is the area in family violence that people want to talk about the least because somehow the victims, the society, and everyone else blames the victim. Somehow it's the parent's fault that the child is beating him up." *Hour Magazine*, interview with host Gary Collins (July 29, 1981).

12. C. Cornell & R. Gelles, *Adolescent to Parent Violence* (Nov. 12, 1981) (paper presented at the Annual Meetings of the American Society of Criminology, Wash., D.C.).

form of assaultive behavior toward their parents. Three percent of all adolescent violence studied would qualify as aggravated assault. When projected into the population as a whole, this research means that approximately 2.5 million parents are assaulted each year by their children.¹³ This research indicates that parent battering is an alarming phenomenon worthy of legal attention.¹⁴

This is especially true because children who are physically abusive toward their parents may become more violent toward society as a whole. A recent report published by the United States Department of Health and Human Services stated:

If children . . . behave violently and their behavior is handled inappropriately, their violent behavior is likely to continue and escalate. Children, particularly adolescents, may be as violent as adults, often not recognizing the potential hazards of their behavior. Thus, it is important to assess the extent and intensity of the child's violent behavior both within and outside the home.¹⁵

A child's improperly controlled violence may actually escalate so far that the child kills one or both parents.¹⁶

Several members of the legal community in San Diego County, California, were contacted about legal methods of handling battering children.¹⁷ The consensus was that virtually nothing can

13. *Id.* at 8, 15.

14. Only a small amount of sociological and psychiatric literature exists on the problem of battered parents. See, e.g., Harbin & Madden, *Battered Parents: A New Syndrome*, 136 AM. J. PSYCHIATRY 10 (1979) (identifying parent battering as a new psychiatric syndrome); C. Warren, *Parent BATTERERS: Adolescent Violence and the Family* (Apr. 1979) (paper for presentation at annual meeting of Society for the Study of Social Problems, Anaheim, Cal.); B. Star, *Family Violence* (Apr. 10, 1980) (paper for presentation at the White House Conference on Families Research Forum Issues). Brief references to the fact that parent battering exists can be found in *FAMILY VIOLENCE*, *supra* note 7, at 2; *BEHIND CLOSED DOORS*, *supra* note 2, at 119.

15. *FAMILY VIOLENCE*, *supra* note 7, at 43.

16. Anthony & Rizzo, *Adolescent Girls Who Kill or Try to Kill Their Fathers*, in 2 *THE CHILD IN HIS FAMILY* 333 (E. Anthony & C. Koupernik ed. 1970); Mark, Scherl & Macht, *Children Who Kill Their Mothers*, in 2 *THE CHILD IN HIS FAMILY* 319 (E. Anthony & C. Koupernik ed. 1970). Both articles indicate that parricide is often preceded by inter-family violence.

17. The following persons were contacted: Jack Palmer, Head of Intake Division, San Diego County Probation Department, telephone interview (May 28, 1981) [hereinafter cited as Interview with Jack Palmer]; Dorothy Dean, Probation Supervisor, San Diego County Probation Department, telephone interview (May 28, 1981) [hereinafter cited as Interview with Dorothy Dean]; Mary Avery, Deputy District Attorney, San Diego County, interview (May 28, 1981) [hereinafter cited as Interview with Mary Avery]; William Swank, supervising Probation Officer, San Diego County, interview (July 1, 1981) [hereinafter cited as Interview with William

be done for a battered parent unless he or she is willing to file a formal assault and battery charge against the child. As is so often the case in domestic violence matters, parents are reluctant to take this step. Even if the parent does wish to pursue a formal delinquency charge, the district attorney often is unwilling to file the delinquency petition, because parents frequently decide against testifying at the delinquency hearing once they have had time to "cool-off."¹⁸

One might argue that if parents are unwilling to pursue the one legal avenue available to them, then they should be left alone to deal with the problem privately. This is a short-sighted view, not only because parricide is an ongoing possibility,¹⁹ but also because domestic violence often spreads beyond the home to the community at large.²⁰

Dr. Gelles stated in a recent interview that the home is "the training ground for learning how to be violent."²¹ He goes so far as to say that it is the violent family which causes the violent society we live in, stating "the society reflects . . . the more violent institution of the family."²² Therefore, society as a whole has an interest in intervening in matters of domestic violence. If the violent family member is a child, intervention is especially critical. The young may still be in the process of forming their personalities, and they may be receptive to training in non-violent methods of problem solving.

This Comment will focus on currently available remedies for battered parents in California. These include processing the child as a juvenile delinquent under section 602 of the Welfare and Institutions Code²³ or as an incorrigible under section 601 of the Welfare and Institutions Code,²⁴ letting the child run

Swank]; Henry G. Kelley, Lieutenant Juvenile Unit Commander, San Diego Police Department, interview at police headquarters (June 17, 1981); Dorene Dawson Sulzer, Attorney at Law, San Diego County, Cal., numerous telephone and personal conversations (May and June 1981). All persons contacted indicated that, at least in San Diego County, parents with physically abusive children had few options.

