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# Notes and Comments: Maryland Laws on Child Abuse and Neglect: History, Analysis and Reform

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## MARYLAND LAWS ON CHILD ABUSE AND NEGLECT: HISTORY, ANALYSIS AND REFORM

*Children in our society are too often the victims of abusive and neglectful parents and guardians. Although Maryland was among the first jurisdictions to enact protective legislation for abused and neglected children, the Maryland legislature must continue to respond to the plight of these victims. The author traces the development of the Maryland child abuse and neglect laws, analyzes the effectiveness of these laws today, and discusses those changes necessary to afford Maryland children the fullest protection possible.*

### I. INTRODUCTION

Few recent social causes have aroused public sensibility or created as much concern, as our present awareness that child abuse is a shocking reality and a problem that knows no bounds in relation to economic or educational levels of parents.<sup>1</sup>

Child abuse and neglect are not recent phenomena but can be traced back through man's cultural and religious history.<sup>2</sup> While many books and articles had been written on the subject,<sup>3</sup> state legislatures took no steps to combat the problem until the early 1960's. The first legislative action on child abuse occurred in 1963, and within four years all fifty states passed some form of law requiring the reporting of child abuse.<sup>4</sup> The first wave of legislation was a response to mandatory reporting laws called for by the Children's Bureau of the United States Department of Health, Education, and Welfare.<sup>5</sup> "Seldom in the nation's history has a specific kind of legislation been enacted so quickly in so many states."<sup>6</sup> The Early Childhood Project Education Commission published its first Model Legislation for the States on Child Abuse and

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1. V. DE FRANCIS & C. LUCHT, *CHILD ABUSE LEGISLATION IN THE 1970's* at 1 (rev. ed. 1974) [hereinafter cited as DE FRANCIS & LUCHT].
  2. See S. Radbill, *A History of Child Abuse and Infanticide*, in *THE BATTERED CHILD* 3 (R. Helfer & C. Kempe eds. 1968).
  3. E.g., C. DUNN, *THE NATURAL HISTORY OF THE CHILD* (1920); G. PAYNE, *THE CHILD IN HUMAN PROGRESS* (1916); W. RYAN, *INFANTICIDE: ITS LAW, PREVALENCE, PREVENTION AND HISTORY* (1862); Baken, *Multiple Skeletal Lesions in Young Children Due to Trauma*, 49 *J. PEDIATRICS* 7 (1956); Caffey, *Multiple Fractures in the Long Bones of Infants Suffering from Chronic Subdural Hematoma*, 56 *AM. J. ROENTGEN* 163 (1946); Harper, *The Physician, The Battered Child and the Law*, 31 *PEDIATRICS* 899 (1963); Kempe, Silverman, Steele, Droegenmueller & Silver, *The Battered Child Syndrome*, 181 *J.A.M.A.* 17 (1962).
  4. DE FRANCIS & LUCHT, *supra* note 1, at 6.
  5. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, *THE ABUSED CHILD — PRINCIPLES AND SUGGESTED LANGUAGE FOR LEGISLATION ON REPORTING OF THE PHYSICALLY ABUSED CHILD* (1963).
  6. Paulsen, Parker & Adelman, *Child Abuse Reporting Laws — Some Legislative History*, 34 *GEO. WASH. L. REV.* 482 (1966).

Neglect in 1973.<sup>7</sup> Many states either utilized this more as a guide or adopted entire parts of it<sup>8</sup> in an attempt to alleviate the "battered child syndrome."<sup>9</sup> Although all fifty states had enacted protective legislation by 1973, the approaches taken were quite varied.<sup>10</sup>

7. EARLY CHILDHOOD PROJECT EDUCATION COMMISSION, CHILD ABUSE AND NEGLECT: MODEL LEGISLATION FOR THE STATES (1973).
8. EARLY CHILDHOOD PROJECT EDUCATION COMMISSION, CHILD ABUSE AND NEGLECT: MODEL LEGISLATION FOR THE STATES I (1975) [hereinafter cited as MODEL LEGISLATION].
9. The term "battered child syndrome" was first used in Kempe, Silverman, Steele, Droegenmueller & Silver, *The Battered Child Syndrome*, 181 J.A.M.A. 17 (1962). The Maryland Court of Special Appeals defined a "battered child" in *James v. State*, 5 Md. App. 647, 650, 248 A.2d 910, 912 (1969), as:  
 a term of art used by the medical profession to describe a specific condition or syndrome relating to a child who has been the victim of malicious assault by parental beating; . . . in other words the "battered child" is a clinical condition in infants who have received serious physical abuse; and . . . among the indicies of suspicion which are designed to aid an examining physician in diagnosing a "battered child," . . . are (1) age usually under three years; (2) characteristic distribution of fractures; (3) disproportionate amount of soft tissue injury; (4) evidence that injuries occurred at different times and are in different stages of repair; (5) cause of recent trauma doubtful; (6) suspicious family history; and (7) previous similar episodes.
10. ALA. CODE tit. 27, §§ 21-25 (Cum. Supp. 1971); ALASKA STAT. §§ 47.17.010-070 (1971); ARIZ. REV. STAT. ANN. §§ 13-842.01(A)-(E) (Supp. 1972); ARK. STAT. ANN. §§ 42-801 to -806 (Supp. 1971); CAL. PENAL CODE §§ 11110, 11161.5 (West 1970); COLO. REV. STAT. ANN. §§ 22-10-1 to -6 (Supp. 1969); CONN. GEN. STAT. ANN. § 17-38a (Supp. 1973); DEL. CODE ANN. tit. 16, §§ 1001-08 (Supp. 1972); D.C. CODE ANN. §§ 2-161 to -166 (1973); FLA. STAT. ANN. § 828.041 (Supp. 1973); GA. CODE ANN. § 74-111 (Supp. 1972); HAWAII REV. STAT. §§ 350-1 to -5 (Supp. 1972); IDAHO CODE §§ 16-1624, -1625, -1628, -1641, -1642, 9-203 (Supp. 1973); ILL. ANN. STAT. ch. 23, §§ 2042-47 (Smith-Hurd Supp. 1973); IND. ANN. STAT. §§ 52-1426 to -1431 (Supp. 1973); IOWA CODE ANN. §§ 235A.1-8 (1969); KAN. STAT. ANN. §§ 38-716 to -721 (Cum. Supp. 1972); KY. REV. STAT. § 199.335 (Supp. 1972); LA. REV. STAT. § 14-403 (Supp. 1973); ME. REV. STAT. ANN. tit. 22, §§ 3851-55 (Supp. 1972); MD. ANN. CODE art. 27, § 35A (Supp. 1973); MASS. GEN. LAWS ANN. ch. 119, § 39A-C (Supp. 1972); MICH. COMP. LAWS ANN. § 722.571-574 (Supp. 1973); MINN. STAT. ANN. § 626.554 (Supp. 1973); MISS. CODE ANN. § 43-21-11 (Supp. 1973); MO. ANN. STAT. § 210.105 (Supp. 1972); MONT. REV. CODES ANN. §§ 10-901 to -905 (Supp. 1973); NEB. REV. STAT. §§ 28-481 to -484 (Cum. Supp. 1972); NEV. REV. STAT. §§ 200.501-509 (1971); N.H. REV. STAT. ANN. § 571.26 (Supp. 1972); N.J. STAT. ANN. §§ 9:6-8.1 to -8.15 (Supp. 1973); N.M. STAT. ANN. §§ 13-14-14.1 (Supp. 1973); N.Y. SOC. SERV. LAW §§ 383-a to -c (McKinney Supp. 1973); N.C. GEN. STAT. §§ 110-115 to -122 (Supp. 1971); N.D. CENT. CODE §§ 50-25-01 to -05 (Supp. 1973); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1972); OKLA. STAT. ANN. tit. 21, § 845-48 (Supp. 1972); ORE. REV. STAT. § 418.740-775 (1971); PA. STAT. ANN. tit. 11, §§ 2101-09 (Supp. 1973); R.I. GEN. LAWS ANN. §§ 40-11-1 to -10 (Supp. 1972); S.C. CODE ANN. §§ 20-302.1 to -302.4 (Supp. 1971); S.D. COMPILED LAWS ANN. §§ 26-10-10 to -15 (Supp. 1973); TENN. CODE ANN. §§ 37-1202 to -1207 (Supp. 1972); TEX. REV. CIV. STAT. ANN. art. 695c-2 (Supp. 1972); UTAH CODE ANN. §§ 55-16-1 to -6 (Supp. 1973); VT. STAT. ANN. tit. 13, §§ 1351-55 (Supp. 1973); V.I. CODE ANN. tit. 19, §§ 171-76 (Supp. 1973); VA. CODE ANN. §§ 16.1-217.1 to -217.4 (Supp. 1973); WASH. REV. CODE ANN. §§ 26.44.030-080 (Supp. 1972); W. VA. CODE ANN. §§ 49-6A-1 to -4 (Supp. 1973); WIS. STAT. ANN. § 48.981 (Supp. 1973); WYO. STAT. ANN. §§ 14.28.7 to 28.13 (Supp. 1973).

