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CHILD ABUSE AND MALTREATMENT: THE DEVELOPMENT OF NEW YORK'S CHILD PROTECTION LAWS

I. Introduction

Each year over 200,000 children in the United States are abused or neglected by their parents.¹ While many of these children are very young and come from poor families,² children of every age and income bracket³ are victimized. Abusive parents are typically characterized by self-centeredness, immaturity, and lower than average intelligence.⁴

In the early 1960s the federal government took some affirmative action by amending the Social Security Act⁵ to provide funds for the states in order to establish comprehensive child welfare services for children receiving substandard care.⁶ Until recently the states had done little to help these children.⁷ Each state now has laws offering protection and services to abused and neglected children.⁸

New York's child protection system is one of the most extensive programs in the nation.⁹ The New York child protection statutes include within their coverage both abused and maltreated chil-

1. 1 NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, CHILD ABUSE AND NEGLECT 10 (1976) [hereinafter cited as NATIONAL CENTER]. Recent estimates of the number of abused and neglected children have soared to four million. *Id.*

Children who are physically abused by their parents are called "battered children." The battered child syndrome is a term used to "characterize children who have received serious physical abuse, generally from a parent or foster parent." Kempe, Silverman, Steele, Droegemuller and Silver, *The Battered Child Syndrome*, 181 J.A.M.A. 17 (1962).

2. Comment, *The Abused Child: Problems and Proposals*, 8 DUQUESNE L. REV. 136, 138 (1969-70).

3. *In re M.*, 78 Misc. 2d 407, 411, 357 N.Y.S.2d 354, 358 (Fam. Ct. 1974).

4. Comment, *supra* note 2, at 142.

5. Act of July 25, 1962, Pub. L. No. 87-543, 102, 76 Stat. 182 (current version at 42 U.S.C. § 625 (1970)).

6. See Paulsen, *The Legal Framework For Child Protection*, 66 COLUM. L. REV. 679, 705 (1966).

7. See Thomas, *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. REV. 293 (1971-72).

8. See, e.g., CONN. GEN. STAT. ANN. tit. 17, § 38a (West Supp. 1976); IND. CODE ANN. § 12-3-4.1 (Burns 1973); N.J. STAT. ANN. § 9:6-8.8 (West 1976); N.Y. FAM. CT. ACT § 1011 (McKinney 1975); TEX. FAM. CODE ANN. tit. 11, § 34 (Vernon 1975).

9. NATIONAL CENTER, *supra* note 1, at 49.

dren.¹⁰ Abused children are those whose parents have inflicted serious physical injury upon them.¹¹ Maltreated children are defined as those whose condition has or may be impaired by the parents' failure to exercise a minimum degree of care over their well-being.¹²

New York's child protection laws include provisions for identifying the abused child,¹³ for providing the abused child and his family with social services¹⁴ and, where necessary, for removing the abused child from the home.¹⁵ This Note will discuss the background, goals and effectiveness of New York's child protection system.

10. See N.Y. SOC. SERV. LAW §§ 412(1), 412(2) (McKinney 1976); N.Y. FAM. CT. ACT §§ 1012(e)-(f) (McKinney 1975).

11. N.Y. FAM. CT. ACT § 1012(e) (McKinney 1975); N.Y. SOC. SERV. LAW § 412(1) (McKinney 1976). The Family Court Act defines an "abused child" as

a child less than sixteen years of age whose parent or other person legally responsible for his care

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means. . . . or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means. . . . or

(iii) commits, or allows to be committed, a sex offense against such child

N.Y. FAM. CT. ACT § 1012(e) (McKinney 1975).

12. The Social Service Law defines a "maltreated child" as a child under eighteen years of age:

(a) defined as a neglected child by the family court act; or

(b) who has serious physical injury inflicted upon him by other than accidental means.

N.Y. SOC. SERV. LAW § 412(2) (McKinney 1976).

The Family Court Act defines a "neglected child" as :

a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter or education . . . or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by using a drug or drugs; or by using alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; or

(ii) who has been abandoned by his parents or other person legally responsible for his care.

N.Y. FAM. CT. ACT § 1012(f) (McKinney 1975).

13. N.Y. SOC. SERV. LAW § 413 (McKinney 1976). The statutes provide almost identical treatment for abuse and maltreatment cases. However, some procedural differences are found. See, e.g., N.Y. FAM. CT. ACT § 1035 (McKinney 1975).

