

# Child Welfare Malpractice

## Suing Agencies and Caseworkers for Harmful Practices

Douglas J. Besharov

**T**here were 1.3 million children reported to authorities last year as suspected victims of child abuse. Improvements in reporting methods and the emergence of specialized child protection agencies have saved thousands of children, but even these advances do not assure the prevention of further problems.

An increasing number of lawsuits against child welfare agencies and individual caseworkers have been brought by children and parents. Liability for injury can result from a failure to accept a report for investigation, to conduct a full or careful investigation if a child is suspected to be in danger, and to place a child in protective custody once the immediate danger is discovered.

In addition, authorities may be liable for violating or ignoring parental rights, for example, by conducting a slanderous investigation, by wrongfully removing a child or by maliciously prosecuting the parent. One of the largest areas of litigation is inadequate foster care services in which children are "lost in the limbo of foster care."

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Over the past twenty years, there has been a major expansion of programs to prevent child abuse and neglect. Last year, approximately 1.3 million children were reported to the authorities as suspected victims of child abuse and neglect. Besharov, *Child Protection: Past Progress, Present Problems and Future Directions*, 17 Fam. L. Q. 151 (1983). This is almost nine times the approximately 150,000 children reported in 1963. At any one time, about 400,000 families are under the supervision of child protective agencies and about 300,000 children are in foster care because of abuse or neglect.

Increased reporting and specialized child protective agencies have saved many thousands of children from death and serious injury. In New York State, for example, after the passage of a comprehensive reporting law that also mandated the creation of specialized child protective staffs, there was a 50 percent reduction in child fatalities, from about 200 a year to less than 100.

However, added protection for abused and neglected children has been purchased at the price of an enormous increase in the level of government intervention into private family matters, much of which appears to be unwarranted and some of which is demonstrably harmful to the children and families involved.

Yet, tragically, being reported to the authorities does not assure a child's safety. Studies in a number of states have shown that about 25 percent of all child fatalities attributed to abuse or neglect involve children already reported to a child protective agency. Tens of thousands of other children receive serious injuries while under child protective supervision.

These serious and deep-seated problems form the basis of an increasing

number of lawsuits against child welfare agencies and individual caseworkers—brought by the children they are supposed to protect and the parents they are supposed to treat. Courts are finding liability and assigning monetary damages for all aspects of child welfare work:

- For inadequately protecting a child,
- For violating parental rights,
- For inadequate foster care services, and
- For leaving children in foster care "limbo."

### Liability for Inadequately Protecting a Child

State laws generally require child protective agencies to receive reports twenty-four hours a day via highly publicized "hot lines" and to initiate investigations on the same day, or shortly thereafter. Besharov, *Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect*, 23 Vill. L. Rev. 458 (1978).

#### Failure to Accept a Report for Investigation

Child protective agencies must accept and investigate all reports made properly to them. They may reject a report only if an investigation would be patently unwarranted. (The conditions under which a child protective agency may properly consider rejecting a report are listed in Chart A.)

*Mammo v. Arizona*, 24 ATLA L. REP. 76 (1980), illustrates the potential liability for failing to investigate a report of suspected child maltreatment. In this case, the non-custodial father reported that, when visiting his children, he noted bruises on the two older children, ages two and four. He told the Arizona Social Service Department that the mother would not

let him see his infant child. The agency seems to have viewed the father's report as part of a custody dispute rather than a sign of serious danger to the child. It advised that the situation should be handled by the father's divorce attorney. Ten days later, the infant was killed. The father filed a wrongful death action; the jury returned a verdict for \$300,000 in compensatory damages and \$700,000 in punitive damages. The judge invalidated the punitive damages award. The case is now on appeal.

#### *Failure to Investigate Adequately*

Outright failures to investigate are rare. More common are claims that the agency, having been given reason to suspect that a child is in danger, failed to conduct a sufficiently full or

careful investigation.