In March and April, 1973, the Subcommittee on Children and Youth of the Senate Committee on Labor and Public Welfare conducted hearings to consider the enactment of legislation to prevent child abuse.<sup>11</sup> The product of these hearings was the Child Abuse Prevention and Treatment Act of 1973.<sup>12</sup> The Act provides financial assistance to the states for demonstration programs directed toward the prevention, identification and treatment of child abuse and neglect, and establishes a National Center on Child Abuse and Neglect.<sup>13</sup> The Act also includes certain standards required of the states in order for them to be eligible for federal assistance.<sup>14</sup>

11. *Hearings on S. 1191 Before the Subcomm. on Children and Youth of the Senate Committee on Labor and Public Welfare*, 93d Cong., 1st Sess. 172 (1973) [hereinafter cited as *Hearings*].
12. Child Abuse Prevention and Treatment Act, Act of January 31, 1974, PUB. L. No. 93-247; 88 Stat. 4 (1973) [hereinafter cited as PUB. L. No. 93-247].
13. *Id.*
14. *Id.* § 4(b) (2) states:
 

In order for a State to qualify for assistance under this subsection, such State shall—

  - (A) have in effect a State child abuse and neglect law which shall include provisions for immunity for persons reporting instances of child abuse and neglect from prosecution, under any State or local law, arising out of such reporting;
  - (B) provide for the reporting of known and suspected instances of child abuse and neglect;
  - (C) provide that upon receipt of a report of known or suspected instances of child abuse or neglect an investigation shall be initiated promptly to substantiate the accuracy of the report, and, upon a finding of abuse or neglect, immediate steps shall be taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect;
  - (D) demonstrate that there are in effect throughout the State, in connection with the enforcement of child abuse and neglect laws and with the reporting of suspected instances of child abuse and neglect, such administrative procedures, such personnel trained in child abuse and neglect prevention and treatment, such training procedures, such institutional and other facilities (public and private), and such related multi-disciplinary programs and services as may be necessary or appropriate to assure that the State will deal effectively with child abuse and neglect cases in the State;
  - (E) provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, his parents or guardians;
  - (F) provide for the cooperation of law enforcement officials, courts of competent jurisdiction, and appropriate State agencies providing human services;
  - (G) provide that in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child in such proceedings;
  - (H) provide that the aggregate of support for programs or projects related to child abuse and neglect assisted by State funds shall not be reduced below the level provided during fiscal year 1973, and set forth policies and procedures designed to assure that Federal funds made available under this Act for any fiscal year will be so used as to supple-

Due to the standards developed by Congress, the Early Childhood Project revised its earlier model legislation in July, 1975.<sup>15</sup> The directors of the Early Childhood Project remain hopeful that most states will follow these guidelines in a national attempt to protect both the abused and neglected children of the United States. It is the purpose of this article to trace the development of Maryland laws on abuse and neglect, to evaluate the current laws and to suggest legislative reform.

## II. MARYLAND LEGISLATIVE HISTORY

### A. *Child Abuse*

The Maryland legislature first responded to the child abuse problem on April 30, 1963, with the passage of a law adding a new Section 11A to Article 27 of the Maryland Annotated Code, entitled "Assault on Child:"<sup>16</sup>

Any parent, adoptive parent or other person who has the permanent or temporary care or custody of a minor child under the age of fourteen years who maliciously beats, strikes, or otherwise mistreats such minor child to such degree as to require medical treatment for such child shall be guilty of a felony, and upon conviction shall be sentenced to not more than fifteen years in the Penitentiary.<sup>17</sup>

This extremely elementary Act provided no guidelines for reporting, processing or recording cases of child abuse. Realizing this inadequacy, the Maryland legislature amended Section 11A during the following session.<sup>18</sup> The new legislation added a subparagraph to Section 11A requiring all physicians treating children under fourteen years of age who have apparently been assaulted to report the circumstances to the police department.<sup>19</sup> A second subparagraph granted immunity from civil liability to those involved in making the report of a suspected assault.<sup>20</sup>

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ment and, to the extent practicable, increase the level of State funds which would, in the absence of Federal funds, be available for such programs and projects;

(I) provide for dissemination of information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat instances of child abuse and neglect; and

(J) to the extent feasible, insure that parental organizations combating child abuse and neglect receive preferential treatment.

15. MODEL LEGISLATION, *supra* note 8.

16. Law of April 30, 1963, ch. 743, [1963] Laws of Md. 1536 (repealed 1970).

17. *Id.*

18. Law of April 7, 1964, ch. 103, [1964] Laws of Md. 300 (repealed 1970).

19. *Id.*

20. *Id.* at 301.

In order to make the law more functional and responsive, Maryland's child abuse provisions were substantially revised in 1966.<sup>21</sup> The revision's main impact was on the system for reporting child abuse in Maryland. Whereas before, only the attending physician was required to report suspected child abuse cases, this revision mandated that all health practitioners, teachers (in both public and private schools), social workers and law enforcement officers immediately notify, orally and in writing, both the local department of welfare and the appropriate state's attorney.<sup>22</sup> The required reports were to include the names and home addresses of the child or children and parents involved, the children's present whereabouts, their ages, the extent and nature of their injuries and all other information available to the reporter that would assist in identifying the person responsible for the abuse.<sup>23</sup> The local department of welfare was instructed to make a thorough investigation of every reported case under Section 11A, and to report its findings to the local state's attorney within five days of the investigation's completion.<sup>24</sup> The 1966 revision also adjusted the age of minor children protected by the statute from fourteen to sixteen.<sup>25</sup>

Another substantial impact of the 1966 revision was the creation of a central registry — a means of storing all reported information concerning cases of abuse.<sup>26</sup> The central registry was to be maintained by the State Department of Welfare and the information made available to all practitioners and agencies responsible under Section 11A for their use in detecting and reporting suspected cases of child abuse.<sup>27</sup>

During the next six years the Maryland legislature made only minor alterations in the child abuse law.<sup>28</sup> In 1970, the Maryland

21. Law of April 29, 1966, ch. 221, [1966] Laws of Md. 466 (repealed 1970).

22. "Health practitioner" includes any physician, surgeon, dentist and other persons authorized to engage in the practice of healing, any resident or intern in any of these professions, and any registered or licensed practical nurse attending or treating a child in the absence of a practitioner of any of these professions.