14. N.Y. SOC. SERV. LAW § 423(1) (McKinney 1976).

15. *Id.* §§ 417, 424(10).

II. Historical Perspective of Child Abuse Legislation

A. Parental Care Tests

Early child abuse cases¹⁶ employed a subjective test to determine a parent's criminal liability. The state had to prove that the parent had acted with criminal intent.¹⁷ This approach is illustrated in *State v. Pendergrass*,¹⁸ which involved a teacher's punishment of a student. The *Pendergrass* court found the right of a teacher to discipline a student analogous to the right of a parent to discipline his child.¹⁹ It emphasized the parent's discretion to decide the degree of punishment which was required by a specific situation.²⁰ Any punishment of the child that did not result in disfigurement or permanent injury, or was not inflicted maliciously, was reasonable.²¹

Later cases²² employed an objective test in which it was necessary to prove only that the parent had used excessive force.²³ In 1947 the Virginia Supreme Court of Appeals used this approach in *Carpenter v. Commonwealth*,²⁴ which involved a foster parent who had beaten a seven year old girl for taking candy. The court found this punishment unreasonable and concluded that a parent could punish a

16. See, e.g., *Dean v. State*, 89 Ala. 46, 8 So. 38 (1890); *People v. Dinser*, 192 N.Y. 80, 84 N.E. 577 (1908); *State v. Harris*, 63 N.C. 1 (1868); *State v. McDonie*, 96 W. Va. 219, 123 S.E. 405 (1924).

17. Thomas, *supra* note 7, at 340.

18. 19 N.C. 365 (1837).

19. *Id.*

20. *Id.* The court stated:

The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may seriously endanger life, limb or health, or shall disfigure the child, or cause any other permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent with, the purpose for which correction is authorized. But any correction, however severe, which produces temporary pain only, and no permanent ill, cannot be so pronounced, since it may have been necessary for the reformation of the child, and does not injuriously affect its future welfare. We hold, therefore, that . . . teachers exceed the limits of their authority when they cause lasting mischief; but act within the limits of it, when they inflict temporary pain.

Id. at 366.

21. *Id.*

22. See *Hinkle v. State*, 127 Ind. 490, 26 N.E. 777 (1891); *Clasen v. Pruhs*, 69 Neb. 278, 95 N.W. 640 (1903); *Steber v. Norris*, 188 Wis. 366, 206 N.W. 173 (1925); *State v. Spiegel*, 39 Wyo. 309, 270 P. 1064 (1928).

23. Thomas, *supra* note 7, at 339.

24. 186 Va. 851, 44 S.E.2d 419 (1947).

child only if the purpose was to further the welfare of the child.²⁵ However, modern child protection statutes permit state intervention when parental actions endanger a child's welfare.²⁶

B. Development of New York's Child Protection System

New York's child protection system is influenced by federal legislation and programs.²⁷ In the early 1960s the Department of Health, Education and Welfare and other organizations created models for later state laws which require certain individuals to inform authorities when they believe a child is being abused.²⁸ These state laws are generally referred to as reporting statutes. New York's reporting statute was originally enacted as part of the Penal Law.²⁹ It required every physician and surgeon to report an incident of suspected abuse to a specified agency such as a society for the prevention of cruelty to children.³⁰ Since its original enactment, the New York

25. *Id.* at 861, 44 S.E.2d at 423. "[T]he great preponderance of authority is to the effect that a parent has the right to punish a child within the bounds of moderation and reason, so long as he does it for the welfare of the child; but that if he exceeds due moderation, he becomes criminally liable." *Id.*

26. See, e.g., N.Y. SOC. SERV. LAW § 417 (McKinney 1976); R.I. GEN. LAWS § 40-13-1. (Supp. 1974); WIS. STAT. ANN. § 48.35 (West Supp. 1976).

Several lower courts in New York have upheld the principles of child protection. See, e.g., *In re Vulon*, 56 Misc. 2d 19, 20, 288 N.Y.S.2d 203, 205 (Fam. Ct. 1968); *In re Edwards*, 70 Misc. 2d 858, 861-63, 335 N.Y.S.2d 575, 580-81 (Fam. Ct. 1972). In *Edwards*, the family court relying on section 1046 (a)(ii) of the Family Court Act held that the state, in justifiable circumstances, has the power to remove a child from his home. It balanced the rights of the abused and neglected child with the rights of the parent and found that the safety of the child outweighed any parental rights involved. 70 Misc. 2d at 861-63, 335 N.Y.S.2d at 580-81.

