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Child Abuse and the Law: The California System†

By GARY S. GOODPASTER* and KAREN ANGEL**

ABUSE, maltreatment, and neglect of children by parents and other guardians is a phenomenon that has received much attention in the United States since the early 1960's. Medical identification of the "battered child" syndrome1 has lead to widespread interest in the medical, social welfare, psychiatric, and legal professions and to public awareness of the problem. Within the four-year period from 1963 to 1967, the legislatures of all the states adopted some form of child abuse reporting statute in an effort to deal with child abuse.2

The speed of the public reaction is not at all surprising. Many incidents of child abuse are horrifying. For example, in one incident, a mother severely burned her eight month old child by immersing him in scalding water because he was not toilet trained.3 Another mother and her husband whipped their nine year old daughter, burned her lips with an electric iron, bathed her almost daily in Clorox or peroxide, and locked her in a closet with her hands, feet, and mouth bound before she finally died of second and third degree burns.4 Such incidents

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2. Thomas, Child Abuse and Neglect, Part I: Historical Overview, Legal Matrix, and Social Perspectives, 50 N.C.L. Rev. 293, 332 (1972) [hereinafter cited as Thomas].


strike us quickly and deeply with terror, revulsion, sorrow, pity, and anger, and readily engender a widespread desire for prevention and punishment.

While all would agree that these two cases definitely involve child abuse, there are a great many intentional injuries to children which are not as serious and which do not receive any publicity but which may also be classified as child abuse. These injuries are manifested by bruises, abrasions, contusions, wounds, cuts, burns, fractures, internal injuries, malnutrition, and so on. A recent study suggests that many injuries which amount to child abuse start out as some form of ordinary parental discipline of a child, but through use of excessive force or through an intention to injure result in something more than acceptable discipline. Evidence that over 80 percent of intentional injuries to children result from beatings with hands or other instruments certainly seems to corroborate this conclusion. It is therefore useful to have some working definition of child abuse.

Under statutory law, in practice, and in common usage, maltreated children are usually divided into the categories of “abused” and “neglected.” The term “abused” is generally applied to children who receive significant physical injuries to children due to intentional use of physical force. “Neglected” represents either a general condition of physical or psychological health below an acceptable community standard, caused by acts of omission, or the absence of an acceptable level of care for a child, which is deemed to have caused some significant harm to the child.

5. See D. Gil, Violence Against Children 121 (1970) [hereinafter cited as Gil].

6. There is an obvious definitional inadequacy in this usage of these terms, for in the common view “abuse” is somehow worse than “neglect.” Yet many concerned professionals would argue that neglect is often worse than abuse and that, more importantly, to a child both are derived from a similar kind of hostility. From this point of view, what is significant is not the character of the particular harm to the child, but the state of mind of the one responsible for the harm.

7. Thus, Gil, for example, defines physical abuse of children as “the intentional, nonaccidental use of physical force, or intentional, nonaccidental acts of omission, on the part of a parent or other caretaker interacting with a child in his care, aimed at hurting, injuring, or destroying that child.” Gil, supra note 5, at 6.

An alternative formulation, focusing on the injury to the child, is that of Model Act for the Reporting of Child Abuse and Neglect, Draft No. 3, § 2A (Nov. 1, 1974, unpublished): “An abused child shall mean a person under eighteen years of age who is suffering from serious physical harm or sexual abuse, caused by those responsible for his care.”

There has been much research, a fair amount of it inconclusive, on the identification and treatment of child abuse cases, on the numbers of children who are abused, and on the causes of child abuse. From the legal perspective, there are articles detailing the legal issues involved in state reporting laws, the nature of state proceedings in such cases, and the rights of the parties involved. But few articles discuss the implementation of child abuse laws or relate the ways in which

son under eighteen years of age whose physical or mental condition is seriously impaired as a result of the failure of those responsible for his care to provide adequate food, shelter, clothing, protection, medical or other care necessary to sustain the life or health of the child."


child abuse cases are actually handled by our agencies of social control, and what effect these processes have on parents and children who are involved in cases of suspected child abuse. The premise of this article is that, even assuming the causes of child abuse are reasonably well-identified and satisfactory treatment modalities devised, failure to understand the way child abuse laws are implemented and cases are handled by the agencies of the social system will result in the creation of ineffective solutions to the problem. The efficacy of legislative efforts at prevention and treatment depends upon the process of implementation and upon mutually consistent views and handling of child abuse cases by all agencies having some responsibility for them. As this article will demonstrate, agencies often work at cross purposes, interfering with each other, duplicating functions, creating unnecessary work, and inhibiting effective treatment.

The initial object of this study, then, is to discover how the California child abuse reporting law and related criminal, juvenile, and welfare statutes operate together in practice to form a system for the identifying, reporting, and processing of suspected child abuse cases. The study details how such cases are reported, handled, and viewed in Los Angeles County and the role each agency or organization involved plays in the disposition of cases.

A second aim of this study is to determine the effects of the California system of child abuse reporting and processing on the incidence of reporting itself, on the principals involved, and on the basic problem of child abuse. Conclusions here are less definite and are based primarily on reasonable inferences from system operation and from information and expressions of attitude provided by interviewees. Based on these conclusions, however, recommendations for changes to improve the California system have been added as a final portion of the study.

11. Los Angeles County is located in southern California and is a totally urbanized area, with a massive population of approximately eight million, spread through many different cities. Field research for this study consisted of extensive interviews with persons in Los Angeles who were involved in the reporting or handling of child abuse cases, and with persons otherwise identified as expert or knowledgeable in the field: police and juvenile officers, probation officers, social workers, physicians and hospital personnel, psychologists, prosecutors, school officials, health department officials, judges, and others.

12. In the original study, field interviews were conducted in and a report made on both Los Angeles County and Yolo County. Compared with Los Angeles County, Yolo County, located in northern California near Sacramento, is completely rural, having a population of approximately 100,000 and only three significant cities. Since there was much repetition in the findings, the Yolo County study was deleted from this article, but information from that study is included in the text or footnotes where relevant.
The Problem Considered

Although many causes have been assigned to explain child abuse, "disagreement among scholars and professionals continues to exist with regard to nearly every aspect of the phenomenon—its scope, its nature, and measures for dealing with it." Personality disorders, emotional and environmental stress, inadequate training in parenting, child rearing or coping, and childhood abuse have all been suggested as causal elements. But none of these explanations is satisfactory, for parents who do not abuse their children have also experienced such problems. It has been argued that physical abuse of children is endemic to American society because our cultural norms authorize the use of physical force against children. While there is no agreement about the general causes of child abuse, enlightening correlations have been discovered. Based upon a series of national epidemiologic studies and public opinion and press surveys, one researcher concluded:

The primary incidence of child abuse is in poor families; recidivism is high in abusing families, with patterns of abuse being transmitted from one generation to the next, child abuse is most prevalent in large families and matriarchal households; more older children (as distinguished from infants) are victims than had previously been suggested; the abused child's behavior can be provocative and a substantial factor in abuse; and both abusing parents and their child-victims have troubled personal histories.

Perhaps the soundest conclusion is that child abuse is a phenomenon with many causes, and is not therefore, susceptible to a single mode of prevention or treatment, but instead requires many different responses.

Incidents of abuse are almost impossible to predict and prevent. Existing laws against child abuse do not prevent it, for it usually occurs in the privacy of a home and often is not sufficiently serious to require the intervention of third parties who might report it. The child-abuse reporting laws, which are the legislative response to the problem, are not really remedies. These laws essentially require health and school authorities and other professionals to report cases of suspected child abuse. Operating after the fact, the apparent theory behind the reporting laws is that children who have been abused will be identified, so that future harm to them can be prevented, protective services can be provided for the child and his family, and perpetrators of abuse will be discovered and handled legally. Since abuse or sus-

14. See id. at 8-15.
15. Thomas, supra note 2, at 336 (summarizing Gil's findings).
pected abuse will have already occurred, the preventative function of the reporting laws is not significant except when a report results in the removal of a child from a dangerous situation, or to the extent that potential or repeat abusers are deterred by awareness that they may be reported and prosecuted.

One major service of the reporting laws, however, is to provide some kind of data base to help us perceive the dimensions of the problem. We cannot accurately estimate the number of children in the United States who are maltreated or abused each year. Estimates in the extensive literature on child abuse range from the high thousands to the millions, and each major investigator or author uses different figures. Since most states have mandatory child abuse reporting statutes, it is at first reasonable to think that figures reported by these states would permit reasonable estimates, but there are major problems in accepting these figures uncritically. The reported incidence of child maltreatment or abuse depends on a number of variables, each of which varies by state and over time. Most important are the definition of a reportable case or incident, the statutory age limit for the reported child, the persons statutorily required to report, sanctions for failure to report, administrative practices, informal procedures for handling potentially reportable incidents, and simple disobedience of the law. In addition to these variables, some official state reports fail to separate neglect and abuse. Finally, while states maintain records for suspected cases of abuse, few maintain records of verified cases.

For these reasons, any child maltreatment or abuse figures derived from reports from the states must be viewed very cautiously. With that caveat stated, the most recent tabulation of available state figures discloses a total of 59,553 child abuse cases (thirty-six states reporting) for 1972; in the thirteen states reporting both abuse and neglect in separate statistics, totals were 13,631 abuse cases and 81,720 neglect cases. For 1973, a total of 58,604 abuse cases were reported (twenty-one states reporting), with 11,992 abuse reports and 66,780 neglect cases.

16. Vincent de Francis, Director, Children's Division, The American Humane Association, estimates that there are, each year, between 30,000 and 40,000 truly battered children, 100,000 sexually abused children, and between 200,000 and 300,000 psychologically abused children. Hearings, supra note 3, at 293, 312. Gil, using the definition of physical abuse quoted in note 8 supra, estimates the figures of 2.53 to 4.07 millions for the year preceding the October, 1965, survey as the number of adults who personally know families involved in child abuse. This indirect measurement undoubtedly includes a lot of repetition of the same cases, and the actual incidence rate is likely to be considerably lower. Gil, supra note 5, at 59-60.
reports in the eight states using both figures.\textsuperscript{17} Extrapolating from these statistics, and using an apparent confirmation rate of 36.4 percent (derived from figures from states maintaining such records) the authors suggest the total of actual confirmed child abuse cases to be 27,569 for 1972 and 41,104 for 1973.\textsuperscript{18}

Whatever the actual amount of child abuse in the United States, it is certainly perceived to be a very serious social problem by many, and there are major continuing efforts to develop solutions. The matter received congressional attention last year when Congress passed the Child Abuse Prevention and Treatment Act, which establishes a National Center and a national commission on child abuse and neglect and authorizes the making of grants for demonstration programs designed to prevent, identify, and treat child abuse and neglect.\textsuperscript{19} The notoriety of the problem, together with this congressional stimulus and increased professional attention, has led to intensified research, establishment of professional and paraprofessional training programs, and development of innovative treatment modalities.