Law of April 29, 1966, ch. 221, [1966] Laws of Md. 467.

"Education or social worker" shall mean any teacher in any school, public, parochial or private, or any caseworker or social worker in any public or private social, educational, health or welfare agency.

Law of April 29, 1966, ch. 221, [1966] Laws of Md. 467.

"Law enforcement officer" shall mean any policeman, constable, sheriff, deputy sheriff or state trooper in the service of the State of Maryland or any county or municipality thereof.

Law of April 29, 1966, ch. 221, [1966] Laws of Md. 467.

23. Law of April 29, 1966, ch. 221, [1966] Laws of Md. 468 (repealed 1970).

24. *Id.* at 468-69.

25. *Id.* at 467.

26. *Id.* at 469.

27. *Id.*

28. Law of May 7, 1968, ch. 702, [1968] Laws of Md. 1394 (repealed 1970).

legislature recodified Section 11A of Article 27 as Section 35A of Article 27, entitled "Child Abuse."<sup>29</sup>

The next major revision of the child abuse law occurred in 1973.<sup>30</sup> For the first time in the ten year statutory history of the Maryland child abuse law, the legislature defined its intent:

The General Assembly hereby declares as its intent and purpose the protection of children who have been the subject of abuse by mandating the reporting of suspected abuse, by extending immunity to those who report in good faith, by requiring prompt investigation of such reports and by causing immediate, cooperative efforts by the responsible agencies on behalf of such children.<sup>31</sup>

In addition, the definition of "child" was amended to read "any person under the age of eighteen (18) years."<sup>32</sup> This revision also included a more complete definition of abuse:

Abuse shall mean any physical injury or injuries sustained by a child as a result of cruel or inhumane treatment or as a result of malicious act or acts by any parent, adoptive parent or other person who has the permanent or temporary care or custody or responsibility for supervision of a minor child.<sup>33</sup>

The revision also expanded the categories of those in the education, health and police professions mandated to report suspected child abuse cases.<sup>34</sup> The final aspect of the 1973 amendment was the incorporation of provisions designed to extend further protections to the child. The local department of social services (formerly department of welfare) was permitted to petition the juvenile court in the child's behalf for commitment or custody if the department believed that either would be in the child's best interest.<sup>35</sup>

In 1974, the legislature enacted two major amendments to the existing Maryland law. The first added a new category of abuse — "Sexual Abuse."<sup>36</sup> The second concerned the examination and treat-

29. Law of April 28, 1970, ch. 500, [1973] Laws of Md. 1114.

30. Law of May 24, 1974, ch. 835, [1973] Laws of Md. 1708 (codified in MD. ANN. CODE art. 27, § 35A (1976)).

31. *Id.* at 1708-09.

32. *Id.* at 1709.

33. *Id.* at 1709-10.

34. *Id.* at 1709.

35. *Id.* at 1712.

36. Law of April 30, 1974, ch. 554, [1974] Laws of Md. 1889. MD. ANN. CODE art. 27, § 35A(b) (8) reads:

"Sexual abuse" shall mean any act or acts involving sexual molestation or exploitation, including but not limited to incest, rape, carnal knowledge, sodomy or unnatural or perverted sexual practices on of [*sic*] child by

ment of an abused child without parental consent. The 1974 amendment immunized both the physician and the medical institution from civil liability for examining a child without parental consent to determine the nature and extent of injuries or sexual abuse.<sup>37</sup> The physician and those under his or her supervision and the health care institution were also granted immunity from civil liability for treating the medical needs of an abused child.<sup>38</sup> Finally, this amendment made the Department of Health and Mental Hygiene financially responsible for reasonable medical expenses charged by the physician or institution.<sup>39</sup>

Although the Maryland child abuse statute has undergone the revisions discussed above, the criminal sanction against the abuser has remained in force since 1963. Section 35A of Article 27 still provides that child abuse is a felony punishable by imprisonment for not more than fifteen years.<sup>40</sup>

### *B. Child Neglect*

The symptoms of child abuse are more easily defined than the symptoms of child neglect, for "neglect is an uncertain concept both legally and in social application."<sup>41</sup> The most commonly employed definition is the continued failure by adults to protect children from known and obvious peril.<sup>42</sup> Broadly speaking, then, child neglect occurs when societal expectations for parenthood or guardianship are not met — when a parent or guardian fails to provide for a child's needs according to the preferred values of the community.<sup>43</sup> While the Maryland child abuse law has developed in the criminal code, the neglect law has developed through the civil code, and is found in the Courts and Judicial Proceedings Article of the Maryland Annotated Code.<sup>44</sup>

The first major legislation in Maryland for the protection of a neglected child was enacted in 1916, and its provisions were incorporated in Article 26 of the Maryland Code.<sup>45</sup> The law provided for the treatment, protection, guardianship and care of dependent, delinquent and neglected children, and prescribed pro-

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any parent, adoptive parent or other person who has the permanent or temporary care or custody or responsibilities for supervision of a minor child.

37. MD. ANN. CODE art. 27, § 35A(h) (2).

38. *Id.* § 35A(h) (3).

39. *Id.* § 35A(h) (4).

40. *Id.* § 35A(a).

41. Katz, Howe & McGrath, *Child Neglect Laws in America*, 14 FAMILY L.Q. 1, 4 (1975).

42. *Id.*

43. *Id.* at 5.

44. MD. ANN. CODE, Cts. & Jud. Proc. Art., §§ 3-801 to -833 (Supp. 1976).

45. Law of April 18, 1916, ch. 326, [1916] Laws of Md. 685 (repealed 1973); and Law of April 18, 1916, ch. 674, [1916] Laws of Md. 1363 (repealed 1973).



cedures to be followed in such cases.<sup>46</sup> Procedures were delineated by which "reputable" residents who possessed knowledge of a neglected child in any county of the State or in Baltimore City could file a complaint with State officials seeking protection of the child.<sup>47</sup>

The 1916 statute also gave the judges of the circuit courts of each county the discretion to try juvenile matters such as child neglect. Until this time, all juvenile matters in Maryland were administered by specially designated Justices of the Peace, who were not required to be lawyers, rather than by judges of courts of general jurisdiction.<sup>48</sup> Thus, for the first time in Maryland, the child's welfare was being determined by an individual trained in the law.

During the following three decades various changes were made in the provisions of Article 26 concerning the protection of neglected children.<sup>49</sup> The turning point in the expansion of legal protection for neglected children occurred in 1945. For the first time, the Maryland Code defined the terms used in the neglected child statute and expanded the rights of the child by creating the Juvenile Court system.<sup>50</sup> A "child" was defined as any person under the age of eighteen years,<sup>51</sup> and a "neglected child" was defined as:

a child (1) who is without proper guardianship; (2) whose parent, guardian or person with whom the child lives . . . is unfit to care properly for such child; (3) who is under unlawful or improper care, supervisory custody or restraint . . . or who is unlawfully kept out of school; (4) whose parent, guardian, or custodian neglects or refuses, when able to do so, to provide necessary medical . . . care for such child; or (5) who is in such condition of want or suffering, or is under such improper guardianship or control, or is engaged in such occupation as to injure or endanger the morals or health of himself or others.<sup>52</sup>

This definition was extremely thorough and specific in attempting to protect all areas of a child's health and welfare.

46. Law of April 18, 1916, ch. 674, [1916] Laws of Md. 1363 (repealed 1973).

47. Law of April 18, 1916, ch. 674, [1916] Laws of Md. 1363 (repealed 1973).

48. *Wiggins v. State*, 275 Md. 689, 692, 344 A.2d 80, 82 (1975) (dictum).