In a recent Iowa case, the non-custodial father reported to the Department of Social Services that his 34-month-old daughter had a bruise on her buttocks; he also told the agency that he believed that the bruise was caused by the mother's paramour. Though the agency investigated and substantiated the injury, it did not interview the paramour. At a staff meeting two days after the initial report, the agency decided not to remove the child from the mother's custody, but instead, to make follow-up visits coupled with day care, counseling, and other appropriate services. No follow-up visit was ever made. Eight days later the child was hospitalized in a comatose state and with bruises, both old and new, over most of her body. She died three days later. The mother's paramour was convicted of second-degree murder. *State of Iowa*

*v. Hillesheim*, 305 N.W. 2d 710 (Iowa 1981). The father sued the agency, alleging negligent investigation and supervision of the case, failure to employ qualified employees, failure to staff the protective unit sufficiently, and failure to remove the child from the home. The case was settled for \$82,500.

#### *Failure to Place a Child in Protective Custody*

Based on their investigations, caseworkers must decide whether the child is in such immediate danger that protective custody is needed. The consequences of a wrong decision—either in favor of foster care when it is not needed, or against foster care when a child is in serious danger—make this hardest decision that child protective workers face.

A civil lawsuit in the Federal District Court of Missouri claimed that a caseworker in St. Louis County, Missouri, and the Missouri Department of Social Services negligently failed to protect a child placed under their supervision pursuant to a Colorado court order. Damages amount-



## CHART A

### REPORTS THAT MAY BE REJECTED\*

- Reports in which the allegations clearly fall outside the agency's definitions of "child abuse" or "child neglect," as established by state law;
- Reports in which the caller can give no credible reason for suspecting that the child has been abused or neglected;
- Reports in which insufficient information is given to identify or locate the child; and
- Reports whose unfounded and malicious nature is established by specific evidence.

\* Reprinted from: Besharov, D., REPORTING CHILD ABUSE AND NEGLECT (Harcourt Brace Jovanovitch, 1984).

ing to \$4 million dollars were sought for the child's subsequent injuries. The complaint alleged that the caseworker—in twenty-six visits over a five-month-period—"negligently failed to recognize severe and permanently damaging neglect of the child." It was alleged that, during the period in question, the two-year-old child "failed to thrive and in fact reduced from a weight of approximately twenty-three (23) pounds to a weight of approximately thirteen (13) pounds." The terms of the settlement included the state's agreement to provide medical and psychiatric care for the children, even those past majority, to provide post-secondary school educational assistance, and to provide subsidy payment in the event of an adoption. *Maupin v. Maupin, et. al.*, E.D. Mo., 1979.

Chart B lists situations that suggest the need to place a child in protective custody. The presence of any one of the factors listed is a clear indication that the child faces an imminent threat of serious injury. Unless the child's safety can be assured by some other means, he or she should be placed in protective custody quickly—and kept there until the home situation is safe (or parental rights are permanently terminated).

### Liability for Violating Parental Rights

Laws against child abuse and child neglect are an implicit recognition that parental rights are not absolute, and that society, through its courts and social service agencies, should intervene into private family matters to protect endangered children. However, the need to protect children from abuse or neglect is not a justification for violating or ignoring parental rights.

### Slanderous Investigation

Child protective investigations are inherently a breach of parental and family privacy. To determine whether a particular child has been abused or neglected, caseworkers *must* interview friends, relatives, and neighbors, as well as schoolteachers, day care personnel, doctors, clergymen, and others who know the family. They must inquire into the most private personal

and family matters.

No reported case suggests that workers should not aggressively investigate reports of suspected child maltreatment. Good faith efforts to protect a child do not give rise to legal liability. However, the cases do make it clear that workers cannot use the need to investigate as an excuse to harass, threaten, or browbeat parents—or children. Furthermore, workers cannot improperly disclose the report's existence and the investigation's findings.