The impetus to improve child-abuse reporting laws, to create effective programs for the prevention and treatment of child abuse, and to adopt helpful legislation and finance treatment programs is great. There are many action proposals, and much valuable work is likely to be done in the next few years. But all these efforts will have to be adapted to the existing system for handling child abuse cases, and certainly will be significantly affected by the manner in which that system functions. It is important, therefore, to have a good understanding of how child abuse cases are reported, processed, and handled by the legal and social system. This article will seek to develop that understanding.

\textbf{The Operation of California Child Abuse Laws}

The California system for handling child abuse cases is not formally organized to any degree of detail. Like all human systems, the "system" is just what the actors in it do. Statutory law, the formal legal structure, does not define the system, but rather constitutes one major factor the actors must take into account as they make their decisions.

\begin{itemize}
\item \textsuperscript{18} Id. at 14.
\item \textsuperscript{19} See 42 U.S.C.A. §§ 5101-06 (Supp. 1975).
\end{itemize}
In order for statutory law to operate effectively, it must mesh into the flow of life and work of those who have responsibilities under it or who are affected by it. Since the decisions of these people create the operation of the legal system, the way they act, feel, and think regarding the law operates in practice.

In order to approximate in words what happens in reality, we will follow a format of describing, on an agency-by-agency, actor-by-actor basis, the legal requirements imposed, together with the administrative procedures followed. In each section this is integrated with a discussion of how system participants carry out their responsibilities, how they react to the law, and how the law constrains them. In order that these descriptions may be understood in their proper context, the article begins with statutory and regulatory overview.

Overview—California Statutory and Regulatory Structure

Criminal and Juvenile Codes

Child abuse itself is proscribed under the Criminal and Juvenile Codes. The basic criminal child abuse law is a broad statute making physical abuse of a child a misdemeanor or a felony and also punishing creation of mental suffering and the endangering of the health or the person of a child.\(^\text{20}\) It thus theoretically covers intentionally caused physical injury, neglect, failure to thrive, and emotional or psychological abuse. A related felony provision punishes "any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition . . . ."\(^\text{21}\) Sexual abuse of children is separately punished either as incest\(^\text{22}\) or child molestation.\(^\text{23}\)

\(^\text{20}\) "(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years."

"(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor." CAL. PEN. CODE § 273(a) (West 1970).

\(^\text{21}\) \textit{Id.} § 273(d).

\(^\text{22}\) \textit{Id.} § 285.

\(^\text{23}\) \textit{Id.} § 647(a).
The dependent child provisions of the California Welfare and Institutions Code\(^{24}\) enable the juvenile court to take jurisdiction over a child in abuse or neglect cases because of the inimical conduct of those having custody of the child. Section 600(d) is the strongest provision; it provides that a minor "[w]hose home is an unfit place for him by reason of neglect, cruelty, depravity, or physical abuse of either of his parents, or of his guardian or other person in whose custody or care he is" may be adjudged a dependent child of the court.\(^{25}\)

The Juvenile Code also has provisions for the immediate interim protection of a child who has been subjected to some abuse, pending dependency hearings by the juvenile court. A law enforcement officer may take a minor into temporary custody, without a warrant, if he has reasonable cause to believe that the dependency provisions of the code apply to the child.\(^{26}\) This is a very important power, for without it an endangered child could not be immediately protected without a court order.

If a child is taken into protective custody, a juvenile petition to have the child declared a ward of the court or dependent child must be filed within forty-eight hours or the child must be released.\(^{27}\) After this petition is filed, a detention hearing is held.\(^{28}\) Parents or other custodians of the child are notified of the hearing, which is held before a juvenile judge or referee. Detention can be ordered if "it is a matter of immediate and urgent necessity for the protection of such minor."\(^{29}\) Obviously, this provision is of extreme importance in child abuse cases, as it authorizes continued protective custody of an endangered child. In suspected child abuse cases, as shall be seen, further detention of the child is almost certain to be ordered; the judges act very conservatively for the sake of safety.\(^{30}\)

\(^{24}\) CAL. WELF. & INST'NS CODE § 600 (West 1972).
\(^{25}\) See id. § 600(d). Section 600(a) permits a finding of dependency for a child "[w]ho is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control."
\(^{26}\) See id. § 625(a).
\(^{27}\) See id. § 631 (West Supp. 1974).
\(^{28}\) See id. § 632 (West 1972).
\(^{29}\) Id. § 635 (emphasis added).
\(^{30}\) Interviews with Chief Judge William P. Hogoboom, Juvenile Court, Los Angeles Superior Court, in Los Angeles, May 20, 1974; Judge James McDermott, Yolo County Superior Court, in Woodland, Calif., May 15, 1974; Julius Libow, Senior Referee, Juvenile Court, Los Angeles, in Los Angeles, June 20, 1974.

Counsel is required for a minor described in section 600(d) who appears before
If the child is detained, a jurisdictional hearing is then held, at which a determination is made of the validity of the allegations of the dependency petition. At the hearing, representatives of juvenile probation or welfare usually act as advocates for the child. If the child is determined to be dependent, the court proceeds to hold a further hearing on the question of proper disposition of the minor. At this stage, reports and recommendations of juvenile probation or welfare are highly significant in the final treatment of the case.

The juvenile court "may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of [a child adjudged dependent], including medical treatment, subject to further order of the court." Despite this apparently broad remedial power, the remedies available are actually quite limited. The juvenile court may return the child to the home under supervision, with probation-type provisions imposed upon the parents, or it may remove the child temporarily and place him in some form of foster care while the home is supposedly being rehabilitated. Foster home placement is the most likely disposition when child abuse is found. If the child's home has been adjudged unfit, and the child, therefore, a section 600(d) dependent (the provision most likely to be used in child abuse cases), and he is, nonetheless, allowed to remain in the home (an unlikely situation), the parent is required, by statute, to participate in a counseling program designated by the court. Whether such a program is of any real benefit in child abuse cases is debatable, but the requirement is important, for it is a vehicle through which parents can be required to attend innovative treatment programs while the child is in the home, a condition now coming to be viewed as essential to effective parenting training or therapeutic counseling.

California Child Abuse Reporting Laws

The basic California Child Abuse Reporting Law requires health and school authorities and other designated professionals who come into contact with a child under twelve to report cases of possible child

the juvenile court at a detention hearing, CAL. WELF. & INST'NS CODE §§ 634.5, 679, 700 (West 1972), but counsel is not required for the parents, though one may be appointed. This is a clear defect in the law since faulty fact determinations at an early stage may seriously injure the parents' interests.

32. See id.
33. Id. § 727 (West Supp. 1974).
34. See id.
These are to be reported where "it appears . . . that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person . . . ." The statute thus calls for reports based on suspicion. Undoubtedly, it does so in order to enhance protection of children, but the statute also thereby seeks to limit the discretion of mandated reporters. As shall be seen, however, virtually all mandated reporters exercise some form of discretion not to report notwithstanding the statute. Reporters are immune from criminal and civil liability for their reporting activities, but failure to report is a misdemeanor punishable by imprisonment in county jail not exceeding six months or a fine up to $500, or both.

Oral reports of suspected child abuse are to be immediately followed, within thirty-six hours, by reports in writing to both the local law enforcement agency and juvenile probation department, or, alternatively, to the county welfare or county health departments. These latter alternatives were added to facilitate and promote reporting by those who, because of fear of police or legal involvement (or some other reason), are deterred by the necessity to report directly to law enforcement agencies. Nevertheless, since it may be necessary, in cases of actual abuse, to conduct an immediate investigation and to take the child into custody, there is some logic in requiring reports to be made to the police and juvenile probation department. The statute also requires county welfare or health departments to report cases reported to them or discovered by them to the local law enforcement agency and to the juvenile probation department. Thus ultimate protective and investigative responsibilities under the statute fall to law enforcement.

Juvenile probation functions in relation to child abuse, however, can be transferred by county boards of supervisors to the County Department of Welfare. Because many child abuse cases come from welfare clientele, and because the county board of supervisors may authorize a Child Protective Services unit within the Welfare Depart-

36. Id. § 11161.5(a).
37. Id.
38. Id. § 11162 (West 1970).
39. Id. § 11161.5 (West Supp. 1974).
40. Id. § 11161.5(b); Cal. Welf. & Inst'ns Code § 576.5 (West 1972).
41. Cal. Welf. & Inst'ns Code § 18250-53 (West 1972). "'Protective services' means social case work consultation and guidance on behalf of children who are in danger of the threatened existence of any of the conditions set forth in [the dependency provisions of the Juvenile Code]." Id. at § 18251.
ment to protect children and to provide them and their families with treatment services, the transfer of authority is natural. These services may be provided even to children in families not on welfare, so they are potentially available in any case of child abuse or neglect. Some twenty of the state's fifty-eight counties have transferred jurisdiction. In these counties, reports bypass juvenile probation and go to the county welfare departments.

The Child Protective Services Division of the Welfare Department is responsible for handling cases involving potential and actual child abuse, as well as neglect, failure to thrive, and emotional or psychological abuse. Protective Services is required to take all referrals from other agencies and has some preventative function in that it is obligated to reach families and children before abuse or serious neglect occur. Once a referral is made, Protective Services must make an assessment and "take whatever action is considered necessary to protect the child and correct the situation." Protective Services assistance can also be provided on a voluntary basis, without a court order. If a child's well-being is actually endangered, Protective Services must refer the case to law enforcement agencies for further action. Obviously, with such broad responsibilities Protective Services is likely to have severe caseload problems and to be more protective in name than in actual services.

County departments of welfare are also required to make provision for short-term emergency shelter care in a subsidized home (i.e., foster care) or in some other shelter facility. Such care is "limited to situations in which, as part of the protective service plan for an eligible child . . . immediate action is taken to safeguard the child from hazardous circumstances arising from a condition of alleged neglect, abuse, or exploitation." When a child is removed from his home by the court, Protective Services must make intensive efforts to determine whether the home is safe for his return. Status reviews are to be made at ninety-day intervals "to determine whether the child should continue to receive services in the specialized Protective Services unit," but this appears to be an administrative requirement

42. See id. § 18250-53 (West 1972).
43. Id. § 18252.
44. Cal. Dep't of Social Services Handbook of Regulations—Protective Services § 30-1042.
45. See id. § 30-104.7.
46. Id. § 30-104.71.
47. See id. § 30-104.74.
48. Id.
adopted for fiscal purposes rather than a service concern for case progress.