49. See Law of April 17, 1931, ch. 323, [1931] Laws of Md. 830; Law of May 6, 1943, ch. 818, [1943] Laws of Md. 1445; Law of April 27, 1945, ch. 797, [1945] Laws of Md. 962; Law of March 28, 1950, ch. 37, [1950] Laws of Md. 298; Law of May 7, 1951, ch. 677, [1951] Laws of Md. 1984 (all repealed in 1973, now codified in MD. ANN. CODE, Cts & Jud. Proc. Art., §§ 3-801 to 3-833 (Supp. 1976)). See also Law of April 16, 1920, ch. 573, [1920] Laws of Md. 1162, which gave the Maryland courts of equity jurisdiction in proceedings concerning the custody and guardianship of children.

50. Law of April 27, 1945, ch. 797, [1945] Laws of Md. 964.

51. *Id.*

52. *Id.*

In 1973, the Maryland legislature repealed Article 26 and enacted Subtitle 8 of the Courts and Judicial Proceedings Article, entitled Juvenile Causes.<sup>53</sup>

In 1975, the legislature repealed Subtitle 8 in its entirety in favor of a new Subtitle 8.<sup>54</sup> The most significant change in this amendment was the removal of the term "neglected child." The legislative intent was to include "neglected child" cases under the new protected category "child in need of assistance."<sup>55</sup> The objective in creating this new category was to present the juvenile courts of Maryland a means of affording state protection to a broader section of children. Section 3-801(e) of the Courts and Judicial Proceedings Article states:

[a] "child in need of assistance" is a child who needs the assistance of the court because (1) He is mentally handicapped or is not receiving ordinary and proper care and attention, and (2) His parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and his problems provided, however, a child shall not be deemed to be in need of assistance for the sole reason he is being furnished no medical remedial care and treatment recognized by State law.<sup>56</sup>

Although the legislature established this category to afford the State a means for protecting a child in a situation in which his or her parents or guardian were unable or unwilling to give the proper care, its force has been muted by judicial interpretation. The courts continue to recognize the traditional principle that the right to rear and nurture a child rests in the parents and not in the State and that only in extraordinary circumstances should the State intervene.<sup>57</sup>

Subtitle 8 of the Courts and Judicial Proceedings Article concerns itself not only with children "in need of assistance" but with all juvenile matters, including unmanageable ("in need of

53. Law of August 22, 1973, ch. 2, § 1, 1st Sp. Sess. [1973] 4 and 134.

54. Law of May 15, 1975, ch. 554, [1975] Laws of Md. 2670 (codified in MD. ANN. CODE, Cts. & Jud. Proc. Art., §§ 3-801 to -833 (Supp. 1976).

55. Since the protection and definition favorably compare with the previous Maryland child neglect law as well as national child neglect legislation, the provisions of Subtitle 8 will continue to be referred to as the child neglect law.

56. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 3-801 (e) (Supp. 1976).

57. *In re Neil*, 21 Md. App. 484, 320 A.2d 57 (1974). State intervention for the protection of children is an extremely important area of family law, but because of space limitation it will not be discussed in this article. For a good discussion, see Areen, *Intervention Between Parent and Child: A Reappraisal of the State Role in Child Neglect and Child Abuse Cases*, 63 GEO. L.J. 887 (1975); Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985 (1975).

supervision") and "delinquent" children.<sup>58</sup> The purposes of this subtitle are:

(1) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;

(2) To remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior;

(3) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(4) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;

(5) To provide judicial procedures for carrying out the provisions of this subtitle.<sup>59</sup>

Section 3-831 of the Courts and Judicial Proceedings Article makes it unlawful for an adult to be the cause of a child being found delinquent or in need of assistance or supervision as defined in Subtitle 8. Once a child has been adjudicated delinquent or in need of assistance, the adult responsible for the child's condition is subject to a fine of not more than \$500, or imprisonment for not more than two years, or both.<sup>60</sup>

Subtitle 8 of the Courts and Judicial Proceedings Article and Section 35A of Article 27 are the current Maryland laws on child neglect and child abuse, respectively. Other than the amendment recodifying Subtitle 8, there have been no changes to either law since 1974.<sup>61</sup> These two laws have steadily developed to afford pro-

58. MD. ANN. CODE, Cts. & Jud. Proc. Art., §§ 3-801(f), (1) (Supp. 1976).

59. *Id.* § 3-802(a).

60. *Id.* § 3-831(c).

61. During the 1975 and 1976 sessions there were thirteen bills proposed strictly concerning child abuse and neglect which were defeated:

1976 — H. 1971, "Child Abuse," February 27, 1976; H. 1554, "Parent & Child — Neglected Children," February 18, 1976; S. 635, "Social Services Administration — Child Abuse Information," February 12, 1976; H. 1253, "Child Abuse — Central Registry," February 6, 1976; S. 504, "Child Abuse Reports," February 2, 1976; S. 668, "Child Abuse," February, 1976; H. 508, "Minors — Guardian Ad Litem," January 14, 1976; S. 74, "Domestic Cases — Appointment of Counsel for Minors," January 14, 1976; S. 29, "Child Abuse," January 14, 1976.

1975 — H. 1320, "Juvenile Causes — Neglected Children," March 3, 1975; H. 1055, "Child Abuse — Technical Corrections to art. 27, § 35A,"

tection to Maryland children, but as the children's current needs become more apparent and varied, so must these laws grow to meet their needs.

### III. ANALYSIS

Maryland's present statutes on child abuse and neglect do not conform to the standards established by Congress in the Child Abuse Prevention and Treatment Act of 1973.<sup>62</sup> In order to be eligible for federal assistance, the Act stipulates that state statutes must, *inter alia*, require mandatory reporting of both abuse and neglect<sup>63</sup> and incorporate a provision for the mandatory assignment of a guardian *ad litem* in all abuse cases.<sup>64</sup> While Section 35A of Article 27 mandates reporting of suspected abuse cases, there is no such requirement in Subtitle 8 of the Courts and Judicial Proceedings Article with respect to neglect cases.<sup>65</sup> In addition, Maryland's child abuse law lacks a provision for mandatory assignment of a guardian *ad litem*.<sup>66</sup> Both of these required provisions are found in the Model Legislation<sup>67</sup> and are part of the trend toward laws more complete in protecting abused and neglected children.

Legislation in many other jurisdictions,<sup>68</sup> as well as the Model Legislation,<sup>69</sup> combines both neglect and abuse into one complete statute in order to unify child protection efforts and to facilitate effective reporting and implementation of the law in general. Maryland, however, continues to maintain the statutory separation of child abuse and neglect.

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February 26, 1975 (Governor vetoed May 15, 1975); H. 690, "Child Abuse — Central Registry," February 10, 1975; S. 418, "Neglected Children," February 5, 1975.

62. Compare PUB. L. No. 93-247, *supra* note 12, with MD. ANN. CODE art. 27, § 35A (1976) and MD. ANN. CODE, Cts. & Jud. Proc. Art., §§ 3-801 to -833 (Supp. 1976). At the end of fiscal 1975 only sixteen states had met these standards qualifying them to receive funding from the federal government. Under the funding of the National Center on Child Abuse and Neglect there were ten regional resource centers established. Maryland was selected as one of the four states to be given the funds for an experimental resource center on child abuse and neglect. The other three states were Arizona, North Carolina and New York. The program established in Maryland was the H.E.L.P. Resource Project in Baltimore. See note 92 *infra*.
63. PUB. L. No. 93-247, § 4(b)(2)(B).
64. *Id.* § 4(b)(2)(G).
65. Compare MD. ANN. CODE art. 27, § 35A (1976), with PUB. L. No. 93-247, § 4(b)(2)(B).
66. Compare MD. ANN. CODE art. 27, § 35A (1976), with PUB. L. No. 93-247, § 4(b)(2)(G).
67. MODEL LEGISLATION, *supra* note 8.
68. *E.g.*, VA. CODE ANN. ch. 12.1, §§ 63.1-248.1 to -248.17 (Supp. 1976). See DE FRANCIS & LUCHT, *supra* note 1, at 33-166; Katz, Howe & McGrath, *Child Neglect Laws in America*, 14 FAMILY L.Q. 1, at 75-349 (1975).
69. MODEL LEGISLATION, *supra* note 8, at 2.