18. Interview with Mary Avery, *supra* note 17; Interview with William Swank, *supra* note 17.

19. Anthony & Rizzo, *supra* note 16; Mark, Scherl & Macht, *supra* note 16.

20. CALIFORNIA YOUTH AUTHORITY, A REVIEW OF THE LITERATURE ON THE ANTECEDENTS OF ADOLESCENT AGGRESSION AND DELINQUENCY (1977).

21. *Hour Magazine*, *supra* note 11. For example, Dr. Gelles states that most homicides, including presidential assassinations, are committed by people from violent home environments.

22. *Id.*

23. CAL. WELF. & INST. CODE § 602 (West Supp. 1981) is California's juvenile delinquency statute. It gives the juvenile court jurisdiction over "[a]ny person who is under the age of 18 when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime"

24. CAL. WELF. & INST. CODE § 601 (West Supp. 1981) is California's so-called

away,²⁵ emancipating him,²⁶ or civilly committing him as mentally disturbed.²⁷ Finally, some suggestions will be made for solutions via legislatively-mandated family treatment, diversion, or conciliation programs.²⁸

CURRENTLY AVAILABLE ALTERNATIVES

"Persons in Need of Supervision"—The Traditional Approach

One approach used to deal with parent-battering children has been to view them not as delinquents, but as incorrigibles, commonly known as children beyond parental control. Such children often are referred to as "status offenders," meaning that they have committed an offense which would not be illegal if done by an adult.²⁹ Historically, children have been required to obey their parents. When they failed to do so, they could be dealt with harshly.³⁰

The earliest case located on parent abuse was an 1838 decision of the Pennsylvania Supreme Court.³¹ A girl had been detained in the "House of Refuge" "by reason of [her] vicious conduct [that] has rendered her control beyond the power of the said

"status offender" statute, conferring on the juvenile court jurisdiction over persons under the age of 18 years who "persistently or habitually [refuse] to obey the reasonable and proper orders . . . of his parents . . . or who is beyond the control of [his parents]" See *infra* text accompanying notes 36-46 for a discussion of how the court's dispositional powers under section 601 have been curtailed.

25. See *infra* text accompanying notes 61-71.

26. See *infra* text accompanying notes 80-87.

27. See *infra* text accompanying notes 72-79.

28. See *infra* text accompanying notes 88-118.

29. For a description of the various labels attached to status offenders, see Gough, *Beyond-Control Youth in the Juvenile Court—the Climate for Change*, in *BEYOND CONTROL: STATUS OFFENDERS IN THE JUVENILE COURT* (L. Teitelbaum ed. 1977).

30. An early ordinance of the Puritans of Massachusetts provided:

If any Childe or Children above sixteen years old and of sufficient understanding, shall Curse or smite their natural father or mother, hee or they shall be put to death; unless it can bee sufficiently testified that the parents have been very unchristianly negligent in the education of such children, or so provoke them by extreme, and cruel, correction that they have beene forced thereunto to preserve themselves from death, maiming. Exod. 12:17. Lev. 20:9. Exod. 12:15.

See Teitelbaum & Harris, *Some Historical Perspectives on Governmental Regulation of Children and Parents*, in *BEYOND CONTROL: STATUS OFFENDERS IN THE JUVENILE COURT* (L. Teitelbaum ed. 1977). This excerpt seems to indicate that the problem of parent battering is not a new one.

31. *Ex parte Crouse*, 4 Whart. 9 (Pa. 1839).

complainant [her mother]."³² The court stated that children who act violently or incorrigibly, and whose parents cannot control them, should be taken into state custody so that they might be educated into more socially-acceptable behavior.

The only recent case located in which a child was charged with assaulting a parent was also a status offense (as opposed to a delinquency) case. *In re Henry G.*³³ involved a minor whose mother alleged that he had been abusive on various occasions, hitting and kicking her. Although this behavior would fall within the definition of battery under the Penal Code,³⁴ Henry's mother requested the filing of an incorrigibility petition under section 601 of the Welfare and Institutions Code.³⁵

Section 601 petitions were the "classic" method of processing assaultive children, according to San Diego County probation officers.³⁶ Prior to 1977, these children could be made wards of the juvenile court and detained in secure detention facilities without the parents testifying against them on formal assault charges.³⁷ This alternative has been eliminated in California by a massive juvenile justice reform bill known as the Dixon Bill.³⁸

Among other things, the bill provides that children brought before the court on section 601 petitions cannot be detained in secure detention facilities.³⁹ The preferred disposition for section

32. *Id.*

33. 28 Cal. App. 3d 276, 104 Cal. Rptr. 585 (1972).

34. CAL. PENAL CODE § 242 (West 1970).

35. This case serves no purpose other than to illustrate that, in the rare instances when a parent-battering child appeared in the courts, he was processed under the status offender, not the delinquency, statute. The child in this case was released because the trial court had erroneously failed to allow the introduction of evidence showing that Henry's mother may have provoked his attack upon her.

36. Interview with Jack Palmer, *supra* note 17; Interview with Dorothy Dean, *supra* note 17; Interview with William Swank, *supra* note 17.

37. CAL. WELF. & INST. CODE § 207 (West Supp. 1981) was passed as part of the Dixon Bill, ch. 1068, 1976 Cal. Stats. 4740. It prohibits placing status offenders in secure detention facilities.

