

# William & Mary Law Review

---

Volume 11 (1969-1970)  
Issue 4

Article 7

---

May 1970

## The Legal Response to Child Abuse

Thomas J. Donovan

Follow this and additional works at: <https://scholarship.law.wm.edu/wmlr>



Part of the [Juvenile Law Commons](#)

---

### Repository Citation

Thomas J. Donovan, *The Legal Response to Child Abuse*, 11 Wm. & Mary L. Rev. 960 (1970),  
<https://scholarship.law.wm.edu/wmlr/vol11/iss4/7>

Copyright c 1970 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmlr>

## THE LEGAL RESPONSE TO CHILD ABUSE

Gross physical abuse is only one segment of a much wider problem of parental neglect. The unloved child, the emotionally traumatized child, the socially and emotionally deprived child, become a part of our neurotic, disturbed, retarded, or delinquent adults.<sup>1</sup>

During the past decade, the American public has become increasingly aware of the problem of child abuse.<sup>2</sup> The mass media has played a significant role in bringing the problem to the attention of the public.<sup>3</sup> It is only in the recent past, however, that even the medical profession has comprehended the scope of the problem in our society.<sup>4</sup> Physicians have identified certain clinical symptoms frequently discovered during the examination of abused children. The term "child abuse syndrome" has become associated with this phenomenon, and significant medical progress has been made in the identification of victims of child abuse.

Identification of victims and discovery of the scope of the problem by the medical profession, however, was only the first step toward what will ultimately be a solution to a complex medical-legal-social problem. Professional sociologists and social workers have taken an interest in the problem,<sup>5</sup> and legal scholars have examined the contributions that the law might make toward its amelioration.<sup>6</sup>

---

1. Bain, *The Physically Abused Child*, 31 PEDIATRICS 895, 897 (1963).

2. For the purposes of this note, the term "child abuse" is intended to include both positive abusive conduct toward the child, and neglect of the child in cases where a duty of care exists toward a child.

3. See, e.g., Coles, *Terror Struck Children*, NEW REPUBLIC, May 30, 1964, at 13; Flato, *Parents Who Beat Children*, SATURDAY EVENING POST, Oct. 6, 1962, at 30; Oettinger, *Protecting Children From Abuse*, PARENTS MAGAZINE, Nov., 1964, at 12. For a comprehensive analysis of the role of the mass media in the formulation of legislative responses to the problem of child abuse see Paulsen, Parker, & Adelman, *Child Abuse Reporting Laws—Some Legislative History*, 34 GEO. WASH. L. REV. 482 (1966).

4. See, e.g., V. FONTANA, *THE MALTREATED CHILD: THE MALTREATED SYNDROME IN CHILDREN* (1964); Bain, *supra*, note 1; Editorial, *The Battered Child Syndrome*, 181 J.A.M.A. 42 (1962); Gwinn, Lewin, & Peterson, *Roentgenographic Manifestations of Unsuspected Trauma in Infancy*, 176 J.A.M.A. 926 (1961).

5. See, e.g., Elmer, *Identification of Abused Children*, 10 CHILDREN 183 (1963); Morris, Gould, & Matthews, *Toward Prevention of Child Abuse*, 11 CHILDREN 59 (1964); Rubin, *The Need for Intervention*, 24 PUB. WELFARE 231 (1966).

6. See, e.g., Carpenter, *The Parent-Child Dilemma in the Courts*, 30 OHIO ST. L.J. 292 (1969); DeFrancis, *Child Abuse—The Legislative Response*, 44 DENVER L.J. 3 (1967); McCoid, *The Battered Child and Other Assaults Upon the Family: Part One*, 50 MINN. L. REV. 1. (1965); Paulsen, *Child Abuse Reporting Laws: The Shape of Legis-*

Thus far, the most important contribution made by the law has been the enactment of child abuse reporting statutes. These statutes, usually reflecting one of four model statutes,<sup>7</sup> have now been enacted in all fifty states. Their objective is the identification of individual victims of abuse so that the resources of the state may be used to protect and assist the child. The identification of the victim, however, does not solve the problem, but is only the first step in the development of a meaningful solution.

Other than the previously mentioned statutes, the law has continued to operate in the areas in which it has been traditionally associated with children and their problems. A rather simplistic approach has been taken in the area of criminal law by increasing the punishment for those who batter children, or by the enactment of statutes which make child abuse a crime separate from common law battery. In many cases, these statutes have undoubtedly been the result of some particularly shocking and brutal incident that has come to the attention of the legislature. While there is some validity to this approach in cases in which the batterer is a stranger to the child, severe criminal sanctions in instances in which the abuser is a parent or one *in loco parentis*, the vast majority of instances, may have a detrimental effect. It has been argued<sup>8</sup> that the severe punishment of a parent is likely to create resentment toward the child and place him in even greater danger. Therefore, in cases in which the child is to remain in his previous environment, it does not seem wise to take action that is likely to aggravate an already poor situation.

Juvenile court acts generally provide that, upon evidence of abuse or neglect, the court may order the child's removal from the abusive environment or assume "protective supervision" of the abused child.<sup>9</sup> Often, however, these solutions are more illusory than real, since, in most cases, a juvenile court judge has no place to "put" the abused child. The under-financed and under-staffed institutions do not provide

---

lation, 67 COLUM. L. REV. 1 (1967); Paulsen, Parker, & Adelman, *supra* note 3; Shepard, *The Abused Child and the Law*, 22 WASH. & LEE L. REV. 182 (1965).

7. AMERICAN MEDICAL ASS'N, PHYSICAL ABUSE OF CHILDREN—SUGGESTED LEGISLATION (1965); CHILDREN'S BUREAU, U.S. DEPT. OF HEALTH, EDUCATION, AND WELFARE, PRINCIPLES AND SUGGESTED LANGUAGE FOR LEGISLATION ON REPORTING OF THE PHYSICALLY ABUSED CHILD (1963); CHILDREN'S DIVISION, AMERICAN HUMANE ASS'N, GUIDELINES FOR LEGISLATION TO PROTECT THE BATTERED CHILD (1963); COMMITTEE OF STATE OFFICIALS ON SUGGESTED STATE LEGISLATION, COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION (1965).

8. Daly, *Willful Child Abuse and State Reporting Statutes*, 23 U. MIAMI L. REV. 283, 297 (1969).

9. E.g., VA. CODE ANN. § 16.1-166 (Replacement Vol. 1960).

a viable alternative to the parents, save in cases of the most flagrant abuse. The same may be said of "protective supervision," since the caseloads of the social workers ultimately responsible for supervision are frequently too heavy. In short, juvenile court judges are often faced with choosing between two undesirable alternatives: leaving the child in an environment in which he has already been abused, or placing him in an institution which cannot provide the type of environment a developing child needs. There are cases, however, in which the child must be removed for its own protection, and courts have reexamined former attitudes concerning the relationships between parent, child, and society with an increasing tendency to protect the child at the expense of parental "rights" in the child.<sup>10</sup>

Child abuse reporting statutes are unlikely to be successful as a solution unless society is willing to allocate the resources necessary to provide quality institutional alternatives to returning an abused child to the source of the abuse, and unless courts continue to reexamine some legal principles with regard to the conflicting rights of the parents, the child, and society.