In *Martin v. County of Weld*, 598 P.2d 532, 533 (Colo. 1979), for example, the parents sought monetary damages for "slander, outrageous conduct, negligence, and gross negligence" arising from a child protective investigation. The parents alleged that the agency received an anonymous report of the father's sexual abuse of his 13-year-old daughter. The daughter was interviewed at school for one-and-a-half hours during which, the

## CHART B

### SITUATIONS SUGGESTING THE NEED FOR PROTECTIVE CUSTODY\*

- The child was severely assaulted, *i.e.*, hit, poisoned, or burned so severely that serious injury resulted or would have resulted but for the intervention of some outside force or simple good luck. (For example, the parent threw an infant against a wall, but somehow no serious injury resulted.)
- The child has been tortured systematically. (For example, the child was locked in a closet for long periods of time, forced to eat unpalatable substances, or forced to squat, stand, or perform other unreasonable acts for long periods of time.)
- The parent's reckless disregard for the child's safety caused serious injury—or could have done so. (For example, the parent left a very young child home alone under potentially dangerous circumstances.)
- The physical condition of the home is so dangerous that it poses an immediate threat of serious injury. (For example, there is exposed electrical wiring, upper-story windows are unbarred and easily accessible to young children, or there is an extreme danger of fire.)
- The child has been sexually abused or sexually exploited.
- The parents have purposefully or systematically withheld essential food or nourishment from the child.
- The parents refuse to obtain (or consent to) medical or psychiatric care for the child needed to prevent or treat a serious injury or disease.
- The parents appear to be so out of touch with reality that they cannot provide for the child's basic needs. (For example, the parents are suffering from severe mental illness, mental retardation, drug or alcohol abuse.)
- The parents have abandoned the child. (For example, the child has been left in the custody of strangers who have neither agreed to care for the child for more than a few hours nor know how to reach the parents.)
- There is reason to suspect that the parents may flee with the child. (For example, the parents have a history of frequent moves or of hiding the child from outsiders.)

NOTE: In any of the above situations, the younger the child, the greater the presumable need for protective custody.

\* Reprinted from: Besharov, D., REPORTING CHILD ABUSE AND NEGLECT (Harcourt Brace Jovanovitch, 1984)

parents alleged, the worker "made various allegations of sexual abuse and criminal misconduct against [the father, which the daughter] denied." *Id.* at 534. Following that interview, both parents and another family member were interviewed. Based on its investigation, the agency determined that the anonymous report was unfounded and it closed the case. The court rejected a motion to dismiss the complaints and effectively sustained the parents' right to sue, basing its decision on their allegations of the "defendants' lack of good faith."

"First, they set out details showing that [the caseworker's] interview of the child...went beyond mere investigation and amounted to harassment and intentional infliction of emotional distress. Second, the [parents] alleged that defendants intentionally leaked information about the case to the county commissioners, with whom [the father], as a member of the county council, regularly met, and also to the press.... Third, they alleged that the defendants published statements that were slanderous *per se*...." *Id.* at 535.

#### *Wrongful Removal of Children.*

If a child is removed pursuant to a court order, the existence of the order protects the caseworker and the agency from liability for wrongful removal unless there has been a violation of statutory mandates or procedures. For example, one federal court recognized potential liability for an emergency removal because, although the state law provided that only a judge could order a child's emergency placement, the order had been signed by a deputy clerk of the court. *McGhee v. Moyer*, 60 F.R.D. 578 (W. Va. 1973).

In emergency situations, removal must occur before court review is possible. If the removal is made in good faith and in accordance with state laws a successful claim for damages is unlikely.<sup>1</sup> Although the question of good faith is ultimately a subjective one, the existence of one or more of the grounds listed in Chart B is at least *prima facie* evidence of good faith.

Even if the original decision to place the child was valid, failure to initiate a statutorily required judicial review of an emergency removal made without a court order raises potential liability.<sup>2</sup> The agency also may be liable for the wrongful failure to re-

turn the child. *McEntee v. N.Y. Foundling Hospital*, 194 N.Y.S. 2d 269 (Sup. Ct. 1959).

One of the best known of these cases is *Duchesne v. Sugarman*, 566 F.2d 817 (2d Cir. 1977). The day after the mother was unexpectedly hospitalized for emotional problems, the agency placed her two children, one seven-years-old and the other six-months-old, in foster care. The mother refused to sign a consent form authorizing the agency to continue caring for the children. The caseworker reported the mother's refusal to his supervisor, who advised that no consent was necessary at that point. Five days later, the mother was released from the hospital and she "immediately...demanded that her children be returned. However, the children were not relinquished." *Id.* at 823. For the next twenty-seven months, the mother unsuccessfully sought to have the agency return her children. The agency continued to rebuff her and never sought a court order legalizing the situation. The court held that the absence of any prior parental consent established potential liability for monetary damages under § 1983 of the Federal Civil Rights Act.<sup>3</sup> (This factual situation was distinguished from that in which the parent originally consents to foster placement. In the latter cases, courts have held that requiring the parent to file a *habeas corpus* petition to obtain custody is constitutionally permissible. *Boone v. Wyman*, 295 F. Supp. 1143 (S.D. N.Y. 1969).