38. Dixon Bill, ch. 1068, 1976 Cal. Stats. 4740. To a large extent, passage of the Dixon Bill was a culmination of pressure from the federal government and an implementation of policies enunciated by many legal commentators calling for reform of the juvenile justice system. For a comprehensive overview of the status offender controversy, see *BEYOND CONTROL: STATUS OFFENDERS IN THE JUVENILE COURT* (L. Teitelbaum ed. 1977). For an example of the federal stance on status offenders, see 42 U.S.C.A. § 5633(a)(12)(A) (West Supp. 1981), which specifies that one criterion states had to satisfy in order to qualify for grant funds to combat juvenile delinquency was to "provide within 3 years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult [i.e., a status offense], or such non-offenders as dependent or neglected children, shall not be placed in juvenile detention or correctional facilities"

39. CAL. WELF. & INST. CODE § 207(b) (West Supp. 1981). The statute also provides that in some circumstances these children could be detained in non-secure

601 offenders is to leave them in the family home.⁴⁰ Thus, a violent child can no longer be locked up if he is deemed incorrigible. Apparently deciding that the remaining dispositional alternatives are ineffective, the San Diego County Probation Department has virtually withdrawn from filing 601 petitions.⁴¹

The total abolition of secure detention for all section 601 offenders may be inappropriate. The California Fourth District Court of Appeal considered this question in 1977 when a runaway minor named Ronald S. filed a petition for habeas corpus.⁴² Ronald had run away from home, and when he was found he was detained in a non-secure detention facility in conformity with the applicable Dixon Bill provisions. He promptly ran away from the institution. The court reluctantly held that Ronald could not be detained in secure facilities because of the new law, but pointed out that juvenile courts had been left in the untenable position of having continuing jurisdiction over runaways yet no power to detain them from running again. The court urged the legislature to review the new legislation and formulate more realistic remedies to fit specific situations: "[I]f the Legislature determined that 601's are to remain under the protection of the juvenile court, [then the applicable Dixon Bill provisions] must be amended to provide that *in the proper case*, a runaway may be detained in a secure setting."⁴³

Assemblyman Julian C. Dixon, the author of the 1976 bill, acknowledged that refinement of the legislation might be necessary. Shortly after its passage, he wrote: "If . . . it is determined that many status offenders can only be rehabilitated by some new type of limited secured attention, then legislation to provide for such will seriously be considered."⁴⁴ Mr. Dixon explained that the bill sought to foster development of creative programs by various counties to house hundreds of status offenders who have to

institutions, referred to in the code as "sheltered care" or "crisis resolution" facilities. See also CAL. WELF. & INST. CODE § 645 (West Supp. 1981).

40. CAL. WELF. & INST. CODE § 628.1 (West Supp. 1981) provides for home supervision of juvenile offenders with the direction of a probation officer.

41. In 1976 the San Diego County Probation Department filed 206 section 601 petitions; in 1980 it filed 17. Mr. William Swank indicated that the 1980 petitions were truancy cases, which are still being handled by the probation department. Interview with William Swank, *supra* note 17; see CAL. WELF. & INST. CODE § 601(b) (West Supp. 1981).

42. *In re Ronald S.*, 69 Cal. App. 3d 866, 138 Cal. Rptr. 387 (1977).

43. *Id.* at 874, 138 Cal. Rptr. at 393 (emphasis added).

44. Dixon, *Juvenile Justice in Transition*, 4 PEPPERDINE L. REV. 469 (1977).

be removed temporarily from their homes.⁴⁵ Unfortunately, these laudable goals have not been reached. Instead, programs to service juveniles have not received permanent state funding, juvenile processing has varied from county to county, and probation departments have often turned their backs on juveniles who formerly would have been dealt with under section 601.⁴⁶ Therefore, parents have been left with the one remedy they are least likely to pursue—assault charges.

Criminal Assault Charges—Section 602 Welfare and Institutions Code

What would seem to be the most obvious remedy for a battered parent is to press an assault charge against the child. California minors who commit criminal acts are within the jurisdiction of the juvenile court under section 602 of the Welfare and Institutions Code.⁴⁷ The district attorney can file petitions alleging violation of a specific section of the Penal Code⁴⁸ and requesting that the child be made a ward of the court. Children who are found to be within the section 602 description may be sent to secure confinement facilities operated by the California Youth Authority.⁴⁹ Other dispositions, such as home supervision under the direction of a probation officer, also are possible.⁵⁰ For a parent under attack, however, the most attractive aspect of a section 602 petition is likely to be the option of having the child sent to juvenile hall pending a hearing on the petition.⁵¹ An incarcerated child can do no further physical harm to the parent. In addition, the child is in a punitive environment. Thus, the parent can feel vindicated as well as safe while the child is detained.

Even when parents wish to pursue the section 602 remedy, they may encounter resistance from the district attorney or the police. In Sacramento County, for example, assault and battery on parents (as on anyone else) is handled as a juvenile delinquency offense under section 602. Nevertheless, the supervisor of the

45. *Id.*

46. See *supra* text accompanying note 41. See also *infra* text accompanying notes 88-111 for a discussion of how two county probation departments are attempting to handle section 601 cases.

