

Although There Were Nearly a Million
Reported Cases of Child Abuse Last Year,
Our Justice System Fails to Protect Our Most
Helpless Victims of Violence

Behind Closed Doors

BY DOUGLAS J. BESHAROV

Nearly a million cases of child abuse or neglect were reported to authorities last year, a 650 percent increase over the past decade.

No one knows whether or not this signals a rise in the incidence of child maltreatment because so many cases previously went unreported. Moreover, many new cases are the result of the shift of investigative responsibilities from the police, welfare agencies, and the courts to specialized child protective agencies. Back in 1968 the approximately 150,000 reported cases were referred informally to social service agencies and the police, who handled these reports in an *ad hoc* and often haphazard manner.

But the great majority of the most recent cases would not come to the attention of any responsible authority had it not been for mandatory reporting laws. Most of these reporting laws were patterned after the Model Child Protection Act and its predecessor model legislation. The Model Child Protection Act was promulgated in 1977 by the United States National Center on Child Abuse and Neglect and the earlier model laws on the reporting of physically abused children were promulgated in 1963 by the U.S. Children's Bureau.

Before the early 60s the plight of maltreated children had long been a social concern, but systematic efforts to protect children were almost nonexistent. In fact, many professionals who should have known better denied that child abuse was a widespread problem. Consequently, most cases went unrecognized, unreported, and untreated.

Then in 1962 C. Henry Kempe published *The Bat-*

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tered Child Syndrome, commonly considered the genesis of contemporary efforts to upgrade child protection programs. Kempe and other individuals like Vincent Fontana and Vincent DeFrancis slowly increased citizen and professional concern about the plight of the abused child.

Their first objective was to encourage better identification of cases through mandatory reporting laws. In 1962, they convinced the U.S. Children's Bureau to prepare and issue a model law for the reporting of physical child abuse incidents.

On the ground that physicians are the professionals most likely to see injured children and most qualified to diagnose symptoms of abuse, the Children's Bureau's first model law required doctors to report "serious physical injury or injuries inflicted . . . other than by accidental means." The 1963 model law also recommended that reports be made to a law enforcement agency, not because criminal prosecution was necessary, but because police agencies are available 24 hours a day, an essential capability in emergency child abuse cases.

The states' response to this first model reporting law was far beyond anything its backers expected. Within four years all 50 states enacted laws that sought reports of injuries inflicted on children.

In the following years, concern over endangered children expanded to all elements of maltreatment so that many states amended their laws to include mandatory reporting of suspected child neglect, sexual abuse and emotional maltreatment. Reporting laws also began to include provisions such as immunity for good faith reporting, penalties for failure to report, protective custody, and the abrogation of certain privileged communications.

However, these reporting laws are only one step toward protecting endangered children. By 1970, child

The remedial services of agencies are more effective t

protective efforts had grown into patchwork systems of blurred responsibility, often based on vague and superficial considerations. Responsibility was frequently passed from one agency or individual to another. Continuous referrals caused frequent loss of information and delays in providing services. The inability of existing agencies to protect children was widely admitted. Studies found that children suffered further injury or died after a report was made to the authorities because of balkanized agencies.

STATES LAUNCH REFORMS

In response to growing public and professional awareness that existing child protective procedures needed to be strengthened and upgraded, states began to reform their child protective systems as well as their child abuse reporting laws. As part of this broadening concern, the United States Congress passed the Child Abuse Prevention and Treatment Act in 1974.

This federal act's eligibility criteria for grants to states to help improve their child abuse and neglect services reflect the evolution toward more extensive and detailed

child protection laws. Section 4(b)(2) of the act provides, in part:

(2) In order for a state to qualify for assistance under this subsection, such state shall—

(A) have in effect a state child abuse and neglect law which shall include provisions for immunity for persons reporting instances of child abuse and neglect from prosecution, under any state or local law, arising out of such reporting;

(B) provide for the reporting of known and suspected instances of child abuse and neglect;

(C) provide that upon receipt of a report of known or suspected instances of child abuse or neglect an investigation shall be initiated promptly to substantiate the accuracy of the report, and, upon a finding of abuse or neglect, immediate steps shall be taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect;

(D) demonstrate that there are in effect.

Highlights of the Proposed Model Child Protection Act

The National Center on Child Abuse and Neglect has developed the Model Child Protection Act to help states meet requirements for federal grants to improve their child abuse programs.