Central Registry

The Central Registry for the filing of child abuse reports, located in the Licensing and Statutory Compliance Unit of the California Department of Justice, serves to collect and provide child abuse case information in California. This division receives copies of all reports received by local law enforcement agencies of child neglect, child beating, assaults on children, deaths of children, and incest and child molestation. Virtually all reporting is done by the law enforcement agencies, and the division currently receives approximately one thousand child abuse reports a month.49 The total child abuse file presently contains approximately 110,000 cards, describing both children and adults.50

Child abuse files in the Central Registry are indexed by the name of the suspect, all adults named in the report, and all children in the family. When a new child abuse report arrives, the names of the adult suspects are searched in a master records file for prior criminal records, which may independently reveal prior arrests for child abuse, molestation, neglect, or assault. The reports are then searched in the child abuse file, and if no prior records are located, the names of all persons mentioned in the report are indexed for the file. If the files reveal a prior record of suspected or adjudicated child abuse, all the information is copied and mailed to the local law enforcement reporting agency and to juvenile probation or welfare.

The division usually provides files or file information only to law enforcement agencies, although it appears that some information is given to agencies that inquire about individuals who apply for child care licenses or adoption. There are few inquiries from welfare or other agencies, and these are usually answered merely with an indication of whether there is a record. Essentially, therefore, whatever information such agencies or interested individuals ultimately receive concerning a child abuse case must be obtained from law enforcement agencies or local juvenile probation or welfare departments in jurisdictions where child abuse regulation functions have transferred. These agencies are required by law to make reports and other pertinent information re-

50. Letter from Mark L. Gregson, CID Specialist I, Child Abuse Services Section, Sacramento, California, on April 3, 1975.
51. CAL. PEN. CODE § 11161.5(a) (West Supp. 1974).
received from the division available to various professionals who may be involved in diagnosing or handling a child abuse case, but it appears that this is almost never done.

The Implementation of Child Abuse Laws in Los Angeles County

*Individuals and Institutions That Report Child Abuse*

**Private Physicians**

Children who have suffered inflicted injury are sometimes taken to private physicians by their parents. The private medical doctor would therefore appear to be a likely reporter of child abuse. While interview contact with physicians was limited to doctors in hospitals or otherwise in public service, the consistent impression received from these physicians and, indeed, from all interviewees in a position to have some knowledge of child abuse reporting by private physicians, was that there was serious underreporting by these professionals.

Of course, some physicians simply fail to diagnose inflicted injury and fail to report for that reason. Yet other reasons for failure to report loom larger. Many doctors are unfamiliar with legal processes and are often suspicious of lawyers and wary of court proceedings. They feel that if they report, they may be required to testify, which often involves substantial loss of time while the witness is waiting to be called. Doctors are resentful of this use of their time. There is also a risk, in an adversary proceeding, that defense counsel will make the physician appear foolish in cross examination.

Further, a doctor's chief professional concern is to serve his patients, not to vindicate the law or to punish abusive parents, and physicians sometimes feel that reporting inflicted injury will interfere with the doctor-family relationship. Physicians may also legitimately feel that reporting a particular incident would be detrimental to the interests of both the child and the family.

Here, as elsewhere, it is reasonably clear that the reporting incentives of protection of the child and statutory mandate are often overbalanced by the disincentives arising from the reporter's perceived potential involvement with the law. While there is no evidence that private physicians would fail to report in cases in which they feel that a child would be in immediate danger were he to remain in the home, it appears likely that physicians would fail to report in those cases in which they conclude that there is no serious future risk to the child.

52. *Id.*
Whatever the merits of such a decision as medical judgment, it obviously defeats one aim of the child abuse reporting system, that is, identification of affected children and those who are involved in more than one incident of child abuse in order to gain some public assurance that the child is protected from future harm. It appears that some of the problems herein noted could be readily solved by education and publicity programs directed at private physicians and by a clear system preference for noncriminal handling of reported cases.

Hospitals

Cases of suspected inflicted injury which are sent to hospitals are usually severe and, as might be expected, most often involve younger children, often infants.53 In most hospital cases, a petition is initiated for temporary removal of the child from the home, pending investigation.54 Some less severe cases, however, may be handled in a hospital clinic rather than through formal hospital admission. These latter usually involve suspected abuse in which the referring person, usually a police officer or protective services worker, wants the child to have a physical examination. In such cases, the results of the examination are reported back to the original referring party, who then makes the decision as to the ensuing course of action.55

Injured children are brought to hospitals by police officers or by parents, relatives or other interested parties, or are referred by Specialized Children's Services (SCS) workers or private physicians who deem the child in need of hospital care. Depending on the particular hospital (and to some extent on whether it has some kind of child abuse or inflicted trauma unit) these cases are diagnosed either as inflicted or accidental trauma cases, and the children are treated.56 Some cases of suspected inflicted injury which are not initially presented as such (e.g., emergency admissions) may not be diagnosed as inflicted trauma, particularly when initial observation is critical in making such a diagnosis.57

For hospital physicians, suspected cases resolve into three categories: accidental trauma, where the injury was not purposeful or deliberate; “inflicted” trauma, where the physician concludes that the in-

53. Interview with James Apthrop, M.D., Head, Child Abuse Unit, Los Angeles Children's Hospital, in Los Angeles, May 22, 1974.
54. Id.
55. Id.
56. Id.
57. Id.
jury was not fortuitous or accidental; and a grey zone in which the doctor is uncertain as to the cause of the injury.\textsuperscript{58} It is in this grey area of uncertainty that hospital doctors exercise a de facto discretion and may choose not to report an injury as a case of child abuse. Notice of these uncertain but suspected cases is instead given to the Specialized Children’s Services section of the Department of Public Social Services (the Los Angeles County Welfare Department), or possibly even to a visiting nurse when a hospital medical social worker has a good impression of the family.\textsuperscript{60} Cases of neglect and failure to thrive are also reported to SCS.\textsuperscript{60}

The larger and more active hospitals, which have some kind of inflicted trauma unit, have medical-social-psychological teams, composed of pediatricians and psychological or medical social workers, to work on suspected abuse cases. In Los Angeles County Hospital, for example, a senior medical social worker works with a resident pediatrician and conducts a psycho-social investigation in cases of suspected inflicted trauma.\textsuperscript{61} Similarly, in Children’s Hospital and Martin Luther King Hospital, nonphysicians work closely with pediatricians and confer with them before a decision is made as to whether a case should be reported as suspected child abuse.\textsuperscript{62} The nonmedical staff also work with the parents, informing them of what is likely to happen and attempting to allay their fears.\textsuperscript{63}

This method of handling suspected instances of inflicted trauma—conducting some form of psycho-social investigation together with a medical examination—is of considerable significance and is, to a certain degree, at odds with the strict child abuse reporting statute. The psycho-social investigation individualizes each case and provides the hospital professional with much more information than many mandated reporters are likely to have. Indeed, enough information is often gathered to allow intelligent assessment of the comparative risks which

\textsuperscript{58} Id.  
\textsuperscript{59} Interviews with James Apthorp, M.D., Head, Child Abuse Unit, Los Angeles Children’s Hospital, in Los Angeles, May 22, 1974; Kerry English, M.D., Martin Luther King Hospital, in Los Angeles, May 23, 1974; and Prof. David Friedman, M.D., USC School of Medicine, in Los Angeles, May 23, 1974.  
\textsuperscript{60} Id.  
\textsuperscript{61} Interviews with Prof. David Friedman, M.D., USC School of Medicine, in Los Angeles, May 23, 1974; and Maureen Cardiff, Senior Medical Social Worker, USC Medical Center, in Los Angeles, May 23, 1974.  
\textsuperscript{62} Interviews with Kerry English, M.D., Martin Luther King Hospital, in Los Angeles, May 23, 1974; and Ms. Robinson, Social Worker, Martin Luther King Hospital, in Los Angeles, May 23, 1974.  
\textsuperscript{63} Id. 
might result to the child from reporting or not reporting, and therefore to permit a reasoned decision whether or not to report based on that assessment.

Under a strict child abuse reporting statute, no mandated reporter has this latitude for decisionmaking. Suppose, for example, the following hypothetical situation. A child is spanked and bruised by his mother’s boyfriend, and the injury is sufficient to bring the case within the reporting statute. A psycho-social investigation reveals that this is an unusual incident in this family, of a type the mother, who is a stable individual, could well control in the future; that the relationship between the mother and the boyfriend is stable and beneficial; and that the relationship between the child and the boyfriend is quite good, notwithstanding this single spanking incident. Given the improbability of another such occurrence, reporting seems to serve no beneficial purpose and may even be considered highly detrimental to the stable quasi-family relationship which exists. Such a case might well go unreported, insofar as reporting would be contrary to professional medical social work judgment, particularly as long as there is a reasonable apprehension that criminal proceedings, leading to family strain or break-up, would ensue.

Reaction of interviewed Los Angeles County Hospital professionals to the present California system of child abuse reporting varied somewhat with the geographical service area of the hospital. This is quite understandable. Los Angeles County is made up of many separate municipalities, each with its own law enforcement agency. The response of these agencies varies greatly, and the attitudes of hospital professionals often appeared to be reactions to the particular law enforcement agency with which they had chiefly dealt. Health professionals in general often feel frustrated by law enforcement agencies, and their response to the role of law enforcement in the treatment of child abuse sometimes appears to depend upon the acts or omissions of the individual officer responding to the report. Because different field officers conduct such investigations, even in apparently clear cases of inflicted child abuse, hospital professionals sometimes cannot be certain that the police will arrest the suspected abuser, as the decision may depend on the individual officer. Further, once a case is reported to the police, hospitals receive no feedback on its disposition, except through their own efforts. They are thus unable to develop the dis-

64. Id.
65. Id.
position experience that would aid them in handling future cases and which would permit them to give parents a realistic sense of what is likely to happen in a particular case.

Hospital professionals heavily involved in the child abuse field authority to draw on Central Registry information regarding prior suspected abuse, and do not use it to assist in diagnosis. Even were they aware of this resource, they might be reluctant to seek such information for fear that the request would mandate a report of the case as one of suspected child abuse. Other records which might be of assistance in diagnosis—for example, those in the possession of SCS or the Department of Public Social Services generally—are apparently often disorganized. Without the ability to draw quickly upon accurate records, hospitals may misdiagnose doubtful cases, and a child may actually be returned to a dangerous situation or, in the mistaken interest of safety, removed from the home.

Hospital professionals heavily involved in the child abuse field view child abuse primarily as a family problem and reasonably believe that treatment must be provided to a family unit, particularly some sort of training and psychological therapy for the parents.

A few hospitals have, as a part of the pediatric service, small staffs which are almost fully oriented toward therapeutic or psychiatric treatment of children in abuse cases. However, the pediatric staffs of most hospitals have little training or inclination toward such an approach. Even those hospital professionals with a psychiatric orientation admit that they cannot treat all such cases effectively; though they can provide care for the physical trauma, they often do not know how to treat the underlying problem that resulted in the child's injury.

