concerned but in the interest of society itself. With sound guide-lines and appropriate practices our courts will be enabled to fairly determine these delicate issues in a spirit of sanity and with regard to the reality of our times!

APPENDIX

A. General information: (1) Name; (2) address; (3) date of marriage; (4) age; (5) children of marriage (list number, age and sex); (6) list any other children living with either of parties (number, age, sex, relationship and whether said children have any independent source of support); (7) any prior marriage and issue therefrom; (8) occupation (if wife is not employed, state occupation, if any, prior to marriage).

B. Financial information:

I. Earnings. Yearly earnings over a period of three to five years. It is not required, but it would be helpful to attach a copy of income tax or social security statement.

II. Expenses: (1) Rent; (2) mortgage (interest and amortization); (3) household expense (utilities, cleaning, food, repairs, laundry, help); (4) clothes; (5) entertainment; (6) medical; (7) expenses for education of children.

III. Assets: (1) All real estate owned—whether in individual name or through corporate ownership; (2) all stocks and bonds; (3) balances in savings bank accounts; (4) average checking account balance for three years; (5) if you own your own business individually or as partner or stockholder, give name of business, your position and the net and gross income of the business during the last three to five years; (6) give list of jewelry and estimated value; (7) if you own automobiles, give make, year and whether any payments due; (8) all debts (amount, creditor and relationship, if any); (9) any moneys due you; (10) any other pertinent data on your financial position, such as financial support to others.

COMMENT

Suggested Guidelines for Child Abuse Laws*

RICHARD H. HANSEN**

Child abuse laws are now in existence in forty-nine states to protect children from their families. The author suggests that these statutes and attendant procedures do not solve the problem of child abuse. He proposes that the judge before whom a child abuse case is brought should have the power to direct studies of the child and his family (the first time that an abuse of the child is reported) to determine if the child is or can be properly cared for by his family. Further, since abused children usually do not live to be brought to court a third time, the parents should be presumed unfit on the second report of abuse to the child. Appropriate measures could then be taken to find fit custodians for the child unless the parents overcome this presumption.

Child abuse legislation is a product of the 1960's; most of the forty-nine state laws on the subject have been enacted since 1963. Agreement is nearly universal that such statutes should provide for reporting of cases and waiver of the doctor-patient privilege at the hearing. There is adequate authority logically and legally that the doctor-patient privilege is not applicable, but for some reason a few courts have allowed it, leading to explicit exclusion of the privilege in "battered child" laws.[1]

While it is certain that children have been abused as long as the family has existed, what actually causes this phenomenon still eludes us, chiefly because of the lack of statistics at this point in the development of the law. This situation may well be corrected by the adoption of central reporting

*An excellent analysis of existing child abuse legislation is contained in *Child Abuse Reporting Laws: The Shape of the Legislation*, Paulsen 67 COLUM. L. REV. 1 (1967).

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1. Foster and Freed, *Battered Child Legislation and Professional Immunity*, 52 A. B. A. J. 1071, n. 10.

systems by the states.[2] Great impetus is resulting from the work of research groups under the auspices of the Children's Bureau of the Department of Health, Education, and Welfare. Central reporting, intrastate and interstate, is becoming a fact because of the Nationwide Epidemiologic Study of Child Abuse being conducted at Brandeis University. This research team is approaching the problem as one would an epidemic of unknown origin and seeks, by uncovering the causes of the social disease, to find a cure.[3]

Because we really know so little about the totality of the problem any suggestions must be based on what limited knowledge we do have and tentative in nature, subject to whatever changes research and experience dictate. In this sense, one might say of child abuse laws that "the life of the law is change."

One conclusion emerges from nearly all the studies to date: abused children who live through two hearings, seldom survive to be the subject of a third.[4] With this fact established, proposals are not inappropriate for revisions of the existing laws (now too preoccupied with reporting and removal of privileges) to provide some guidelines for handling and disposition of the cases when they come to court the first, perhaps second, and rarely the third time.

The absence of guidelines has tended to perpetuate the antiquated presumption that because parents are the natural guardians of their children they are fit to have custody as opposed to third persons. Judicial proceedings have too often been in biological, rather than realistic, perspective. In states where this doctrine is given the historic emphasis born of its

2. Ireland, *A Registry on Child Abuse*, CHILDREN, May-June, 1966, p. 113.

3. Information on the scope of this study is available from The Florence Heller Graduate School for Advanced Studies in Social Welfare, Brandeis University, Waltham, Mass.

4. Gillespie, *The Battered Child Syndrome: Thermal and Caustic Manifestations*, JOURNAL OF TRAUMA 523 at 529: "It is discouraging to note that physicians and the courts have failed to recognize the desperate plight of the recurrently abused child. This is well-documented by the example of a child who was hospitalized at age five months with extensive burns of the pharynx and esophagus after having been fed boiling milk. Following recovery the infant was separated temporarily from the parents and placed in a foster home. The child was returned shortly thereafter by court order, and at age eight months was admitted to another hospital with cerebral concussion, skull fracture, and nutritional anemia. This silent suffering child was unable to protest the inadequacies of our protective laws and suffered the inevitable consequence, death, at age three."