#### *Malicious Prosecution*

Child protective agencies seek to avoid formal court action whenever possible. Nationally, less than 20 percent of all reported cases reach court.<sup>4</sup>

The subjective weighing of the considerations involved in deciding whether to initiate court action make a lawsuit for malicious prosecution unlikely unless there are sufficient allegations that the decision to initiate court action was made recklessly or in bad faith. This was the case in *Doe v. County of Suffolk*, 494 F.Supp. 179, 180, (E.D. N.Y. 1980), where the mother sued for malicious prosecution. The mother alleged that the worker and the agency initiated a court child protective proceeding "knowing full well that they could not successfully prosecute the petition

against said plaintiff...and knowing full well that ultimately the said petition must be dismissed." *Id.* at 180, n.1. The worker had filed a petition against both the mother and the father after the mother told the police that her husband had sexually abused their child. Apparently, there was no reason to suspect that the mother had in any way been abusive or neglectful, and the county attorney withdrew the petition against her before the trial. The court allowed the mother's lawsuit to continue.

#### *Violation of Confidentiality*

Child protective agency records contain information about the most private aspects of personal and family life. Whether the information is true, its improper disclosure can violate the sensibilities of all those involved, and it can be deeply stigmatizing. All states have laws making child protective records confidential, and most have enacted specific provisions making unauthorized disclosure a crime. Some states, such as Iowa and West Virginia, also impose civil liability for unauthorized disclosures.<sup>5</sup>

A recent case in New York City demonstrated the importance of respecting the confidentiality of case records. Administrative disciplinary proceedings were initiated against a caseworker for releasing case records to the press. The caseworker claimed that he wanted to prove that a child abuse death "stemmed from...staff incompetence and irresponsibility in handling clients."<sup>6</sup> Initially, the agency sought to fire the worker. In a compromise agreement, the worker agreed to a demotion and reduction in salary.<sup>7</sup>

#### **Liability for Inadequate Foster Care Services**

Many children must be placed in foster care to protect them from serious injury and many children benefit from foster care. However, foster care has its hazards: In addition to the problem of children lost in the limbo of foster care, some children are placed in homes or institutions that are unable to meet their needs for special physical or emotional care. Worse, some children actually are abused or neglected by their foster parents. Both situations have been the subject of extensive litigation.<sup>8</sup>

### *Dangerous Foster Care Placements*

Tragically, there are more reported cases involving liability for the abuse or neglect of foster children than for any other individual topic covered by this article. By assuming custody of a child—either pursuant to a court order or with the parent's consent—and by making decisions about the child's care, the agency and the caseworker accept a certain degree of legal responsibility for the child's health, safety, and well-being.<sup>9</sup> Hence, the courts are all but unanimous in holding agencies and workers liable when their negligence results in the abuse or neglect of children at the hands of the foster parents.<sup>10</sup>

However, for liability to attach, the agency or the worker must have been negligent in the selection of foster parents or in the supervision of the foster placement. The child's abuse or neglect must have been the reasonably foreseeable consequence of conditions known to the agency or conditions which the agency should have known about. (A number of states have passed legislation which requires the screening of foster parents through central child abuse registers.)