#### IDENTIFYING THE VICTIM—THE REPORTING STATUTES

The reporting statutes, the basic objective of which is the identification of the abused child, all have certain fundamental elements in common. First, a designated class of persons is either required or permitted to report suspected cases of child abuse. Secondly, these reports are to be made to designated public officials, who, presumably, take some remedial action. Thirdly, the statutes typically require an oral report by telephone followed by a written one describing the injuries and providing other data on the child and his family situation. Reports are made either to the appropriate law enforcement authorities, the juvenile court, or the local welfare department.

A distinction must be made at the outset among those statutes that make reporting mandatory by imposing criminal penalties for failure to report,<sup>11</sup> those which use the mandatory language "shall" but fail to provide any penalty for failure to report,<sup>12</sup> and those which are per-

---

10. *E.g.*, *State v. Perricone*, 37 N.J. 463, 181 A.2d 751 (1962); *Raleigh Fitkin-Paul Morgan Mem. Hosp. v. Anderson*, 42 N.J. 421, 201 A.2d 537 (1964).

11. *E.g.*, ALA. CODE tit. 27, § 25 (Supp. 1967); N.J. STAT. ANN. § 9:6-8.7 (Supp. 1969-70).

12. *E.g.*, IDAHO CODE ANN. § 16-1641 (Supp. 1969); VA. CODE ANN. § 16.1-217.1 to 217.2 (Supp. 1968).

missive, that is, that extend immunity to the reporter if he chooses to report, but impose no sanction for failure to report.<sup>13</sup> A hybrid type of statute levies requirements on some classes of reporters, while merely permitting others to report if they so choose.<sup>14</sup>

The statutes also vary as to the classes of persons who are either required or permitted to report. Physicians are included in all statutes. Other classes of health personnel, such as registered nurses,<sup>15</sup> visiting nurses,<sup>16</sup> practical nurses,<sup>17</sup> school nurses,<sup>18</sup> public health nurses,<sup>19</sup> pharmacists,<sup>20</sup> laboratory technicians,<sup>21</sup> and others<sup>22</sup> may also be included. If the physician or nurse examines the child in his capacity as a staff member of a hospital or clinic, provision is often made for the administrator or superintendent to do the actual reporting to the appropriate officials.<sup>23</sup> Other classes typically included are those in frequent contact

---

13. *E.g.*, N.C. GEN. STAT. § 14-318.2 (Supp. 1969); WASH. REV. CODE ANN. §§ 26.44.010, 26.44.060 (Supp. 1969).

14. *E.g.*, IOWA CODE ANN. § 235 A.3 (1965) provides that health practitioners "shall" report, and that any other person "may" report.

15. *E.g.*, HAWAII REV. STAT. § 350-1 (1968); KAN. STAT. ANN. § 38-717 (1965).

16. MONT. REV. CODE ANN. § 10-902 (2d Replacement Vol. 1968); N.M. STAT. ANN. § 13-9-13 (Replacement Vol. 1968).

17. MD. ANN. CODE art. 27, § 11A(b)(1) (Supp. 1969); MONT. REV. CODES ANN. § 10-901 (2d Replacement Vol. 1968).

18. *E.g.*, KAN. STAT. ANN. § 38-717 (Supp. 1969); MO. ANN. STAT. § 210.105 (Supp. 1969-70).

19. *E.g.*, GA. CODE ANN. § 74-111(a) (Supp. 1969); N.D. CENT. CODE § 50-25-01 (Supp. 1969).

20. *E.g.*, ALA. CODE tit. 27, § 21 (Supp. 1967); ARK. STAT. ANN. § 42-802 (Supp. 1969); MINN. STAT. ANN. § 626.554(2) (1967); WASH. REV. CODE ANN. § 26.44.030(1) (Supp. 1969).

21. *E.g.*, ARK. STAT. ANN. § 42-802 (Supp. 1969); IND. ANN. STAT. § 52-1419 (Supp. 1969).

22. ALASKA STAT. § 11.67.010(a) (Supp. 1969) (practitioner of the healing arts); CAL. PENAL CODE § 11161.5 (West Supp. 1968) (religious practitioner); ILL. ANN. STAT. ch. 23, § 2042 (1968); MD. ANN. CODE art. 27, § 11A(b)(1) (Supp. 1969) (other persons authorized to engage in the practice of healing); MO. ANN. STAT. § 210.105 (Supp. 1969-70); N.Y. SOC. SERVICES LAW § 383A(1)(a) (McKinney Supp. 1969-70); WASH. REV. CODE ANN. § 26.44.030(1) (Supp. 1969) (psychologist). The term "physician" generally includes those who are licensed by the jurisdiction to practice healing, as well as residents and interns whether licensed or not. Therefore, it normally includes doctors of medicine, dentists, osteopathic physicians, chiropractors, podiatrists, optometric physicians, and chiroprpodists.

23. *E.g.*, N.J. STAT. ANN. § 9:6-8.3 (Supp. 1969-70); VA. CODE ANN. § 16.1-217.1 (Supp. 1968).

with children, such as school teachers,<sup>24</sup> principals,<sup>25</sup> and administrators,<sup>26</sup> as well as social workers,<sup>27</sup> clergymen,<sup>28</sup> and law enforcement officers.<sup>29</sup> Occasionally, other classes of persons are specifically included.<sup>30</sup> Five jurisdictions<sup>31</sup> make the requirement universal by providing that "any person" shall report such abuses.

To encourage the reporting of child abuse, the statutes provide the reporter with immunity in civil defamation actions, as well as any criminal proceeding arising out of the report. The immunity granted falls into one of three categories. The first provides immunity if the reporter acts in good faith.<sup>32</sup> The second category not only provides immunity if the report was made in good faith, but additionally presumes that the report was made in good faith.<sup>33</sup> Finally, some statutes grant absolute immunity to reporters.<sup>34</sup> The official designated to receive the initial report is also granted immunity. Many jurisdictions provide for reporting to law enforcement agencies or prosecuting attorneys.<sup>35</sup> Frequently, these officials are required to report, in turn, to

---

24. *E.g.*, OHIO REV. CODE ANN. § 2151-421 (Page Supp. 1970); W. VA. CODE ANN. § 49-6A-2 (1966).

25. *E.g.*, CAL. PENAL § 11161.5 (West Supp. 1968); CONN. GEN. STAT. ANN. § 17-38a(a) (Supp. 1969).

26. *E.g.*, OHIO REV. CODE ANN. § 2151.421 (Page Supp. 1970); WIS. STAT. ANN. § 48.981(1) (Supp. 1969).

