INTRODUCTION

Willful child abuse resulting in what has been termed the battered child has received an increasing amount of attention in recent years. While the problem is not unique to modern times, its solution continues to challenge the minds of men in almost all the professions of functioning society in the United States—including medicine, law, the social sciences, education, and government. The purpose of this article is to try to achieve some perspective on the problem by analyzing significant aspects and to clarify the legal issues so as to bring them closer to resolution.

Part of the problem involves identification of the battered child; this part subsumes the problems of defining his characteristics, determining the available persons for, and their impediments to, identifying him. It also implies a need to know the frequency of occurrence of abused children and understand the causes and correlational factors which accompany them. Interrelated to identification, yet distinct, is the process of prevention and remediation through the law. In order to solve the problems and meet the issues, which the legal framework has avoided, legal reform is necessary.
IDENTIFICATION OF THE BATTERED CHILD

What Is the Battered Child?

The main problem in defining the abused child is that there are a number of ways of abusing a child and the importance may depend partly on the matter of degree or severity of the abuse. Generally, however, for matters of exposition and clarification in this article, the medical interpretation of the battered child will be used.

The medical field coined the term "battered child syndrome" to fit a particular pattern of physically correlated symptoms. The syndrome is relatively limited to severe physical injuries, although a range of possible symptoms is broad and excludes the more nebulous kinds of abuse which fall into areas of mental, social, and emotional development. A 1963 cumulative report of 662 dif-

1. While "[m]any children are deprived of sufficient food, clothing, shelter and parental guidance . . ." and are injured due to "involuntary neglect, poverty, and necessitous circumstances . . ." the unintentional neglect by a parent will not be included in this article. California Legislative Approach to Problems of Willful Child Abuse, 54 CALIF. L. REV. 1805 (1966) [hereinafter cited as California Approach].

2. Identification of the abused child is tempered by awareness of the fact that children may suffer physical mars, bruises, and scratches due neither to parental neglect nor intent, and at any one time may coincidentally show a variety of types of physical marks (e.g., a black eye, cut lip, bruised ear, scratches, and diaper rash burns), even though their parents may be loving, concerned, and reasonably careful.


4. Although the social and emotional growth of children may be affected by the rearing techniques of their parents, arguments in favor of one over another type of parental rearing technique are not discussed in that the state of psychological knowledge concerning their effects is such that prediction is on a probabilistic standard and not absolutely determinable. Cf. R. Sears, E. Maccoby & H. Levin, Patterns of Child Rearing (1957) for a study of the effects of different techniques on the personality development of children.

5. Although a child's mental and emotional development may suffer when the child is an emotional scapegoat of the family (i.e., belittled, de-
ferent cases nationwide described types of injuries which were in-
volved.

The majority of battered children were marred by various sizes
and forms of bruises and contusions, such as welts, swollen limbs,
split lips, black eyes, and lost teeth. One child lost an eye.

Many had broken bones, both simple and compound fractures;
arms and legs were broken, and ribs were fractured. Having more
than one fracture was common, and thirty broken bones were
found in the small body of one five-month-old child.

The internal and head injuries were particularly grim and ac-
counted for a great many of the fatalities. In this group, damage
to internal organs, such as ruptured livers, spleens, and lungs
were found. Concussions or skull fractures with brain hemorrhage
and brain damage were frequently diagnosed.

The types of abuse were numerous and presented awesome and
shocking evidence of the ingenuity and inventiveness of man. Most
injuries resulted from beatings with various kinds of implements
and instruments. The hairbrush was used often but did not have
as deadly an impact as other implements, such as bare fists, straps,
electric cords, sticks, and bottles.8

ried, scorned, but not physically injured), this type of situation has not
been included in state reporting laws of child abuse. CAL. PEN. CODE 
§ 11161.5 (West Cum. Supp. 1968). However, CAL. PEN. CODE § 273a (West 
Cum. Supp. 1968) makes the infliction of unjustifiable mental suffering on 
a child a crime. Cf., California Approach, supra note 1, at 1812, 1815, for 
a discussion of the inclusion of mental suffering in the ambit of reporting 
statutes in California.

Part of the problem is that the psychological effects of such abuse are
neither as understandable nor as overtly observable as physical ones and
must be measured by a standardized examining device in order to be de-
tected. Detection may also be made by the examination of a trained ob-
server such as a psychiatrist or psychologist rather than by the eye of a
layman or reasonably prudent man; this is true even in light of the every-
day manner of describing problematic individuals in terms of their family
backgrounds, emotional climates, and environments. From a legal frame of
reference, valid objections would be made to such a basis for a charge of
abuse on the grounds of policy considerations, that restrictions on types of
parental behavior would extend beyond the scope of possible control of
the court for enforcement to say nothing of the need to consider the legis-
lative intent of the existing laws.

6. CAL. WELF. & INST'N CODE § 18250 (West 1966) states that “[t]he
board of supervisors of any county may establish such programs as are
deemed necessary to provide protective services for children, so as to ensure
that the rights or physical, mental, or moral welfare of children are not
violated or threatened by their present circumstances or environment.”

7. V. DEFRANCIS, CHILD ABUSE—PREVIEW OF A NATIONWIDE SURVEY (1963)
[hereinafter cited as DEFRANCIS].

8. Other implements which were used equally effectively included tele-
vision aerials, ropes, rubber hoses, fan belts, wooden spoons, pool cues,
The children's extremities, hands, arms, and feet, had often been burned in open flames such as from gas burners or cigarettes, electric irons, or hot pokers. Others suffered scaldings from hot liquids being thrown over them or from being dipped into hot liquids. Strangulations and suffocations of some children were caused by pillows held over their mouths or plastic bags thrown over their heads. Many were drowned in bathtubs, one child was buried alive, and another had pepper forced down his throat.

Children had also been stabbed, bitten, shot, subjected to electric shock, thrown violently to the floor or against a wall, and stamped on.\(^9\)

Dr. John Caffey became aware of the problem in 1946 when he reported the coincidence of long bone fractures and subdural hematomas\(^10\) and noted that when a reasonable history or explanation of the trauma\(^11\) was absent, many of the cases raised the question of intentional ill treatment.\(^12\) In 1962 Dr. Charles Kempe and others published a study based on reports of 71 hospitals and 77 district attorneys which established guidelines for the diagnosis of the battered child syndrome.\(^13\)

The syndrome should be considered in any child exhibiting evidence of possible trauma or neglect (fracture of any bone, subdural hematoma, multiple soft tissue injuries, poor skin hygiene, or malnutrition) or where there is a marked discrepancy between the clinical findings and the historical data as supplied by the parents. In cases where a history of specific injury is not available, or in any child who dies suddenly, roentgenograms\(^14\) of the entire skeleton should be obtained in order to ascertain the presence of characteristic multiple bony lesions in various stages of healing.\(^15\)

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broom handles, baseball bats, chair legs, a sculling oar, street and heavy work shoes.

9. DeFrancis, supra note 7, at 5-7.

10. A subdural hematoma is a tumor or swelling caused by a collection of blood situated beneath the outermost of the three coverings of the brain and spinal cord. B.S. Maloy, The Simplified Medical Dictionary for Lawyers 279, 551 (2d ed. 1951) [hereinafter cited as Medical Dictionary].

11. A trauma is medically defined as a wound or injury. Dorland's Illustrated Medical Dictionary 1605 (24th ed. 1965).


15. Kempe, supra note 3, at 17.
The doctor's diagnosis of child abuse involves analyzing several observations. Probably the most obvious one to the physician is that the parents cannot give a suitable or plausible explanation for the cause of the child's injuries. Although the cause is probably difficult to determine on the basis of the clinical symptoms alone, the occurrence of an aggregate of physical symptoms and problems in one child would be expected to arouse the physician's interest concerning possible abuse. The use of x-rays to analyze the condition of the child's limbs may also aid the physician's diagnosis, as the abused child has often been twisted and jerked in such a manner as to break his bones.

Problem of Identifying the Battered Child—By Whom and Why Not?

Given the recognition by the medical field of the problem, one might assume that identifying the severely battered child so as to alleviate his problems would be a relatively simple task, which would be assumed willingly by physicians. University of Minnesota Professor of Law Alan H. McCoid has explained the physician's role in the following manner.

The physician more than any other individual is able to determine whether the child's injuries are consistent with the parent's recital of a history of nontraumatic events or of minor 'accidental' injury. It is the physician who is best able to discover the evidence of multiple injuries in various stages of healing which have come to be recognized as 'signs' of the battered child syndrome, or the 'maltreatment syndrome' and to emphasize the role of the medical practitioner in its detection may explain why legislators have looked to the medical profession as the class most likely to make disclosures of child abuse.