Child welfare agencies also must monitor the quality of care foster parents provide for the children. Agencies have an affirmative obligation to supervise foster care placements and to remove children from unsuitable or dangerous environments.<sup>11</sup> Supervision of foster placements requires periodic home visits, including interviews of the children, and periodic medical examinations of the children. *Vonner v. State*, 273 So.2d 252 (La. 1973). It also requires that the agency be aware of and responsive to reports or other indications of possible abuse in the foster home. *Doe v. New York City Dept. of Social Services*, 649 F.2d 134 (2d Cir. 1981). For example, in *Bradford v. Davis*, 629 P.2d 1376 (Or. 1981), the plaintiff, a foster child, received \$90,000 in settlement from the state of Oregon after alleging that the Children's Services Division negligently failed to supervise, screen, and monitor his foster placement. One of the allegations was that the Department failed to investigate reports by neighbors that the child was being beaten.<sup>12</sup> Finally, the failure to follow written agency procedures for the supervision of foster placements often seems to be an im-

portant factor in the court's finding of agency or worker liability. *Doe v. N.Y.C. Dept. of Social Services*, 649 F.2d at 134, and *Vonner v. State*, 629 P.2d at 1376.

### *Failure to Meet the Child's Needs for Special Care*

While in foster care, children are supposed to receive treatment services that they may need to remedy the effects of past maltreatment or other special problems. However, courts seem to be reluctant to translate this basic need into a constitutional right. For example, in *Sinhogar v. Parry*, 427 N.Y.S. 2d 216 (App. Div. 1980), *aff'd* 425 N.E. 2d 826 (N.Y. 1981), a New York appeals court distinguished the rights of foster children from those of juvenile delinquents and persons in need of supervision who, because they are deprived of their liberty, have a right to treatment. According to this decision, foster children "do not have a constitutional right to a particular kind of care from the state and what rights they do have are limited by the facilities and funds made available by the legislature."<sup>13</sup> Similarly, a California court refused to allow a complaint that alleged an agency's mistaken—and negligent—diagnosis of a foster child's mental retardation which resulted in the child's placement in classes for the mentally retarded. *Smith v. Alameda County Social Services Agency*, 153 Cal. Rptr. 712, 718 (Cal. Ct. App. 1979).

### **Foster Care "Limbo"**

Despite this hesitancy to recognize the foster child's "right to treatment," one federal court decision suggests that there may be an alternate ground for liability. In *Patton v. Dumpson*, 498 F. Supp. 933, 936 (S.D. N.Y. 1980), the court dismissed claims of liability under Section 1983 of the Federal Civil Rights Act. However, it allowed to stand claims under Section 504 of the Federal Rehabilitation Act. The court explained that, under section 504, "the plaintiff, a handicapped child, is seeking to hold public and private agencies liable for damages for discrimination against him because of his handicap. The complaint alleges that, due to the plaintiff's physical and mental handicaps, agency employees denied him the benefit of educational services [while he

was in foster care]." *Patton*, 498 F. Supp. at 936.

In theory, foster care is supposed to be a *short term remedy*—to protect children from harm while parents have time to respond to treatment or until the child can be freed for adoption. The reality is far different. More than 50 percent of the children in foster care are in this "temporary" status for over two years; more than 30 percent are away from their parents for over six years.<sup>14</sup>

To reduce the number of children in foster care, many states have initiated periodic case review and special permanency planning programs. Unfortunately, even the most extensive and well-funded efforts have resulted in only a 20 percent reduction in the number of children in foster care.<sup>15</sup> Many lawsuits have been filed seeking damages for a child's prolonged stay in foster care.

### *Failure to Treat Parents*

Lawsuits for the failure to provide adequate treatment services usually are dismissed because the courts refuse to find that parents have a constitutional right to treatment.<sup>16</sup> Judges respond differently, though, when they conclude that the failure to provide appropriate treatment services was caused by poor judgment or negligent administration rather than lack of funds. This seems to have been the situation in *Cameron v. Montgomery County Child Welfare Services*, 471 F. Supp. 761 (E.D. Pa. 1979). In that case, the foster child, as plaintiff, alleged that the agency that placed the child in foster care pursuant to a court's dependency finding had prevented parental visitation, failed to provide any services to the mother which were designed to facilitate the child's speedy return home, transferred the child to another foster home fifty miles from the mother's residence, and had not informed the child of his right to counsel or to a placement review. After the federal court refused to dismiss the suit, the case was settled when the defendants agreed to pay \$5000.

### *Failure to Arrange the Child's Adoption*

Courts have been unwilling to hold that children in foster care have a constitutional right to be adopted. *Child v. Beame*, 412 F. Supp. 593 (S.D.