It has been suggested that criminal sanctions in child abuse laws may discourage many persons from reporting violations.<sup>70</sup> There have been relatively few reported child abuse cases in Maryland under Section 35A in comparison to the number of neglect reports.<sup>71</sup> This disparity may be a direct result of the criminal nature of the sanctions for child abuse.<sup>72</sup> It has been determined that a physician who believes he or she is helping the child and not merely punishing the parent, will be more likely to report suspected cases of abuse.<sup>73</sup> In its assessment of the Maryland child abuse law, the Legal Aid Bureau of Baltimore, Maryland, concluded:

While resorting to the criminal process may at first glance appear to be a simple and expedient remedy for the problem of abuse and neglect of children, the disadvantages of applying criminal sanctions to abusive and neglectful parents far exceed the advantages. Imprisonment separates parent and child(ren) and causes often irreparable harm to the family unit. Fines reduce the family income. Future social interaction within the community and family is negatively affected by the stigma incident to a criminal conviction. Another factor for consideration is evidence which indicates that the abusive pattern is repetitive in nature and may result in a child becoming a greater target for the vindictive parent.<sup>74</sup>

The trend in the United States is toward non-criminal statutes for child abuse and neglect.<sup>75</sup>

70. See LEGAL AID BUREAU, LEGAL NEEDS ASSESSMENT 16-20 (1976) (copy on file, University of Baltimore Law School Library); Note, *The Battered Child: Logic in Search of Law*, 8 SAN. DIEGO L. REV. 365, 380-83 (1971). MODEL LEGISLATION, *supra* note 8, at 9, states: "The purpose of the Act is preventive and curative, not punitive." *But cf.* McKenna, *A Case Study of Child Abuse: A Former Prosecutor's View*, 12 AM. CRIM. L. REV. 165 (1974).

71. During the period of January 1, 1974 through June 30, 1975, there were 2,041 reports of suspected child abuse cases as compared with 15,987 reports of suspected child neglect cases. This data was tabulated by the Legal Aid, Inc., in WORKING DRAFT, LEGAL NEEDS ASSESSMENT 20 (1976). The chart giving the state wide distribution of these reports is available in the University of Baltimore Law School Library.

72. The Director of the Virginia Department of Welfare recently released a statistical summary reporting results compiled at the completion of the first year after Virginia enacted a non-criminal (mandatory reporting) child abuse and neglect statute. (VA. CODE ANN. ch. 12.1, §§ 63.1-248.1 to -248.17 (Supp. 1976)). In 1974-1975, the year prior to enactment, there were 426 statewide reports, compared with 21,061 reports during 1975-1976. This is a statewide increase of nearly 5,000 percent in the first year. Copies of the official news release and the statistical summary data sheet are on file in the University of Baltimore Law School Library.

73. DE FRANCIS & LUCHT, *supra* note 1, at 183.

74. LEGAL AID BUREAU, LEGAL NEEDS ASSESSMENT 18 (1976).

75. Presently there are only fourteen states which include child abuse in their criminal code: Arizona, Arkansas, California, Florida, Kansas, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, Oklahoma, South Dakota and Vermont.

In analyzing any child protection law there are two questions that must be asked: (1) Is the law complete and sufficient; and, (2) Is the law working? Though these two questions seem to be rooted in the same pot, they can be separated by the problem of communications. A sophisticated, effective law will not be totally functional if those who can implement it are unaware of its existence. This lack of awareness appears to be one of the major problems with the effectiveness of the current Maryland abuse and neglect statutes. A substantial part of the personnel in the schools, hospitals, police departments, day care centers and other institutions dealing with children lack adequate knowledge of the symptoms of child abuse and child neglect and of the laws designed to protect the child.<sup>76</sup> The present law does not provide for training and demonstration programs that could generate more awareness of the problem and the law. Without some public education program the Maryland statutes on child abuse and neglect will not work to their fullest potential.

A most instructive means of evaluating the effectiveness of a law is by observing administrative and judicial interpretation and application. In a recent Maryland case, *Fabritz v. State*,<sup>77</sup> the Maryland child abuse law was both interpreted and applied. The case illustrates judicial confusion about abuse and neglect. In the *Fabritz* case, the mother of a three-year-old girl left her daughter in the home of another couple, the Crocketts, with whom the mother and daughter had been living, while she went to attend her grandfather's funeral. After a two day absence, the mother (Mrs. Fabritz) was picked up in an automobile by Mr. Crockett. Her daughter was in the car with Crockett and appeared listless. When they arrived home, the child complained of cramps and appeared to have a fever. Believing it was nothing serious, Mrs. Fabritz bathed her daughter and put her to bed for the night. The child's condition grew steadily worse throughout the night, and by early morning she was in a semi-conscious state. Some eight hours after the mother noticed the child's serious condition, the three-year-old was pronounced dead upon arrival at the Calvert County Hospital.<sup>78</sup>

Mrs. Fabritz was charged with child abuse and assault and battery, and tried by a jury in the Circuit Court for Calvert County. Mrs. Fabritz testified that, although she noticed the bruises immediately after arriving at their home, she failed to take her

76. See MARYLAND CONFERENCE OF SOCIAL CONCERN, CHILD ABUSE NEEDS ASSESSMENT AND PROPOSED GUIDELINES FOR CHILD PROTECTION STANDARDS (1976) [hereinafter cited as NEEDS ASSESSMENT].

77. 276 Md. 416, 348 A.2d 275 (1975), cert. denied, 96 St. Ct. 1680 (1976).

78. *Id.* at 419, 348 A.2d at 277.

child to a hospital because she was ashamed of the bruises on her daughter's body. Because there was no evidence that Mrs. Fabritz had struck the child or otherwise had affirmatively caused the many bruises which led to the child's death, the trial judge dismissed the assault and battery charge.<sup>79</sup> The child abuse charge, however, was submitted to the jury under instructions permitting conviction under Section 35A upon proof that Mrs. Fabritz failed to provide adequate medical attention for her daughter.<sup>80</sup> The jury convicted.

The Maryland Court of Special Appeals reversed the conviction, holding that in order for Mrs. Fabritz "to be guilty under the statute, the accused must be shown to have caused the injury, not simply to have aggravated it by failure to seek assistance."<sup>81</sup> The court was unable to find, either in the child abuse statute itself or within the legislative intent of the statute, the inclusion of neglectful conduct such as Mrs. Fabritz's failure to seek medical assistance.<sup>82</sup>

The Maryland Court of Appeals overruled the decision of the court of special appeals and upheld the trial court's conviction. In interpreting the child abuse law, the court of appeals looked to the legislative intent, and found that by amending the law in 1973, the legislature intended to broaden the scope of liability for child abuse.<sup>83</sup>

It is apparent from its holding in *Fabritz* that the Maryland Court of Appeals stretched the definition of abuse in Section 35A in arriving at its decision. Although courts often deem it necessary to look to the legislative intent in order to place particular facts before the court in the perspective of a particular statute, the sensitive nature of child abuse cases should preclude them from being subjected to this interpretive approach. By broadening criminal liability for abuse, the courts merely punish abusers, rather than further the express legislative intent of protecting abused children. If the Maryland legislature intended to include "omission to act" as part of the definition of "abuse," it would have so provided in Section 35A.