27. *E.g.*, ALASKA STAT. § 11.67.010(b) (Supp. 1969); KAN. STAT. ANN. § 38-717 (Supp. 1969).

28. N.M. STAT. ANN. § 13-9-13 (Replacement Vol. 1968); WASH. REV. CODE ANN. § 26.44.030(1) (Supp. 1969).

29. *E.g.*, S.D. COMPILED LAWS ANN. § 26-10-10 (1967); TEX. REV. CIV. STAT. art. 695c-2 (Supp. 1969-70).

30. *E.g.*, HAWAII REV. STAT. § 350-1 (1968) (coroner); MO. ANN. STAT. § 210.105 (Supp. 1969-70) ("others with the responsibility for care of children for financial remuneration . . ."); TEX. REV. CIV. STAT. art. 695c-2 (Supp. 1969-70) (coroners and nursery school directors); NEV. REV. STAT. § 200.502(d) (1965) (attorneys).

31. KY. REV. STAT. ANN. § 199.335 (1966); NEB. REV. STAT. § 28-481 (Supp. 1967); TENN. CODE ANN. § 37-1202 (Supp 1966); UTAH CODE ANN. § 55-16-2 (Supp. 1969); WYO. STAT. ANN. § 14-28.1 (1965).

32. *E.g.*, DEL. CODE ANN. tit. 16, § 1004 (Supp. 1969-70); FLA. STAT. ANN. § 828.041(4) (1965).

33. *E.g.*, ILL. ANN. STAT. ch. 23, § 2045 (1968); MICH. COMP. LAWS ANN. § 722.573 (1968).

34. *E.g.*, COLO. REV. STAT. ANN. § 22-13-6 (1963); PA. STAT. tit. 11, § 2107 (Supp. 1970).

35. *E.g.*, ARIZ. REV. STAT. ANN. § 13-842.01(A) (Supp. 1969-70); LA. REV. STAT. ANN. § 14:403(B) (Supp. 1970); W. VA. CODE ANN. § 49-6A-2 (1966).

some public welfare agency;<sup>36</sup> other jurisdictions provide for reporting directly to a public welfare agency.<sup>37</sup> In many instances, these agencies are required to investigate the incidents and report to law enforcement authorities if criminal prosecution is warranted.<sup>38</sup> A third type of statute requires that reports be made directly to the court having jurisdiction over juvenile affairs, which, in turn, directs an appropriate public agency to investigate the report.<sup>39</sup> Still other jurisdictions require reports to be made simultaneously to both law enforcement and public welfare officials.<sup>40</sup>

Reports are usually required to be made immediately by telephone or otherwise, to be followed, as soon as is practicable, by a written report. Some jurisdictions, however, merely require a written report.<sup>41</sup> The written report is typically required to contain the name and address of the victim and his parents or others standing *in loco parentis*, the victim's age, the nature and extent of his injuries, and any other information the reporter believes might be helpful in establishing the cause of injuries and the person or persons responsible therefor.<sup>42</sup>

Several jurisdictions have established central registries which receive copies of the report.<sup>43</sup> Experience has demonstrated that abusive parents usually do not bring the child to the same health facility more than once for treatment of injuries.<sup>44</sup> Many instances of abuse go undiagnosed because of the mobility of today's society and the physician's natural reluctance to believe that a parent has abused his child, particularly when the parent provides some reasonably plausible explanation for the injuries. Data available in central registries is likely to be an invaluable tool in cases such as these.

Child abuse reporting statutes also provide, in most cases, for the

---

36. E.g., ALA. CODE tit. 27, § 21 (Supp. 1967); COLO. REV. STAT. ANN. § 22-13-1 (1963).

37. E.g., IDAHO CODE ANN. § 16-1641 (Supp. 1969); ILL. ANN. STAT. ch. 23, § 2043 (1968).

38. E.g., HAWAII REV. STAT. § 350-1 (1968); R.I. GEN. LAWS ANN. § 40-13.1-4 (Supp. 1967).

39. E.g., DEL. CODE ANN. tit. 16, § 1003 (Supp. 1969-70); TENN. CODE ANN. § 37-1202 (Supp. 1969).

40. E.g., KY. REV. STAT. ANN. § 199.335 (1966); ME. REV. STAT. ANN. tit. 22, § 3852 (Supp. 1970).

41. E.g., FLA. STAT. ANN. § 28.041(3) (1965); S.C. CODE ANN. § 20-302.2 (Supp. 1969).

42. E.g., HAWAII REV. STAT. § 350-1 (1968); NEV. REV. STAT. § 200.503 (1965).

43. E.g., MICH. COMP. LAWS ANN. § 722.572 (1968); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1970).

44. See Daly, *supra* note 8, at 332.

abrogation of the physician-patient privilege,<sup>45</sup> the husband-wife privilege,<sup>46</sup> or both,<sup>47</sup> in any legal proceedings, civil or criminal, arising from the report. Other clauses found in reporting statutes provide for temporary non-judicial removal from custody if the examining physician and a specified law enforcement official concur that such immediate action is necessary for the protection of the child.<sup>48</sup> In a few jurisdictions, the statutes contain a rather unfortunate provision to the effect that treatment accorded to an ill child by spiritual means or by prayer in accordance with the tenets of a recognized religion shall not, for that reason alone, be deemed neglect within the meaning of the statute.<sup>49</sup>

A table summarizing the provisions of the enacted child abuse reporting statutes follows on page 968.

### THE COMMON LAW CONTEXT

For centuries the young child has been regarded as a chattel of his parents. By making abortions illegal except under limited circumstances, civilized society now protects the child *in utero*. It should continue giving adequate protection through the early years of life when the child is still too young to defend himself.<sup>50</sup>

Society's response to the problem of child abuse and the efficacy of child abuse reporting legislation must be viewed in the context of the common law attitudes toward the relationship between parent, child and state.<sup>51</sup> The right of the parent to physically discipline the child has been the focus around which much of the law of parent and child has arisen. The most extreme view seems to be that the parent or one acting *in loco parentis* is the sole arbiter of the child's punishment, and that all punishment that does not result in the disfigurement of, or

---

45. E.g., ARIZ. REV. STAT. ANN. § 13-842.01(C) (Supp. 1969-70); KAN. STAT. ANN. § 38-719 (1965).

46. IDAHO CODE ANN. § 16-1641 (Supp. 1969); TEX. REV. CIV. STAT. art. 695c-2 (Supp. 1969-70).

47. E.g., ARK. STAT. ANN. § 42-805 (Supp. 1969); DEL. CODE ANN. tit. 16, § 1005 (Supp. 1969-70).

48. E.g., COLO. REV. STAT. ANN. § 22-13-4(2) (1963); R.I. GEN. LAWS ANN. § 40-13.1-5(2) (Supp. 1968).

49. ALA. CODE tit. 27, § 21 (Supp. 1967) (limited to Christian Science Practitioners); D.C. CODE ANN. § 2-166 (Supp. 1969-70); HAWAII REV. STAT. § 350-4 (1968); N.H. REV. STAT. ANN. § 571:25 (Supp. 1969); OHIO REV. CODE ANN. § 2151.42.1. (Page Supp. 1970); VA. CODE ANN. § 16.1-217.1 (Supp. 1968) (limited to Christian Science Practitioners).