Physicians actually have been very reluctant to diagnose a physically abused child, partly because the syndrome is generally, rather than specifically, defined in terms of symptoms, and partly

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18. Id. at 927.
19. McCoid, The Battered Child and Other Assaults Upon the Family: Part One, 50 Minn. L. Rev. 1, 28 (1965) [hereinafter cited as McCoid].
20. I.e., the syndrome is not defined in terms of which bones are broken, the number of bones broken, the sizes and number of bruises, or other kinds of abuse. Rather, it is defined in terms of the total condition of the child (e.g., whether there are a number of injuries in varying states of healing, including any number of types of symptoms from scratches to subdural hematomas) plus the lack of a suitable explanation for the injuries by the parent.
because the physician has been professionally trained to be relatively certain before he labels the cause of the symptoms. He is seldom willing to extend his professional expertise to an unfamiliar area, that involving a judgment of whether or not the child fits the battered child syndrome. While he may be confident, for example, that the child has an arm broken in five or six places and that this diagnosis indicates the proper treatment (for example, bandaging, operating), he is less willing to judge the cause of the broken arm. Though the doctor may assume a traumatic origin of the injury, he often does not define the source of the trauma and prefers to concentrate upon the physical condition of the child.21

Also, the physician's role is partly to diagnose and prescribe treatment so as to heal the injury or disease. He cannot be certain that his diagnosis (that is, that the child is battered) will benefit the child. While one might conceptualize the syndrome as a disease with etiological factors and alternative solutions or treatments varying in effectiveness with the individual, the difficulty is that the etiological factors are not biological or physiological but more psychological in that another person with motives unfamiliar to the physician has inflicted the injury (s). This is more a problem for a psychologist or psychiatrist, lawyer and judge. The doctor may not be willing to extend his frame of reference to these factors when the immediate and imminent problem is the child's physical health; this may not be a conscious process but rather a matter of professional training for a specific role which does not extend to making professional judgments outside his area of training, knowledge, and experience.

Assuming that the doctor considers the possibility of diagnosing the child's problems as being due to battering, unlike his diagnosis of other problems which are medical, he has no direct control over the treatment of the cause, presumably the parent of the child. In comparison to his use of drugs and medication for the treatment of other medical problems, he often does not know what the treatment is. If the physician believes that the ramifications of such a diagnosis lie within the legal and judicial realm, he is not clear what the effects on the parent and child will be and may be even less sure that the effects will benefit his patient the child.

Also, some physicians have been reluctant to diagnose child abuse cases due to their unwillingness to believe that parents or others in loco parentis would have intended to hurt the child and their apparent refusal to assume responsibility for interrogation or investigation. The usual orientation of physicians to identify and sympathize with parents is contrary to a hostile, critical, questioning approach. If a physician considers the possibility of battering, he often does not know how to resolve the conflict between such opposing attitudes. Others have taken the view that the physician's responsibility is to his patient the child, not the parent, and feel that analysis of the cause would only be a logical extension of the physician's obligation to his patient.

The medical practitioner is also bound by an ethical principle of confidentiality to disclose no medical confidences or secrets in order to enable him to make a correct diagnosis and to treat his patient "safely and efficaciously." A supporting argument is that any loss of confidentiality will deter parents from bringing their children to doctors for aid, while the opposing one is that a disclosure by a medical doctor will provide the abused child patient with increased protection. This is a serious matter, since the child may be placed in equally great danger by failure to both obtain medical care for immediate injuries and prevent potential future injury. The problem is mostly one of overcoming the individual physician's feelings against informing, as the legal recognition of a physician-patient testimonial privilege or the professional ethics of the medical field do not preclude the physician from making a report to the legal authorities of suspected child abuse, a report not concerning his patient but a third party.

Another reason a physician may not report his suspicions is that he may fear civil or criminal responsibility or liability for making an erroneous report even though he is fairly assured of being able to successfully defend against liability. He may also hold an un-

24. McCoid, supra note 19, at 32-35.
26. McCoid, supra note 19, at 36-37.
27. Id. at 41.
28. Id. at 37, 39-41.
defined fear of legal involvement with investigating police or welfare authorities,\(^{29}\) which hardly seems reasonable in light of the probable ill-effects for the child of non-disclosure but may not seem completely unreasonable when considered in terms of the probable loss of the physician’s valuable time, which he could otherwise spend ministering directly to the medical needs of other patients.

While medical practitioners may be relatively well equipped to discover, identify, and diagnose child abuse cases, at least in terms of the symptoms of physical maltreatment and resultant injury,\(^{30}\) other members of the citizenry have opportunities to learn of the abused child and have not hesitated to report their suspicions. These include law enforcement officers, social workers, school teachers, counselors and lawyers engaged in dealing with family problems; they have tended to fulfill their moral and/or professional obligations to disclose information or start the remediation processes of government agencies to assist the child whenever they have learned of an abused child situation.\(^{31}\)

Although reporting laws will be discussed in a separate section, it is appropriate to mention at this point that the American Medical Association feels that, regardless of the optimal position the physician may hold for identification of child abuse situations, the legal duty to report such situations should not fall exclusively on the physician but rather also equally on other members of the community.

This is a social problem in which the physician plays but a part. Visiting nurses, social workers, school teachers and authorities, lawyers, marriage and guidance counselors, and others frequently learn of cases before medical care is demanded or received. To wait until the child requires medical attention is too late. To compel reporting by the physician alone may single him out unwisely. Knowing of this requirement, the parent or guardian may, for his own protection, put off seeking medical care.\(^{32}\)

\(^{29}\) Id. at 37.


\(^{32}\) 188 J.A.M.A. 386 (1964)
A report was made in 1960 by Mr. Edgar J. Merrill of the Lawrence-Lowell District of the Massachusetts Society for the Prevention of Cruelty to Children. The report was based on a study of over 100 cases involving 200 children referred to the Massachusetts Society. Of the reporting sources, relatives and law enforcement authorities each had made approximately 23-24 percent of the referrals, and while physicians had seen about 30 percent of the cases, they had referred only 9 percent of them. It thus might appear that medical practitioners were reluctant to report and diagnose the battered child syndrome, while other members of the citizenry were more willing to report their suspicions. Interpretation of this statistic must be made carefully, however, as the physicians who had seen the 30 percent may have made a professional judgment that an official report would not aid the 21 percent of children whom they did not report. At the time of the report the Massachusetts legislature had not enacted a reporting statute for physicians and thus what reports they made were essentially voluntary, lacked legal sanction and may have provoked fears of possible liability.

**Frequency of Occurrence of the Battered Child Syndrome**

The incidence of the battered child problem is somewhat indicative of the significance of the problem today. The statistics which are available must be interpreted in light of the above discussion in that a reluctance to recognize and report such cases may tend to make the available statistics lower than what they would be if there were better standards for or fewer obstacles to overcome in reporting suspected cases. Thus one may infer that the available statistics on child abuse have not been complete. The

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33. Bryant, Billingsley, Kerry, Leefman, Merrill, Senecal & Walsh, *Physical Abuse of Children—An Agency Study*, 42 CHILD WELFARE 125, 129 (1963) [hereinafter cited as Bryant].

34. In some states the power of discretion to report has been statutorily granted to physicians. E.g., CAL. PEN. CODE § 11161.5 (West 1963), did not require the physician to report “if in his opinion it would not be consistent with the health, care or treatment of the minor;” but as amended, (West Cum. Supp. 1968), the physician is no longer exempted on this basis; MASS. ANN. LAWS ch. 119, § 39A (1969) (originally enacted June 15, 1964, effective 90 days thereafter) provides that physicians or medical officers who have reasonable cause to believe that a child whom they have examined or treated is “suffering from serious physical injury or abuse inflicted by a parent or other person responsible for the care of such child shall report such injury or abuse . . . .” The Massachusetts law thus did not have such an exemption clause.


36. If complete statistics were available, the maltreatment of children could be a more frequent cause of death than leukemia, cystic fibrosis.
numbers have not been low, however.

Perhaps the more telling fact about the problem than the numerical figures of frequency is the severity with which it occurs. A battered child is not reported unless his life is endangered. Children who may be properly classified in the syndrome and are returned to their parents following medical or hospital treatment are seldom returned to a less abusing environment, often required later medical care and suffer repeated abuse. It has been noted also that children who are brought into court for two hearings seldom survive to a third.

What Are the Age and Familial Characteristics Associated with the Battered Child Syndrome?

A number of characteristics of the battered child have been observed by those who have studied the syndrome. Usually only
one child in a family suffers abuse. Battered children tend to be young and to suffer their battering at the hands of their parents. One study indicated that the majority are less than one year old, and another found that only ten percent of the abused children surveyed were ten years old and the majority were under age four. Of the children who died, over 80 percent were under age four while a majority were under age two.

Race, cultural background and religion have not been found to be correlated with child abuse. Although it has been found to occur more predominantly with low income families, the problem has not been found to be restricted to any particular socio-economic level. A study in Illinois found that 19 abused children had parents with an annual income of over $7000, 121 (42.3 percent) had parents with an income range of $4000-7000 a year, and 146 (51.1 percent) had families with less than $4000 a year. The greater preponderance of low income families may, however, be due to a possible difference in physician-patient relationships such that the physician of the higher income family may be less inclined to formally report suspected child abuse in order to maintain his clientele, and for other reasons aforementioned, while the doctor of the lower income family may not feel the same fear of loss of clientele or intra-social level reprobation for his lack of confidentiality.

Although one study found that abused children were characterized by similar behavioral patterns which tend to provoke battering from their parents, most research studies have tended to concentrate on observing and classifying the psychological characteristics of their abusers. The underlying causes of the abuser's characteristics are not clear, although some abusive parents were abused children. Four types of individuals who batter their chil-

41. California Approach, supra note 1, at 1806.
42. The Abused Child, supra note 22, at 138.
43. Bryant, supra note 33, at 127 (in 86 percent of cases the abusing adults were parents of the child).
44. Gwinn, supra note 17, at 927.
45. DeFRANCIS, supra note 7, at 8.
46. California Approach, supra note 1, at 1806.
47. The Abused Child, supra note 22, at 138-40.
48. DeFRANCIS, supra note 7, at 5-7.
49. From the States Legislation and Litigation, 75 J. AM. DENTAL ASS'N 1081-82 (1967).
50. See Silver, supra note 23, at 809, 812, 813, for evidence that the abused child may behave so as to invite aggressiveness from others and be hurt.
51. Id. at 812, FONTANA, supra note 16, at 18-19; Kempe, supra note 3, at 18; Bryant, supra note 33, at 127.
Children have been identified. One type included physically disabled fathers whose frustrations led them to maintain rigid discipline with rapid, severe punishment. Another category was of passive, dependent, and immature parents. A third group was of individuals who were continually hostile and aggressive, whose attributes stemmed from internal conflicts and led to physical expressions of violence on the child. Another type was composed of parents who were compulsive, rigid, and lacking in warmth toward their children.