Another weakness in the current Maryland abuse and neglect law exists in the area of the reporting of violations. Section 35A of Article 27 enumerates those required to report suspected child abuse cases,<sup>84</sup> but imposes no liability or penalty for their failure

79. *Id.* at 419-20, 348 A.2d at 277-78.

80. *But see* MD. ANN. CODE art. 27, § 35A(a)(7) (1976).

81. *Fabritz v. State*, 24 Md. App. 708, 714, 332 A.2d 324, 327 (1975).

82. *Id.* at 713, 332 A.2d at 326.

83. *Fabritz v. State*, 276 Md. 416, 348 A.2d 277 (1975).

84. MD. ANN. CODE art. 27, § 35A(c) (1976).

to do so. This provides no motivation and places a large amount of discretion in an individual who suspects child abuse. When in doubt, he or she will most likely fail to report. By penalizing non-reporting, the child will be given the benefit of the doubt and thus better protection. "The underlying philosophy for the inclusion of a penalty clause is that no action can be mandated by law without also providing a penalty for failure to comply with that legal obligation."<sup>85</sup> Presently, twenty-nine states have a penalty clause in their child abuse law.<sup>86</sup> This author believes that discretion in reporting does not favor the child and that his or her best interests would be better protected by mandatory reporting.

Nearly all states have incorporated a central registry system into their abuse and neglect laws.<sup>87</sup> The general purpose for having a central registry is twofold: it is a means of gathering statistical data on the incidence of abuse and neglect, and it is a means of detecting repeated abuses of the same child or of other children within the same family.<sup>88</sup> The provisions for Maryland's central registry are found in both Article 27, Section 35A and Article 88A, Section 5A.<sup>89</sup> The legislation provides few guidelines for the operation of the registry. Operation and maintenance of the system is delegated to the Department of Social Services.<sup>90</sup> The Maryland Conference of Social Concern,<sup>91</sup> under funding of the H.E.L.P. Resource Project,<sup>92</sup> conducted a study and published "Proposed Guidelines for a Central Registry of Child Abuse and Neglect

85. DE FRANCIS & LUCHT, *supra* note 1, at 13.

86. Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Indiana, Kansas, Louisiana, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, Wisconsin and Wyoming.

87. DE FRANCIS & LUCHT, *supra* note 1, at 18.

88. *Id.* at 13.

89. MD. ANN. CODE art. 27, § 35A(i) (1976); MD. ANN. CODE art. 88A, § 5A (1976).

90. MD. ANN. CODE art. 27, § 35A(i) (1976); MD. ANN. CODE art. 88A, § 5A (1976).

91. The Maryland Conference of Social Concern in Baltimore has been awarded two research contracts by the H.E.L.P. Resource Project in the area of child abuse and neglect: (1) CHILD ABUSE NEEDS ASSESSMENT AND PROPOSED GUIDELINES FOR CHILD PROTECTION STANDARDS (1976), and (2) PROPOSED GUIDELINES FOR A CENTRAL REGISTRY FOR THE STATE OF MARYLAND (1976) [hereinafter cited as CENTRAL REGISTRY] (copies of both of these works are on file in the University of Baltimore Law School Library).

92. The H.E.L.P. Resource Project, under the principal sponsorship of the Maryland Department of Human Resources, began in January, 1975. It is a Demonstration Resource Project authorized by the Federal Child Abuse and Treatment Act, *supra* note 12. In January, 1975, the State of Maryland received from HEW a grant of \$161,000 to be utilized for a six-month planning stage. The original proposal estimated the grant to continue for a three-year period at an approximate cost to HEW of \$350,000 each year. The project is based in Baltimore, Maryland, under the directorship of Curtis Decker, Esq.



for the State of Maryland."<sup>93</sup> This report discussed the various problems in the present Maryland central registry and proposed many innovations for a more sophisticated and practical system.

Although the Maryland laws on abuse and neglect developed rapidly, the child is still insufficiently protected from these perils.<sup>94</sup> There exists a substantial amount of research in the area of abuse and neglect nationally which could be employed, in conjunction with the federal Child Abuse Prevention and Treatment Act Standards<sup>95</sup> and the 1975 Model Legislation,<sup>96</sup> to correct the deficiencies in these laws. The current laws are not the final means toward the ultimate end. The end is to cure and prevent child abuse and neglect and to protect the children of Maryland by the most effective means available. The Maryland laws should be amended to achieve this end.

#### IV. PROPOSED REFORM

The first area of needed reform concerns changes necessary to bring the Maryland laws into conformity with the federal criteria. It is important for Maryland to make these changes in order to extend more protection to the children of this State and to become eligible for federal funding.<sup>97</sup>

One of the federal requirements is that the abused or neglected child have independent counsel to represent his or her interests.<sup>98</sup> Under Maryland Rule 906, the respondent in all juvenile proceedings is entitled to be represented by counsel.<sup>99</sup> Section 3-821 of the Juvenile Causes Title of the Courts and Judicial Proceedings Article provides that "a party is entitled to the assistance of counsel at every stage of any proceedings under this subtitle."<sup>100</sup> These provisions provide the child with a right to an attorney in criminal juvenile matters or in civil neglect cases, but this right

93. CENTRAL REGISTRY, *supra* note 91. The mechanisms of these guidelines were developed by the Johns Hopkins Hospital under the direction of Robert H. Drachman, M.D.

94. *But cf.* McKenna, *A Case Study of Child Abuse: A Former Prosecutor's View*, 12 AM. L. REV. 165 (1974).

95. PUB. L. No. 93-247.

96. MODEL LEGISLATION, *supra* note 8.

97. It is estimated that Maryland loses \$80,000 a year of special funding offered the states under Title VI, Parts A and B of the Social Security Act, by not conforming to the federally established criteria. The Social and Rehabilitation Service (SRS), which administers the Social Security Act, drafted proposed rules for these criteria in cooperation with the National Center. *See* CHILDREN'S BUREAU, REPORT OF THE U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES ON THE IMPLEMENTATION OF PUBLIC LAW 93-247, THE CHILD ABUSE PREVENTION AND TREATMENT ACT 21-23 (1975) [hereinafter cited as HEW REPORT].

98. PUB. L. No. 93-247, § 4(b)(2)(G).

99. MD. RULE 906 (Supp. 1976).

100. MD. ANN. CODE, Cts. & Jud. Proc. Art., §§3-801 to -833 (Supp. 1976).

does not extend to the victims in child abuse cases under Section 35A. The purpose of the federal standard requiring counsel for minors in child abuse and neglect cases is to assure that the interests of the child are protected in court:

The guardian *ad litem* is expected to make his own investigation of the relevant facts, is given access to various reports and information concerning the child and the reported abuse. . . . The attorney for the parent(s) obviously cannot protect the interest of the child. The prosecuting attorney . . . may be in a better position. But in all fairness, the prosecuting attorney in his prosecutorial role cannot protect the long range interest of the child.<sup>101</sup>

To protect the long-range interest of the child, the Maryland legislature should either extend Rule 906 to the victims in all cases involving abuse and/or neglect, or amend Section 35A to include a guardian *ad litem* provision.

The federal standards also require mandatory reporting of both abuse and neglect cases. Since Maryland law currently mandates the reporting of abuse cases only, an amendment is required. Maryland could comply with the federal requirements in one of two ways. First, the current neglect law in the Courts and Judicial Proceedings Article<sup>102</sup> could be amended to provide for mandatory reporting of all known cases of child neglect. A second means of correcting this shortcoming would be to include child neglect in the provisions of the current child abuse law in Article 27.<sup>103</sup> The legislature should follow the first alternative to avoid the criminalization of child neglect.