47. CAL. WELF. & INST. CODE § 602 (West Supp. 1981).

48. CAL. PENAL CODE §§ 240, 242 (West 1970).

49. CAL. WELF. & INST. CODE § 730 (West Supp. 1981). The California Youth Authority, according to CAL. WELF. & INST. CODE § 1700 (West 1972), is the state entity responsible for treating and rehabilitating "young persons found guilty of public offenses." Among other functions, California Youth Authority is responsible for establishing and operating secure detention facilities for youthful offenders. CAL. WELF. & INST. CODE § 1760 (West Supp. 1981).

50. CAL. WELF. & INST. CODE § 654 (West Supp. 1981).

51. Interview with William Swank, *supra* note 17.

intake division of the Sacramento County Probation Department states that "the biggest problems that we have run into is [sic] convincing law enforcement to make an arrest on a minor assaulting his parents."⁵² Police reluctance to arrest no doubt stems from the same phenomenon that deters district attorneys from filing petitions: the likelihood that the parent ultimately will decline to testify, having decided that the child has suffered enough during pre-hearing detention.⁵³ Treating parent batterers as young criminals is, therefore, emotionally distasteful to parents and pragmatically unappealing to law enforcement officials.

Pitting parents against children in a delinquency hearing is more than unattractive on a practical level; it is also undesirable from a policy standpoint. A strong policy goal of juvenile law is to foster inter-family harmony and discourage domestic conflicts. For example, the Juvenile Justice Delinquency Prevention Act⁵⁴ passed by the United States Congress in 1974 encouraged states to formulate plans for more effective juvenile delinquency prevention and treatment, with the stimulus of federal funds. One condition to receiving federal funding was that a percentage of the funds be used for

advanced techniques in developing, maintaining, and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, and to provide community-based alternative to juvenile detention and correctional facilities. [The facilities were to include]

....

(b) community-based programs and services to work with parents and other family members to *maintain and strengthen the family unit* so that the juvenile may be retained in his home⁵⁵

California's Welfare and Institutions Code⁵⁶ parallels the federal language favoring the promotion of family unity:

(a) The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor . . . ; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when necessary for his welfare or for the safety and protection of the pub-

52. Memorandum from Virgil L. Harris, Supervisor of Intake, to Ray Roskelley, Division Chief, Special Services Division, Sacramento County Probation Department (July 2, 1981).

53. Interview with William Swank, *supra* note 17.

54. Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109.

55. 42 U.S.C.A. § 5633(10) (West Supp. 1981) (emphasis added).

56. CAL. WELF. & INST. CODE § 202 (West Supp. 1981).

Not only federal and state legislatures but also federal courts have indicated that the judicial system should encourage family harmony and non-adversary relationships. In the landmark case dealing with civil commitment of minors, *Parham v. J.R.*,⁵⁸ the Supreme Court feared that even a fact-finding hearing on whether to commit posed a danger "for significant intrusion into the parent-child relationship. Pitting the parents and child as adversaries often will be at odds with the presumption that parents act in the best interests of their child."⁵⁹ The Court feared, and wished to minimize, the impact upon all family members of a public airing of "intimate family details." Similar unfortunate results to ultimate family unity are probable if parents must press criminal charges against their offspring to be protected from violence.

Letting the Child Run Away

A San Diego social worker, Michael Posner,⁶⁰ commented that many parents with unmanageable children simply allow them to run away from home. Basically the parents throw these children out of the home.⁶¹ Some risk is inherent in this choice. Technically, the parents can be subject to charges of child neglect for failing to provide the necessities of life.⁶² Mr. Posner said, however, that unless the child is very young (presumably under ten years) it is unlikely either that the police would pursue the parents on criminal neglect charges or that the Social Services Department would attempt to file a dependency petition under section 300 of the Welfare and Institutions Code⁶³ to enable the child to get state-sponsored care.⁶⁴

The lethargy of governmental agencies stems principally from the recent cutbacks in funds for all types of social services, in-

57. *Id.*

58. 442 U.S. 584 (1979).

59. *Id.* at 610. Stating that an adversary confrontation prior to commitment might impair the ability of the parents to assist the child during hospital treatment, the Court went on to say:

Moreover, it will make [the child's] subsequent return home more difficult. These unfortunate results are especially critical with an emotionally disturbed child; they seem likely to occur in the context of an *adversary hearing in which the parents testify*. A confrontation over such intimate family relationships would distress the normal adult parents and the impact on a disturbed child almost certainly would be greater.

Id. (emphasis added).

60. Interview with Michael Posner, M.S.W., Youth Service Bureau, Pacific Beach branch, San Diego County, California (June 17, 1981).

61. *Id.*; Interview with Dorothy Dean, *supra* note 17.