Beaters of children have been considered to be either unstable and emotionally immature or so self-centered that they view the child as a personal handicap, as well as being mentally ill. Severe child injuries have also been attributed to parental alcoholism, indifference, irresponsibility and immaturity which was manifested in poorly controlled aggressive behavior. The study by Dr. Charles Kempe and others in 1962 concluded that the parents were immature, impulsive, egocentric, hypersensitive, and overly reactive with poorly controlled aggression, and appeared to have a defective ability to control aggressive impulses.

Another study also indicated that the families of battered children tended to be lacking in group and community integration and to be in a state of marital discord, of which only one cause was that of pre-marital conception in slightly less than fifty percent of the cases. In another study the victim of abuse was found to be usually the youngest child in the family, perhaps because the child was an unwanted addition to the family.

The conclusion may be drawn, therefore, that the abuser tends to suffer from emotional pressures which are not directly related to the child himself, focuses his own general feelings of frustration and anger on the one child, and expresses his emotions through an immature and uncontrolled display of physical abuse of the child.

52. Bryant, supra note 33, at 127-28.
53. Boardman, supra note 38, at 47.
54. DeFrancis, supra note 7, at 5-7.
56. Kempe, supra note 3, at 18.
57. Bryant, supra note 33, at 127.
58. Cameron, supra note 55, at 14.
59. Boardman, supra note 38, at 45.
There have also been a few indications that, if the battered child survives his physically maligning environment, he may become a somewhat unsocialized member of the community. As already noted, the battered child may become a battering parent. There are also indications from studies with small samples that he may become a juvenile delinquent or criminal as an adult. From the findings of a larger study of juvenile delinquency, the battered child has been similarly hypothesized as having a predisposition for delinquency. The parents of delinquents tended to employ erratic disciplinary techniques and to be more physically punishing and over-strict than parents of non-delinquents. Whether or not these findings may lead to the inference that the battered child tends to become a juvenile delinquent is questionable, since the study was not an experimental one employing control groups and focused on the delinquent rather than the battered child. (That is, did the parental punishment cause the delinquency, did the delinquency provoke the erratic and severe parental behavior, or does parental punishment influence how the child behaves outside the home?) Because the amount of research data is limited, the conclusion must only be drawn that while child abuse may be an antecedent factor in the history of the individual who later displays antisocial conduct, it is not necessarily the causal factor in criminality.

**THE LAWS**

*Theories of Regulation*

Before attempting to review the existing kinds of legislation and their objectives concerning the battered child, it is necessary to first consider the theories of regulation upon which the laws are based. The principle that a parent may discipline his child by physical punishment is based on common law heritage. In the United

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60. A study of seven boys who had made murderous assaults and one who had committed murder revealed that three had been regularly beaten harshly and the others had probably suffered similar beatings. Easson & Steinliber, *Murderous Aggression by Children and Adolescents*, 4 Arch. Gen. Psychiatry 27, 29-32 (1961).


64. But see Shepherd, supra note 63, at 189 & n.46, for support of the conclusion that a causal relationship exists between child abuse and subsequent conduct by the battered child.

States the courts have taken two different approaches with respect to the limits of parental discipline. The minority and older, subjective approach provides that the parent, or one in loco parentis, is the judge as to the degree of punishment, and punishment which does not result in disfigurement or permanent injury, or is not inflicted maliciously, is reasonable. A parent or parental substitute is not liable for the use of reasonable force which might otherwise be considered an assault and battery if the parental relationship did not exist. This older approach takes the position that unless permanent injury resulted from the defendant’s act or unless the act was done maliciously, the defendant is within the protection of the in loco parentis rule. If the punishment is for an improper purpose or improper in itself, the rule will not apply.

The rationale of this position emphasizes the significance of the infliction of permanent injury, as averse to pain, and is stated in an 1837 North Carolina opinion in State v. Pendergrass. The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may seriously endanger life, limbs or health, or shall disfigure the child, or cause any other permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent

66. Nicholas v. State, 32 Ala. App. 574, 575, 28 So. 2d 422, 425 (1946) (Appellate court upheld conviction of assault and battery on defendant’s stepson for defendant’s inflicting “immoderate punishment” which was done with legal malice and wicked motive, and inflicted permanent injury); State v. Jones, 95 N.C. 588, 592, 59 Am. Rep. 282, 286 (1886) (Citing State v. Pendergrass, infra note 70, the North Carolina Supreme Court reversed the jury’s finding of assault and battery by the father on his 16 year-old daughter, and stated that the test “of criminal responsibility is the infliction of permanent injury by means of the administered punishment, or that it proceeded from malice, and was not in the exercise of a corrective authority.”) The Jones case is an old case but one of the landmark cases, and more recent cases cite to it.


68. State v. Jones, supra note 66, at 592, 59 Am. Rep. at 286; Dean v. State, 89 Ala. 46, 8 So. 38 (1890) (conviction of man in loco parentis to six-year old child overturned on basis that the rule for criminal liability for immoderate chastisement is that there must be legal malice or wicked motive or the infliction of permanent injury, and not a showing of unreasonable or immoderate severity.) This old case is one of the landmark cases for this premise and more recent cases cite to it.

69. People v. Jones, supra note 67 (conviction of murder by person in loco parentis of three-year-old boy upheld).

70. 19 N.C. 348 (1837). This old case is a landmark case for this rationale and more recent cases cite to it.
with, the purpose for which correction is authorized. But any correction, however severe, which produces temporary pain only, and no permanent ill, cannot be so pronounced, since it may have been necessary for the reformation of the child, and does not injuriously affect its future welfare.\textsuperscript{71}

Although Pendergrass involved an assault and battery charge against a teacher, it was decided on the ground that the teacher's power to correct pupils was analogous to the parent's privilege to discipline children. The court said ascertaining whether the teacher's intent was to discipline is an important factor in determining whether there has been an abuse of discretion.\textsuperscript{72}

When the correction administered, [sic] is not in itself immoderate, and therefore beyond the authority of the teacher, its legality or illegality must depend entirely . . . on the quo animo with which it was administered. Within the sphere of his authority, the master is the judge when correction is required, and of the degree of correction necessary; and like all others intrusted with a discretion he cannot be made penal responsible for error of judgment, but only for wickedness of purpose . . . . His judgment must be presumed correct, because he is the judge, and also because of the difficulty of proving the offence, or accumulation of offences, that called for correction; of showing the peculiar temperament, disposition, and habits of the individual corrected; and of exhibiting the various milder means, that may have been ineffectually used, before correction was resorted to.\textsuperscript{73}

The rule in Pendergrass imposed strict liability on teachers or parents when permanent injury resulted from use of force which the actor in good faith believed would inflict only a moderate amount of pain.

The majority or objective view\textsuperscript{74} of the limits of parental discipline is that a parent has

\textbf{... a right to punish a child within the bounds of moderation and reason, so long as he does it for the welfare of the child; but that if he exceeds due moderation, he becomes criminally liable.}\textsuperscript{75}

\textsuperscript{71. Id. at 349-50.}
\textsuperscript{72. Id. at 349}
\textsuperscript{73. Id. at 350.}
\textsuperscript{74. W. PROSSER, THE LAW OF TORTS § 27, at 140 (3d ed. 1964), [hereinafter cited as PROSSER]. (citing criminal cases; CAL. PEN. CODE § 273a (West Cum. Supp. 1968).}
\textsuperscript{75. Carpenter v. Commonwealth, 186 Va. 851, 862, 863, 44 S.E.2d 419, 423 (1947) (the court stated that a jury determines what is reasonable or beyond the bounds of moderation); Steber v. Norris, 188 Wis. 366, 368, 206 N.W. 173, 175 (1925) (eleven-year-old boy unreasonably punished in view of his conduct, the nature of the misconduct, the nature of the instrument used for punishment, and the marks or wounds left on his body); People v. Curtiss, 116 Cal. App. 771, 782, 300 P. 801, 805 (App. Dept Super. Ct. 1931) (a teacher may not inflict punishment at all under unwarrantable circumstances or excessive punishment under warrantable circumstances, the test of reasonableness applying both to punishment of the child and the
This approach holds the defendant to an "external standard of what is reasonable under the circumstances," and imposes liability for willfully, wrongfully, unlawfully, knowingly, recklessly, or negligently using excessive force on a child. The jury decides what is reasonable under the circumstances.

An Ohio court has singularly adopted a middle ground between the subjective and objective approaches by differentiating the case in terms of whether a teacher and student or a parent and child are involved. The basis for the distinction by the court is that the teacher-pupil relationship is relatively objective in that the teacher performs in a "quasi-judicial capacity which requires a maximum of discretion" and should be given the benefit of a subjective or good faith standard. The parent-child relationship is inherently subjective and often involves hatreds and strong emotions. It therefore follows that an objective or reasonable man standard should be applied.

question of the degree of punishment). These old cases are landmark cases for this view and more recent cases cite to them.