The criminalization of child abuse should be studied closely. The trend, and the better view, is to deal with both child abuse and neglect as a civil problem rather than a criminal one. The problem of child abuse and neglect is multidisciplinary and as such requires a multifaceted solution. The symptoms of both abuse and neglect should be treated therapeutically rather than punitively. Research has yet to expose all of the causes of child abuse and the appropriate solutions, but in the meantime, the best approach is to protect the child rather than punish the parent. The Children's Division of the American Humane Association stated that, in seeking a law more efficacious, emphasis should be on a non-criminal, non-punitive approach to the problem of child abuse by channeling the cases through protective services as the primary treatment resource.<sup>104</sup>

101. Fraser, *A Pragmatic Alternative to Current Legislative Approaches to Child Abuse*, 12 AM. CRIM. L. REV. 103, 118 (1974).

102. MD. ANN. CODE, Cts. & Jud. Proc. Art., §§ 3-801 to -833 (Supp. 1976).

103. MD. ANN. CODE art. 27, § 35A (1976).

104. DE FRANCIS & LUCHT, *supra* note 1, at 175.

[P]ersons required to report must be made to feel that their report is the initial step in the process designed to help children and their parents. Many people, reluctant to involve themselves and others in criminal procedures, would readily participate in initiating a process to help parents and children.<sup>105</sup>

Further, it is questionable whether the criminal prosecution of a suspected abusive parent has any therapeutic value or alleviates the underlying causes of most child abuse cases.<sup>106</sup> The conviction and imprisonment of a child abuser does not protect the abused child's interest other than by removing the abusive individual. However, mere removal of the immediate instrumentality ignores the deeper wounds inflicted by child abuse and, in many cases, the removal is more harmful to the child than beneficial.<sup>107</sup>

The prosecution of an abusive parent is also unnecessary in that the individual suspected of abusing a child may be liable pursuant to other criminal laws.<sup>108</sup> In Maryland, a suspected abuser could be prosecuted for murder, manslaughter, assault, battery or another appropriate criminal offense. Thus, the abuser would not escape criminal liability if the child abuse law is removed from the criminal code and placed in either Subtitle 8 of the Courts and Judicial Proceedings Article or Article 72A "Parents and Child."<sup>109</sup>

The next area of proposed reform involves the communications problem associated with the current law. Training and demonstration programs should be instituted and funding should be made available by the state legislature to assure their continuation. These types of programs are in keeping with the spirit of the Child Abuse Prevention and Treatment Act,<sup>110</sup> and have been instituted by the H.E.L.P. Resource Center and by some Maryland hospitals.<sup>111</sup> Pamphlets should be published by the State for distribution throughout the public and private school systems, the state and local police departments, all health institutions and the De-

105. *Id.*

106. LEGAL AID BUREAU, LEGAL NEEDS ASSESSMENT 18-20 (1976).

107. See generally Mnookin, *Foster Care — In Whose Best Interest?*, 43 HARV. ED. REV. 599 (1973), and articles cited in note 57 *supra*.

108. Note, *The Battered Child: Logic in Search of Law*, 8 SAN DIEGO L. REV. 365, 380 (1971); see also Paulsen, *The Law and Abused Children in THE BATTERED CHILD* 176 (R. Helfer & C. Kempe eds. 1968).

109. MD. ANN. CODE art. 72A (Supp. 1976).

110. PUB. L. No. 93-247. See also 88 Stat. 2763 for the legislative history and purpose of the Act.

111. The following hospitals in Maryland have established programs to aid parents and children in abuse and neglect cases: Prince George's General Hospital and Medical Center, Prince George's County; Sacred Heart Hospital, Cumberland; Sinai Hospital, Baltimore; Johns Hopkins Hospital, Baltimore; The University of Maryland Hospital, Baltimore; and Anne Arundel County General Hospital, Annapolis.

partment of Social Services. These pamphlets should include the symptoms of both child abuse and neglect, a synopsis of the current law, and guidelines for diagnosing, reporting and following up each case. A similar program of pamphlet distribution should be instituted for the general public.<sup>112</sup>

Demonstration programs have been successful nationally and have been helpful in imparting a greater awareness of the severity of the problem. In-service training programs have been conducted in the states in which federally funded resource centers have been established. After visiting all the agencies and departments in the State that have contact with child abuse and neglect, the Maryland Conference of Social Concern reported that there was not a single agency or department that did not either assert or clearly evidence a need for specialized training in the area of child abuse and neglect.<sup>113</sup>

Because there is little, if any, curriculum content devoted to child abuse and neglect in graduate and professional schools, training is indicated for professionals and para-professionals who work either directly or indirectly with abusing/neglecting families, or who are in a position to report cases of abuse or neglect.<sup>114</sup>

Education is the first step toward assuring that the children of Maryland will be protected by a law that is more widely known and utilized. There are various published guidelines to aid the legislature in designing and instituting procedures for training and demonstration programs.<sup>115</sup> Congress' realization of the importance of these programs is evidenced by its directive that half of the funding allocated under the Child Abuse Prevention and Treatment Act be used for demonstration and training programs.<sup>116</sup>

One of the continuing problems in the application of the present child abuse law is the lack of legal knowledge on the part of social workers involved in the cases. The Department of Social Services has been doing an adequate job in investigating and reporting suspected cases, but is hampered by a limited understanding of the mechanics and intricacies of the law. The social worker investigates each case according to the procedures outlined by the Department's regulations, and then submits his or her report in

112. The Commonwealth of Virginia Department of Welfare undertook a project of this nature in an attempt to educate the general public concerning the Virginia child abuse and neglect statute. Pamphlets were sent out in telephone, gas and electric, and water bill envelopes at no additional expense to the State other than printing costs.

113. NEEDS ASSESSMENT, *supra* note 76, at 102.

114. *Id.*

115. *See id.* at 102-20; PUB. L. No. 93-247, § 4(a); MODEL LEGISLATION, *supra* note 8, at 57-58.

116. PUB. L. No. 93-247, § 4(a).

accordance with either the child abuse or child neglect provisions. A program is needed in which social workers receive legal training and assistance in the area of child abuse and neglect. The legal training would aid the social workers in their investigating, counseling, reporting and testifying. If the social worker were better trained and more prepared to testify as a witness, both the State and the child would be better served during litigation.<sup>117</sup> The Maryland legislature should provide the funds to develop a pilot program of this nature in Baltimore.<sup>118</sup>

The definitions of both "abuse" and "neglect" also require reform. As evidenced by the *Fabritz* case, the present Code definition of "abuse" is vague and insufficient. That case required three court decisions to determine whether nonfeasance or neglect would constitute child abuse within the meaning of Section 35A of Article 27. Also, the present Maryland Code does not refer to "neglect," but rather defines a neglected child as "a child in need of assistance" (C.I.N.A.). Although the C.I.N.A. provision is sufficiently protecting the neglected children in the courts of this State, confusion has developed from the removal of the term "neglected child" from the Code. There are better formulations in the codes of other jurisdictions from which to fashion a more efficacious and comprehensive definition of abuse and neglect. For example, the Maryland legislature could adopt a definition of "child abuse or neglect" similar to the one found in the Code of Virginia:

"Abused or neglected child" shall mean any child less than eighteen years of age whose parents or other person responsible for his care:

(1) creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, impairment of bodily or mental functions;

(2) neglects or refuses to provide care necessary for his health; provided however, that no child who in good

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117: The plan for such a program was proposed in a 1973 law review article: Brown, Fox & Hubbard, *Medical and Legal Aspects of The Battered Child Syndrome*, 50 CHI.-KENT L. REV. 45, 76-77 (1973).