27. One example is the Child Abuse Protection and Treatment Act (CAPTA), 42 U.S.C. §§ 5101-06 (Supp. V, 1975). In part, the law created the National Center on Child Abuse and Neglect. CAPTA authorizes the Secretary of Health, Education and Welfare to make grants to public agencies and non-profit organizations for demonstration programs designed to prevent, identify and treat child abuse and neglect. *Id.* § 5101. Under CAPTA, during 1975, New York was eligible to receive \$166,649. NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, FEDERALLY FUNDED CHILD ABUSE AND NEGLECT PROJECTS 1975 20 (1976).

28. 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); Paulsen, *Child Abuse and Reporting Laws; The Shape of the Legislation*, 67 COLUM. L. REV. 1, 2 (1967). The Council of State Governments, the American Humane Association, and the American Medical Association also recommended guidelines. *Id.*

29. Act of April 23, 1964, ch. 811, 1964 N.Y. Laws 1386 (repealed by Act of July 20, 1965, ch. 1046, § 2, 1965 N.Y. Laws 1897).

30. *Id.*

reporting statute has been expanded and is now contained in the Social Services Law.³¹

In 1970 the New York Legislature enacted the Child Protective Proceedings Act (CPPA).³² CPPA consolidated and coordinated child protective proceedings by combining the child abuse and child neglect provisions of articles 3³³ and 10³⁴ of the Family Court Act. It also conferred exclusive jurisdiction on the Family Court to deal with the abused and neglected child,³⁵ and it provided guidelines for court intervention on behalf of a child against the wishes of a parent.³⁶

In 1970 the New York City Mayor's Task Force on Child Abuse and Neglect noted the importance of a comprehensive child protec-

31. N.Y. Soc. SERV. LAW §§ 413-15 (McKinney 1976). There are also provisions in the criminal code that deal with protecting children. See N.Y. PENAL LAW § 260.10 (McKinney 1975).

Prior to the nineteenth century, little was done in New York to protect the abused and neglected child. Occasionally, poor children were apprenticed or placed in other homes by their parents. Early efforts were aimed at preventing child abuse in order to avoid the criminalization of neglected children. In 1825, the first child-saving institution was established. The last quarter of the nineteenth century witnessed an increase in public interest in the problem. This resulted in the creation of "cruelty societies," the first of which was designed to protect animals. Later, the service was extended to children.

During the nineteenth century reformers established homes throughout the United States for neglected children in an attempt to prevent them from being placed in almshouses with poor and sick adults. Thomas, *supra* note 5, at 301. As a result of anti-institutional feelings, in 1853, a reverend founded the New York Children's Aid Society which began placing children in private homes. *Id.* at 306-07. In 1964 New York City's Commissioner of Welfare established a city-wide register to receive child abuse reports, one of the few then in existence in the country. The register was used "to record information obtained by reports filed according to the law with the welfare department or Society for the Prevention of Cruelty to Children." Paulsen, *supra* note 28, at 28. In 1966 the legislature created a statewide register, but this register was used only for statistical and internal purposes. MAYOR'S TASK FORCE ON CHILD ABUSE, FINAL REPORT 16-18 (1970) [hereinafter cited as MAYOR'S TASK FORCE].

32. N.Y. FAM. CT. ACT §§ 1011-74 (McKinney 1975).

33. Act of April 24, 1962, ch. 687, 1962 N.Y. Laws 2235 (repealed by Act of May 1, 1970, ch. 962, § 8, 1970 N.Y. Laws 2033). The Act was adopted to provide due process in determining whether a child was neglected, and if necessary to remove him from his home. *Id.*

34. Act of April 28, 1969, ch. 264, 1969 N.Y. Laws 363 (repealed by Act of May 1, 1970, ch. 962, § 9, 1970 N.Y. Laws 2033). The Act established procedures for the protection of children who suffered serious physical injury which was inflicted by other than accidental means. *Id.*

35. N.Y. FAM. CT. ACT § 1013 (McKinney 1975). The family court has jurisdiction over the child even when there is an action pending against the parent in criminal court. See *People v. Webb*, 52 App. Div. 2d 8, 10, 382 N.Y.S.2d 369, 371 (3d Dep't 1976).