Even if the hospitals had effective treatment modalities and adequate treatment resources, law enforcement intervention removes reported cases from hospital control, and the predominance of law en-

66. Id.
67. Interviews with James Apthorp, M.D., Head, Child Abuse Unit, Los Angeles Children's Hospital, in Los Angeles, May 22, 1974; Kerry English, M.D., Martin Luther King Hospital, in Los Angeles, May 23, 1974; and Ms. Robinson, Social Worker, Martin Luther King Hospital, in Los Angeles, May 23, 1974.
68. E.g., Los Angeles Children's Hospital; Martin Luther King Hospital.
69. Interview with James Apthorp, M.D., Head, Child Abuse Unit, Los Angeles Children's Hospital, in Los Angeles, May 22, 1974.
70. Interviews with James Apthorp, M.D., Head, Child Abuse Unit, Los Angeles Children's Hospital, in Los Angeles, May 22, 1974; Kerry English, M.D., Martin Luther King Hospital, in Los Angeles, May 23, 1974; and Prof. Morris Paulson, Ph.D., Dep't of Psychiatry, UCLA Medical Center, in Los Angeles, May 23, 1974.
enforcement purposes interferes with any modality of treatment from that point on. Viewed functionally, the child abuse laws tend to focus on the punishment of a statutory crime and the immediate protection of the child, having little interest in long-term rehabilitation or family unity.\textsuperscript{71} The child is often protectively removed from the home, and the abuser treated in accordance with the criminal process (which may or may not result in prosecution or conviction).\textsuperscript{72} From the health professional's point of view, the therapeutic value of this procedure is quite marginal.\textsuperscript{73} Child abuse statutes neither call for nor provide for treatment, but rather appear to be based upon the expectation that separation of the child from the family will improve the child's situation; without treatment, however, when the child is finally returned to the home, the family situation may well be as bad or worse than before.\textsuperscript{74}

Despite the broad authority of a juvenile court to fashion orders, examination of the actual handling of child abuse cases in juvenile court reveals a serious inflexibility at a critical point. When a child is removed from his home because of abuse, he is usually placed in foster care for an extended period of time. Research conducted by the Department of Public Social Services has revealed that such children remain in foster care for an average of two to three years.\textsuperscript{75} Physicians and others who are deeply involved in child abuse cases believe that a majority of the children can and should be returned to their parents immediately, and that children can be returned even in some high-risk cases if close attention and intensive therapeutic social services are provided.\textsuperscript{76} These professionals believe that proper therapy requires either working with the entire family unit or authority to reunite the child with his family at some appropriate point during treatment.\textsuperscript{77} It is, however, precisely here that the legal system is most rigid, as evidenced by the long-term separation of family and child and failure to focus efforts toward getting the child back into the home. Indeed, some health professionals find that leaving the child in the

\textsuperscript{71} Interviews with James Apthorp, M.D., Head, Child Abuse Unit, Los Angeles Children's Hospital, in Los Angeles, May 22, 1974; and Prof. Morris Paulson, Ph.D., Dept of Psychiatry, UCLA Medical Center, in Los Angeles, May 23, 1974.
\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{75} Interview with James Apthorp, M.D., Head, Child Abuse Unit, Los Angeles Children's Hospital, in Los Angeles, May 22, 1974.
\textsuperscript{76} Interview with Prof. Morris Paulson, Ph.D., Dept of Psychiatry, UCLA Medical Center, in Los Angeles, May 23, 1974.
\textsuperscript{77} Id.
home and providing intensive therapy or some sort of homemaker or supportive surrogate parent services is less risk to the child than placing him in long-term foster care.\textsuperscript{78}

Aside from frequent excesses of strict and purely punitive law enforcement, foster care does appear to be the chief problem in the present system of dealing with child abuse. Long-term placement in foster homes and consequent separation from the natural family may have severe psychological effects on the child, including possible identity problems.\textsuperscript{79} There are no specialized foster homes for the treatment of abused children, and foster parents, who are usually not trained in any way to deal with a traumatized child, possess limited resources. Further, children in foster care may be repeatedly moved from one home to another, increasing the child's confusion as to who his parents really are.\textsuperscript{80}

The natural parents may also suffer and develop resentments; in any event, when the child is removed from the home, they are prevented from interacting with him.\textsuperscript{81} This forced separation may to some extent be beneficial since the parents are relieved of the stress of parenting.\textsuperscript{82} But while they cannot injure the child again, the parents cannot learn to deal with the child properly.\textsuperscript{83} In some instances, where there is severe physical abuse of a child or where the child has experienced severe emotional trauma, parents of removed children may be denied visiting rights by the court.\textsuperscript{84} More commonly, remote geographic placement of the child makes visits between parent and child difficult.\textsuperscript{85} Counseling and therapeutic resources or services are quite limited, and therefore parents often do not receive any form of treatment or help.\textsuperscript{86} All of this may not only alienate the parents, but may

\begin{itemize}
\item\textsuperscript{78} Id.
\item\textsuperscript{79} Id.
\item\textsuperscript{80} Id.
\item\textsuperscript{81} Interviews with Prof. Morris Paulson, Ph.D., Dep't of Psychiatry, UCLA Medical Center, in Los Angeles, May 23, 1974; and Ms. Jolly K., Founder and Director, Parents Anonymous, in Los Angeles, May 22, 1974.
\item\textsuperscript{82} Id.
\item\textsuperscript{83} Interview with Ms. Jolly K., Founder and Director, Parents Anonymous, in Los Angeles, May 22, 1974.
\item\textsuperscript{84} Id.; telephone interviews with Katherine Clement, Supervisor, Specialized Children Services, Yolo County Dep't of Social Services, Mar. 20, 1975, and with Louisa Moore, Coordinator, Department Representative to Los Angeles County Court Liaison Service, Dep't of Public Social Services, Mar. 21, 1975.
\item\textsuperscript{85} Interview with Ms. Jolly K., Founder and Director, Parents Anonymous, in Los Angeles, May 22, 1974.
\item\textsuperscript{86} Telephone interview with Louisa Moore, Coordinator, Department Representative to Los Angeles County Court Liaison Service, Dep't of Public Social Services, Mar. 21, 1975.
\end{itemize}
also make them more rather than less hostile, and less able to deal with the child properly when the child is finally returned to the home.\textsuperscript{87}

The whole set of problems created by the foster care tactic for child abuse is well summarized in a draft proposal for the development of a family treatment center for child abuse, written by the staff at the Martin Luther King Hospital:

The abused child is often initially taken from the home and placed in a dependency situation, usually foster care. This child, already suffering from a good deal of guilt and rejection on the basis of the abuse itself, will go on to interpret the separation as an affirmation of this rejection and guilt. He is not likely to have significant contact with his parents during the time of his foster placement, and in fact may suffer the disruptions of more than one such home. At the same time his parents are left to interpret the separation in not dissimilar ways regarding guilt and rejection as well as grief, contending at the same time with the court system that remains basically punitive. These parents, thus cut off from their child, must watch the child in a foster care situation from a distance while the foster parents presumably receive the affection from the child so desperately sought by the natural parents. If therapy does occur in the face of these feelings, it is often separate from any interaction with the child and must work through parental hostility towards both police and courts as well as the foster parents. This separate therapy in turn provides little insight into the progress of the parent-child relationship, except indirectly. When the court then reviews the case for consideration of reconstitution of the family, there is too often precious little to go on in making the decision for or against return to the home. This failure, coupled with sporadic maintenance of therapy and crisis intervention after reunification, sets up these families for failure in their next crisis situation, which may simply be the disruptions of reunification itself.\textsuperscript{88}

One other major concern of hospital health professionals, like private physicians, is the amount of time consumed in attending juvenile and criminal court proceedings relating to child abuse.\textsuperscript{89} The problem is particularly serious for persons employed in hospital inflicted trauma units. As they see, diagnose, treat, and report more of these cases, these professionals are called to court with increasing frequency to testify as witnesses. In addition to the natural apprehension of possibly grueling cross-examination, the time lost in preparing for and attending court hearings may seriously interfere with their principal work in the

\textsuperscript{87} Interview with Prof. Morris Paulson, Ph.D., Dep't of Psychiatry, UCLA Medical Center, in Los Angeles, May 23, 1974.

\textsuperscript{88} Inflicted Trauma staff, Martin Luther King Hospital, A Rough Draft of a Proposal to Develop a Family Treatment Center for Child Abuse (undated).

\textsuperscript{89} Interview with Kerry English, M.D., Martin Luther King Hospital, in Los Angeles, May 23, 1974.
inflicted trauma unit. Added to professional and philosophical disagreements with criminal treatment of child abuse cases and the indefinite placement of abused children in foster care, the frustration of health professionals with the current system is warranted and easy to understand. Thus, hospital professionals generally expressed dislike for the present method of reporting and disposing of child abuse cases under the juvenile and criminal justice systems. The current framework was viewed as too inflexible and punitive, insufficiently resourceful, and incapable of utilization as a tool to enhance proper treatment. There was, nonetheless, recognition of the need for an agency with authority to conduct investigations and, if deemed necessary, to remove the child from the home, and for mandatory orders relating to treatment which abusers must obey, for many such persons might not voluntarily attend treatment programs. The hospital professionals felt, however, that absent the availability of a variety of treatment alternatives from which to choose, no court order is likely to be particularly effective in assisting a family.

In the view of well-informed and concerned health professionals, the ideal program to deal with child abuse properly would call for residential treatment centers, either within hospitals or affiliated with some kind of medical service. Such centers would provide protective custody for children—thus replacing the system of foster care in insuring the safety of abused children—and would also furnish treatment for the parents. These programs would avoid the aura of punitiveness which accompanies traditional procedures and would supply the flexibility lacking in the legal system's present method of handling these cases, permitting reunification of the child with the family as soon as warranted, under the auspices of professional judgment.

Schools

Schools are a likely source of reports of suspected child abuse involving older, school-age children, for such institutions have children

90. Id.
91. Interviews with James Apthorp, M.D., Head, Child Abuse Unit, Los Angeles Children's Hospital, in Los Angeles, May 22, 1974; and Kerry English, M.D., Martin Luther King Hospital, in Los Angeles, May 23, 1974.
92. Id.
93. Id.
94. Interviews with James Apthorp, M.D., Head, Child Abuse Unit, Los Angeles Children's Hospital, in Los Angeles, May 22, 1974; Kerry English, M.D., Martin Luther King Hospital, in Los Angeles, May 23, 1974; Prof. David Friedman, M.D., USC School of Medicine, in Los Angeles, May 23, 1974; and Prof. Morris Paulson, Ph.D., Dep't of Psychiatry, UCLA Medical Center, in Los Angeles, May 23, 1974.
under their observation for five or six hours a day, five days a week. While the reporting statute requires school nurses, teachers, and counselors to report cases of suspected inflicted injury, actual practice appears to channel reporting through the school principal, who, after discussion with concerned staff, determines how the case should be handled. Formal reports of suspected abuse are made to both the Los Angeles Police Department and the Supervisor of the Department of Public Social Services Intake and Detention Center, MacLaren Hall. School personnel refer cases of suspected neglect and "grey area" child abuse to Specialized Children's Service of the Department of Public Social Services.