Roman origin, the prosecuting attorney has the burden of proof of showing that the parents are unfit. This is true whether the hearing is the first, the second, or (if the child is fortunate enough to live that long) the third.

The time is long past for this concept to be re-examined in connection with child abuse. Certainly no thoughtful person wishes to arbitrarily deprive parents of their natural rights. Therefore, the burden of proving the natural parents unfit should properly remain on the prosecuting attorney in the first case of child abuse coming before the court.

But the law should provide direction and financial means for the judge, at this first critical juncture in the case, to bring to focus on the family all community resources: pediatric, psychological, psychiatric, and social welfare. Nor should the effort be one of isolated disciplines operating in the vacuum of their own specialty, but supervised in a coordinated study by the juvenile office or similar appropriate authority. In other words, central direction is essential to the inter-disciplinary approach. The law should give the court authority to direct the proper disciplines to make the necessary studies and, when he feels it is in the best interests of the child and family, to have the juvenile office call the various representatives of the disciplines concerned together to resolve differences in diagnosis and recommendations.

Furthermore, the judge should have funds available to insure that *all* agencies needed are involved and paid when they are not otherwise financed for such casework.

The recommendations thus achieved should, of course, be treated as confidential as the report of a probation officer, though made available to the attorneys involved in the proceedings. Nor should such reports be part of the public record of the trial or introduced in evidence, though the attorneys ought to have the right to properly subpoena the various members of the disciplines involved for testimony at the trial. At that phase the testimony would be public.

In each instance the law could well provide for a guardian ad litem to represent the child, much as is done in child

custody proceedings in states like Washington.[5] Since many psychotic parents refuse voluntary treatment, the judge could "suggest" their incompetence to the mental health board or its equivalent.

The objective in these cases should be the rehabilitation of the family; its maintenance as the basic unit of our society. But exceedingly close supervision should be exercised if the children remain in the parental home during the study. A survey made by the Division of Child Welfare in the State of Iowa revealed that in several instances children suffered additional injuries while efforts were being made to help the parents to a proper solution of their problems in caring for the children.[6] The judge or appropriate person should have the authority to remove the child from the parental home when there is reasonable cause to believe violence may result. The right of habeas corpus is ample protection against precipitate action by the authorities.

Many times persistent efforts by those involved in the case can bring about significant positive gains in the family. There are reports that sixty-seven percent of the families involved in the Family Centered Project in St. Paul, Minnesota, have made gains. But, a recent report from the Children's Hospital of Philadelphia describes intensive services given to parents of infants who had . . . (severe malnutrition) for which no organic cause could be found. For fifteen of the infants the parents demonstrated response to these services, but for eight the parents lacked the capacity to meet the babies' needs and these infants had to be removed from their parents.[7]

The obvious advantage of utilization and expansion of public health nursing services and visitations should not be overlooked in combatting this problem at its most crucial stage: the first report or judicial hearing. When a second incident occurs and is discovered through the central reporting system, or otherwise, then the very life of the child may

5. REV. CODE OF WASH. tit. 11, sec. 11.52.014 which provides for appointment of a guardian ad litem for a minor at a family support hearing.

6. Immes, *Child Victims of Parental Abuse*, Report to Division of Child Welfare, Iowa State Department of Social Welfare, June 19, 1963.

7. Boardman, *Who Insures the Child's Right to Health?*, CHILD WELFARE, March, 1963 at pp. 123-124.

hinge on the decision concerning custody, and as already proven nearly all the studies made to date reveal that a "battered" child seldom lives to be brought to court a third time.

At this point, then, the "law of life," as reflected in the fact that most children do not live to a third hearing, demands a change in traditional procedure.

Such a new approach was applied recently, in this connection, by Brooklyn Family Court Judge Harold Felix. Faced with the presumption that parents are fit until proven otherwise, an infant whom a hospital found suffering from broken legs and ribs, and parents who sought dismissal of the case for lack of evidence, Judge Felix invoked the negligence law principle of *res ipsa loquitur*. When he got no satisfactory explanation, he took the child away from its parents. Most of the nation's battered children (estimated to number at least 10,000 a year) lack such protection.[8]

While the application of negligence law may not be the answer, is it not time to reverse the traditional presumption to provide at the second hearing that it is presumed the parents of the child are unfit until they prove otherwise? This would not be as major a departure from the "innocent until proven guilty" concept as one might think; for is not the rationale behind the habitual criminal, non-resident driving statutes, and the whole "point" system for bad drivers similar? The lives at stake in child abuse cases are those of "the silent ones," those usually unable to speak in their own defense.

Society could well afford to give these children the chance such a change in the law could provide. Leaving the law as it is places an unfair burden on the prosecuting attorney, the judge and, in many cases, gives the parents a license to kill.

8. TIME, Nov. 11, 1966, p. 74.