The major elements of the model act are:

- A purpose clause that emphasizes the act's rehabilitative purpose. (§ 2)
- Procedures to facilitate parental self-help efforts. (§ 3)
- Much more precise definitions of "child abuse and neglect," "physical injury," "mental injury," "institutional child abuse and neglect," and "a person responsible for a child's welfare." (§ 4)
- Mandatory reporting of "child abuse and neglect" by physicians, nurses, and other medical personnel; teachers and other school personnel; social workers; day care workers, and other professional child care workers; and peace officers and law enforcement officials. (§ 5a)
- Permissive reporting of "child abuse and neglect" by all other persons. (§ 6)
- Mandatory reporting of suspicious deaths to medical examiners or coroners. (§ 7)
- Authorization for the taking of photographs and X-rays of areas of injury, even if against parental wishes. (§ 8)

• Authorization for putting children in protective custody when their life or safety is in "imminent danger" and there is no time to apply for a court order (§ 9a)

• Immunity from civil and criminal liability for good faith reporting and for taking other actions required or authorized by the Act. (§ 10)

• Abrogation of the husband-wife privilege as well as those between professionals and their clients, except for the attorney-client privilege. (§ 11)

• Civil and criminal penalties for the knowing and willful failure to report or to take any other action required by the Act. (§ 12)

• Creation of a 24-hour, toll-free hotline for reports (§ 13)

• Designation of a specialized child protective agency, with specified duties and powers, in every county of the state. (§§ 14, 15, and 16)

• Establishment of child protection teams to help guide agency decision making. (§ 16c)

• Establishment of "community child protective advisory boards." (§ 17)

• Required preparation of a local plan for child protection services, which would be aired at a public hearing before being submitted to the state for approval. (§ 18)

e punitive powers of criminal courts

throughout the state, in connection with the enforcement of child abuse and neglect laws and with the reporting of suspected instances of child abuse and neglect, such administrative procedures, such personnel trained in child abuse and neglect prevention and treatment, such training procedures, such institutional and other facilities (public and private), and such related multidisciplinary programs and services as may be necessary or appropriate to assure that the state will deal effectively with child abuse and neglect cases in the state;

(E) provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, his parents or guardians;

....

(G) provide that in every case involving an abused or neglected child which results in a judicial proceeding a guardian *ad litem* shall be appointed to represent the child in such proceedings.

Although these congressional requirements merely describe the indispensable fundamentals of an effective

child protective system, only three states met all the criteria for funding in 1974. To assist the other 47 states in establishing eligibility, the National Center on Child Abuse and Neglect developed the Model Child Protection Act.

The provisions of the Model Child Protection Act reflect and conform to the requirements for state eligibility specified in the federal act. While a state may be eligible for a state grant without enacting the provisions of the model act, the model act was designed so that any state adopting it would automatically satisfy the state law requirements of the federal act. The provisions of the model act, however, go beyond the minimum requirements in the federal act and include an emphasis on parental self-help and rehabilitation. The model act does not deal with the issues of eligibility involving programmatic and procedural requirements.

REHABILITATION

Extreme cases of parental brutality make society anxious to take effective and immediate action against child maltreatment. But this emotionally charged desire to do something—and to do it quickly—often outruns society's ability to act intelligently.

For example, in some states, impatience with unsuccessful therapeutic treatment intervention has led some people to propose such Draconian measures as the automatic removal of abused children from the home and a return to criminal prosecution of parents. In Maine, one legislator has gone so far as to introduce a bill authorizing castration in cases of sexual maltreatment.

Child abuse and child neglect stem from a constellation of psychological problems and social tensions. In most situations, the remedial services of child protection agencies are more effective than the punitive powers of the criminal court in preventing further abuse or neglect. This is not only a more humane approach, it is also more practical.

Social casework, psychological and psychiatric counseling, child abuse teams, lay therapists, parent surrogates, Parents Anonymous, homemaker services, and education for parenthood make a documented improvement in the level of family functioning. Therefore, the model act deliberately avoided any punitive provisions and adopted an explicitly rehabilitative approach. The challenge is to provide the appropriate treatment services in the needed quality and quantity.