62. CAL. PENAL CODE § 270 (West Supp. 1981).

63. CAL. WELF. & INST. CODE § 300 (West Supp. 1981).

64. *Id.* §§ 360, 361.

cluding services for abused and neglected children.⁶⁵ Linda Walker, Director of the Family Stress Center in San Diego County, an agency which has been counseling between 400 and 500 families per year with child abuse and related domestic violence problems, stated that county funding for the family program had been severely cut in 1981.⁶⁶ Even though families desperately needed counseling, many were being placed on waiting lists. Even families who were seeking help pursuant to a court order were forced to wait weeks for appointments with the center.⁶⁷

Additionally, the Department of Social Services' budget for child abuse investigation has been reduced so that only the most serious child abuse cases are investigated.⁶⁸ Thus, it appears that parents can allow their children to run away virtually with impunity. Nevertheless, an argument can and should be made that society has an interest in ensuring that young, and arguably disturbed, children are not set free to run away from home and live off their wits in the streets. State inaction in this situation epitomizes the system's abandonment not so much of the parents as of the children. Herbert and Helen Sacks, in a recent article outlining the current turmoil in the handling of juvenile offenders, indicate that many "are wretched, in pain worsened by family disorganization."⁶⁹ If the juvenile justice system abandons such children, it will "ensure that they will be society's victims, unprepared to survive."⁷⁰

Civil Commitment

Some children who are violent toward their parents are considered mentally ill and, consequently, hospitalized.⁷¹ In 1977, the

65. Interview with Michael Posner, *supra* note 60.

66. Telephone interview with Linda Walker, Director, Family Stress Center, National City, San Diego County, California (July 8, 1981).

67. *Id.*

68. *Id.* Ms. Walker stated that funds for child abuse programs were being cut generally and that even the County Department of Social Services had instituted a policy of investigating only the most serious child abuse cases, e.g., injuries above the waist.

69. H. Sacks & H. Sacks, *Status Offenders: Emerging Issues and New Approaches*, in *CHILD PSYCHIATRY AND THE LAW* (D. Schetky & E. Benedek ed. 1980).

70. *Id.* at 189. The National Broadcasting Company telecast a documentary on runaway children (Sept. 10, 1981) that reported that as many as 90% of runaways in New York City, male and female, may be engaging in prostitution to stay alive. C. Warren, *supra* note 14.

71. C. Warren, *supra* note 14.

California Supreme Court stressed that parents did not have an unrestricted right to place a child in a state-operated mental hospital.⁷² The court indicated that a pre-commitment hearing was necessary, at least for children aged fourteen and above. The court did not decide whether parents were free to place children aged thirteen and younger into state-operated facilities nor whether parents could still place children of any age into private mental health facilities without a hearing. Under section 6000 of the Welfare and Institutions Code⁷³ parents seem still to have that right. Nevertheless, legislation is pending⁷⁴ which, if passed, would require a pre-commitment hearing for any minor aged fourteen or older whose parent wanted to commit him to any mental health facility funded even partially by public funds. The minor would be entitled to representation by court-appointed counsel, whether or not he protested the commitment. A child would be subject to emergency commitment for a seventy-two hour period to evaluate whether he needed psychiatric treatment.⁷⁵

When a pre-commitment hearing is required, civil commitment becomes nearly as much of an adversary proceeding as assault charges. Further, the hearing runs counter to the social policy of promoting harmony among family members. It also results in the same isolation from the family unit as does detention in correctional facilities. This isolation may be counter-productive because some mental health workers believe that, if one family member appears disturbed, the entire family actually needs help.⁷⁶ Identifying one family member as "sick" and committing him means that the family as a whole never solves its problems.⁷⁷ More importantly, since the legislative trend is away from civil commitment of minors, any suggestion that this is the ideal solution for parents with abusive children is an unrealistic step backward.⁷⁸

Emancipation

In California, a minor who is aged fourteen or older can, in

72. *In re Roger S.*, 19 Cal. 3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1981).

73. CAL. WELF. & INST. CODE § 6000 (West Supp. 1981).

74. Cal. Senate Bill No. 1016 (Mar. 27, 1981).

75. CAL. WELF. & INST. CODE § 5150 (West Supp. 1981) provides in pertinent part: "When any person, as a result of mental disorder, is a danger to others" the person may be placed into 72-hour detention in a state facility for treatment and evaluation.

76. Ellis, *Volunteering Children: Parental Commitment of Minors to Mental Institutions*, 62 CALIF. L. REV. 840 (1974).

77. V. SATIR, *CONJOINT FAMILY THERAPY* (1964).

78. Michael Posner stated that in all likelihood children who formerly would have been processed as status offenders are now being committed to private mental institutions when their parents can afford the cost. Interview with Michael Posner, *supra* note 60.

some circumstances, become emancipated from his parents. Civil Code section 64⁷⁹ provides that a minor may petition the superior court for a declaration of emancipation. The court will grant the petition if 1) the minor and his parents acquiesce, 2) the child is managing his own financial affairs and has a lawful source of income, 3) the child is living apart from his parents voluntarily and with their consent, and 4) the court finds that "emancipation would not be contrary to [the child's] best interests."⁸⁰

Once the emancipation decree is issued, the minor is considered to have reached the age of majority for several legal purposes, including "the application of sections 300⁸¹ and 601 of the Welfare and Institutions Code."⁸² What this means is that the child is not subject to parental control and could not be deemed incorrigible under section 601. Correlatively, the child no longer has the right to support from his parents so the parents could not be criminally prosecuted for failing to provide for his needs, nor could the child be declared dependent under section 300.