76. PROSSER, supra note 74, § 27, at 140. See Model Penal Code § 3.08, Comment at 72 (Tent. Draft No. 8, 1958) (relating to the use of force by persons with responsibility for the care, discipline, or safety of others, the force not being designed to cause death, serious bodily harm, disfigurement, extreme pain or mental distress or gross degradation).

77. State v. Hunt, 2 Ariz. App. 6, 406 P.2d 208 (1965) (the use of immoderate or excessive physical violence for correction is aggravated assault); Carpenter v. Commonwealth, 186 Va. 851, 44 S.E.2d 419 (1947) (parent may punish but cannot exercise malevolence or the exhibition of uncontrolled passion); Steber v. Norris, supra note 75, at 368, 206 N.W. at 175.

78. People v. Curtiss, 116 Cal. App. 771, 782, 300 P. 801, 805 (App. Dep't Super. Ct. 1931) (magistrate sitting without a jury); State v. Straight, 136 Mont. 255, 268, 347 P.2d 482, 490 (1959) (Montana Supreme Court affirmed that it is up to the jury to determine whether the parent, guardian, master or teacher used force or violence which is reasonable in matter and moderate in degree); 1 F. WHARTON, CRIMINAL LAW AND PROCEDURE § 259 (1957).

79. Ohio has adopted the rule established in State v. Pendergrass, supra note 70, at 367, 206 N.W. at 175.

80. State v. Lutz, 65 Ohio L. Abstr. 402, 407, 113 N.E.2d 757, 760 (C.P. 1953) (teacher-pupil case differentiated from parent-child case on the basis that the school teacher rarely punishes one child for the ill-will or malice caused by the misdeeds of another, and "[t]he quasi-judicial capacity of the school teacher punisher is therefore more impersonal and more impartial than that of a parent or step-parent punisher.") But see State v. Straight, supra note 78, at 263, 347 P.2d at 490 (expressly disapproving of the granting of a quasi-judicial capacity and unlimited discretion regarding punishment of the child by one standing in loco parentis).

81. State v. Lutz, supra note 80, at 407, 113 N.E.2d at 760.
The principle, that the interests of the state as *parens patriae* are superior to the rights of the parents or those in *loco parentis*, has not been accepted in the United States democratic system because it connotes totalitarianism, and has consequently been balanced in the courts by the constitutional rights of the parents. In modern American society the extension of the interests of the State have not been used as a device for aggrandizement of the State but rather as a shield for the protection of the child.

**Criminal Law**

Criminal sanctions against child abuse are probably unnecessary as the state penal codes which cover homicide and general assault and battery cases apply to a parent's or caretaker's bringing about the death of a child or inflicting physical harm upon a child. Nevertheless, over thirty-five states have statutes covering cruelty to children. The range of offenses include abandonment, torture, and certain other forms of maltreatment.

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82. *In re Hudson*, 13 Wash. 2d 673, 126 P.2d 765 (1942) (the right of the state to exercise guardianship over a child is based on the common law heritage and does not depend on a statute asserting that power). The rule of Hudson followed in many subsequent cases was the rule of law well before Hudson. Prior cases such as Commonwealth v. Fisher, 213 Pa. 43, 48, 62 A. 198 (1905) stand for the same premise. All such authority is said to stem from the English case of Eyre v. Shaftsbury, 2 P. Wms. 1034, 24 Eng. Rep. 659 (Ch. 1722) from which the *parens patriae* principle is derived.

83. *In re Tuttendario*, 21 Pa. Dist. 561, 563 (1911) (case involving a boy of seven suffering from rickets and in danger of being crippled for life but denied the necessary operation by his parents; the court ruled that the defective judgment [i.e., based on fear of the unknown effects of the operation] of the parents did not provide a good reason for depriving them of their guardianship). This old case is one of the landmark cases for this premise and more recent cases cite to it.

deprivation of the necessities of life, such as clothing, food, or medicine, infliction of unjustifiable physical pain or mental suffering, impairment of morals, or injury in any other manner. The penalties include imprisonment and/or the imposition of a fine. While some states cover the acts by a parent, or one in loco parentis, the trend in most states is to allow any person to be charged with the crime of cruelty to children.

Inaction as well as action is frequently an offense. In a 1965 California case, People v. Beaugez, the parents of a five month old infant were indicted under a statute which made it a crime to willfully cause or permit a child to be placed in a situation which endangers its life or limb or is likely to injure its health. The case involved problems of determining beyond a reasonable doubt that the parents had inflicted the child’s injuries, of establishing how the injuries had been caused and of determining the actual extent of the injuries. Yet the appellate court affirmed the conviction of the parents and interpreted the statute in terms of the basic social need which it addressed. The court felt that the type of parental conduct from which children were being protected by the statute could not be precisely defined, but that it included directly and indirectly applied willful mistreatment. Indirect mistreatment was given particular significance because it is often the only sort of child abuse which can be proved; the usual occurrence of child abuse in the privacy of the home prevents proving that one person is directly responsible. Thus responsibility for the protection of children is placed on those indirectly responsible—those who intentionally allow dangerous situations to imperil children. In Beaugez the young age, the parental custody and care, the injuries and their inadequate explanation permitted the jury to draw the

85. E.g., Md. ANN. CODE art. 27, § 11A(a) (1987).
inference that each parent had been indirectly responsible for, and
guilty of, allowing a situation of reasonably foreseeable danger to the
child to exist. A reasonably prudent parent would not have al-
lowed the child's safety to remain endangered.

Other types of criminal provisions designed to protect children
have been criticized. The fact that criminal statutes are applica-
table to child abuse cases is not sufficient reason for prosecutors to
employ them in view of the problems which will be discussed.
Their vagueness and imprecise formulations may raise constitu-
tional questions. The Children's Bureau, in its Standards for Spe-
cialized Courts Dealing with Children, has favored omitting such
statutes and has suggested that there be no statutory crime of con-
tributing to the neglect of a minor. Because most such statutes
cover an infinitely wide spectrum of types of adult behavior and
are broadly phrased, (and therefore fail to provide a clear defini-
tion of neglect), they are more than sufficient in providing adequate
protection for children. The Children's Bureau's recommendation
is that a statute relating to children clearly should define the crime
and relate the misbehavior to an act which is a violation of law or
an omission to perform a duty required by law.

The criminal prosecution of parents for abuse may impeded the
continuance of the family's life. Placing the parent in prison may
needlessly separate child and parent and make the child's home
life more insecure and unstable. If fines are imposed, the family's
resources for other purposes and needs are reduced and may im-
pose greater hardships on the child than the parent. Condemnation
of a criminal conviction usually leads to social ostracism and an
impaired community reputation. Probation or a suspended sen-
tence for bringing changes within a family so as to permit a cer-
tain amount of stability to the home may be a more appropriate
alternative.

While leaving a child in the home may not always be desirable,
separating the child and parent by criminal processes is not neces-
sarily more desirable. Social services are not always made avail-
able following conviction. Prosecution is likely to end any chance
of improving the child's home life since parents usually resent the
proceeding and develop greater hostility toward the child. These
undesirable and socially alienating features of prosecution of the
parents may produce such intense feelings of hostility that the pos-

90. Legal Framework, supra note 66, at 688-91.
91. Children's Bureau, U.S. Dep't of Health, Educ. & Welfare, Standards
for Specialized Courts Dealing with Children 35 (1954) [hereinafter cited
as Children’s Bureau].
sibility of a social worker or probation officer conducting casework and working with and effecting positive changes in the parent-child relationship becomes non-existent. Further, fear of prosecution may only deter abusing parents from seeking medical assistance for their battered child. Other impediments to meeting the needs of the child are posed by the criminal rules of evidence and the typical postponements of court action which often leave the child in the custody of his abuser. Thus criminal sanctions are not the solution to child abuse problems.

**Juvenile Court Acts**

Juvenile courts have jurisdiction over neglected children in almost every state, and battered children fall within the category of neglected children as defined by the relevant juvenile court act. The National Probation and Parole Association offered the model Standard Juvenile Court Act, stating that the juvenile court has jurisdiction over any child "whose environment is injurious to his welfare."

Many states have suitable provisions to cover emergency situations which may arise during weekends and in the evenings when judges are not usually available so that immediate action can be taken.

New York handles emergency cases by authorizing a peace officer to remove a child from his home without an order and without parental consent if the child's life or health is in imminent dan-

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92. E.g., in People v. Forbs, 62 Cal. 2d 847, 402 P.2d 825, 44 Cal. Rptr. 753 (1965), the defendant mother had not been advised of her right to remain silent or her right to counsel when a statement had been taken after the investigation reached the accusatory state, and a conviction of voluntary manslaughter was overturned.

93. See Legal Framework, supra note 86, at 692-3 n.97, for a lengthy account of some of the difficulties which one prosecutor faced. After numerous adjournments, the date for trial arrived, the judges granted a motion to transfer the case to the juvenile term of the Family Court, in which the case was finally heard, the mother admitted the allegations, and only then was the child taken from her.

94. E.g., CAL. WELF. & INST'N CODE § 600 (West 1970), places a person within the jurisdiction of the juvenile court if he is under twenty-one and his home is an unfit place because of the cruelty, neglect, or depravity of his parents, guardian, or other person in loco parentis.