INVESTIGATIVE PROVISIONS

Many who reviewed the model act questioned its emphasis on the provision of investigative and treatment services. They pointed out that many of the services described by the act could be implemented administratively, through agency regulations and program expansion. However, the probable success of such an ap-

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* Specification of state responsibilities regarding public awareness, training of staff, technical assistance to agencies, and program innovation and implementation. (§§ 19 and 20)

* Creation of a "statewide child protection center" and a "central register of child protection cases" to immediately locate prior reports on the same family, monitor the status of the cases, and evaluate the effectiveness of services. (§ 21)

* Confidentiality of all records, with exceptions explicitly specified in the Act, and with unauthorized disclosure made a misdemeanor. (§ 24)

* Required updating and expunction of case records and central register records based on subsequent investigations and treatment experience. (§ 21d, e, f and h)

* Guaranteed access to records for those children and parents named in them, coupled with the right to a hearing if a request to amend or expunge a record is denied. (§ 21h and i)

* Creation of a "state child abuse and neglect coordinating committee" and a "statewide citizen's committee on child abuse and neglect." (§§ 20b and 22)

* Required preparation of an "annual state report on child abuse and treatment." (§ 20c)

* Required independent investigation of reports of institutional child abuse and neglect. (§ 23)

* Provision of independent legal representation for children, parents, and child protective agencies. (§ 25)

* Mandatory public and professional education on child abuse and neglect prevention and treatment. (§ 26)

250,000, except Lake County. Elsewhere, judge of circuit court performs duties by law conferred on juvenile court except as otherwise provided by law. Superior courts in cities other than county seats and in Lake County exercise concurrent juvenile jurisdiction with circuit court. In Marion County, juvenile jurisdiction transferred to Marion Superior Court January 1, 1979.

⁷Juvenile court (family court) has jurisdiction, in New Orleans, of aggravated rape, trial of children under 17 charged with neglected or delinquent matters, of persons charged with contributing thereto, violation of any law protecting children not punishable by death or hard labor, desertion or nonsupport of children, nonsupport of wives by husbands, adoption. Elsewhere: juvenile court in every parish, judges of city courts and district courts sit. Legislature may create separate juvenile court on petition of governing body.

⁸Family court project in Prince George's County is now the subject of "some criticism relating to two main problems. The first has to do with record keeping and information in the various sections of the circuit court and service agencies. The second deals with obtaining cooperation among the various service agencies and elimination of duplication of efforts on the part of both public and private agencies."

⁹Note that family and juvenile cases are in separate departments. Further changes planned.

¹⁰Circuit Court of the City of St. Louis has separate divisions for domestic relations and juveniles. Juvenile court commissioner may be appointed in each county of first class (except St. Louis and those not having a charter form of government). He is appointed by a majority of the circuit judges, en banc, for a term of four years, to

serve as full-time juvenile court commissioner. The qualifications are the same as circuit judge.

¹¹"There is no family court as such. . . Superior court . . . deals with dissolution, custody, adoptions, alimony, support of children and equitable distribution of property between spouses. Below the superior court was . . . a county court (no family law) which now has been merged into the superior court. We have a separate court—the juvenile and domestic relations court—dealing with all juvenile matters and support, thus no court fees or costs are charged. This court also has jurisdiction in adoption cases and those that may require temporary custody problems. We are on the verge of setting up a Family Court—a division of the Superior Court. . . . If it happens, the Juvenile Court will be merged with the Superior Court. Also, those cases now heard in the local magistrate's courts dealing with family problems (simple assault and battery, e.g.) will be transferred to the family court. . . ."

¹²Effective September 1, 1980, will have exclusive original jurisdiction over adoption.

¹³Except in counties in which there are divisions of domestic relations within the common pleas, probate court judges preside over juvenile court within probate court. In some counties juvenile court is part of Domestic Relations Division of Common Pleas. In Cuyahoga and Hamilton courts, it is a separate division of common pleas.

¹⁴Some counties have a law and equity court with juvenile jurisdiction.

¹⁵1977 act authorized their establishment. Note: juvenile and domestic relations courts are not courts of record. ■

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proach appeared unlikely given the weaknesses of child protection programs and the seeming inability of program managers to mobilize sufficient support to improve them.

The drafters of the model act were convinced that its greatest asset is its mandate for those services essential to a comprehensive, statewide child protective system. The enactment of expanded reporting laws was assumed to be a cure for a state's child abuse and neglect problems. But sharply increasing caseloads, which inexorably flow from strengthened reporting laws, have come as a rude shock to social service systems and state and local administrators.

By fully and honestly describing the investigative and treatment services necessary to support a strong reporting law, the model act seeks to ensure that all those considering the enactment of child protective laws also consider the need for improved and expanded services. The model act's emphasis on investigative and treatment services is intended to clearly and unambiguously prepare all elements of a community for the full costs of an effective child abuse and neglect prevention and treatment program.