36. N.Y. FAM. CT. ACT. § 1011 (McKinney 1975).

tive service program in which the responsibility for dealing with all reported cases of abuse and neglect would be established.³⁷ The Special Child Abuse Project, created to implement the recommendations of the Task Force,³⁸ commented that under the then existing child protection system, public and private agencies which had the responsibility for investigating child abuse reports usually received specific cases based on superficial definitions and considerations.³⁹ Case assignments often were dependent upon a variety of factors such as the source of the complaint, source of family income, and whether abuse or neglect was suspected.⁴⁰ Under this system no agency had primary responsibility for dealing with a particular case,⁴¹ cases were easily lost, and information about the cases was not efficiently handled by the agencies.⁴²

III. The New York Child Protective Services Act

In 1973, in an attempt to expand the child protection system, the New York Legislature enacted the Child Protective Services Act (Act).⁴³ That statute stresses prompt investigation and intervention in reported cases of child abuse and maltreatment.⁴⁴ It includes sections dealing with protective services,⁴⁵ removal of the child from the home,⁴⁶ and court procedures.⁴⁷ The Act changes the emphasis of child abuse legislation from the punishment of the parent to the prevention of further child abuse through family rehabilitation.⁴⁸ While the CPPA relied heavily on the probation department in

37. MAYOR'S TASK FORCE, *supra* note 31, at 1.

38. HUMAN RESOURCES ADMINISTRATION, PROGRESS REPORT ON THE PROJECT OF CHILD ABUSE AND NEGLECT 1 (1972).

39. *Id.* With a comprehensive system there is less chance of duplication of services and less chance that a case will be lost between workers. *Id.*

40. MAYOR'S TASK FORCE, *supra* note 31, at 21-22.

41. *Id.*

42. *Id.*

43. N.Y. SOC. SERV. LAW §§ 411-24 (McKinney 1976). The act amended the Social Services Law providing procedures for reporting abuse and maltreatment of children. *Id.* § 413. It also provides for a central register of child abuse and maltreatment cases, and provides procedures for investigating reports, and outlines protective actions. *Id.* §§ 417, 422, 423(1), 424(8).

44. *Id.* § 411.

45. *Id.* § 423(1).

46. *Id.* §§ 417, 424(9).

47. *Id.* § 424(8)-(12).

48. *Id.* § 411.

dealing with child abuse, the 1973 legislation requires this department only to assist the protective service workers and the court.⁴⁹

In addition to defining abuse and maltreatment,⁵⁰ the Act expands the list of agencies and individuals who are required to report suspected cases of child abuse and maltreatment⁵¹ (hereinafter collectively referred to as reporters). The reporter must name the person he believes to have committed the abuse in his report.⁵²

The Act provides both civil and criminal penalties for those who are required to report cases of suspected abuse and maltreatment and fail to do so.⁵³ Failure to report such abuse constitutes a misdemeanor.⁵⁴ However, after a report is filed in good faith, the statute grants immunity from any prosecution, civil or criminal, initiated by the parent.⁵⁵

The Act also includes provisions for handling the child abuse case

49. YOUNG, TINT AND BREWER, *A STUDY OF THE IMPLEMENTATION OF THE CHILD PROTECTIVE SERVICES ACT IN SELECT NEW YORK COUNTIES* 5 (1973).

50. N.Y. SOC. SERV. LAW § 412(1), (2) (McKinney 1976). See notes 10-12 *supra* and accompanying text.

51. N.Y. SOC. SERV. LAW § 413 (McKinney 1976). Those required to report now include: any physician, surgeon, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, registered nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, a Christian Science practitioner, school official, social service worker, day care center worker or any other child care or foster care worker, mental health professional, peace officer or law enforcement official.

Id.

The Act also encourages volunteers, other than the required reporters, to report when they have reasonable cause to suspect that a child has been abused or maltreated or is in danger of receiving such treatment. *Id.* § 414. Thus, it establishes a wider base for reports. These individuals are not subject to criminal or civil sanctions for not reporting. *Id.* § 420. They have only a moral responsibility to report suspected cases of abuse and maltreatment.

Most of the reports, however, come from sources who are required to report. In New York City, for example, 97 percent of the abuse and 63 percent of the maltreatment reports were filed by required reporters. H. YOUNG, *A STUDY OF THE IMPLEMENTATION OF THE CHILD PROTECTIVE SERVICES ACT OF 1973 IN NEW YORK CITY* (rev'd ed. 1976).