It is impossible to determine the extent of underreporting by the Los Angeles schools. The Los Angeles City Unified Schools have 630,000 students. In 1972-73, 183 cases were reported. There is some anecdotal evidence of underreporting, and interviewees felt there might be some degree of underreporting by school staff. One interviewee stated that many cases were suspected but few were re-reported.

A significant factor in the underreporting, to whatever extent it exists, may be the difficulty in determining what constitutes a reportable offense. Reports often require medical judgments for which school staff feel inadequately trained, and there is no training program for teachers in the recognition of child abuse. In addition, school administrators indicated that it is difficult to establish specific guidelines for purposes of reporting. Undoubtedly, of the many thousands of teachers in the district, some are simply unaware of the statutory requirement to report. Further, like many health professionals, school personnel may not report some cases because they wish

96. Id.
97. Id.
98. Id.
100. Id.
103. Id.
to avoid potentially lengthy time loss in court.\textsuperscript{105}

Beyond this, some principals apparently discourage reporting because of previous actions taken by the police which are thought to have been detrimental to school environment,\textsuperscript{106} disturbing the children and classes, injuring school relationships with parents, and raising the possibility of litigation in which school personnel would be involved.\textsuperscript{107} Prior experience with police reaction to reported child abuse cases may account for some of these attitudes. Additionally, reporters of child abuse often expect immediate results and feedback on the progress and outcome of a particular case. In the past, neither has been forthcoming, and this may be partly responsible for frustration and disenchantment with the reporting system.\textsuperscript{108} This problem is particularly acute for those reporters who later discover that an apparently abused child has been returned to the endangering environment and the case against the alleged abuser has been dropped for lack of evidence.\textsuperscript{109}

\textit{Agencies that Receive Child Abuse Reports}

Department of Public Social Services

Under the reporting statute, suspected child abuse cases can be reported to the Welfare Department, which, as indicated earlier, in Los Angeles County is called the Department of Public Social Services (DPSS). As the probation department's child abuse reporting functions have been delegated to the DPSS in Los Angeles County, that department ultimately also receives the Central Registry reports of prior offenses following law enforcement reports to or requests from the Central Registry.

DPSS is a natural vehicle for recognizing and handling numerous child abuse cases. It maintains a twenty-four hour child placement service and can thus provide immediate temporary foster care,\textsuperscript{110} and many cases come to its attention through its own social service functions. Although not limited to any particular social class, there is apparently a higher incidence of child abuse reported among the poor,

\textsuperscript{105} Interview with Dr. Rosalio F. Munoz, Pupil Services and Attendance Branch, Los Angeles Unified School Dist., in Los Angeles, May 23, 1974.
\textsuperscript{107} Id.
\textsuperscript{108} Id.
\textsuperscript{109} Id.
\textsuperscript{110} See id.
those who are the welfare clientele. Thus some cases of suspected child abuse come to DPSS's attention through ordinary casework. Some are also brought to its attention by police who have received a report and who want the assistance of a child protective services worker. Further, the Specialized Children's Services section of DPSS is notified of potentially endangered children by schools, hospitals, and police when these agencies are unable to determine whether a child's injury was accidentally or intentionally inflicted. Since persons required by statute to report suspected child abuse often wish to avoid involvement with the police and courts, their easiest course of action in doubtful or nonserious cases is to report to SCS, and this procedure is often utilized. However, when a child abuse or neglect case comes to DPSS's attention, it falls within the jurisdiction of SCS and is handled in accordance with established departmental procedures.

SCS does not limit its concerns to physically abused children. They are treated simply as one category of "cruelly mistreated children" which includes, in addition to children who have sustained non-accidental injuries, children who are severely neglected and children who are sexually molested. When an SCS worker suspects that a child has been cruelly mistreated, he first evaluates the nature of the child's trauma and attempts to determine, through investigation, how

111. Thomas, supra note 2, at 336 (summarizing Gil's findings). Of course, this higher reported incidence may merely be due to the greater contact with welfare agencies.

112. Interview with Marsena Buck, Supervising Children's Services Worker, Dep't of Public Social Services, in Los Angeles, May 21, 1974.

113. Id.

114. Figures for 1973 show that Los Angeles County DPSS received an average of 350 written dependency petition applications each month. Approximately 125 of these applications were investigated immediately and filed as "juvenile detained" petitions at intake. The remaining applications were investigated by field staff, and 90 of these applications resulted in "nondetained" petition filings. The applications which did not result in a filing were either closed at intake because no further service was required, or were referred to another service within DPSS or to a community agency for follow-up social services. DPSS reports that between 10% and 13% of the monthly petition filings are on children who are the victims of physical abuse, which DPSS defines to include children who apparently sustained nonaccidental physical injury, children who were sexually molested, and children who suffer from malnutrition. Approximately 10% of the original dependency petitions filed are dismissed by the court for lack of evidence and inconclusive testimony. The foregoing statistics were provided by Ms. Patricia Johnson, Associate Director, Services Planning and Development, Los Angeles County Dep't of Public Social Services.

115. Los Angeles County Dep't of Social Services Dependency Handbook, ch. 10 at 3 (Feb. 23, 1971).
the injury occurred. Less experienced case workers are required to consult with a supervisor before determining a course of action.

If the child is not severely injured and does not need medical attention and the injury was not clearly accidental the case may be treated as a suspicious case, calling for careful future observation. If medical attention is required, the parent may decide to take the child for such treatment, and in this situation it is the case worker's responsibility to contact and alert the physician to the possibility of inflicted trauma. Once the physician examines the child, however, it becomes his responsibility to report if he suspects an inflicted injury.

If the parent refuses to seek treatment for the child, the case worker must report the incident by telephone and in writing to DPSS intake and detention control, and to the local law enforcement agency, which has primary authority. The police in turn determine whether to investigate the incident, and whether to take the child into protective custody. Undoubtedly, this is often done after consultation with or at the behest of the case worker, although only the police officer has the actual authority to take the child into custody.

Specialized Children's Services does not desire to have primary authority in child abuse cases or any power to remove a child from his home. Even though it has some law enforcement functions, it views itself as an agency that works to keep families together. It does not believe it could perform this function even as modestly as it does, and develop the necessary relationships with family members, if it had removal power or threshold prosecutorial responsibilities. Its staff also does not have the training, attitudes, orientation, and public authority essential to deal adequately with crisis situations like those occurring in child abuse cases. The police on the other hand, do have such resources, and police intervention, it is believed, will often initiate positive change in families where child protective services intervention would not. Undoubtedly this is true in some cases.

116. Interview with Marsena Buck, Supervising Children's Services Worker, Dep't of Public Social Services, in Los Angeles, May 21, 1974.
117. Id.
118. Id.
119. Id.
120. Id.
121. Id.
122. Id.
123. Id.
124. Id.
125. Id.
Once a child is removed from the family, he is taken, pending future disposition, either to the Los Angeles County receiving home (MacLaren Hall), to a temporary foster care home, or, if necessary, to a hospital.\textsuperscript{126} If the child is not taken into protective custody, the case worker must, in consultation with a supervisor, reevaluate the case in order to provide services to protect the minor.\textsuperscript{127} If the child has not yet been declared dependent by a court, a dependency petition may be filed; if the child has already been deemed dependent, a supplemental petition and recommendation for a change in the court's order may be filed.\textsuperscript{128}

If the case worker concludes that there was inflicted trauma, depending on the nature and severity of the incident, some further plan for protective services might be devised, possibly involving voluntary counseling for the parents and increased case worker visitations to the family. A dependency petition might be filed in juvenile court if the case is viewed as serious or circumstances suggest that such a procedure might be useful.\textsuperscript{129} Evidently, SCS exercises some discretion in deciding whether to involve law enforcement, or to determine dispositions on its own. SCS's handling of a particular case is independent of the law enforcement-prosecutorial decision whether to charge the perpetrator with the crime, but consultations often do take place between SCS and law enforcement officials before either selects a course of action; depending on the law enforcement agency, these discussions probably influence both agencies.\textsuperscript{130}

If a dependency petition is filed, SCS then conducts an investigation of the family and the child's injuries for juvenile court. This court-related function creates a conflict of interest with SCS efforts to work with a family, and may deter the SCS case worker from establishing an effective professional relationship with a client. According to the regulations, the objective of SCS is "to protect neglected, abused, exploited, or potentially delinquent children by providing social services to preserve the children's own home, wherever possible, or if this is not possible, by providing adequate substitute care, thereby reducing or forestalling the need for action by law enforcement agencies."\textsuperscript{131} In Los Angeles County, SCS is also charged with the respons-

\begin{itemize}
\item \textsuperscript{126} Id.
\item \textsuperscript{127} Id.
\item \textsuperscript{128} Id.
\item \textsuperscript{129} Id.
\item \textsuperscript{130} Id.
\item \textsuperscript{131} Cal. Dep't of Social Services Handbook of Regulations—Protective Services, § 30-101.
\end{itemize}
sibility of providing information to the court concerning child abuse cases. On the one hand, SCS is charged to forestall action by law enforcement agencies; on the other, to act as an agent of the court. These two responsibilities seem to require different roles and may contribute to dividing a case worker's allegiance.

SCS files most cases under subdivisions (a) and (d) of Section 600, which allows a juvenile court to find a child dependent:

(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.

(d) Whose home is an unfit place for him by reason of neglect, cruelty, depravity, or physical abuse of either of his parents, or of his guardian or other person in whose custody or care he is.

SCS believes subdivision (d), since it entails prescriptive counseling, is the better legal device because it mandates service to the dependent child's family. The actual value of SCS services to a family at this point is unclear, for it is unlikely that parents will cooperate enthusiastically with an agency that participates in and oversees their punishment. Even where counseling might be useful, however, the section 600(d) charge is sometimes dropped through plea bargaining, and while the child is still adjudged to be dependent, the court permits the parents or guardian to retain custody. In such a case, the parents are not required to receive counseling. When the court decides to remove the child from the home in section 600 cases, however, the court finds the child dependent under both subsections (a) and (d), and the child is committed to the custody of SCS for suitable placement in a foster home.