50. Editorial, *The Battered Child Syndrome*, 181 J.A.M.A. 42 (1962).

51. See generally Shepherd, *The Abused Child and the Law*, 22 WASH. & LEE L. REV. 182 (1965).



permanent injury to the child is *per se* reasonable.<sup>53</sup> This is clearly the older view. The majority approach gives a parent the right to punish a child within the bounds of moderation and reason, as long as he does so for the welfare of the child. If he exceeds moderation, however, he becomes criminally liable.<sup>53</sup>

Providing the foundation for this latter view is the Roman law concept of *parens patriae*: that the state has an interest in the child that is superior to the parents' or others' standing *in loco parentis*.<sup>54</sup> This is a difficult concept for a citizen of a democratic society to accept, since it has so often been associated with totalitarian ideologies. The state, however, has not hesitated to interfere with the parent-child relationship when it is in the interest of the state to do so. Compulsory education and child labor laws are but two examples of such interference. Additionally, the state has long taken the position that a child can be removed from parental custody in order to protect its morals.<sup>55</sup> There has been an increasing tendency for the state, through its court system, to interfere with the parent-child relationship in order to protect the physical health of the child. The Supreme Court of New Jersey recently approved a lower court's appointment of a guardian for an unborn child and its order to the mother to submit to blood transfusions which was contrary to her religious beliefs.<sup>56</sup>

#### REMOVAL OF THE CHILD

Although legal theory no longer obstructs the removal of a child from an abusive environment, the practical difficulties are great. All states have statutory provisions giving juvenile courts jurisdiction over "neglected children," and, although the wording of such statutes varies widely, it can be stated with certainty that the abused child falls within this category. These juvenile courts have the power to remove the child from parental custody in appropriate cases.

The distinction must be drawn between the court's power to summarily remove the child for an emergency purpose, such as medical

(Continued on page 982)

52. See, e.g., *Nicholas v. State*, 32 Ala. App. 574, 28 So. 2d 422 (1946); *Dean v. State*, 89 Ala. 46, 8 So. 38 (1889); *Boyd v. State*, 88 Ala. 169, 7 So. 268 (1886).

53. See cases cited in R. PERKINS, CRIMINAL LAW 878 (1957); Annot., 89 A.L.R. 2d 396 (1963).

54. See 67 C.J.S. *Parens Patriae* (1950).

55. E.g., *In re Douglas*, 11 Ohio App. 2d 340, 164 N.E.2d 475 (1959); *In re Drake*, 87 Ohio L. Abs. 483, 180 N.E.2d 646 (Juv. Ct. 1961).

56. *Raleigh Fitkin-Paul Morgan Mem. Hosp. v. Anderson*, 42 N.J. 421, 201 A.2d 537 (1964).

STATE AND STATUTE	CLASSES OF REPORTING PERSONNEL	Age Limit	Report Made to	Mandatory or Permissive	Penalty for Not Reporting	Abrogation of husband- wife privilege	Abrogation of physician- patient privilege	Immunity if report made in good faith	Presumption of good faith reporting	Absolute immunity	Central registry	Oral and written reports required	COMMENTS
ALABAMA Ala. Code tit. 27, §§ 21-25 (Supp. 1967).	Hospitals, clinics, san- itariums, doctors, phy- sicians, surgeons, nurses, school teach- ers, pharmacists, social workers, or any other person called to render medical assistance.	16	Chief of police or sheriff who notifies Dep't of Pensions.	M	6 months or \$500.	X	X			X		X	Child being treated by Christian Science Practition- er shall not be deemed neglected.
ALASKA Alaska Stat. §§ 11.67.005- .070 (Supp. 1969).	Practitioners of the healing arts, school teachers or social workers acting in an official capacity.	16	Nearest office of Dep't of Health and Welfare.	M	None	X	X	X			X	X	
ARIZONA Ariz. Rev. Stat. Ann. § 13-842.01 (Supp. 1969-70).	Physicians, including interns and residents.	16	Municipal or county peace officer.	M	\$100 or 10 days or both.		X			X		X	
ARKANSAS Ark. Stat. Ann. § 42-801 to 806 (Supp. 1969).	Doctors of Medicine, Dentistry, Osteopa- thy, interns, residents, coroners, chiroprac- tors, pharmacists, nurses, laboratory	16	Appropriate police author- ity, copy to County or State Dep't of Welfare.	M	\$500 or 6 months or both.	X	X	X				X	



STATE AND STATUTE	CLASSES OF REPORTING PERSONNEL	Age Limit	Report Made to	Mandatory or Permissive	Penalty for Not Reporting	Abrogation of husband-wife privilege	Abrogation of physician-patient privilege	Immunity if report made in good faith	Presumption of good faith reporting	Absolute immunity	Central registry	Oral and written reports required	COMMENTS
DISTRICT OF COLUMBIA D. C. Code. Ann. §§ 2-161 to 166 (Supp. 1969-70).	Physicians to persons in charge of a hospital.	18	Metropolitan Police Dep't.	M	None	X	X	X				X	Privileges abrogated only if court finds interest of justice served. Child being treated by spiritual means shall not be deemed neglected.
FLORIDA Fla. Stat. Ann. §§ 828.041 (1)-(6) (1965).	Licensed Doctors of Medicine, Osteopathy, interns, residents, hospitals.	16	Appropriate juvenile judge.	M	Not more than \$200 or 90 days.		X	X	X				Only written report required.
GEORGIA Ga. Code Ann. § 74-111 (Supp. 1969).	Physicians, osteopaths, interns, residents, dentists, podiatrists, public health nurses, welfare workers or persons in charge of a hospital.	12	Child Welfare Agency.	M	None			X				X	
HAWAII Hawaii Rev. Stat. §§ 350-1 to 5 (1968).	Any person licensed by the State to render services in medicine, osteopathy, dentistry, or any of the healing arts, registered nurses,	"Minor"	Dep't of Social Services, which reports to office of the prosecutor if criminal prose-	M	None	X	X	X			X	X	Child being treated spiritually in accord with tenets of an established religion shall not be deemed neglected.