95. STANDARD JUVENILE COURT ACT § 8(2)(b) (1959).
ger if he continues to live in the home, or there is not enough time to apply for a court order.\textsuperscript{96}

In California a police or probation officer has the power to remove a child from the custody of the parents if he has reasonable cause to suspect the child is being abused.\textsuperscript{97} The California procedure has been considered suitable in serious abuse cases where it is imperative to remove the child immediately and indefinitely from his parent's control.\textsuperscript{98} Yet it is a drastic procedure and the probation officer often has other alternatives, which are discretionary and determined after his investigation of a case of suspected child abuse.\textsuperscript{99} The alternatives include the supervision of parental treatment of children\textsuperscript{100} and the authorization of medical services.\textsuperscript{101}

Problems arise, however, due to the necessity for early discovery of abuse cases and the inappropriateness of the probation department as the primary agency for handling these cases. Since willful abuse often results in serious injury or death and tends to be repetitive, early discovery and intervention by public authority are important to insuring the child's safety. Yet the persons who re-

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\item \textsuperscript{96} N.Y. FAMILY CT. ACT § 324 (McKinney 1963).
\item \textsuperscript{97} CAL. WELF. & INST'N CODE §§ 584, 625 (West Supp. 1970). Section 584 gives to every probation officer the same powers and authority as a police officer; section 625 provides that a police officer may, without a warrant, take into temporary custody a minor whose home is an unfit place for him to live by reason of the neglect, cruelty, or depravity of either of his parents, or other person in loco parentis.
\item \textsuperscript{98} In re Florance, 47 C.2d 25, 300 P.2d 825 (1956) (the primary consideration in proceedings to declare a minor a ward of the court is the minor's welfare); In re Schultz, 99 Cal. App. 134, 277 P. 1049 (1929) (evidence was sufficient to support finding that home in which the child was living was an unfit place for the child).
\item \textsuperscript{99} CAL. WELF. & INST'N CODE § 652 (West 1966) imbues the probation officer with the power of discretion of investigating suspected cases of child abuse; this discretionary power may also be exercised by not investigating. In re Petersen, 56 Cal. App. 2d 791, 133 P.2d 831 (4th Dist. Ct. App. 1943) (probation officer shall make such investigation of the child as is deemed necessary but the investigation is not mandatory and does not require the probation officer to make an investigation in every case before the petition is filed).
\item \textsuperscript{100} CAL. WELF. & INST'N CODE § 654 (West 1966) allows the probation officer to supervise the minor for six months in lieu of filing a petition if the parents consent. If consent is withheld the petition may be filed to declare the child a dependent of the court.
\item Probation officers have also supervised a few families in which children are living who have been neglected or mistreated. National Study Service, Planning for the Protection and Care of Neglected Children in California 140 (Aug. 1965) [hereinafter cited as Neglected Children].
\item \textsuperscript{101} CAL. WELF. & INST'N CODE § 739 (West Supp. 1970). Medical services may be authorized for a child in an emergency with the parents' consent or when the parents cannot be reached, and over their objection if so ordered by the court.
\end{itemize}
port child abuse may be intimidated by the legal nature and delinquency orientation of the juvenile court to whom they report. Also, probation departments are overloaded with delinquency cases, and the abused children who fall under their jurisdiction may develop unfortunate reputations due to the delinquency orientation.\textsuperscript{102}

If a full hearing is held to determine if the minor should be declared a dependent child of the court and if so, what is to be done with him, difficulties arise due to the necessity of having sufficient and reliable evidence to present before the court. Although most juvenile courts may establish child abuse by a preponderance of the evidence rather than by proof beyond a reasonable doubt,\textsuperscript{103} the courts must have objective items of proof. What must be proved for the juvenile court to intervene varies between the states.\textsuperscript{104} For example, in some states the basis is a parent's personal act of cruelty so that evidence from which inferences may be drawn about the conduct of parents or others must be produced, and this evidence is difficult to obtain. A finding of parental fault may be based, however, on circumstantial evidence.\textsuperscript{105} The court will, in most cases, try to assume its responsibility of protection of the child even though the evidence fails to clarify whether one or both parents have abused the child.\textsuperscript{106}

The issue to resolve in finding neglect is the determination of

\textsuperscript{102} Neglected Children, supra note 100, at 140–41.
\textsuperscript{104} See Legal Framework, supra note 86, at 698–99, for an in-depth discussion of the problems of proof.
\textsuperscript{105} CAL. WELF. \\ INST'N CODE § 600 (West Supp. 1970) focuses upon the conditions of the child's environment and direct parental involvement in the causing of a child's injuries need not be proved. E.g., age of the child, number and nature of the injuries, parental explanations which are not persuasive, and continuous proximity of parent and child may be sufficient evidence. People v. Beaugez, 232 Cal. App. 2d 650, 43 Cal. Rptr. 28 (3d Dist. Ct. App. 1965). In other jurisdictions the cumulative effect of the testimony has been sufficient to uphold a finding of intentionally inflicted harm. In re Minors M. \\ S., Nos. 15,885 \\ 15,885A (Caddo Parish, La. Juv. Ct. 1962).
\textsuperscript{106} In re S., 46 Misc. 2d 161, 259 N.Y.S.2d 164 (Family Ct. 1965) (finding of neglect based upon evidence of unsatisfactorily explained injuries of an infant in his own home); In re Minors M. \\ S., Nos. 15,885, 15,885A (Caddo Parish, La. Juv. Ct. 1962) (the court being the source of protection for the child).
what happened and whether these facts may be characterized as neglect. The degree to which the court will interfere with parental rights depends on the seriousness of the parent's misconduct, and thus the court may determine that an order to remove the child from the home may not be as appropriate as one to require supervision of the family by the probation staff.\textsuperscript{107}

The court also does not separate a finding of neglect from the purpose for which the terms of its orders are to be used. For example, the consequences of the court's order of disposition are important to a finding of neglect. In one case the order of disposition of the court provided that inquiry be made into any mental, emotional, or physical inadequacies of the parents, and if appropriate, guidance or counseling be initiated for the parents.\textsuperscript{108} Thus the purpose of the court is to help both the child and his parents.

The juvenile court in California may order a child, who has been declared a dependent of the court, to be placed under the supervision of the probation officer, or committed to the custody of any reputable person, an association or public agency equipped to care for such children, or the probation officer for finding a suitable home or institution.\textsuperscript{109} The family court in New York has been given a great deal of flexibility and a number of alternatives in the disposition of the abused child. The judge may suspend judgment for a period during which specific terms and conditions are imposed upon the parents or custodians.\textsuperscript{110} He may allow the child to remain in the custody of his parents when the parents will be supervised by a probation service.\textsuperscript{111} He may enter an order of protection which establishes additional rules of behavior for the parent or custodian.\textsuperscript{112} He may also remove the child from his home and place the child in the custody of a relative, or a public

\textsuperscript{107} See \textit{In re Diaz}, 212 La. 700, 703, 33 So. 2d 201, 202 (1947) (the Supreme Court of Louisiana reversed a finding of neglect which had been based on the acts of a mother who had spanked her 3½ month old infant in a physician's office. The court held that "[t]his isolated instance in view of the overwhelming testimony that the mother properly cared for the child, does not afford sufficient grounds to take the infant from its mother and place it in an asylum, and is not sufficient to constitute the lack of proper guardianship.") This older case is cited by more recent cases for its rationale.

\textsuperscript{108} \textit{In re S.}, supra note 106, at 162, 259 N.Y.S.2d at 165 (the court held that the condition of the battered child spoke for itself, thus permitting an inference of neglect to be drawn from proof of child's age [one month old] and condition, and absent a satisfactory explanation, the court found neglect on the part of the parents).


\textsuperscript{110} \textit{N.Y. Family Ct. Act} § 353 (McKinney 1963).

\textsuperscript{111} Id. § 354(a).

\textsuperscript{112} Id. §§ 354(a), 356.
A drawback to an order of protective supervision of an abused child is that the family may resent the intervention of an outsider. Yet if the supervision is to be effective, the Children's Bureau has stated that it should not be allowed to degenerate into mere watchfulness. It should be a purposeful activity directed towards the improvement of the child's situation through the use of established casework techniques and the utilization of other community resources.

The California Welfare and Institutions Code states that once the child becomes a dependent child of the court, the child will remain a dependent for not more than one year unless there is a hearing by the court to so adjudge the child. New York limits the duration of an order of supervision to one year unless there are exceptional circumstances.

The recourse of separating the child from his parents and home is not a popular one to both judges and legislators. The juvenile court judge has the difficult task of balancing the interests of the parents against the probability of continuing danger to the child. It is especially difficult in light of the fact that predicting the recurrence of misbehavior is tenuous at best and the evidence often has not clearly established that the parents were the actual perpetrators of the abuse. Juvenile court judges, therefore, are faced with making difficult practical decisions in regards to child abuse cases, for how they rule may depend on the relative feasibility of the alternatives available for the child's care (that is, leaving the child in the home as averse to removing him and finding a suitable kind of institution for his care), as well as the facts of each case.

Reporting Statutes

Many states have child abuse reporting laws which either re-
quire or permit physicians and others to report their suspicions when appropriate. The purpose of these statutes includes implementing the discovery of suspected child abuse cases by imparting a certain degree of immunity from legal liability to the reporter for making a report, providing protection to the child by making provisions for the handling of a report by a suitable agency, and removing any legal prohibition that may prevent the physician from testifying about the case in court. The following discussion will consider the basic characteristics and significance of reporting laws in trying to alleviate the problems which the abused child presents.

The legislative models suggested by different groups have


120. E.g., Cal. Pen. Code § 11161.5 (West 1970) grants immunity from any civil or criminal liability to physicians for making an authorized report.