132. Interview with Louisa Moore, Coordinator, Department Representative to Los Angeles County Court Liaison Services, Dep't of Public Social Services, in Los Angeles, May 21, 1974.
133. CAL. WELF. & INST'NS CODE §§ 600(a), (d) (West 1972).
134. "When a minor is adjudged a dependent child of the court, on the ground that he is a person described by subdivision (d) of Section 600 and the court orders that a parent or guardian shall retain custody of such minor subject to the supervision of the probation officer, the parent or guardian shall be required, as a condition of his continued custody of such minor, to participate in a counseling program to be provided by an appropriate agency designated by the court." Id. § 727(d) (West Supp. 1974).
135. Interview with Louisa Moore, Coordinator, Department Representative to Los Angeles County Court Liaison Services, Dep't of Public Social Services, in Los Angeles, May 21, 1974.
136. Id.
137. Id.
Once a child has been placed in a foster home pursuant to a court order for suitable placement, the case plan often focuses on the child and his adjustment to placement rather than on the family or on re-uniting the child with his parents.\textsuperscript{138} Often long-term foster placements are maintained for the child's "protection" while aggressive case work services are not directed toward the remainder of the family. Specialized Children's Services does not have the financial or professional resources to provide effective therapy in child abuse cases.\textsuperscript{139} Social work supportive services may be important in child abuse cases, but social workers do not know specifically which kinds of behavioral therapy may be effective in child abuse cases; in any event, they are unlikely to have the time to give significant attention to any particular family. For the same reasons, SCS is not in a good position to provide preventive treatment in identified potential child abuse cases, although it may be able to protect children through observation, seeking police intervention, and ultimately through court action.

Department of Health

Under the California Child Abuse Reporting Law, mandated reporters can notify their county department of health of suspected child abuse cases. In Los Angeles County, this particular reporting track is seldom used, probably because it is not well known.\textsuperscript{140} Child abuse cases that do come to the attention of the Department of Health do so primarily through its own community programs, such as well-baby clinics operated by the Department's Community Health Division.\textsuperscript{141}

For Department of Health purposes, Los Angeles County is divided into twenty-three districts. Each district has at least one professionally trained public health social worker, who usually handles reported child abuse cases. On receipt of a call of suspected abuse, the social worker tries to elicit the severity of the case from the caller. If the caller indicates that it is a severe case, the social worker immediately refers the matter to the police. If, however, the situation does not appear to be critical or to require protection of the child, the social

\textsuperscript{138} Id.
\textsuperscript{139} Id.
\textsuperscript{140} Telephone Interview with Norma O'Con, Los Angeles County Dep't of Health, June 1974 (specific date unrecorded). Specific procedures detailed in the text are also included in Order No. 3018, Bureau of Maternal and Child Health, County of Los Angeles Health Dep't (Revised Nov., 1971).
\textsuperscript{141} Telephone interview with Norma O'Con, Los Angeles County Dep't of Health, June 1974 (specific date unrecorded).
worker conducts an investigation. If the child is not in danger, and the family is responsive and does not require long-term attention, the department offers the family its own preventive medicine and casework services. If the case is not serious enough to call the police but appears to require intervention, and the family opposes such intervention, the Department of Health refers the case to Specialized Children's Services.  

The Community Health Division's Preventative Medicine Clinics—well-baby clinics and prenatal clinics—sometimes discover children who are not developing properly. These cases usually involve malnourishment or failure to thrive, but on occasion also involve more direct instances of abuse. If such cases are not severe they are referred to the public health social worker, who handles them in the manner described above. Cases of possible child abuse are discussed with the District Health Officer, and a decision is made whether or not to report the case to the local police authority. Cases which appear to call for urgent medical attention are also immediately referred to a private physician or medical facility for treatment, who are alerted to the possibility of abuse.  

Miscellaneous Programs  

In Los Angeles County there are a number of independent treatment or therapy programs for parents of abused children, as well as child trauma intervention and research projects. While the scope of our research made it unfeasible to identify all such activities, some stood out. At the University of California at Los Angeles, the medical school has engaged in a three-year, multi-disciplinary group psycho-therapy program with thirty-one families. The Southeast Medical Health center runs group therapy sessions for abusing parents; there are also other psychiatric facilities providing some form of parental therapy.  

Of particular interest is Parents Anonymous, a vital organization which operates approximately fifteen chapters in Los Angeles County involving 150 to 160 parents. It is apparently the largest self-help
private agency, possibly the largest de facto "therapeutic" agency, dealing with child abuse in Los Angeles County. Operating somewhat like Alcoholics Anonymous, chapters of Parents Anonymous are sponsored by trained professionals and meet in informal, mutual, self-help groups where parents can share their frustrations and experiences and obtain assistance and support. Most parents attending Parents Anonymous do so of their own volition, although a few are ordered by juvenile courts to attend chapter meetings.

A Child Abuse Liaison Committee, composed of professionals and members of relevant agencies dealing with child abuse, has also been formed in the county. Thus far the committee has found it impossible to formulate central direction for the county. Aside from the inherent problems caused by the size of the jurisdiction, the primary difficulties are that the committee does not have authority to make necessary changes in the present system, it lacks financial support, and it lacks a staff.

**Police**

Under the California Child Abuse Reporting statute, the police play the central role in the investigation and handling of reported child abuse cases. Most initial reports are made to the police, and ultimately all cases are supposed to be reported to and investigated by the police. The police make the important decision whether to take a child into protective custody, and also make the critical decision whether to file criminal charges against the offending adult. Police attitudes toward inflicted trauma therefore determine how most child abuse cases are investigated and handled.

Handling child abuse cases criminally has serious consequences for future treatment of the entire family unit. It contributes to long-term separation of the injured child from his family, and may result in a criminal conviction for the abuser. Most professionals involved in treating child abuse do not view it principally as a criminal matter, but as a psychological and behavioral problem. Criminal treatment

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146. *Id.*
147. *Id.*
148. Interview with Louisa Moore, Coordinator, Department representative to Los Angeles County Court Liaison Services, Dep't of Public Social Services, in Los Angeles, May 21, 1974.
149. *Id.*
150. See *CAL. PEN. CODE* § 11161.5 (West Supp. 1974).
151. Interviews with James Apthorp, M.D., Head, Child Abuse Unit, Los Angeles Children's Hospital, in Los Angeles, May 22, 1974; Kerry English, M.D., Martin Luther
of the child abuser may do little to reach that problem, and the fear that an abuser or potential abuser has of being criminally charged may result in denial that injuries were intentionally inflicted, and reluctance voluntarily to seek outside help, since it would lead to exposure. For similar reasons, public and legal designation of child abuse as criminal conduct inhibits reporting of child abuse incidents, particularly where police have a strong "law and order" image. Additionally, the reactions of all professionals providing counseling or therapy services in child abuse cases may be significantly affected by their perceptions of what police are likely to do in a given case. All persons who become aware of possible child abuse incidents may exercise a de facto discretion not to report, and in uncertain or grey zone cases, the legal requirement to report may be subverted by a professional judgment that, given the strict and punitive manner in which law enforcement is likely to act, reporting may not be in the best interest of either the child or the family.

These background observations lead to the general conclusion that the perceived and actual ability of the police to respond differentially and sensitively to families of child abusers significantly determines whether or not some cases are reported at all. The character of the police response apparently also has a great psychological effect on the family and may contribute to or interfere with future treatment of the behavioral causes of the abuse.

The foregoing describes generally the process in Los Angeles County, at least when an initial report comes from some mandated professional. Of course, the county has many different jurisdictions and law enforcement agencies, and police response to a child abuse case depends on the law enforcement agency involved, its official attitudes toward child abuse, and the training and experience of its officers. The occurrence or nonoccurrence of reporting, at least in borderline cases, is therefore partly a function of the police agency to which the report would have to be made. The reaction of reporters and families to police involvement is certainly directly related to police response.

In this respect, the Los Angeles City Police Department Child King Hospital, in Los Angeles, May 23, 1974; and Prof. David Friedman, M.D., USC School of Medicine, in Los Angeles, May 23, 1974.


153. This may be an extremely difficult decision for the professional to make, for, in addition to violating the law, his decision not to report may expose the child to risk of further injury or death. This risk is somewhat mitigated by reporting the case to SCS as one which should be carefully watched.
Abuse Unit received high praise from all parties interviewed. The Child Abuse Unit was established in January, 1974, and combines social and family service functions with traditional law enforcement operations. It has final authority for handling all complaints involving physically and sexually abused children. It investigates and evaluates complaints and decides whether to refer the cases to SCS or to file charges. The Unit handles about one hundred cases a month, but provides no treatment services.

In any given case, based upon an informed assessment of the facts as determined by investigation, the Unit determines how the matter should be handled. A decision to file criminal charges depends upon numerous variables, such as whether the injury to the child is considered an isolated incident, or the result of legitimate physical discipline, perhaps improperly controlled, or due to parenting ignorance; the past history of the family; the degree of violence or sadism involved; and the nature and severity of the injury. If the incident is isolated or the result of parenting stress and the child is safe, the Unit refers rather than pressing charges for misdemeanor offenses. If the matter is thought serious enough to require a criminal charge, the Unit files a detention petition request with SCS, which in turn evaluates the request and determines whether the matter can be handled without the necessity of juvenile court intervention. If it cannot be so handled, SCS petitions the court. If SCS decides not to file a petition, but the Unit disagrees and feels court action is necessary, the entire case is presented to the juvenile court judge in an affidavit form requesting his review.

If felony charges are filed or if the case is a borderline felony and needs prosecutorial assessment, it is sent to the Los Angeles County District Attorney. Misdemeanor charges are sent to the City Attorney for a determination of whether the case should be prosecuted as a misdemeanor. Most filings are in fact misdemeanors; some of these are originally filed to induce parental cooperation through the

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154. Indeed, when various interviewees were asked whether they felt law enforcement should be the front-line agency dealing with child abuse, affirmative responses appeared almost directly proportional to experience with the Child Abuse Unit.


156. Id.

157. Id.

158. Id.

159. Id.

160. Id.
threat of prosecution, and are ultimately dropped. Similarly, misdemeanor charges may be forgone if the child has already been removed from the home by juvenile court action. If the case does go to a judicial disposition, however, the Child Abuse Unit may continue its involvement through recommendations at the sentencing hearing.

The Los Angeles County Child Abuse Unit is unique. A cross between a social service and law enforcement agency, it has, through an extensive training program for its officers, combined the powers of law enforcement with sensitivity for the causes and character of child abuse and has developed a generally nonpunitive attitude toward the handling of most child abuse cases. It has developed good rapport and working relationships with other agencies and persons involved in the child abuse area, and appears to be very effective in responding intelligently to child abuse cases and in avoiding the dysfunctional impact of strict criminal treatment. The Unit's only problems in this respect are the untoward effects of both the relatively bad public image of the police generally, and the inadequacies of non-Unit patrol officers who often make the initial family contact in child abuse cases. Regular patrol officers do not receive training similar to that of the Child Abuse Unit, and the manner in which a case is initially handled depends very much upon the sensitivity of the individual investigating officer. In some cases, therefore, despite the existence of the special Child Abuse Unit, initial police mishandling is a possibility, and this may lead not only to some circumspection by mandated reporters, but also, when an investigation takes place, to polarization in a family. In an attempt to ease this problem, the Child Abuse Unit provides some specialized training to non-Unit officers at the Police Academy, as well as in-service and roll call training.

Because of the size of Los Angeles County and the number of law enforcement jurisdictions in it, information about how law enforcement agencies other than the Los Angeles City Child Abuse Unit handle child abuse cases was difficult to obtain. The following comments therefore are merely the authors' impressions.