118. A program of this nature is in the planning stages at the University of Baltimore School of Law under the leadership of Professor Robert E. Shepherd. The Honorable Robert L. Karwacki, Juvenile Court Judge for the Supreme Bench of Baltimore City, has been actively aiding in the development of this program. It is planned that once the project is instituted, law students of the University of Baltimore will aid personnel of the Department of Social Services in a legal training clinic. Legal assistance will be provided to the social worker at each stage of an abuse or neglect case. It is hoped that under Maryland Rule 18, third year law students will be able to aid during the litigation of each case.

faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

(3) abandons such child; or

(4) commits or allows to be committed any sexual act upon a child in violation of the law.<sup>119</sup>

The inclusion of a definition of this type in the Courts and Judicial Proceedings Article would both clarify what constitutes abuse and neglect, and combine them into one civil statutory article in the Maryland Code.

The next area of proposed reform concerns the "mandatory" reporting system of the current child abuse law. Most reported cases of child abuse in Maryland emanate from state hospitals and social workers in Baltimore City. Affluent parents can avoid state hospitals and social workers by taking their injured child to a private family doctor. The author does not suggest that private doctors are unwilling to report an abusive parent under the current criminal child abuse law, but when there is doubt whether an injury resulted from abuse or accident, the family doctor most likely will not subject his or her regular patient to criminal sanctions. If some liability is not placed upon the professional for his or her non-reporting, the abused children of Maryland are not being fully protected.

The physician is the best trained of all professionals to detect cases of child abuse, known as "the battered child syndrome."<sup>120</sup> Other professionals and paraprofessionals in the public and private schools, law enforcement agencies and social services departments are not trained to diagnose symptoms of the battered child syndrome. There is an emotional involvement between a doctor and his or her regular family patient that makes reporting of an abusive parent difficult.<sup>121</sup> Placing civil liability upon the physician may encourage more reporting and thus in the long run protect more children.<sup>122</sup> It may be that the physician will report more suspected cases of child abuse or neglect, not out of fear of civil liability, but because the liability gives the doctor a crutch on which to take an action which is best for the child. The possi-

119. VA. CODE ANN. ch. 12.1, § 63.1-248.2(A) (Supp. 1976).

120. See Helfer, *The Responsibility and Role of the Physician in THE BATTERED CHILD* 43 (R. Helfer & C. Kempe eds. 1968).

121. *Id.* at 44.

122. See Isaacson, *Child Abuse Reporting Statutes: The Case for Holding Physicians Civilly Liable for Failing to Report*, 12 SAN DIEGO L. REV. 743 (1975).

bility of liability is a sound explanation to give parents as to why he or she made the required report.

Physician liability for failure to report suspected cases of abuse and neglect is believed to be a means toward encouraging more accurate reporting.<sup>123</sup> Currently, the majority of jurisdictions sanction in some manner those who fail to report when required by law to do so.<sup>124</sup> The Maryland legislature should impose some form of civil liability upon physicians who wilfully fail to report a known case of child abuse or neglect.

The last area of needed reform concerns the present central registry system. Nationally, central registries have proven their worth as a mechanism in the effective management of child abuse and neglect.<sup>125</sup> Among the purposes of a central registry are: (1) providing the state with statistical data to measure the severity of the abuse and neglect problem so that programs may be allocated on the basis of geographical needs; and (2) providing the state with a means of following an abusive parent who would avoid detection by either going from state to state or hospital to hospital.<sup>126</sup> In 1976, the Maryland Conference of Social Concern published "Proposed Guidelines For a Central Registry of Child Abuse and Neglect for the State of Maryland."<sup>127</sup> The Maryland legislature should seriously consider the proposals and innovations suggested in this report.<sup>128</sup> The report was compiled after in-depth research to discover the best means available for maintaining a central pool of all available state-wide data on reported incidents of child abuse or neglect.

A comprehensive electronic central registry, such as the one being proposed by the Maryland Conference of Social Concern, should be approved by the Maryland legislature. "A computer's ability to store, retrieve and analyze the complex series of data proposed for this Registry would far surpass the capabilities of our present system of manual record keeping."<sup>129</sup> The proposed registry would extend present capabilities by providing additional information which could be utilized for case monitoring, coordina-

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123. *Id.*

124. See DE FRANCIS & LUCHT, *supra* note 1, at 18-19. In a recent medical malpractice decision, *Landeros v. Flood*, 131 Cal. Rptr. 69, 551 P.2d 389 (1976), the Supreme Court of California held that a physician and hospital may be held liable to a child for injuries received as a result of the physician's failure to properly diagnosis and report battered child syndrome to local officials.

125. HEW REPORT, *supra* note 97, at 23.

126. Fraser, *A Pragmatic Alternative to Current Legislative Approaches to Child Abuse*, 12 AM. CRIM. L. REV. 103, 113 (1974).

127. CENTRAL REGISTRY, *supra* note 91.

128. *Id.*

129. *Id.* at 2-3.

tion, management and follow-up.<sup>130</sup> Once a computerized system is instituted in Maryland, the vast amount of research and incidence information available on the computer would be more readily retrievable for Maryland professionals.

The proposed guidelines suggest functions for the computerized system<sup>131</sup> as well as reporting procedures.<sup>132</sup> Each case of suspected abuse, neglect or sexual abuse that is entered into the computer should be utilized for research, program planning and data collection.<sup>133</sup>

The Conference's proposals also call for the creation of a multidisciplinary Advisory Committee to oversee the implementation and operation of the proposed central registry and to advise the Director of the Social Services Administration as to its progress.<sup>134</sup> Since child abuse and neglect are multidisciplinary problems, this proposal is an effective and intelligent step toward the ultimate end of preventing abuse and neglect.

## V. CONCLUSION

Maryland was one of the first states to take positive action against child abuse by enacting legislation in early 1963. During the following ten-year period, the Maryland legislature passed amendments adding various provisions aimed at providing broader protection for Maryland children. By 1973, the law was as progressive as any legislation found in the country. The report of the Senate hearings on child abuse, published in 1973,<sup>135</sup> suggested new methods and provisions for states to consider in amending their child abuse laws. A National Center of Child Abuse and Neglect was established, providing services and research materials to the states. In enacting the Child Abuse Prevention and Treatment Act of 1973, Congress established standards to be met by state legislatures in order to qualify for federal funds to combat the problem of abuse and neglect. Maryland has not met these standards.

Although Maryland's current laws on both abuse and neglect are comprehensive and sensitive to the needs of abused and neglected children, they are still not the best available solutions. Until Maryland conforms to the federal assistance standards by mandating reporting and the appointment of a guardian *ad litem*

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130. *Id.* at 2.

131. *Id.* at 10-11.

132. *Id.* at 16-20.

133. *Id.* at 18.

134. *Id.* at 19.

135. *Hearings, supra* note 11.



in abuse cases, the State will continue to lose valuable dollars needed to implement training and demonstration programs.

The causes of child abuse and neglect are deeply rooted in the psychological and sociological make-up of an abusive or neglectful individual. The law cannot provide the psychological and sociological remedies, but it can provide the funding needed to research and develop multidisciplinary approaches to the problem. In adopting the programs herein suggested, the Maryland legislature will maximize both protection for the child victimized by abuse or neglect and the opportunity for the rehabilitation of abusive and neglectful parents and guardians. Moreover, by adopting these programs, the legislature would also further the legislative intent of the present child abuse law: "the protection of children who have been the subject of abuse."

*Barry L. Steelman*