<b>IDAHO</b> Idaho Code Ann. § 16-1041 (Supp. 1969).		school teachers, social workers, or coroners.	Physicians and hospitalists.	18	Dep't of Public Assistance.	M	None	X				X		
<b>ILLINOIS</b> Ill. Ann. Stat. ch. 23, §§ 2041- 47 (1968).		Physicians, surgeons, dentists, osteopaths, chiropractors, podiatrists, Christian Science Practitioners, hospitals.	Dep't of Children and Family Services.	16		M	None		X	X		X		
<b>INDIANA</b> Ind. Ann. Stat. §§ 52-1419-1425 (Supp. 1969).		Physicians, interns, residents, laboratory technicians, nurses, pharmacists, chiropractors, or other persons furnishing medical aid.	County Dep't of Public Welfare having jurisdiction.	16		M & P*	None	X	X*	X*		X*		*Mandatory as to health practitioners who are given absolute immunity. Permissive as to others who are given immunity for reporting in good faith.
<b>IOWA</b> Iowa Code Ann. §§ 235A.1- .8 (1965).		Physicians or surgeons, osteopaths, dentists, podiatrists or chiropractors, residents, interns, or registered nurses. Others.	County Dep't of Social Welfare, or if immediate protection necessary, a law enforcement agency.	18		M & P*	None	X	X	X				*Mandatory as to health practitioners. Permissive as to others. Copy of written report must also be filed with county attorney.
<b>KANSAS</b> Kan. Stat. Ann. §§ 38-716 to -721 (Supp. 1969).		Physicians or surgeons, including doctors of medicine, osteopathy, and dentistry, chiropractors, residents, interns, social or case workers, registered nurses and school nurses.	Juvenile Court, which, in turn reports to Division of Maternal and Child Health of the State Dep't of Health.	16		M	Not more than 1 year or more than \$500 or both.		X*	X*			X	*Immunity granted to those participating "without malice."

STATE AND STATUTE	CLASSES OF REPORTING PERSONNEL	Age Limit	REPORT MADE TO	Mandatory or Permissive	Penalty for Not Reporting	Abrogation of husband-wife privilege	Abrogation of physician-patient privilege	Immunity if report made in good faith	Presumption of good faith reporting	Absolute immunity	Central registry	Oral and written reports required	COMMENTS
KENTUCKY Ky. Rev. Stat. Ann. §§ 199.335-(1)-(6) (1966).	Physician, osteopathic physician, or other person having cause.	18	Appropriate police authority, copy to Dep't of Child Welfare.	M	Not less than \$10 nor more than \$100.	X	X	X*				X	**Anyone acting upon reasonable cause in making a report" given immunity.
LOUISIANA La. Rev. Stat. Ann. § 14:403 (Supp. 1970).	Physicians, including doctors of medicine and osteopathy, interns, and residents.	17	Police Dep't or nearest law enforcement agency.	M	Not more than \$100 nor more than 10 days or both.	X	X	X				X	
MAINE Me. Rev. Stat. tit. 22, §§ 3851-3855 (Supp. 1970).	Physicians, including doctors of medicine, osteopathy, interns, residents, and chiropractors.	16	State Dep't of Health and Welfare, Division of Child Welfare and to the county attorney.	M	Not more than \$100 nor more than 6 months or both.			X*					*Only written report required. Immunity given unless report made "in bad faith or with malicious purpose."
MARYLAND Md. Ann. Code art. 27, § 11A (Supp. 1969).	Physicians, surgeons, dentists and other persons authorized to engage in the practice of	16	Local Dep't of Social Services, but if immediate pro-	M	None							X	

healing; residents, interns, any registered or licensed practical nurse. Educators, social workers, law enforcement officers.	16	Physicians, interns, and medical officers.	M	None		X											Reports to be made "in accord with the rules of the Department."
	17	Licensed Physicians. Registered nurses, social workers, school principals, assistant principals and counselors, law enforcement officers shall cause child to be examined by a physician and then report.	M	Not more than 90 days nor more than \$100.	X	X	X			X							Only written reports required.
	18	Physicians, surgeons persons authorized to engage in the practice of healing, hospital superintendents, nurses, pharmacists.	M	Not more than 90 days or \$100.	X	X	X			X						X	Child being treated by spiritual means or prayer shall not be deemed neglected.
	18	Licensed Doctors of Medicine, Dentistry, interns, residents, or registered nurses.	M	None			X			X						X	

MASSACHUSETTS  
Mass. Ann.  
Laws, ch. 119  
§ 39A (1969).

MICHIGAN  
Mich. Comp.  
Laws Ann.  
§§ 722.571-575  
(1968).

MINNESOTA  
Minn. Stat.  
Ann.  
§§ 626.554 (1)-  
(7) (1967).

MISSISSIPPI  
Miss. Code  
Ann. § 7185-05  
(Supp. 1968).

STATE AND STATUTE	CLASSES OF REPORTING PERSONNEL	Age Limit	Report Made to	Mandatory or Permissive	Penalty for Not Reporting	Abrogation of husband-wife privilege	Abrogation of physician-patient privilege	Immunity if report made in good faith	Presumption of good faith reporting	Absolute immunity	Central registry	Oral and written reports required	COMMENTS
MISSOURI Mo. Ann. Stat. § 210.105 to .108 (Supp. 1969-70).	Physicians, surgeons, dentists, chiropractors, podiatrists, or Christian Science or other health practitioners, registered nurses, school nurses, teachers, social workers and others with the responsibility for the care of children for financial remuneration.	17	County Welfare Office or County Juvenile Officer. May also report to the appropriate law enforcement authority.	M	Not more than \$1000 nor 1 year or both.	X	X	X			X	X	
MONTANA Mont. Rev. Codes Ann. §§ 10-901 to -905 (2d Re- placement Vol. 1968).	Licensed physicians and surgeons, residents, interns, registered nurses, practical nurses, visiting nurses, school teachers or social workers.	18	County Attorney.	M	None		X	X	X				May report orally, but written report required.
NEBRASKA Neb. Rev. Stat. §§ 28-481 to -484 (Supp. 1967).	"Any Person."	*child	County Attorney.	M	Not more than \$100.					X		X	*Reports of abuse are made concerning "any child, or any incompetent or disabled person."