Some of the larger departments have juvenile officers specializing in child abuse, and proportional to their scale, try to carry on work sim-

161. Id.
162. Id.
163. Id.
164. Interview with Sgt. Jackie Howells, Director, Child Abuse Unit, Los Angeles Police Dep't, in Los Angeles, May 20, 1974.
iliar to that of the Los Angeles City Child Abuse Unit.\textsuperscript{165} Smaller departments lack training, and apparently some departments simply do not view child abuse as a problem at all; that is, the police in such departments simply do not get involved except in extreme cases.\textsuperscript{166} In Los Angeles County as a whole, therefore, there seems to be a great range of police department reaction to child abuse cases—from the most careful and sensitive handling to the most punitive or neglectful.

Criticism by welfare and health professionals of law enforcement involvement in child abuse cases derives from the belief that most of these cases present psychological and behavioral rather than criminal problems. Critics focus on the inhibitory effect of police involvement on reporting, the negative effect of police involvement on families, the inflexibility of police response, and the drastic and rigid character of judicial remedies. However, many practical factors seem to favor continued police involvement. The police are the only twenty-four hour-a-day field service community agency with investigatory and arrest authority. By the nature of their daily work, their role in the community, and their powers, the police are in an almost ideal position to discover child abuse. More child abuse cases naturally come to their attention than to that of any other agency. They also have the perceived authority and status which induces cooperation. Compared to the personnel of other agencies, such as social welfare workers, they are better trained to accord respect to constitutional rights and to handle cases through the orderly processes of the law. No other existing agency combines such training and investigative capability with the powers of law enforcement.

Additionally, while the great majority of child abuse cases may properly be viewed as presenting psychological rather than criminal problems, a properly trained police force, with carefully selected personnel and considerable discretion, might still beneficially enter these cases. Furthermore, in some cases the possibility of a criminal charge, which is suggested by police involvement, may actually provide the abuser with the necessary stimulus to change behavior or to seek help. As the Los Angeles City Child Abuse Unit demonstrates, with proper training and orientation, police response can be quite flexible. Once such an operation is adequately publicized, the general detrimental psychological effects of police involvement on reporting and on suspected abusers may be greatly mitigated.

There are, of course, child abuse cases of extreme sadism or

\textsuperscript{165} Id.
\textsuperscript{166} Id.
violence, sometimes involving the death of a child, and there is some public demand for criminal punishment in such cases. While it might be argued that such cases present the clearest instances of psychological problems, the behavior is so far beyond public sympathetic understanding and acceptance that noncriminal rehabilitation is not an acceptable alternative. While there is a feeling that persons committing these extreme acts are "sick," there is a great public desire to "put them where they can do no further harm," and to use the punishment as a deterrent and educative example to others. Consequently, even were there a general policy of noncriminal handling of child abusers, and an orientation toward psychological and behavioral treatment, there would still be a need for police and criminal system intervention in extreme cases.

Finally, it must be recognized that police involvement, while ultimately a part of the juvenile process, is not responsible for the inadequate remedies or treatment possibilities available to the juvenile courts. Regardless of which agency happens to be on the front line in child abuse cases, if the juvenile courts are involved in any way their deficiencies have to be remedied separately. Furthermore, it is unlikely that any system for handling child abuse, even if fully oriented to noncriminal treatment, could succeed without being able to invoke the power of the courts to protect a child or to order parents to undergo treatment in appropriate cases. Thus, it appears that a system that relies on child abuse units such as that in Los Angeles City, and which provides significant treatment alternatives, such as residential treatment centers together with other referral and treatment resources, would meet many objections to the current system.

Prosecutor and Courts

The role of the prosecutor in child abuse cases is not as significant as one might suspect. The decision as to which cases shall be considered for adult prosecution is essentially made by the police; the prosecutor sees only those cases that they refer to him. Furthermore, since the Los Angeles District Attorney has adopted a policy of refusing to plea bargain in virtually all cases, prosecutors file on most charges lodged by the police.167

As noted above, the Los Angeles City Police Child Abuse Unit refers misdemeanor child abuse cases to the City Attorney's office for

167. Interview with Julius Libow, Senior Referee, Juvenile Dep'ts, Superior Court of Los Angeles County, in Los Angeles, June 20, 1974.
prosecution, and refers felonies to the District Attorney.\textsuperscript{168} The City Attorney's office has adopted the practice of conducting what are called "City Attorney's hearings" in child abuse cases.\textsuperscript{169} The deputy in charge of the case has the accused, witnesses, and the victim meet with him in his office for an informal discussion prior to the filing of a complaint.\textsuperscript{170} Parties may bring counsel if they so desire. On the basis of this discussion, the prosecutor may determine that the case can be resolved informally, without the necessity of prosecution.\textsuperscript{171} This procedure apparently has good results, as the threat of possible future prosecution in the event of a recurrence of abusive conduct causes some parents to change their behavior or to seek help.

In any event, very few child abuse cases actually are prosecuted, and of these, most are charged as misdemeanors.\textsuperscript{172} The infrequency of prosecution is the result of a number of factors. Police do not charge all reported incidents as crimes; many are handled on a social-work referral basis simply because the police believe that the behavior involved does not warrant criminal prosecution or because investigation discloses too little evidence to obtain a conviction. When a case is referred for prosecution, the prosecutor has an opportunity to make similar decisions. Where specialized child abuse personnel or a police child abuse unit (such as that found in Los Angeles City) are present, however, the prosecutorial role is probably somewhat more restricted since a greater percentage of cases will never reach the prosecutor's office. Those that are referred are cases in which an expert has already determined that prosecution is appropriate;\textsuperscript{173} the prosecutor's role in such situations tends to be restricted to professional judgments about the "triability" of the cases—essentially whether there is adequate evi-

\textsuperscript{168} See notes 85-86 & accompanying text \emph{supra}.  
\textsuperscript{169} Interview with John Miner, Esq., Former Head, Medical-Legal Section, District Attorney's Office, in Los Angeles, June 21, 1974.  
\textsuperscript{170} \textit{Id}.  
\textsuperscript{171} \textit{Id}.  
\textsuperscript{172} "In 1972, the Los Angeles Police Department arrested 206 adults for 273(a) P.C. (felony child neglect). The total County arrest figure is usually twice this figure, but is not specifically available. Department of Justice statistics for 1972 indicate that for all of Los Angeles County, a total of 47 felony complaints were filed. At the Municipal Court level, under Section 17 P.C., 19 were handled as misdemeanors with 12 being found guilty and 7 dismissed. In Superior Court, out of 28 informations filed, 6 were dismissed and 22 convicted with the following dispositions: Jail, 1; prison, 2; probation, 19." Julius Libow, A Supplementary Report to the "Proposal for a Reevaluation of Juvenile Dependency, and Adult Child Endangering Laws and Procedures," submitted on Mar. 20, 1973.  
\textsuperscript{173} For the same reasons, deferred prosecution seems to be little used, although it might be a tool to handle such cases in which the prosecutor plays a strong role.
dence to prove the case beyond a reasonable doubt.

Child abuse cases are often difficult to prove. They are usually based on circumstantial evidence: the victim may be too young or too frightened to testify, and often there are no witnesses to the incident. The mate of the suspected abuser usually denies knowledge, or, if jointly charged, can invoke the privilege against self-incrimination. The cases, therefore, often depend on medical testimony, and, given the uncertainty in medical diagnosis and the recalcitrance of physicians to testify, may be difficult to establish beyond a reasonable doubt.

On the other side, however, child abuse cases are also hard to defend. The public at large views serious child abuse as a crime without any possible justification, and it is virtually impossible to offer an effective defense of accidental injury or proper discipline in severe cases. Because of the nature of the offense and sympathies for the child, a jury is likely to be hostile to a defendant and to draw inferences favorable to the prosecutor. In most cases the only possible line of defense is that the injury was accidental or unintentional; again, this makes medical testimony crucial, and physicians testifying for the prosecution are likely to undergo stringent cross-examination.

For these reasons, prosecutors are likely to proceed with only the strongest cases, and defendants in such cases are likely to plead guilty, particularly after a preliminary examination in which the prosecution has shown some of the strength of its case. An additional factor inducing defendants to plead guilty is the likelihood of sentencing leniency in response to such a plea. Even in severe cases, many judges are likely to view the offense as having derived from psychological or stress difficulties. Consequently, very few child abuse cases actually go to trial.

Most child abuse cases that do reach the courts appear not in adult criminal courts, but in juvenile court. Under section 600 of the Juvenile Code, the juvenile court has jurisdiction to protect endangered children, and a dependency petition is usually filed in any case in which a child is removed from the home for protective custody. In dependency cases, the juvenile court has two basic remedial alternatives: to allow the child to remain in the home under supervision; or to remove the child from the home, awarding temporary custody to DPSS, which will then place the child in foster care.175

174. CAL. WELF. & INST'NS CODE § 600 (West 1972).
175. In 1973 DPSS supervised 5,800 dependent children of the court, with the following dispositions: Child retained in home under DPSS supervision, 1,650; placement
The standards for determining whether a child is dependent or is to be detained are quite vague, and this undoubtedly permits judges to apply their own social values and attitudes and contributes to the ready tendency to separate a child from his family. There is no question that juvenile judges and referees act conservatively in child abuse cases. They find it difficult to release a child to the parents when there is any risk at all to the child. This protects the judges from criticism, and certainly protects the child from immediate physical harm, but in many cases it may not be the best disposition and may in fact be more harmful to the child than a return to the family. 176

Once a child has been removed from his home and placed in foster care, 177 the case is placed on an automatic review calendar, to be investigated by DPSS and reviewed by juvenile court approximately eleven months after the original order. 178 Theoretically, the status of the child could be reviewed at any time, but apparently the eleven month period has become the norm for the DPSS case worker as well as the court. On occasion, however, when there is good cause, certain cases are simply continued to an earlier date and reviewed at that time; unfortunately, this practice is exceptional, and the longer period is usual. While this is an important exacerbating factor in the long-term foster care dilemma, speedier automatic review of status, while essential, would not solve the problem in many cases; services to the parents are also needed. If an advocate is available to protect the parents' interests after separation, and if the parents receive proper treatment or parenting training, there is nothing to prevent earlier review on a motion by counsel, and thereby a possible impetus to discontinue unwarranted long-term foster care.

The percentage of cases in which adult charges are filed when a dependency petition is also filed is unknown. It is clear that in some

176. One juvenile referee has adopted an unusual procedure in dependency cases, which is of particular interest in child abuse matters. The procedure calls for a pretrial social investigation, stipulated to by the parties when it appears to them that the matter may be resolved by agreement without trial. No party is bound by anything at this stage, and information provided by the investigation cannot be used at trial. The effect of the procedure is to accelerate the social investigation and stimulate the search for a disposition which can be agreed upon by all parties. Parents can thus participate in the framing of the disposition. Early results from this procedure indicate that it has cut down adjudication. Id.