121. E.g., Id. § 11161.5 also stipulates that the physician shall make the report by telephone and in writing to the local police authority (the head of the police department, sheriff, district attorney) and the juvenile probation department.


been the guidelines for the mandatory and permissive statutes124 adopted by the state legislatures.

The model statute of the Children's Bureau, which has been used extensively by state legislatures, covers (1) the purpose of the act (to protect the health and welfare of physically abused children and to prevent further abuses by having physicians report to a police authority and causing state protective services to be implemented); (2) reports by physicians and institutions (required when injuries do not appear to be caused accidentally); (3) nature and content of report and to whom made (oral report to be made immediately and written report to follow); (4) immunity from civil or criminal liability for reporting; (5) evidence not to be excluded (due to physician-patient or husband-wife privilege); and (6) penalty (a misdemeanor) for a knowing and willful violation of failure to report.125

The rationale behind the model statutes is that a report must be filed by a person who possesses the skill and judgment necessary for recognizing a case of abuse; the persons most appropriate for fulfilling this function are physicians. Because physicians are reluctant to report their suspicions, they need support from legal institutions and the laws. Too, a report of a suspected case of abuse must be filed before the legal authorities and social welfare agencies can identify a case of abuse and apply their methods for alleviating the condition. Such laws have been needed to help overcome the unwillingness of physicians and directors of hospitals to disclose their knowledge and suspicions of possible child abuse cases to appropriate authorities.

A question has been raised by the American Medical Association


125. Suggested Reporting Legislation, supra note 123.
as to whether physicians as a group should be solely identified as having an obligation to report injuries or whether other groups should be similarly required. The problem posed by the Association is that if doctors are publicized as having a unique duty to report, parents may be more deterred from seeking medical attention for their child than if other kinds of persons also are required to similarly report their suspicions. The opposing argument is that if a duty to report falls upon an indefinitely large group, the impact of the requirement may become diffused so that neither a physician nor any other person may feel as though the duty applies to him. Predominantly, the law is designed to aid the physician in resolving his special professional problems concerning reporting rather than to alleviate his duty to report.

In jurisdictions with statutes which carry a criminal sanction for the physician who fails to report, the physician may be civilly liable for not reporting if his inaction had deprived the child of protective services and thus substantially led to subsequent injuries which were inflicted by the youth's caretakers. Behavior, which flagrantly and unexcusably violates a criminal statute designed to protect a child from harm, may subject the actor (physician) to civil liability in an action brought by the child.

The need to establish that the physician's omission to act is a proximate cause of the child's injuries remains, and a test case of this type of action has yet to appear. Assuming that his family is socially alienated and lacks personal and social relationships with the community, the child, who has been so abused, must bring the case before legal and judicial authorities and due to the very nature of his problem (young age, physically abused, unreported to protective agencies which might act in his behalf), tends to be in no position to do so. If the battering of the child is known, however, it is possible that in the future an entrusted relative or other responsible person may bring a civil action for the benefit of the child.

The argument has been advanced that a reporting statute should

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128. I.e., the reasoning is that if the physician is legally required to report cases, his reluctance to report based on fear of legal liability for exercising his professional judgment (that the child is battered) or recriminations for not respecting a confidential relationship to a patient (when viewed in terms of the parent rather than the child as patient) will be overcome.
129. Reporting Laws, supra note 31, at 35. See also 2 F. HARPER & F. JAMES, TORTS § 17.6 (1965); PROSSER, supra note 74, § 35; Morris, The Role of Criminal Statutes in Negligence Actions, 49 COLUM. L. REV. 21 (1949).
not have a penalty clause since the identification of the battered child depends upon competent persons exercising their judgment and discretion, and such a provision is practically unenforceable.\textsuperscript{130} Also, physicians have objected to the establishment of penal sanctions because the suggestion that criminal measures must be taken to “ensure that they do their duty impugns their integrity as professional persons.”\textsuperscript{131}

Mandatory reporting legislation is not considered a panacea by many persons concerned with child abuse.\textsuperscript{132} The Attorney-General of Kansas has advised that such legislation would be redundant.\textsuperscript{133} His reasons were that a physician was already obligated to report cases of child abuse according to the law in Kansas,\textsuperscript{134} the only person who could claim the physician-patient privilege would be the child, and the physician would not be personally liable if he rendered and reported only his medical opinion.\textsuperscript{135}

Another difficulty with reporting laws is that the parent who has been reported is likely to feel accused and affronted by being reported,\textsuperscript{136} and if reunited with the child may release these feelings against the child. Alternatively, and perhaps idealistically, however, the parent who has been rehabilitated and reunited will seek to develop a new and positive relationship with his child.

Regardless of the drawbacks which are involved with reporting statutes, the need remains to alleviate the bases for the unwillingness of physicians to report. The medical practitioners are most able to detect possible instances of battering, particularly those hidden to the layman. Before social and legal institutions have the opportunity to correct and improve the home environments of abused children, the children must be identified. The objective of a reporting statute is not to “enlarge the potential for case finding, nor to articulate a moral duty, but to spur reporting and, hence, actual case finding.”\textsuperscript{137} Since medical practitioners often do not

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\textsuperscript{130} Shepherd, supra note 63, at 192.  \\
\textsuperscript{131} Reporting Laws, supra note 31, at 9.  \\
\textsuperscript{132} Shepherd, supra note 63, at 193.  \\
\textsuperscript{133} Ferguson, Battered Child Syndrome, 65 J. KAN. MEDICAL SOC’Y 67 (1964).  \\
\textsuperscript{134} KAN. STAT. ANN. § 38-717 (Supp. 1969).  \\
\textsuperscript{135} Id. § 38-718.  \\
\textsuperscript{136} Reinhart & Elmer, The Abused Child, 188 J.A.M.A. 358, 360 (1964).  \\
\textsuperscript{137} Legal Framework, supra note 86, at 5.
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report many of the battered children they treat\textsuperscript{138} any legal means for encouraging and persuading them to report will have a significant effect, whether measured in terms of actual increases in cases reported,\textsuperscript{139} or greater awareness of the problem by educating physicians of the potential existence of child abuse.\textsuperscript{140}

\textit{Central Registries}

After suspected child abuse cases have been reported to the appropriate agency, the information may be recorded in a central agency or registry in several states.\textsuperscript{141} While a central registry has been considered to have several important objectives, implicit in some of the objectives are also drawbacks and problems. If a file is set up without express legislative authorization, it violates statutes which provide for the confidentiality of certain kinds of official health and welfare data. Wisconsin, for example, overcame this problem by approving a registry that allowed for only those who, by law, were required or licensed to provide for the welfare of children, to obtain its information, except by order of the court.\textsuperscript{142} However, even with this legislative proviso, the author questions whether such files of a registry would ever be maintained in the strictest confidentiality, no more than are juvenile records which wind up in the hands of potential employers.

Since abusing parents usually do not return their injured child to the same doctor or hospital,\textsuperscript{143} a central registry which covers a wide geographical range may reduce the possibility that parents may be able to hide the situation. The doctor treating a current physical ailment of a child, who he has not previously examined and for whom he has no medical history, may be hesitant about

\begin{itemize}
\item \textsuperscript{138} See McCoid, supra note 19, at 19 n.51, 36.
\item \textsuperscript{139} See Reporting Laws, supra note 31, at 37-54; Legal Framework, supra note 86, at 715-16; for discussion of the frequency of reports of child abuse following the enactment of reporting statutes in various states.
\item \textsuperscript{140} McCoid, supra note 19, at 37.
\item \textsuperscript{141} E.g., Md. Code Ann. art. 27, § 11A (Supp. 1969); Cal. Penal Code § 11161.5 (West 1970) (all written reports received by a law enforcement agency are forwarded to the State Bureau of Criminal Identification and Investigation); Cal. Penal Code § 11110 (West 1970) (Bureau maintains records of reports which are available to any physician, probation department or child protective agency and which are subsequently transmitted to the city police department, sheriff, or district attorney when concerning the same minor or minors of the same family in a current report). See Reporting Laws, supra note 31, at 24-31, for an excellent discussion of the purposes and legislative and administrative origins of registries in several states.
\item \textsuperscript{142} Wis. Stat. Ann. § 48.78 (1957) (relating to confidentiality of records).
\item \textsuperscript{143} Cal. Report on Child Abuse, supra note 30, at 73.
\end{itemize}
forming an opinion that the child is battered. At the point of deciding whether present injuries are reasonably indicative of abuse and non-accidentally inflicted, the registry information of the existence and relative severity of previous incidents of suspected abuse may help him. The information available in a central registry also may aid a court or child protective worker in evaluating the degree to which the child is endangered by remaining with his parents, or whether protective services may be adequate. The drawback with this type of use is that it may be unfair to the parents. While a previous report may provide some basis for concern that the present injury is a case of abuse, the physician may be unduly influenced by the report. When the central registry is the type which records instances of suspicions of possible abuse but the reporter's firmness of opinion is considered insufficient to justify a community response or an investigation, the danger is enlarged. Two questioning opinions of possible abuse may lead to the forming of a reasonable belief which can cause a public agency to investigate and invade the privacy of a family. When the determination to make such an investigation is finally made, the amount of circumstantial evidence provided in the registry is more than sufficient to merit the intrusion. On opposite sides of the scale of this conditional intrusion into the parent's privacy is the life or the limb of the child. It is unlikely that judicial wisdom would not read into the registry's statutory authority a valid police power purpose (that is, for the health, safety, and welfare of its citizens, in this case children), but it is advisable for statutes to contain a statement of purpose so that legislative intent need not be researched or theorized.