NEVADA Nev. Rev. Stat. § 200.501 (1965).	Physicians, surgeons, including doctors of medicine, osteopathy, dentistry, chiropractic physicians, residents and interns, licensed nurses, attorneys, clergymen, social workers, school authorities and teachers.	18	Police Dep't or Sheriff's Office.	M	None				X	Temporary custody of the child may be assumed if physician or law enforcement officer believes it necessary for the protection of the child.
NEW HAMPSHIRE N. H. Rev. Stat. Ann. §§ 571:25 to :30 (Supp. 1969).	Physicians, including licensed doctors of medicine, licensed osteopathic physicians, interns and residents.	16	Bureau of Child Welfare of the Division of Welfare of the Dep't of Health and Welfare, which, in turn notifies appropriate police authority.	M	Not more than \$500.	X	X		X	Child who is being treated by spiritual means according to tenets of a recognized church shall not be deemed neglected.
NEW JERSEY N. J. Stat. Ann. §§ 9:6-8.1 to :7 (Supp. 1969-70).	Physicians, including licensed doctors of medicine or osteopathy, residents and interns.	18	County Prosecutor and Bureau of Children's Services.	M	Not more than \$1000 or 3 years or both.		X			Bureau of Children's Services maintains "statistics" on child abuse.
NEW MEXICO N. M. Stat. Ann. §§ 13-9-12 to -16 (Replacement Vol. 1968).	Licensed practitioners of the healing arts, residents or interns, registered nurses, visiting nurses, school teachers, social workers, ordained ministers of an established church.	16	Appropriate District Attorney may notify Dep't of Public Welfare.	M & P*	None	X	X			*If physician discloses abuse as staff member of hospital, a report is mandatory. In other situations, reporting is permissive. Only written reports are required. <del>§ 13-9-16</del>

STATE AND STATUTE	CLASSES OF REPORTING PERSONNEL	Age Limit	Report Made to	Mandatory or Permissive	Penalty for Not Reporting	Abrogation of husband-wife privilege	Abrogation of physician-patient privilege	Immunity if report made in good faith	Presumption of good faith reporting	Absolute immunity	Central registry	Oral and written reports required	COMMENTS
NEW YORK N. Y. Soc. Services Law § 383A (McKinney Supp. 1969-70).	Physicians, surgeons, dentists, osteopaths, optometrists, chiropractors, podiatrists, residents, interns, registered nurses, hospital personnel engaged in the admission, examination, care or treatment of abused children; Christian Science practitioners, social service workers, school officials.	16	Social Services Officials in county where reporter maintains his business.	M	None	X	X	X			X	X	Person in charge of hospitals may assume custody until next regular session of Family Court. Physician may assume custody until transfer to appropriate police authorities.
NORTH CAROLINA N. C. Gen. Stat. § 14-318.2 (Supp. 1969).	Licensed physicians and surgeons, licensed nurses, school teachers, principals, superintendents, or other administrative heads of schools; any employee of County Dep't of Welfare.	18	County Director of Public Welfare where child resides.	P	n/a			X*				X	*Immunity given unless report made 'in bad faith or with malicious purpose.'
NORTH DAKOTA	Physicians, including licensed doctors of	18	Director of the Division of	M	None	X	X	X					Only written report required.

N. D. Cent. Code §§ 50-25-01 to -05 (Supp. 1969).	medicine, licensed osteopaths, licensed chiropractors, interns, residents, or public health nurses.		Child Welfare of the Public Welfare Board and, if warranted, to appropriate juvenile commissioner or state's attorney.	M	Not less than \$5 normore than \$100 or 1-10 days or both.	X							*If crippled or otherwise physically or mentally handicapped, under age 21. Concurring peace officer and physician may remove child for protection. Child being treated spiritually in accord with tenets of recognized religion shall not be deemed neglected.	Only written report required.
OHIO Ohio Rev. Code Ann. § 2151.42.1 (Page Supp. 1970).	Physicians, interns, residents, dentists, podiatrists, practitioners of a limited branch of medicine or surgery, registered nurses, visiting nurses, school teachers or school authorities, social workers, persons rendering spiritual treatment.	18*	Municipal or county peace officer, who, in turn, notifies appropriate Dept't of Welfare or Children's Services Board.	M		X								
OKLAHOMA Okla. Stat. Ann. tit. 21, §§ 845-848 (Supp. 1969-70).	Physicians or surgeons, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, interns, registered nurses.	17	To a public child protective agency, public welfare official having responsibility for the enforcement of laws for the protection of children, sheriff, county attorney, or the police.	M	None	X								

STATE AND STATUTE	CLASSES OF REPORTING PERSONNEL	Age Limit	Report Made to	Mandatory or Permissive	Penalty for Not Reporting	Abrogation of husband- wife privilege	Abrogation of physician- patient privilege	Immunity if report made in good faith	Presumption of good faith reporting	Absolute immunity	Central registry	Oral and written reports required	COMMENTS
OREGON Ore. Rev. Stat. § 146.750 (1965).	Physicians, including interns and residents, elementary school teachers or elementary school nurses with the permission of the prin- cipal, public health nurses or employees of a county welfare com- mission with permis- sion of supervisor; police officers.	12*	Medical Inves- tigator.	M	Not more than 1 year or \$500 or both.	X	X	X			X	X	Physicians are re- quired to report all injuries inflicted by other than acci- dental means re- gardless of the vic- tim's age. Others report only when victim is under 12 years of age.
PENNSYLVANIA Pa. Stat. tit. 11, §§ 2101-2110 (Supp. 1970).	Physicians, including any licensed doctor of medicine, licensed os- teopathic physicians, any person in charge of a hospital.	18*	Public Child Welfare Agency.	M	Not more than \$200, or inde- fault thereof, 90 days.		X			X	X	X	*Physicians must re- port all non-acci- dental injuries, re- gardless of the vic- tim's age, under Pa. Stat. Ann. tit. 18, § 4330.
RHODE ISLAND R. I. Gen. Laws Ann. §§ 40-13.1-1 to -6 (Supp. 1968).	Licensed doctors of medicine, licensed os- teopathic physicians, interns or resident.	18	Department of Social Wel- fare.	M	None			X				X	Immediate assump- tion of custody per- mitted upon con- currence of physi- cian and law en- forcement agency.

SOUTH CAROLINA S. C. Code Ann. §§ 20-302.1 to .4 (Supp. 1969).	Physicians, interns, staff members of hospitals and similar institutions, medical officers of the U. S. on duty in this state.	16	Proper authority of the county having jurisdiction over minors, or sheriff of said county.	M	Not more than \$100 or more than 30 days.			X	X	Only written report required.
SOUTH DAKOTA S. D. Comp. Laws Ann. §§ 26-10-10 to -15 (1967).	Physicians, surgeons, dentists, doctors of osteopathy, chiropractors, hospital interns or residents, law enforcement officers.	18	Judge of County Court.	M	Not more than 1 year or \$500 or both.	X	X	X	X	
TENNESSEE Tenn. Code Ann. §§ 37-1202 to -1207 (Supp. 1969).	"Any Person"	16*	Judge having juvenile jurisdiction in County in which child resides.	M	Not more than \$50 or 3 months or both.			X	X	* "or reasonably presumed to be under 16."
TEXAS Tex. Rev. Civ. Stat. art. 695c-2 (Supp. 1969-70).	Licensed physicians, staff members of a medical institution, interns, registered nurses, school teachers, nursery school directors, social workers, coroners, peace officers.	"child"	County Attorney or Regional Dep't of Public Welfare, Division of Child Welfare.	P	n/a	X		X*	X	*Immunity given if report made "without malice."
UTAH Utah Code Ann. §§ 55-16-1 to -6 (Supp. 1969).	"Any Person"	"minor"	Local City Police or County Sheriff or an Officer of the Division of Family Services.	M	Not more than 6 months nor less than \$300 or both.	X		X		*Utah Code Ann. § 15-2-1 defines minority as below 21 for males, below 18 for females. Only oral report required but may be followed by written report.