N.Y. 1976). However, as the following cases suggest, potential liability may arise if there is negligence or if there is a violation of the administrative procedures required by the Federal Social Security Act.

In *Bradford v. Davis*, 626 P.2d 1376, 1378 (Or. 1981), a 17-year-old child filed suit claiming that "the agency had failed to take reasonable actions to find [him] an adoptive home." The child had been placed in foster care shortly before his fourth birthday, and his parents had signed adoptive release forms when he was eight. The Oregon court allowed the case to proceed to trial. Before the trial, the case was settled for \$90,000.

*Joseph and Josephine A. v. New Mexico Department of Social Service*, 8 Fam. L. Rep. (BNA) 2188, 2190 (N.M. Dist. Ct. 1982), suggests that the absence of periodic reviews and other administrative safeguards required by Title IV (42 U.S.C. 601 *et seq.*) and Title XX (42 U.S.C. 1397 *et.*

*seq.*) of the Federal Social Security Act may open another line of potential liability for failure to arrange for an adoption. The plaintiffs "alleged that the defendants have failed and refused to establish procedures to determine whether children should continue in foster care, whether the rights of the biological parents should be terminated or whether a child should be placed for adoption. It [was] also alleged that the department [did] not even have an accurate count of the children in their custody." The court allowed the case to proceed to trial on the basis of a possible violation of the Federal Social Security Act.

### Conclusion

Most caseworkers feel that they are often blamed—and sued—for problems beyond their control. They especially are troubled by the apparent inability or unwillingness of courts to

recognize the difficulty of making child protective decisions, and of the need to safeguard caseworker discretion in doing what seems best for the child—and parents. They are even more troubled by criminal prosecutions which seem to be attempts to find a scapegoat for a child's death or blatant attempts by prosecutors to gain publicity.

Nevertheless, suing agencies and caseworkers may be the only way to obtain financial compensation for past wrongs, and it may be the only way to change child welfare practices harmful to children and families. As Leroy Schultz, a social work professor at the University of West Virginia, has written: "For the aggrieved client, an immovable social service agency must be challenged in his 'court of last resort.' Thus, court test cases, while destructive of a worker or two, have benefit for all future children, and in some cases, for other workers as well."<sup>17</sup>

### Notes

\* This article is adapted from the monograph, "Criminal and Civil Liability in Child Welfare Work: The Growing Trend," American Bar Association (1983).

<sup>1</sup> See *Brooks v. Richardson*, 478 F. Supp. 793 (S.D.N.Y. 1979); *Anthony v. White*, 376 F. Supp. 567 (D. Del. 1974); *Wayne S. v. County of Nassau*, 441 N.Y.S.2d 536 (App. Div. 1981).

<sup>2</sup> Cf. *White v. Minter*, 330 F. Supp. 1194 (D. Mass. 1971), holding that failure to initiate a judicial review hearing, whether or not required by statute, is a violation of parental rights which creates a cause of action for damages.

<sup>3</sup> The same considerations seem to have been involved in *Thorn v. New York City Department of Social Services*, 523 F. Supp. 1193 (S.D.N.Y. 1981), in which the defendants removed a child from the mother without her consent, after they had returned the child to her following three years of voluntary foster care. Cf. *Hatfield v. William*, 376 F. Supp. 212 (N.D. Iowa 1974).

<sup>4</sup> U.S. Dep't of Health and Human Services, National Center on Child Abuse and Neglect, *National Analysis of Official Neglect and Abuse Reporting* 38 (1980).

<sup>5</sup> U.S. Dep't of Health and Human Services, National Center on Child Abuse and Neglect, *Child Abuse and Neglect: State Reporting Laws* 22 (1980).

<sup>6</sup> *Legal Defense Fund Aids in Test Case in Confidentiality*, NATIONAL ASSOCIATION OF SOCIAL WORKERS NEWS, June 1982 at 22.

<sup>7</sup> Letter from Craig Kaplan, National Emergency Civil Liberties Committee, to R. Abramson, Office of the President of

N.Y.C. Council (April 19, 1982).