Despite the appeal of this alternative, it is not a panacea. First, it is only available for children aged fourteen and older. Second, it is not available to any child who lacks a means of self-support. The child need not himself be a wage earner because, for example, a parent could set up a trust fund to provide an independent income source for the emancipated child.⁸³ Few parents, however, are likely to be able or willing to do so. If the emancipated child becomes indigent, he can petition for a reversal of the emancipation. A reversal re-institutes the parents' duty to care for the child.⁸⁴

A more fundamental problem is whether it is desirable public policy to emancipate a minor who is violent toward his parents before he has been exposed to therapeutic intervention. It is true that in some families the minor's only severe problem is unreasonable parents. When this child leaves the family home he is likely to become a productive member of society, without carrying his prior violence outside the domestic setting. More realistic is

79. CAL. CIV. CODE § 64 (West Supp. 1981).

80. *Id.*

81. CAL. WELF. & INST. CODE § 300 (West Supp. 1981).

82. CAL. CIV. CODE § 63(h) (West Supp. 1981).

83. Telephone interview with William McCarty, Attorney at Law, San Diego, California (June 18, 1981). Mr. McCarty specializes in juvenile law.

84. CAL. CIV. CODE § 65 (West Supp. 1981).

the prospect of a child who is a violent family member becoming a violent member of society in general.⁸⁵ In this instance, emancipation is unwise. Once the child is emancipated, society will have lost its opportunity to treat the juvenile through mandatory counseling. As Juvenile Judge Lindsay A. Arthur points out: "Children are *not* small adults. They lack experience; by definition they lack maturity. They cannot choose intelligently between options, because they do not know the options or the consequences of the options. Children should not be emancipated wholesale."⁸⁶ Most children with violent tendencies should be kept in the juvenile justice system, guided toward maturity, and taught how to make intelligent decisions. Premature emancipation is a disservice not only to potential victims of these children's violence, but also to the children themselves.

SUGGESTED SOLUTIONS

Modified Temporary Secure Detention

In *In re Ronald S.*,⁸⁷ the California Supreme Court recognized that secure detention might be appropriate for some section 601 cases. It is submitted that one such case might be when a minor is violent toward his parents. The purpose of such detention should not be to encourage abdication of parental responsibility. Instead, the detention should serve as a cooling-off period between parents and child, and should include mandatory family counseling, perhaps under threat of contempt for refusal to participate. The California courts now have some limited powers of this nature.

Under section 727 of the Welfare and Institutions Code⁸⁸ a juvenile court can order a family to participate in counseling with a juvenile, but only when the child is a ward of the court and has been released to home supervision. Because the parents often resist taking home the incorrigible child,⁸⁹ it makes sense to order counseling for the family while the child is detained, rather than only when he is released to home custody. The stresses which have caused the parental rejection could then be mitigated and family unity restored.

85. CALIFORNIA YOUTH AUTHORITY, A REVIEW OF THE LITERATURE ON THE ANTECEDENTS OF ADOLESCENT AGGRESSION AND DELINQUENCY (1977).

86. Arthur, *Status Offenders Need a Court of Last Resort*, 57 B.U.L. REV. 631, 643 (1977).

87. 69 Cal. App. 3d 866, 138 Cal. Rptr. 397 (1977).

88. CAL. WELF. & INST. CODE § 272 (West Supp. 1981).

89. See Marticorena, *Take My Child Please—A Plea for Radical Nonintervention*, 6 PEPPERDINE L. REV. 639, 644 (1979), indicating that status offenders often are detained merely because the parents refuse to take them home.

Some parents initially agree to press delinquency charges against the child so that the child will be retained temporarily in juvenile hall. Later these same parents decide the child has been punished enough by the detention and they take him home without pursuing the charges. Perhaps this procedure should be legalized, but with the caveat that the family shoulder its share of responsibility for the interactional breakdown.⁹⁰

Some forms of limited detention are now authorized in section 601 cases. For example, a runaway can be detained in a secure facility for up to seventy-two hours for the purpose of locating his parents and returning him to them.⁹¹ At this point, rather than forcing parents to return home with a violent juvenile or insisting that the parents be willing to press an assault charge before the minor legally can be detained, the legislature could provide for emergency crisis detention of the minor, coupled with crisis counseling for the family.

This would be the easiest course to take. It involves building no new facilities, for the detention could be in juvenile hall so long as the building was physically modified to separate section 601 children from section 602 children.⁹² It is, however, an unpopular suggestion politically, because the legislative trend in California, embodied in the Dixon Bill, has been to withdraw from any type of incarceration of section 601 children. This type of detention would likely be viewed as regressive and, hence, undesirable. Currently popular, in lieu of detention, are various forms of diversion.

Non-Secure Detention—Diversion

When secure detention is not required, a diversion project might be the proper approach.⁹³ For example, the goal of the Sac-

90. See Wilson, *New Concepts in Detention*, 28 Juv. JUST. 19 (1977), describing a detention program in Kansas which, in appropriate cases, combines secure detention with family counseling to facilitate family reunion.