Only if the real issues of prevention and treatment are faced honestly can sufficient community and professional support be developed for the long-term effort

needed. To do otherwise would be irresponsible and indefensible. That is why, as a reminder of the true costs of an effective child protective system, the model act provides: "There are hereby authorized to be appropriated such sums as may be necessary to effectuate the purposes of this Act."

NEGLECT REPORTS REQUIRED

Unlike its 1963 predecessor, the model act requires the reporting of child neglect and sexual maltreatment as well as serious physical injuries. Some commentators objected to the expansion on the grounds that the concept of "child neglect" is inherently ambiguous and would encourage unwarranted reporting. Others pointed out that the increase in reported cases would create unmanageable child protective caseloads which would detract from the priority abuse cases require. Critics also noted that reporting would likely focus on poor and minority families.

After the proposed model act was distributed for public comment, HEW received about a half dozen letters requesting the deletion of mandatory reporting of neglect. Those letters included one from then Senator Walter Mondale, who had been one of the prime sponsors of the federal act. Unfortunately, neither the staff which drafted the model act nor those at higher echelons

of the department felt they should—or could—agree.

Legally, the drafters of the model act never really had a choice because the federal act, to which the model act had to conform, made no distinction in the eligibility requirements between abuse and neglect and, in fact, posited a unified definition of *child abuse and neglect*, stating, "For purposes of this Act, the term *child abuse and neglect* means the physical or mental injury, sexual abuse or exploitation, *negligent treatment*, or maltreatment of a child..." (emphasis added).

Furthermore, most child protective professionals believe that child neglect can be just as damaging, and just as deadly, as child abuse. By the late 1960s, studies had documented how abuse and neglect often occurred as interrelated problems in the same families and how artificially created distinctions were causing harmful difficulties in case handling. Consequently, even before the passage of the federal act, many states had expanded reporting mandates to include child neglect, as well as sexual abuse and emotional maltreatment. Their experience was that there were few malicious reports and that most reports were made by friends, neighbors, and relatives, demonstrating a broad community consensus on the need to protect neglected children.

Therefore, in keeping with the federal act's unitary definition of "child abuse and neglect," the model act incorporates all forms of child maltreatment, including child battering, physical attack, neglect, dependency, and abandonment, in one conceptual framework—the abused or neglected child. In order to minimize the danger that families would be reported merely because they were poor, the model act's definition of failure to supply a child with food, clothing, shelter, education and health care requires that the parents be offered financial or other reasonable means to do so before they can be considered neglectful.

THE DEFINITION DILEMMA

The drafters of the model act were deeply concerned about the imprecision of existing definitions of "child abuse" and "child neglect." Thus, like most reform proposals made in the last ten years, the act is careful to require that a child be "harmed or threatened with harm" before being considered abused or neglected. It then goes on to define the specific circumstances under which harm to a child may occur.

But while the act's definition is many times more precise than most state law definitions, like the best of them, it still suffers from residual imprecision. For example, it speaks in terms of *adequate* food, clothing, shelter, education or health care, without providing any guidance about what is adequate.

It also contains a catch-all provision that authorizes intervention when parents commit "specific acts or omissions of a similarly serious nature." The imprecision of such provisions led one observer to assert that "even the most sensitive, caring parent could, at some

point in his or her child-rearing years, be considered at least neglectful, and perhaps even abusive. The discretionary power of social services personnel emerges as virtually limitless, and for parents in the lower income brackets, the law edges into gray areas of discrimination and coercion." This somewhat exaggerated statement is tempered by the act's requirement that the child be harmed or threatened with harm, an important limitation on its application.

Moreover, the basic social consensus about what is and what is not "child maltreatment" operates to exclude most families from the reach of even the most vague statutes. However, because of the model act's residual imprecision, its definitions, like all other existing definitions, allow individual decision makers great latitude in applying their personal interpretations and values to the child-rearing situations they must judge.

DEFINE 'SERIOUS'

Unfortunately, at the present time, there does not seem to be any way to prevent such residual imprecision. The only solution that critics of such provisions have offered is the additional requirement that the harm to the child be *serious*. But an injury that one person may consider serious, another person may consider minor.

Consequently, efforts to narrow the concept of child maltreatment by adding the one-word qualifier of *serious* are at best a partial solution to a more fundamental problem, and, at worst, a cosmetic change that gives the illusion of greater specificity while in reality merely substituting one imprecise term for another. In fact, the experience of those states that required the reporting of only "serious" injuries was that many professionals claimed that a child's injury was not "serious" and used that claim as an excuse for not reporting situations.