<sup>8</sup> Although beyond the scope of this paper, it should be noted that foster parents may sue the agency and/or caseworker if a dangerous child is placed in their care and they are not warned of his known violent tendencies. See, e.g., *Snyder v. Mouser*, 272 N.E.2d 627 (Ind. Ct. App. 1971); *Johnson v. State*, 447 P.2d 352 (Cal. 1968); *Seavy v. State*, 250 N.Y.S.2d 877, *aff'd* 216 N.E. 2d 613 (N.Y. 1964). See also *Vaugh v. North Carolina Department of Human Resources*, 252 S.E.2d 792 (N.C. 1979), finding liability for placing a child with cytomegalo virus (likely to cause birth defects) in the home of woman knowing that the woman intended to become pregnant where the ensuing pregnancy was aborted due to the woman's contraction of the virus.

<sup>9</sup> Even the arrest of the parents may raise the possibility of liability for inadequate placement of the child. See, e.g., *White v. Rockford*, 592 F.2d 381 (7th Cir. 1979), allowing a lawsuit against police officers who, upon arresting the children's uncle, allegedly left the children without adult protection in an automobile on the side of the road on a cold evening.

<sup>10</sup> See, e.g., *Doe v. New York City Department of Social Services*, 649 F.2d 134 (2nd Cir. 1981); *Brooks v. Richardson*, 478 F. Supp. 793 (S.D.N.Y., 1979); *National Bank of South Dakota v. Leir*, 9 Fam. L. Rep. (BNA) 2105 (S.D. Sup. Ct. Nov. 3, 1982); *Andrews v. Courts of Ostego*, 446 N.Y.S.2d 169 (Sup. Ct. 1982); *Bradford v. Davis*, 629 P.2d 1376 (Or. 1981); *Bartels v. County of Westchester*, 429 N.Y.S.2d 906 (App. Div. 1980); *Koepf v. County of York*, 251 N.W.2d 866 (Neb. 1977); *Vonner v. State*, 273 So.2d 252 (La. 1973);

*Hanson v. Rowe*, 500 P.2d 916 (Ariz. Ct. App. 1972); *Elton v. County of Orange*, 84 Cal. Rptr. 27 (Cal. Ct. App. 1970); *Fox v. Mission of Immaculate Virgin For Protection of Homeless and Destitute Children*, 119 N.Y.S.2d 14 (Sup. Ct. 1952), *aff'd* 117 N.Y.S.2d 477 (App. Div. 1952); cf. *Parker v. St. Christopher's Home*, 431 N.Y.S.2d 110 (App. Div. 1980); *Pickett v. Washington County*, 572 P.2d 1070 (Or. Ct. App. 1977). See generally Annotation, *Government Tort Liability for Social Service Agency's Negligence In Placement, or Supervision After Placement, of Children*, 90 A.L.R. 3d 1314 (1979).

<sup>11</sup> See, e.g., *Gill v. Smith*, 382 N.Y.S.2d 626 (Sup. Ct. 1976); *In the Matter of Adoption of Doe*, 444 P.2d 800 (Wash. 1968).

<sup>12</sup> For a review of this case see National Center for Youth Law, YOUTH LAW NEWS 6 (1982) and 15 CLEARINGHOUSE REVIEW 288 (July 1981).

<sup>13</sup> *Sinhogar*, 427 N.Y.S. at 223, *Black v. Beame*, 419 F. Supp. 599 (S.D.N.Y. 1976) and *Child v. Beame*, 412 F. Supp. 593 (S.D.N.Y. 1976).

<sup>14</sup> U.S. Department of Health, Education, and Welfare, Children's Bureau, *National Study of Social Services to Children and Their Families*, at 120.

<sup>15</sup> Lahti, J., et al., *A Follow Up Study of the Oregon Project: A Summary*, (Regional Institute for Human Services, School of Social Work, Portland State University, 1978), 3, Table 1.

<sup>16</sup> See, e.g., *Black v. Beame*, 419 F. Supp. 599 (S.D.N.Y. 1976). But see *McTeague v. Sosnowski*, 617 F.2d 1016 (3rd Cir. 1980).

<sup>17</sup> L. Schultz, MALPRACTICE AND LIABILITY IN WEST VIRGINIA'S CHILD PROTECTIVE SERVICES: A SOCIAL POLICY ANALYSIS (1981) Preface.