A problem also arises when names contained in the registry are not removed when abuse is found not to have occurred. Unjustified loss of reputation may follow the placing of a name in a registry, especially when there is no assurance that only authorized persons will have access to the files. A suggestion by the Committee on the Infant and Pre-School Child of the American Academy of Pediatrics is that all reports should be temporarily filed and then placed in a permanent file only when suspicions have been factually confirmed.144

Depending on the information reported, a registry may provide important facts for studies dealing with the prevention and management of child abuse cases. Central registries which are administratively set up for statistical purposes have been considered to be the only type which do not raise sensitive issues of privacy, since they have no reason to record family identities.

**Protective Agencies**

The main difficulty with the types of legislation discussed in preceding sections is that they do not, in themselves, lead to the desired protection and alleviation of the problems of the abused child in a practical sense. The Children's Bureau Model Act suggests that reports of suspected cases of child abuse be made to police or other law enforcement authorities, and several states have adopted its recommendations. The rationale for this position has been that law enforcement authorities may be expected to make needed investigations to determine the source of the reported physical injuries, and because they are found in all states and are available at all times of the day, law enforcement agencies provide a certain element of uniformity to the enforcement of child abuse legislation throughout the nation. However physicians may be more reluctant to report to law enforcement authorities than to welfare agencies or child-protective societies, preferring rehabilitation and prevention over the penal alternatives of the law.

Although the police are trained to investigate and appear to be the appropriate agency to receive reports, the effectiveness of its

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145. E.g., knowledge that abused children fall within a certain age range and may tend to be of one sex and that the parents may have certain psychological or social characteristics may make the physician more aware of possible cases of child abuse, and make prevention more effective if the information can be utilized so as to set up needed services to such parents who are characterized by the more probable attributes, to alleviate the pre-disposing factors.


147. Suggested Reporting Legislation, supra note 123, at 8.


See McCoid, supra note 19, at 51-56, for a discussion of various state statutes concerning the person or agency to whom child abuse reports are made.

149. McCoid, supra note 19, at 51-52. See also Suggested Reporting Legislation, supra note 123, at 8-9; Children's Bureau, U.S. Dep't of Health, Educ. & Welfare, Report of Meeting on Physical Abuse of Infants and Young Children 3, 6 (Jan. 15, 1962).

officers may be limited due to the unique problems involved in child abuse cases. The police investigation is likely to be oriented more toward punishment than the invocation of protective social services, and the presence of a police officer may escalate the fears of the parents to such an extent that they will not be able to cooperate in trying to improve their child's environment.\textsuperscript{161} The investigating person is faced with important decisions concerning the course of action which should be followed\textsuperscript{152} and needs to be skilled and experienced in working with families in difficulty.\textsuperscript{163} One legal authority has thus concluded that reports should be sent to child welfare rather than law enforcement agencies as soon as child protective services of reasonable quality are available, and that the responsibilities of the social welfare investigators ought to be clearly delineated by statute.\textsuperscript{164}

Statutory provisions\textsuperscript{155} to resolve the practical problems of treatment\textsuperscript{156} often establish a child protective service which deals with situations in which a child is reported to be abused by parents or others responsible for his care and may include both casework service and the initiation of legal action to remove the child from the home,\textsuperscript{157} or it may be primarily a casework service activated by an agency on a report of knowledge of abuse of children, carrying legal authority and focusing on parental function in relation to the child care.\textsuperscript{158} The duty of the agency responsible for the child welfare program, as suggested by the Children's Bureau\textsuperscript{159} is to investigate

\begin{itemize}
\item \textsuperscript{151} Reporting Laws, supra note 31, at 44.
\item \textsuperscript{152} E.g., sending the case to juvenile court, removing the child from the home, leaving the child in the hospital, handling the specific family problems.
\item \textsuperscript{153} DeFrancis, The Battered Child—A Role for the Juvenile Court, the Legislature and the Child Welfare Agency, Juv. Ct. Judges J. 27, 29 (Summer 1963).
\item \textsuperscript{154} Reporting Laws, supra note 31, at 45, 46.
\item \textsuperscript{155} See Legal Framework, supra note 86, at 704-07, for a discussion of the variable statutory patterns for offering child protective services.
\item \textsuperscript{156} See Reporting Laws, supra note 31, at 41-43, for a discussion of the "practical operations of agencies and institutions under the law which give life to the purpose of the reporting statutes or destroy them."
\item \textsuperscript{157} Jeter, Children's Problems and Services in Child Welfare Programs 73 (Children's Bureau 1963).
\item \textsuperscript{158} Bishop, Introduction to Am. Humane Ass'n, An INTENSIVE CASEWORK PROJECT IN CHILD PROTECTIVE SERVICES 3 (undated).
\item \textsuperscript{159} Children's Bureau, U.S. Dep't of Health, Educ. & Welfare, Proposals for Drafting, Principles and Suggested Language for Legislation of Public Child Welfare and Youth Services 29 (1957).
\end{itemize}
reports of suspected cases of child abuse, and following the investigation either offer appropriate social services to the parents or others in loco parentis, or notify a law enforcement agency, an appropriate court, or another community agency.

Since leaving the child with his parents is preferable to removing him from their custody, it is important for a trained social worker to investigate the feasibility and effectiveness of retaining the child in his home and conducting casework; casework with battering parents, however, is an intensive, difficult process, requiring specialized knowledge. While it provides an effective means for correcting some child abuse cases, most such counseling experiences have not been successful. When leaving the child with his parents would involve a high probability of further abuse of the child, removal of the child from the home is often deemed advisable. Probably the least attractive alternative is the prosecution of the parents.

The objective of offering protective services to parents and children is to change and improve the family situation, relationships, and problems, to

... bring about a change in behavior; in attitudes about the treatment of children...; about responsibility... toward physical, medical or emotional needs of the family so that warmer, happier and more secure bonds are formed between the parents as individuals and their children, so that improvement is brought about in the physical and environmental side of their home life.

An important point about the offer of protective service of the social agency is that it is not passive; upon receiving a report of abuse and prior to court action, the agency contacts the parents. Since the danger of coercion and the invasion of a family’s privacy exists, certain legal safeguards are necessary. Legislation should clearly delineate the authority of the agency and the factual circumstances justifying an offer of service, so as to prevent the unconstitutional invasion of privacy. The right to consultation with counsel should be available to the parents when services are offered, provided at public expense if necessary, to evaluate the reasons for intervention by the agency. Also, judicial determination of the propriety of the offering of protective services is appropriate since the procedure involves questioning of witnesses and scrutinizing evidence so as to determine the necessity of providing ade-

160. California Approach, supra note 1, at 1826.
161. See id. at 1826 n.83.
162. Id. at 1826.
163. V. DeFrancis, Child Protective Services in the United States 11 (Children’s Division, Am. Humane Ass’n 1956).
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quate protection for the child and insuring the rights of the parents. The requirement of Due Process would seem to command these safeguards.

**NEEDED REFORM OF THE LAW**

There are numerous alternative solutions to the problems previously discussed and many suggested solutions have been made by other writers. One alternative is to make the laws stricter in terms of the sanctions against parents who have abused their children, but this would not alleviate the underlying causes of the problem. Parents would only be motivated to hide their battered child so that no reports would be made until the child was beyond medical help, if then. If the parent were heavily fined or jailed, the family resources would be depleted, and/or the parents might feel angrier and more aggressive toward the child. Assuming that the parent's behavior was previously motivated by some underlying unresolved personal conflict which provoked aggressiveness toward the child, the parent who had been punished because of his relationship with his child might later feel as though he was completely justified in taking out his anger on the child with physical beatings and abuse; in this sense society in effect would be providing the parent with a justification for beating the child. The parent might not feel a need to make restitution or make up to his child in any other way, as he might feel that society's sanctions had accomplished this. The relationship between the child and parent thus could not be expected to improve and would probably deteriorate further.

Another alternative is to remove the legal sanctions against the parent and thereby eliminate any legal source of contention between parent and child. This may not be feasible, however, as removing the influence and authority of the law from the intra-fa-

164. Legal Framework, supra note 86, at 708-10.
165. U.S. Const. amend. XIV, § 1.
166. See e.g., California Approach, supra note 1, at 1828-30, for discussion of the recommendation that primary responsibility be placed tentatively with a special unit in county welfare departments on a pilot or small study basis; The Abused Child, supra note 22, at 152-60, for a proposed draft of legislation to overcome the "apathetic attitude" in medical and legal professions concerning the child abuse problem and the "psychiatric dilemma of the parent."
milial relationships which are threatening the security, well-being, and life of the child would be removing the sole source of protection the child might have. Thus a need remains to maintain the provisions of reporting statutes which require physicians to report suspected cases of abuse.