91. CAL. WELF. & INST. CODE § 207(c)(2), (3) (West Supp. 1981).

92. *Id.* § 207(e).

93. The Sacramento County Diversion Project has been a model diversion program for the entire country. The program

began as an experiment designed to test whether juveniles charged with this kind of offense—the 601 or “pre-delinquent offense” could be handled better through short term family crisis therapy at the time of referral than through the traditional procedures of the juvenile court. The project’s objective was to demonstrate the validity of the diversion concept of delinquency prevention . . .

ramento County Diversion Project is to discourage incarceration of section 601 youths. Instead, they are encouraged to return home. The entire procedure is voluntary by all family members involved. Each person is requested to commit himself to working on problems as a group member. If feelings are too strong to permit home placement, an attempt is made to locate an alternative place for the youth to stay temporarily.⁹⁴ Sacramento County provides a seventeen-bed facility specifically for use in this type of crisis. The facility provides a cooling-off period during which volatile emotions can subside.⁹⁵

The official report on the Sacramento County Diversion Project identifies certain activities as being too serious to be handled through the diversion program.⁹⁶ These include assault, assault and battery, and assault with a deadly weapon.⁹⁷ But despite this stated prohibition, some instances of family violence are treated through the diversion project.⁹⁸ Thus, the Sacramento County Diversion Project is considered to be an excellent alternative to court processing. The only drawback is that it is not a statewide plan. Such a permanently funded statewide diversion program would be desirable not only for battered parent cases, but also for other section 601 situations where legal intervention is appropriate.⁹⁹ Further, studies show that this alternative is less expensive than court processing.¹⁰⁰ Arguably, it is even less expensive to

R. BARON & F. FEENEY, JUVENILE DIVERSION THROUGH FAMILY COUNSELING at xi (1976).

94. *Id.*

95. Letter from Ray Roskelley, Division Chief Special Service Division, County of Sacramento Probation Department (July 3, 1981).

96. R. BARON & F. FEENEY, *supra* note 93, at 5.

97. *Id.*

98. The project director indicates that if the assault

is seen as serious enough to be considered a beyond control situation but not serious enough to act on as 602, it would be referred to . . . the 601 diversion program (under 654 W&C Code) where the minor would remain in our non-secure detention facility for twenty days while ongoing counseling was accomplished. This would allow for defusing the physical situation in the home until the counseling could take effect If the program were not successful, a 601 petition could be filed to allow the Court to order placement out of the home It has been our experience that private entities are not capable fiscally to provide the same quality of programs as the public sector.

Letter from Ray Roskelley, *supra* note 95.

99. Of course, there is strong sentiment for total abolition of section 601 jurisdiction. See, e.g., Andrews & Cohn, *PINS Processing in New York: An Evaluation*, in *BEYOND CONTROL: STATUS OFFENDERS IN THE JUVENILE COURT* (L. Teitelbaum ed. 1977).

100. INST. OF JUDICIAL ADMIN. OF THE AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS PROJECT, STANDARDS RELATING TO NON-CRIMINAL BEHAVIOR 18 (tentative draft 1977), stated that diversion, such as that used in Sacramento County, could save substantial amounts of money compared with regular court proceedings.

stop processing these children altogether and wait until they are delinquents before involving the juvenile court.¹⁰¹ Then, however, the cost of early inaction is likely to catch up with the system.

Another way to divert assaultive children is through the use of youth service agencies. The Institute of Judicial Administration of the American Bar Association recommended in 1977 that legislation be passed in all states requiring "the development of community-based youth service agencies that would focus on the special problems of juveniles in the community." Among the services that should be available are family counseling, because "in many cases of alleged noncriminal misbehavior family discord is the real problem."¹⁰²

In California, Youth Service Bureaus (YSB) have been operating since 1968.¹⁰³ Unfortunately, the funding for them has been erratic.¹⁰⁴ In San Diego County, the five YSBs were most recently funded through the County Probation Department and the Department of Social Services. The bureaus provided numerous services, including individual and family counseling. Particularly in recent years, since the probation department virtually ceased filing section 601 petitions, YSBs provided necessary intervention to families.¹⁰⁵ The San Diego County Probation Department's 1980 annual report¹⁰⁶ praises the YSB. The report indicates that in 1980 2,726 persons and their families received counseling and stresses that the YSB program resulted in savings to the taxpayer.¹⁰⁷ Nevertheless, because the YSB was not a state-man-

101. Commentators who are opposed to status offense jurisdiction suggest that because there is no definable category of "pre-delinquents" the juvenile justice system should leave juvenile offenders alone until they actually commit some type of crime. Then they can be processed as delinquents. *See, e.g.*, INST. OF JUDICIAL ADMIN. OF THE AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS PROJECT, STANDARDS RELATING TO YOUTH SERVICE AGENCIES (tentative draft, 1977).

102. *Id.* at 36.

103. CAL. WELF. & INST. CODE §§ 1900-1906 (West Supp. 1981).

104. The Youth Service Bureaus set up through the legislation cited *supra* note 103 were only funded through 1971. In August 1976, state funds were allocated for eight YSBs through the Office of Criminal Justice Planning. San Diego County YSB was not part of the August 1976 funding. For a comprehensive report on the YSBs which were funded in August 1976, see CALIFORNIA YOUTH AUTHORITY, YOUTH SERVICE BUREAUS (1980).