While the model act's definitions appear to be as precise as any others that have been proposed, that does not mean that they should be accepted as the last word on the subject. The improvement of definitions of "child abuse" and "child neglect" must be a continuing priority of the field.

WIDE ACCEPTANCE

The Model Child Protection Act has been almost as successful as its predecessor. More than 35 states have enacted at least one of its provisions while more than ten states have adopted large portions of it.

The consequent changes in state practices have been equally impressive. For example, almost all states now require the reporting of neglect as well as abuse, mandate the prompt investigation of cases by specialized child protective agencies, provide a guardian *ad litem* in court proceedings, assure the confidentiality of court records, and guarantee the outside, impartial investigation of reports of institutional child abuse and neglect.

What accounts for the model act's wide adoption by the states? Certainly, the fact that it was built around federal eligibility requirements provided some impetus. But the cost of implementing the requirements, which mandate states to establish comprehensive casefinding and investigatory programs, is many times greater than the amount of the grant. While the grant averages a mere \$80,000, the actual additional costs have been in the millions of dollars for many states.

More likely the states were motivated because the model act, and the congressional requirements that were its genesis, reflected the professional and public consensus concerning the direction of needed reform. Every provision of the model act, for example, was based on an already enacted statute that some state had found to be effective. In state after state, the prime argument of proponents of change was that the existing child protective system had to be improved and that the proposed legislation would help do so.

ACT AWAITS FINAL ACTION

The original draft of the model act was developed with the assistance of a 41-member national advisory board that met five times during 1974-75. This first draft of the act was sent for review and comment to the commissioners of social services and the directors of child welfare services in all 50 states as well as to over 100 concerned organizations and individuals. Numerous meetings were held to discuss the draft. In response, the National Center on Child Abuse and Neglect received about 50 letters making specific and generally favorable comments and suggestions.

As a result of this review process, the model act was revised and submitted to HEW for formal approval in the summer of 1976. By December, it had been approved by all appropriate HEW agencies, but the decision was made to allow the incoming administration to review the draft before it would be approved. Wishing to ensure the widest possible review of this revised draft, the new administration decided that it should be sent out again for public review.

Hence, in 1977, in addition to sending copies to state social services and child welfare officials, more than 1,000 copies were distributed to concerned organizations and individuals. In response, the National Center received about 90 letters. And the comments were even more positive than before.

This is not meant to suggest that the draft enjoyed universal support. Like any complex document developed to satisfy broadly divergent groups and individuals, the model act was the product of intense interaction and negotiated give-and-take. Although the final document represented a consensus of what was considered the best means of protecting endangered children while also providing a fair procedure for parents, a few of the provisions—especially those requiring reports of child neglect—are still vigorously opposed by some.

Because of lingering fears that the model act will be criticized for going too far or not far enough in seeking to protect children, it still awaits final action by the Department of Health and Human Services (formerly HEW). And yet, the model act continues to be widely used. In 1979, it was reprinted to meet continuing requests for copies and more than 3,500 copies of the 1977 draft, still marked "for review purposes only," have been distributed.

In light of the model act's broad impact, perhaps the lesson to be learned is that, to be effective, a reform proposal does not need the formal imprimatur of its sponsoring agency—so long as it reflects the best thinking available.

CONCLUSION

Despite wide acceptance, the model act, like any reporting law, has its limits in combating child maltreatment. Mandatory reporting laws have successfully identified hundreds of thousands of endangered children—and many thousands of children have been saved from serious injury and even death. In Denver, for example, the number of hospitalized abused children who die from their injuries has dropped from 20 per year to less than one per year. And in New York state, under a comprehensive reporting law that also mandated the creation of specialized child protective units, there has been a 50 percent reduction in fatalities, from about 200 per year to under 100. More significantly, the number of children who die *after* their plight has been brought to the attention of the authorities is down 75 percent, from about 150 per year to under 40.

Nevertheless, the phenomenal increase in reports has created service and funding demands that remain unmet. Treatment services have simply not kept up in quality or scope with the increase in reports. Encouraging more reporting could be a cruel hoax—to the community as well as to the children and parents involved—if we do not now upgrade the treatment programs designed to respond to such reports.

Developing the high quality services needed will take enormous amounts of additional money. Unfortunately, this is a time of fiscal austerity at all levels of government, when already overburdened and inadequate services are being cut back instead of expanded. The next few years will determine whether we, as a society, will respond to the enormous human needs revealed by these dramatic increases in reporting and whether we will make the monetary commitment needed to expand treatment services. ■

A copy of the full text of the Model Child Protection Act together with commentary may be obtained from the National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013.