STATE AND STATUTE	CLASSES OF REPORTING PERSONNEL	Age Limit	Report Made to	Mandatory or Permissive	Penalty for Not Reporting	Abrogation of husband-wife privilege	Abrogation of physician-patient privilege	Immunity if report made in good faith	Presumption of good faith reporting	Absolute immunity	Central registry	Oral and written reports required	COMMENTS
VERMONT Vt. Stat. Ann. tit. 13, §§ 1351-1355 (Supp. 1969).	Physicians, including licensed doctors of medicine, licensed osteopathic physicians, licensed chiropractic physicians, interns and residents.	16	Dep't of Social Welfare.	M	Not more than \$25.			X			X		
VIRGINIA Va. Code Ann. §§ 16.1-217.1 to .4 (Supp. 1968).	Any person licensed to practice medicine or any of the healing arts, hospital residents or interns, registered nurses, visiting nurses, public school nurses, registered or associate social workers.	16	Juvenile and Domestic Relations Court of the county or city or to Sheriff or Chief of Police.	M	None	X	X	X*			X		*Immunity given unless report made "in bad faith or with malicious intent." Child being treated by Christian Science Practitioner shall not be deemed neglected. Only written report required.
VIRGIN ISLANDS V. I. Code Ann. tit. 19, §§ 171-176	Physicians, including licensed doctors of medicine, licensed osteopathic physicians, interns, residents, reg-	15	An appropriate police authority.	M	Not more than \$500 nor more than 1	X	X	X				X	

(Supp. 1970).	istered nurses.		Proper law enforcement agency or to the Dep't of Public Assistance.	P	n/a	year or both.	X	X	X	*Includes mentally retarded persons of any age. Child being treated by a Christian Science Practitioner shall not be deemed neglected. Only oral report required.
WASHINGTON Wash. Rev. Code Ann. §§ 26.44.010- .060 (Supp. 1969).	Doctors of Medicine, dentistry, osteopathy, chiroprody, Christian Science Practitioners, professional school personnel, registered nurses, social workers, psychologists, pharmacists, clergymen, employees of the Dep't of Public Assistance.	18*					X			
WEST VIRGINIA W. Va. Code Ann. §§ 49-6A-1 to 4- (1966).	Duly licensed physicians or surgeons, residents or interns, doctors of the healing arts, registered nurses, visiting nurses, school teachers, social workers.	18	Prosecuting Attorney.	M	None			X		Only written report required.
WISCONSIN Wis. Stat Ann. § 48.981 (Supp. 1969).	Physicians, surgeons, nurses, hospital administrators, dentists, social workers, school administrators.	18	County Child Welfare Agency, sheriff, or city police dep't.	M	Not more than \$100 or more than 6 months or both.			X	X	
WYOMING Wyo. Stat. Ann. §§ 14-28.1 to 6 (1965).	Physicians, including licensed doctors of medicine, licensed osteopathic physicians, interns, residents, nurses, druggists, laboratory technicians, or any other person.	19	County Welfare Department.	M	Not more than \$100 or more than 6 months or both.		X		X	

attention, and its power to ultimately place the child in a foster home or an institutional substitute. There are few problems associated with the exercise of this first power, the most serious of which is locating a judge in an emergency situation.<sup>57</sup> Some jurisdictions, as previously discussed,<sup>58</sup> permit the police or a physician, in conjunction with a law enforcement officer, to assume temporary custody. The latter situation, however, poses some significant problems of an evidentiary and a practical nature. In most courts, a case of child abuse must be established by a preponderance of the evidence.<sup>59</sup> In the face of a denial by the parent and a child too young to communicate, this may be a difficult standard to meet. One court has approached this problem by adopting the doctrine of *res ipsa loquitur* from the law of negligence, allowing the condition of the child to speak for itself, and thereby permitting an inference of abuse or neglect.<sup>60</sup>

It is when the standard of proof has been met, however, that the greatest problem is encountered. Except in the rare case in which a good foster home is available, the judge is faced with the equally unacceptable alternatives of returning the child to an environment in which he has already been abused, or of placing the child in an institution. Given the conditions prevailing at most institutions, the options open to the judge are bleak. Normally, the child is returned and "protective services" are provided by a welfare agency to the child and his family. Despite the dedication of professional social workers, caseloads prohibit any meaningful work with the family toward the resolution of what is an extremely complex psychological and social problem. Herein lies the dilemma of the abused child: how can he be helped in a society that is apparently unwilling to provide services or institutions capable of addressing themselves to his problems?

#### FACING THE PROBLEM

As Professor Monrad Paulsen points out, "From the standpoint of a battered child . . . the usefulness of the entire legal framework ultimately depends upon the effectiveness of the interventions for which the law provides."<sup>61</sup> The first of these interventions is the child abuse

---

57. See Paulsen, *The Legal Framework for Child Protection*, 66 COLUM. L. REV. 679, 695 (1966).

58. COLO. REV. STAT. ANN. § 22-13-4(2) (1963); R.I. GEN. LAWS ANN. § 13.1-1 (Supp. 1967).

59. See Paulsen, *supra* note 57, at 697.

60. *In the Matter of S.*, 46 Misc. 2d 161, 259 N.Y.S.2d 164 (Family Ct. 1965).

61. Paulsen, *supra* note 57, at 697.



reporting statute. In evaluating the effectiveness of a reporting statute, the first consideration is a determination as to whether a mandatory or permissive statute is more effective. Although many of the statutes are mandatory in that they use the language "shall report" and provide penalties for failure to do so, the requirement that such a failure must have been "knowing and willful"<sup>62</sup> leaves the physician a great deal of latitude in his diagnosis. Still other statutes, although employing mandatory language, provide no punishment.<sup>63</sup> When looked at from a practical point of view, the reporter, in the final analysis, is likely to use his own judgment. One salutary effect of mandatory language is that it provides the physician a "reason" for reporting doubtful cases, in which the parents stoutly deny abusing the child.<sup>64</sup> Such language, in effect, takes the physician "off the hook." Secondly, it provides a strong statement of public policy and undoubtedly encourages reporting. On a practical level, however, it probably makes little difference whether the reporting statute is mandatory or permissive.

The second consideration involves the class of persons either required or permitted to report, and the persons thereby granted some degree of immunity from defamation actions. Obviously, physicians and associated medical personnel should report. How far beyond this class the statute should go has been the subject of some debate.<sup>65</sup> It has been argued that the wider the class permitted to report, the greater the chance of abuse of the statute. It has also been argued that only medical personnel are qualified to diagnose child abuse. It is also true, however, that the larger the class, the more likely that a case of child abuse will be identified. When coupled with the good faith requirements imposed by a majority of the statutes, the possibilities of statutory abuse seem minimal in relation to the salutary effects of increased identification. Reporting should be restricted, however, to those classes of persons who have some relationship with the child. Hence, school personnel and welfare workers should clearly be included, since these individuals very often have the child's confidence. Law enforcement officers who come in contact with the child in the line of duty should also be included. All of these classes, if not technically qualified to make a diagnosis of child abuse, are capable of making rational judgments about the probable source of the injury.