105. The San Diego County Youth Service Bureau received 709 referrals during the period from July 1, 1980 to April 30, 1981 that would have been categorized as section 601 offenses if processed through the juvenile court system.

106. SAN DIEGO PROBATION DEP'T, ANNUAL REPORT (1980).

107. *Id.* at 13.

dated program, funding was precarious, and in July 1981 funds were withdrawn from the YSB by all San Diego County funding sources.¹⁰⁸

This represents another example of the legal system's withdrawal of all support for families in crisis. State-mandated and funded YSBs could be a reasonable alternative for families with section 601 children, especially families experiencing domestic violence. Thus, permanent funding should be explored seriously by the legislature.¹⁰⁹

Conciliation Court

It may be that the entire judicial response to families in crisis needs revision. The system adopted by the State of New York is an interesting contrast to the California approach. There the Family Court Act, passed in 1962,¹¹⁰ set up a special court to deal with all problems of families: divorce, child neglect, and all types of juvenile court proceedings. Any family member who assaults another family member is considered a "family offender" and is within the family court's jurisdiction.¹¹¹ The purpose of the family court is "not to secure a criminal conviction and punishment, but practical help for the members of the family. A family offense proceeding contemplates conciliation procedures under the Family Court Act."¹¹² Thus, an assaulted family member can obtain help from the court in a civil proceeding without having to proceed against his relative in criminal court. If criminal prosecution is appropriate, it can still be obtained, because the family court is authorized to transfer cases to the criminal court.¹¹³

A conciliation court exists in San Diego County for the purpose of assisting spouses enmeshed in family violence.¹¹⁴ In 1978 the

108. Interview with Michael Posner, *supra* note 60.

109. The California Youth Authority report on YSBs, *supra* note 104, states at 141 that the number of self-reported delinquent acts of YSB-counseled youths was not lower than the number of self-reported delinquent acts of juvenile court processed youths. The conclusion of the report is that YSB processing is neither better nor worse than juvenile court processing for reducing delinquency, although it probably reduces the stigma attached to the latter. The San Diego YSBs, however, were not included in the study. The YSB report for fiscal 1980-1981 prepared by the San Diego County Probation Department indicates that 90% of the youths counseled had not had any juvenile court petition filed against them within one year after counseling ceased. These figures include not only diverted status offenders, but also diverted "hard core" delinquents. There is a strong implication, therefore, that YSB counseling as it is carried on in San Diego County may reduce juvenile delinquency.

110. N.Y. FAM. CT. ACT (McKinney 1975).

111. N.Y. FAM. CT. ACT § 802 (McKinney 1975).

112. *Parrett v. Parrett*, 46 Misc. 2d 573, 574, 260 N.Y.S.2d 382, 383 (Fam. Ct. 1965).

113. N.Y. FAM. CT. ACT § 811 (McKinney 1975).

114. ADVISORY COMMISSION ON FAMILY LAW OF THE CALIFORNIA SENATE, FIRST

California Senate Advisory Commission on Family Law recommended to the California Senate that conciliation courts be legislatively created statewide and that "children, elderly persons and other members of the family or household be given the right, as victims, to seek the assistance of the Domestic Violence Program."¹¹⁵

This may be the best possible solution. The legislature has been struggling to deal with domestic violence piecemeal as its members come to understand better the scope of the problem through expert advice from social scientists.¹¹⁶ Enabling all victims of inter-family violence to seek conciliation without the stigma of criminal or juvenile delinquency proceedings may be the most socially acceptable and judicially responsible approach to this complex problem. At the very least, family violence should be taken seriously by lawmakers and something should be done. In the words of sociologist Barbara Star, without help the family unit "is a social institution that is destroying itself from within."¹¹⁷ The legal system should prevent such destruction.

CONCLUSION

Parents are regularly being assaulted by their children, just as other family members are being victimized by domestic violence. California juvenile law offers abused parents limited legal recourse. In an effort to protect children from being abused by the juvenile justice system itself, the legislature has left parents with unworkable or undesirable alternatives—principally criminal prosecution. Legislation is needed to ensure that families undergoing crises of domestic violence can seek and find other forms of protection and therapeutic intervention, either through state-

REPORT OF THE ADVISORY COMMISSION ON FAMILY LAW TO THE SENATE SUBCOMMITTEE ON ADMINISTRATION OF JUSTICE (1978).

115. *Id.* at 44.

116. *Id.* See generally COMMITTEE ON HUMAN RESOURCES OF THE CALIFORNIA ASSEMBLY, PUBLIC HEARING ON PERMANENT FUNDING FOR DOMESTIC VIOLENCE CENTERS (1979), which discusses domestic violence principally within the context of spousal abuse.

117. Durant, *Family Violence Unseen by Society*, L.A. Times, Apr. 22, 1979, § 1, at 3, col. 3.

mandated diversion programs, court-operated conciliation programs, or some innovative combination of the two.

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