177. See notes 118-29 & accompanying text supra.

cases the decision as to whether to file adult charges is affected by the filing of a dependency petition. Apparently, this dual system of handling cases leads to a great duplication of effort. There is little consultation between adult and juvenile decisionmaking bodies and consequently all processes and investigations are conducted separately for each system. The small amount of effort-saving coordination that does exist occurs through informal contacts between the agencies involved. Since very few adult prosecutions take place anyway, it would appear to be more efficient and rational, and in the interests of all concerned parties, to consolidate the adult and child proceedings in one family court procedure and reserve the criminal process for the few extreme cases.

In addition to the criticisms of the juvenile courts already expressed—vagueness of standards, inflexibility of the foster care remedy, and lack of effective treatment alternatives for families of child abusers—there are other significant problems in the Los Angeles County juvenile court system which seriously affect its handling of child abuse cases.

Juvenile courts have no direct jurisdiction over the parents; they have only de facto indirect authority over the parents through their explicit powers over the children. The character of juvenile court orders regarding parents, therefore, is conditional: unless the parents do certain specified acts, the court will take further action with respect to the child. Practically and psychologically, the child becomes the pawn. If the juvenile courts had authority over the parents directly, the court's orders would be directly enforceable through criminal contempt powers. Thus, the courts would not have to resort so immediately to the extreme remedy of child removal, and there might be less need to use the criminal process for the adult case.

Difficulties also arise because the juvenile court has jurisdiction over both section 600 cases, crimes against or neglect of children, and sections 601 and 602 cases, crimes by juveniles. Consolidating cases involving crimes by children, causes problems, despite the differing standards of proof in the two classes of cases and the fact that the cases are ultimately treated differently.

By statute, dependency cases are supposed to take priority on the court calendar. Nonetheless, while one might assume that the prevention of danger to children and of possible future criminality would suggest according dependency cases the highest priority in terms of court time and work load, crimes by children—some of which are admittedly,
extremely serious—clearly take actual priority. The dependency cases therefore receive less attention than they should and appear to languish in the system while the dependent child himself appears to get lost. What attention dependency cases do receive derives from a system geared primarily to criminal cases, and this may have subtle spinoff effects in terms of practical burdens of proof, the attitudes with which these cases are viewed, and most importantly, the lack of effective remedies custom-tailored to individual dependency cases.

A particular problem of the Los Angeles Juvenile Courts appears to be the quality of the judicial personnel. Los Angeles County Juvenile Courts rely heavily on a system of juvenile referees, many of whom are apparently untrained and not well acquainted with the dependency statute. Their performance was strongly criticized by interviewees familiar with their handling of juvenile cases.

These problems are well known to the juvenile court itself, and it is considering suggestions to correct them. Aside from obvious matters (such as improving the quality of referees and providing them with suitable training) the most significant proposal is to centralize handling of dependency cases, and to disassociate them in some manner from cases involving juvenile crimes.

Summary, Conclusions, and Recommendations

Analyzing the California system of reporting, processing, and handling child abuse cases as it operates in Los Angeles County, a number of serious problems are readily apparent. The most obvious major difficulty in that county is the poor coordination between the various agencies and individuals officially responsible for handling such cases. This problem appears chiefly to stem from the number and asymmetry of the various official jurisdictions in the county: i.e., there is one welfare department and one juvenile court, but there are many police jurisdictions and hospitals.

As the number and variety of official interactions increase because of the number and variety of individuals and agencies involved, it becomes increasingly difficult both to track child abuse cases and to develop a consistent policy toward them. The result is poor coordi-

179. Interview with Louisa Moore, Coordinator, Department Representative to Los Angeles County Court Liaison Services, Dep't of Public Social Services, in Los Angeles, May 21, 1974.
180. Id.
182. No attribution is given for this criticism in order to protect the interviewees.
nation of the activities of the several agencies, duplication and misdirection of effort, and even instances of agencies working at crossed purposes. No single agency is responsible for handling child abuse cases as child abuse cases. Welfare agencies handle them as social work cases, hospitals as medical cases, and courts and prosecutors as criminal or juvenile cases. In effect, the purpose of the system has become the varied purposes of the agencies that constitute it. Similarly, the turning kaleidoscope of jurisdictions and actions seriously inhibits experimentation with and the development of alternative forms of treatment or effective parenting training programs for interested parents. The dismay and helplessness that hospital professionals expressed in their views about the character of legal system involvement in child abuse both evidence and characterize these concerns.

From a social policy point of view, an important choice must be made here: each agency can maintain its current operations; each can participate in a coordinating body; or some new or consolidated agency can be given principal responsibility for the tracking and handling of child abuse cases, overseeing their progress through the system from beginning to end, coordinating activities, providing or insuring treatment, and keeping its own records on all of these matters. The latter alternative is obviously recommended here, for fragmentation of responsibility seriously interferes with the best resolution of child abuse cases.

A commitment to single agency tracking of child abuse cases probably entails an essentially nonpunitive orientation, aimed primarily at informal dispositions and the reunification of the family. This is wholly in accord with most current thinking in the child abuse field. Since most child abuse cases are not currently resolved with criminal punishment, it also accords, to some degree, with actual present practice, although the incidental, noncriminal punishments of the process, such as long term separation of the child from the family, may be quite severe.

It is also clear from the Los Angeles County experience that there is significant underreporting of child abuse and that mandated reporters often exercise a discretion not intended by the reporting law in not reporting suspected cases. This is due to a number of factors: lack of knowledge by some potential reporters; a pervasive social attitude of noninvolvement in other people’s personal affairs; and fear of the consequences for either the alleged offender or for the reporter. To counteract these underreporting stimulants, serious and sustained efforts to educate the public and potential reporters are needed. Current
educational activities are desultory, do not reach all the relevant audi-
ences, and give insufficient attention to aspects of the system which may 
be of most concern to a potential reporter. For example, doctors and 
other mandated professional reporters should be made aware of the 
prevalence of nonpunitive dispositions and of the fact that they are 
likely to be called as witnesses in only a few severe cases. A similar, 
general emphasis to the public at large on family-oriented and thera-
peutic features of the system would probably stimulate increased public 
reporting and possibly even generate some self-reporting or voluntary 
seeking of treatment. It is necessary to be very careful in this educa-
tional program, however, for the current child abuse handling system is 
genuinely punitive even if few people are criminally prosecuted, and 
there are relatively few treatment resources available. Educational ef-
forts of the kind suggested must, therefore, go hand-in-hand with sub-
stantive changes in the character of the system.

It is also a serious error of social policy to treat the reporting of 
child abuse cases separately from the manner in which those cases are 
ultimately handled by the criminal and juvenile justice systems because 
the perceived consequences of reporting greatly affect reporting. Even 
with a criminally sanctioned mandatory reporting statute, it is clear that 
there is serious underreporting. Further, when suspicious cases are 
brought to the attention of public employees and others mandated to 
report, many of these cases are not subsequently reported as suspected 
cases of child abuse either because they are not felt to be sufficiently 
serious or because the potential harm to family unity or to the child 
that might be occasioned by criminal and juvenile processing is thought 
to be greater than the risk to the child. As long as a reporting statute 
is viewed as tracking inevitably toward a criminal or juvenile case, it 
discourages broad reporting. On the other hand, when it is understood 
that prosecution is highly unlikely, and that a child may not be removed 
from a family or will be separated for as short a time as possible while 
the family receives help, reporting is encouraged.

This observation also has bearing on the breadth of coverage of 
a reporting statute. The greater the kinds of maltreatment of children 
which are to be reported or the less apparently serious the case to be 
reported, the more actual reporting will depend upon the perceived 
benefits of reporting and the absence of penalties to the reporter, 
notwithstanding the existence of criminal penalties for nonreporting.

Another systemic feature which has a considerable effect on re-
porting and the way in which individuals involved in the system react
to it is the character of investigations of child abuse reports. The investigation itself can be punitive or objective, sympathetic, and understanding. The investigation often keys the psychological reactions of the accused and the reporters and is thus an important factor in creating cooperation both in the present and the future. Any agency or individual assigned the investigative task in child abuse cases, therefore, must be trained to have a psychological appreciation of the situation and the anxieties and fears of the actors, and how to deal with them, but must also have protection of the child as a foremost concern.

Finally, it must be recognized that the basic remedy of the current system—removal of the child from the home for a long term and without provision of treatment of the family—is contrary to the prevailing medical and psychological thinking, and may work serious harm. Removal of the child from the family, albeit done for the protection of the child, is the real punishment in the system. Together with the possibility of criminal prosecution, it feeds back to discourage reporting by those who have a genuine concern for family unity. And the fact that the system offers these kinds of punishment, instead of help, precludes many individuals from voluntarily seeking some form of assistance. A more overtly treatment-oriented system would, by that fact alone, encourage reporting while reducing the harm the current system does to the family.

To establish a new system of handling child abuse cases, or to mitigate the negative effects of the current system, and to improve reporting and provide protection to more endangered children, the following specific changes in California law and practice are recommended:

1. The basic criminal provisions relating to child abuse should be changed so that the law would either limit the criminal sanction to serious cases (which would place the statutes in accord with actual prosecutorial practice), or explicitly provide for noncriminal diversion or deferred prosecution in less serious cases.

2. A statutorily expressed preference for civil, as opposed to criminal, handling of child abuse cases should be enacted.

3. The dependent child provisions of the juvenile code should articulate clearer standards for removal of a child from the parental home, forcing judges to assess other alternatives. For example, the amendment might provide: “A state may remove a child from parental custody without parental consent only if the state first proves: a) there is an immediate and substantial danger to the child’s health; and b)
there are no reasonable means by which the state can protect the child's health without removing the child from parental custody.”

4. The law should contain a provision for shorter term foster care placements, possibly for maximum periods of three months, except for good cause shown. Such a statute should also specify mandatory treatment services for parents, the right of child visitation or home visits under supervision, unless specifically forbidden, and interim reports to the court on the present ability of the parents to handle the child without abuse.

5. Training programs for all police officers and others who may investigate or handle child abuse cases should be instituted.

6. Child abuse units should be established in the larger police or welfare departments, and juvenile officers should be specially trained for others. Such units or persons should have the additional function of coordinating the activities of various agencies dealing with a particular child abuse case.

7. A substantial increase in the provision of treatment services to families should be made, and parenting training programs provided for those who wish to undertake them. Greater public education in child abuse matters is also obviously critical to the success of any system.

8. Mandatory reporting of suspected abuse to police departments or to welfare should be preserved, but the report should be oral, with a written report (on a standardized medical examination and social investigation form) to be filed by the agency after investigation. No useful purpose appears to be served by permitting reports to the Department of Health or Juvenile Probation, and this practice should be eliminated.