62. E.g., ARK. STAT. ANN. § 42-806 (Supp. 1969); KY. REV. STAT. ANN. § 199.335 (1966).

63. IDAHO CODE ANN. § 16-1641 (Supp. 1969); VA. CODE ANN. § 16.1-217.1 to -217.2 (Supp. 1968).

64. See generally McCoid, *supra* note 6.

65. See generally Daly, *supra* note 8, at 305.

Since it is the child the statute seeks ultimately to protect, it would seem appropriate to permit this wider class to report.

Reporters should have the alternative of reporting to either public welfare agencies, law enforcement agencies, or both. A requirement that reports be made to a law enforcement agency is unwise since it is likely to discourage such reports in situations in which the abuse is relatively minor and social casework is indicated. Many physicians are reluctant to report to law enforcement agencies<sup>66</sup> if the child is to remain in the home since criminal sanctions against the offending parent are likely to cause further resentment toward the child. Such a physician, however, might be willing to report the incident to a welfare agency in the hope that the child would receive assistance. On the other hand, the reporter should have the option of making a report to a law enforcement agency if he feels the abuse was severe and that the child is still in danger.

The establishment of central registries is a useful diagnostic tool for the physician. It is not without dangers, however. Reports filed in such a registry may be mistaken, or, in rare instances, intentionally false. In cases in which the determination is made that the parent has not been abusive, mechanisms must exist for removal of the report. Additionally, access to the information in the registry must be restricted to members of the medical profession who seek the information in a professional capacity as part of a diagnosis.

The encouragement of child abuse reporting can best be accomplished by a statute that grants immunity to a reporter who acts in good faith. Absolute immunity is neither necessary nor desirable since it only serves to protect those who would abuse the statute. The presumption of good faith should adequately protect the mistaken reporter, while encouraging those who might otherwise be reluctant to report for fear of legal liability.

Statutes specifically abrogating the physician-patient or husband-wife privileges, although probably unnecessary,<sup>67</sup> are nevertheless desirable so as to leave no doubt that such testimony is admissible. The physician-patient privilege belongs to the child, and the accused parent would have no standing to invoke it. Further, in most jurisdictions<sup>68</sup> the hus-

---

66. McCoid, *supra* note 6, at 51.

67. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 COLUM. L. REV. 1, 37 (1967).

68. *E.g.*, N.J.R. EVIDENCE 23(2) provides that a spouse shall not testify in a criminal action against the other spouse unless "(b) such spouse and the accused is charged

band-wife privilege is not applicable in proceedings involving the children of the marriage.

Both oral and written reports should be made. The necessity of an immediate report in cases in which the child remains in danger of further abuse is obvious. The need for a more comprehensive written report also exists, both for the benefit of the welfare agency that will investigate the incident, and for the purposes of the central registry.

It would also be beneficial to provide for the assumption of custody on a temporary basis until the matter can be brought to the attention of the appropriate judicial authority. Provisions authorizing the assumption of temporary custody of the child upon the concurrence of a physician and a law enforcement officer would be responsive to this problem, although it is not difficult to envision situations in which the safety of a child might depend upon the summary assumption of custody by a law enforcement officer alone.<sup>69</sup>

There seems to be no valid reason why these statutes should only extend to children below a certain age. The test should be whether the abused party is mentally capable of defending or reporting the abuse himself. Hence, some states have included invalids, the mentally incompetent, and the retarded within the purview of the reporting requirement.<sup>70</sup> The helplessness of the victim is a more valid indicator of his need than is his age.

Perhaps the most unfortunate and ill-advised provisions of child abuse reporting statutes are those which provide that a child is not to be deemed neglected merely because he is being treated by spiritual means, through prayer according to the tenets of a recognized religion.<sup>71</sup> By enacting such provisions, the legislature is suggesting that the child is nothing but a chattel of his parents, subject to any whims of bad judgment that they may wish to entertain. As has been indicated, the courts have tended to depart from this view. Undoubtedly, these provisions reflect a concern for the parent's rights under the free exercise clause of the

---

with an offense against the spouse, a child of the accused or of the spouse, or a child to whom the accused stands in the place of a parent."

69. An Arizona court has held that a peace officer has a duty to do so in such a situation. *State v. Hunt*, 2 Ariz. App. 6, 406 P.2d 208 (1965).

70. NEB. REV. STAT. § 28-481 (Supp. 1967); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1970); WASH. REV. CODE ANN. § 26.44.020(6) (Supp. 1969).

71. ALA. CODE tit. 27, § 21 (Supp. 1967); D.C. CODE ANN. § 2-166 (Supp. 1969-70); HAWAII REV. STAT. § 350-4 (1968); N.H. REV. STAT. ANN. § 571:25 (Supp. 1969); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1970); VA. CODE ANN. § 16.1-217.1 (Replacement Vol. 1960).

Constitution; the free exercise clause is not absolute.<sup>72</sup> It is not the right of the parent to follow his chosen pattern of religious behavior that is being interfered with, but rather the elementary rights of the child to live and be healthy that the state is protecting on behalf of the child. The parent may follow whatever course he wishes with regard to his own health, but he should not be permitted to dictate manifestly unreasonable and inadequate solutions for a helpless child. Provisions such as these are steps away from a solution of this significant social problem.

### CONCLUSION

Behind "closed doors" a countless number of helpless young children and infants are being abused, neglected, and often "battered" by parents or other individuals in the family. These children are beaten with a variety of instruments, ranging from bare fists to baseball bats; others are being burned over open flames, gas burners and cigarette lighters. Some children are strangled, others are suffocated by pillows or plastic bags; and some are being drowned.<sup>73</sup>

Child abuse reporting statutes, by identifying the victims of abuse, make a significant contribution toward the amelioration of this widespread and serious problem in our society. The identification of the victim is, however, only the first step. Courts must come to grips with the modern notion of giving children rights independent of those of their parents. In other words, courts must cease viewing children as chattels of their parents. Less attention must be given the rights of the parent, and more to the independent rights of the child. Most important, however, society must be willing to allocate the resources necessary to provide institutions capable of coping with the problem. Not until society collectively decides that its children are to be valued as greatly as its high-

---

72. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. *Thus the amendment embraces two concepts—Freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.*

·Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940) (emphasis added).

73. Preface to V. FONTANA, *THE BATTERED CHILD* (1964).

ways and weapons will any truly meaningful progress be made toward the eradication of this shocking social problem.

THOMAS J. DONOVAN