A question remains, however, whether criminal statutes which specifically apply to abusive parent-child relationships should be maintained, and whether the criminal codes which apply to cases of assault and battery should apply to child abuse. The difficulties of prosecuting parents under criminal cruelty to children statutes have been discussed in a preceding section. The problems with assault and battery prosecutions are also unresolved issues due to the fact that the realm of a parent's authority extends to punishment, and the acts of punishment and their physical and mental effects on the child may meet all of the necessary elements of the crimes except perhaps the mens rea. The issue is unresolved, however, not because mens rea is difficult to establish, but because the parents have the responsibility of raising their children, providing for their education and physical and moral well-being, and may even be considered to have the duty to punish and apply physical restraints on their children so as to meet the requirements of their task. Thus it would appear that the physical treatment of children by their parents (except in the extreme effect of death) should not, as a matter of social policy, fall within the realm of criminal law. By its recognition that assault and battery are crimes, the criminal law tends to imply that children should not learn partly be means of fear of physical punishment administered by their caretakers for their disapproved behaviors, or alternatively that parents should be hesitant about punishing their children for what they consider wrongdoings. This reasoning may be particularly valid as the parent, who is normally loving and controlled and whose actions are not characteristic of the abusing parent, may become intensely angry and show his anger by a severe physical beating when the child has performed acts which are grossly distasteful to the parent; the parent's intention may very well include hurting the child due to his own anger although it may be tem-

167. Mens rea is difficult to establish when the acts occur in the privacy of the home as the child is too young to testify against his parents and no other witnesses are available. However, mens rea may be established by circumstantial evidence alone.
168. The use of the term physical punishment here is meant to imply the kinds of actions involved in spankings as well as physical isolation.
169. Hurting in this sense is limited to pain and discomfort and is not meant to imply a permanent physical injury.
pered by the further purpose of teaching the child never to repeat the act. The criminal law is not designed to prevent parents from conveying their system of values to their children according to the means they deem most efficacious. When the criminal law is applied to parent-child relationships, the objectives of the criminal law (for example, retribution, prevention of assault and battery) may conflict with the objectives of parental punishment techniques (for example, teaching, guiding, controlling, caring). Thus the criminal law may not provide an appropriate frame of reference for evaluating parent-child relationships.

The problem with the handling of battered child cases by the juvenile court system in regards to providing adequate evidence has been discussed in a former section. (See text accompanying note 102, supra). Too, the child who becomes a dependent of the juvenile court often develops a negative social reputation which is similar to that applied to delinquents who have received disciplinary/penal treatment from the same juvenile court. If the juvenile court orders the family life of the child to be supervised so as to maintain the child in the home, usually a probation officer is charged with responsibility for the supervision. The probation staff is actually very poorly trained for this kind of work and may apply quite inappropriate techniques to the problems of parental behavior; rather, the staff is more experienced with handling juvenile problems. While this problem might be solved through specialized training, perhaps the orientation of the staff toward juvenile rather than adult behavior would not be overcome completely.

The question as to the appropriate agency and professionally trained persons for handling battered child situations has remained unanswered. The basic cause of the battered child has been found to be the parent’s behavior and state of mind, not the behavior of the child. Presumably the parent needs help in coping with his personal adjustment problems since he is not able to solve them by himself within his family context. Intervention by a trained professional person such as a psychiatrist or psychologist provides an appropriate avenue for exploration of possible solutions to the existing problems. The type of work and analysis performed by

A social worker may prove effective in some cases but does not enlist the voluntary support or approval of the parents; in most instances the reported reaction of parents has been resentment.

A possibility, which has not been considered specifically\(^{171}\) is to place suspected cases of child abuse under the ambit of Conciliation Courts.\(^{172}\) Superficially, at least, the title of the court implies that a problem between persons exists and that there is a desire to solve the problem and reconcile the differences. If the parents do not care to assume their responsibilities for their battered child, no implication is intended that the state would not assume its duty to find another place for the child to live nor require the parents to maintain custody of their child. But, assuming that the parents want to retain control of their child, they may be motivated to improve their relationship with the child. The work of the Conciliation Court in San Diego, California, has been very adept in helping marriages in trouble by helping the individuals resolve their conflicts and problems by a decision in favor of either conciliation or dissolution of their marriage.\(^{173}\) The point is that Conciliation Court counselors are trained in working with and handling problems of a personal adult nature, often involving unresolved conflicts, and capable of developing and testing techniques suitable to solving the problems of family relationships.\(^{174}\)

Under this proposal the court would continue to be active in making the discretionary decisions concerning the adjudication and handling of child abuse cases, and thus would gain several advantages. One would be the viable alternative of making the help of the Conciliation Court available to the parents. If the facts of a case indicated that the child may be presently retained in the home without danger to his life, the judge could allow the child to re-

\(^{171}\) In California the proposal to establish a statewide family court to have full jurisdiction over all matters relating to the family, including battered child cases, was rejected by the legislature. Cal. Assembly Comm. on Judiciary, Report on Assembly Bill No. 530 and Senate Bill No. 252, Report of 1969 Divorce Reform Legislation 2 (Assembly Daily J., Aug. 8, 1969); Report of the Cal. Governor’s Commission on the Family (Dec. 15, 1966). But see N.Y. FAMILY CT. ACT §§ 1011-25 (McKinney Supp. 1969-70), which places child abuse cases under the jurisdiction of family courts.

\(^{172}\) Ganley, Henry, & Porteus, Divorce, Law and Psychology, 7 HAWAII B.J. § 6 (Oct. 1970) [hereinafter cited as Ganley]. Conciliation Courts have been set up since 1939 in several counties in California, with the purpose of assisting married residents who find themselves in a crisis situation which is threatening the stability of their marriage. Super. Ct. of San Diego, Cal., The Conciliation Court of San Diego County 7-11 (2d ed. Dec. 1966).


\(^{174}\) Id. at 14-17; see Ganley, supra note 172. 
main in the home and order the parent to meet with a Conciliation Court counselor with the purpose of helping the parent to improve his relationship with the child, of understanding the reasons for his previously abusive behavior toward the child, and of finding ways to effect a beginning to a warm relationship with his child. If the safety of the child was deemed endangered by remaining in the home, the child could be placed in a foster home or institution for child care until the parents had worked with the counselors and decided whether or not they wanted to provide a positive, non-abusive environment for their battered child. The ultimate goal would be the resolution of the parent's personal adjustment conflicts so that he could decide if he wanted to maintain custody of his child, and hopefully the reconciliation of the natural parent and his child.

While this suggestion resolves the problems of handling battered child cases with criminal statutes and juvenile court acts, it does not solve the problem of who the proper person is to submit the initial report. Since physicians have been considered to be reluctant to report their suspicions to the police, their hesitation might be overcome if they were to report to counselors of the Conciliation Court. By their title and training, counselors would be expected to offer remedial assistance rather than penal sanctions. The counselor would need to have the same authority as that of a police or probation officer to remove a child from his home in order to meet the possible need for temporary removal due to apparent imminent danger to the child's life when the Conciliation Court was not available. While the response of parents to the intervention of a police officer might be influenced by any previous associations they have had with the police, their response to a counselor might be more open and flexible and considerably less prompted by fear.

Thus, if child abuse cases were handled by Conciliation Courts and their counselors, the hesitation of physicians about reporting suspected cases of battered children might be overcome, and the treatment of the parents or abusers of the children could be geared toward remediation and correction rather than penal punishment or removal of the child from the home.

A few other effects might also follow. One drawback is that

175. See e.g., CAL. WELF. & INST'N CODE §§ 584, 600, 625 (West 1970).
the Conciliation Court would have to be expanded. State funds 
would have to be allocated to provide the community with a new 
combined legal and psychological service to solve a problem for 
which valid and reliable statistics concerning its frequency of oc-
currence are not available. Also, the counselors would need to in-
vestigate and analyze the attendant problems of abusive parent-
child situations and develop effective means for coping with them 
and helping the abusive parents overcome these problems.

This discussion is not meant to imply that the task of the coun-
selors of the Conciliation Court would not be great and difficult. 
While the problems of the battered child situation may be consid-
ered to have been caused primarily by the parent's behavior and 
psychological difficulties, the patterns of his behavior may be ex-
pected to have evoked certain patterns of behavior on the part of 
the child, which interact and feed upon the parent's abuse and 
which may cause psychological adjustment problems in the child. 
The problems will not, therefore, be solely limited to how the par-
ent behaves but will also involve restructuring the behavior pat-
terns of the child which provoke abuse and working with the emo-
tional conflicts and psychological problems which the abused child 
may hold. 176

Another possibility is that enactment of this proposal might lead 
to greater socialism by the extension of the state into the health, 
welfare, and safety of the child. That is, considering that the par-
ent may have ambivalent feelings toward the child he is battering, 
conceivably once the parent has considered his feelings and their 
cause without fear of penal sanctions in the context of a profes-
sional counseling relationship, he may decide that he actually does 
not want to maintain custody and control of the child; in this case 
the state would be obligated to assume control and custody of the 
child and find an appropriate way of caring for his needs. Too, if 
the child abuse is handled by the law according to a non-penally 
oriented system, some tensions caused by the law might be eased; 
loss of child custody in such a situation might be a psychologically, 
emotionally easier event, and might even involve less social ostrac-
cism, in which case the state's burden of economically, educationally, 
and socially providing for the unwanted child in a suitable manner 
would probably increase. There is no way of knowing, however, 
if the number of parents who voluntarily would choose to relin-
quish custody of their children would be greater than the number 
of whom have their rights to custody served by the courts due to a

176. Interview with B.D. Porteus, Ph.D., Research Psychologist, in San 
determination that the child’s health and well-being are endangered by remaining in the home. Any increase of wards of the state should be more than compensated by the advantage of the possibility of a surviving battered child taking his place in society sufficiently adaptable not to be an antisocial, economic, and parasitic burden on society and the state. The primary advantage in itself, however, would be the potentiality of changing the child’s abusive home environment, which is threatening his health and well-being, to one with nurturant relationships which would provide for his optimal physical, emotional, and mental development. If the above legal reforms would only prove to be partially successful then that aspect of the law dealing with the battered child would have found some degree of logic.

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