52. N.Y. SOC. SERV. LAW § 415 (McKinney 1976).

53. *Id.* § 420.

54. *Id.* § 420(1).

55. *Id.* § 419. This immunity extends both to those required to report and those who voluntarily do so. *Id.*

The 1973 legislation requires that the reporter notify the statewide register of the suspected abuse and maltreatment unless there are appropriate arrangements for reporting to a local child protective service. *Id.* § 415. In localities where the report is made to a local child protective service, the statute requires the service to make an initial oral or electronic report to the statewide register. *Id.*

after a report has been made.⁵⁶ It delegates to local child protective service agencies the responsibility for investigating reports of suspected abuse and maltreatment.⁵⁷ These agencies must provide supportive services⁵⁸ for the rehabilitation of the family;⁵⁹ and if necessary, take the child into protective custody to prevent further abuse or maltreatment.⁶⁰ If removal becomes necessary, the Act mandates that the case be brought before the family court for adjudication.⁶¹

The Act provides that the local child protective service agency shall be the "sole public agency responsible for receiving and investigating or arranging with the appropriate society for the prevention of cruelty to children to investigate all reports . . . for the purpose of providing protective services to . . . provide or arrange for and monitor the provisions of those services necessary to safeguard and ensure the child's well-being and development and to preserve and stabilize family life wherever appropriate."⁶²

The goals of the protective services offered to the child and his family are to prevent injury and neglect, and to stabilize the family situation.⁶³ A protective service worker evaluates the family situation to determine which services are most appropriate for the child and his family.⁶⁴

56. See, e.g., *id.* § 424(12).

57. Every local department of social service was required to establish a child protective service. *Id.* § 423(1).

58. The services include casework and supervision of the family, psychiatric counseling, therapy, and short and long term placement in foster homes or institutions. NEW YORK STATE ASSEMBLY SELECT COMMITTEE ON CHILD ABUSE, A GUIDE TO NEW YORK'S CHILD PROTECTION SYSTEM 24 (1974) [hereinafter cited as SELECT COMMITTEE].

59. N.Y. Soc. SERV. LAW § 423(1) (McKinney 1976).

60. *Id.* §§ 417, 424(8).

61. *Id.* § 424(10).

62. *Id.* § 423(1).

63. *Id.* §§ 411, 423(1).

64. The statute requires the local child protective service to transmit the reports to the central register which provides a method for identifying parents who repeatedly abuse their children. *Id.* § 415. This also permits the administrator of the register to monitor the efforts of individual workers and require them to make a final determination regarding the child's situation. NATIONAL CENTER, *supra* note 1, at 49.

Once a report is filed, the protective service agency has ninety days to determine whether the complaint is unfounded. N.Y. Soc. SERV. LAW § 424(7) (McKinney 1976). If no credible evidence of abuse or maltreatment is discovered, the register must remove all information about the case from its files. *Id.* § 422(5).

If the information remains at the register it can release this information to a doctor who suspects a child before him is abused or maltreated; a person authorized to place the child

The protective service worker must inform the family that he does not have the legal authority to compel it to use any of the available services.⁶⁵ If the family decides to accept the services, the case worker must determine whether he will attempt to work with the family, or whether he will refer the family to another agency while maintaining responsibility for coordinating the case.⁶⁶

A protective service worker, or any individual at the court's discretion, can bring a child abuse or maltreatment case before the family court⁶⁷ if the parent refuses to accept protective services or if the child is in imminent physical danger.⁶⁸ If the parent refuses the protective services, the court can order the parent to accept the services.⁶⁹ If the parent still refuses to accept them, the court can put the parent in jail.⁷⁰ The court also has the power to order removal of a child from his home, and to continue the removal for as long as the protective service worker does not find any improvement in the home.⁷¹ The family court can place the child in either an institution or a foster home, and if the parent does not contact the child or worker for an extended period of time, the court can place the child for adoption.⁷²

The Act provides that a peace officer, law enforcement official, or certain other individuals⁷³ may take a child into protective custody

in protective custody when this information is needed for his determination; an agency responsible for the care of the subject of a report; and others who need this information for a valid purpose. *Id.* § 422(4) (McKinney Supp. 1976).

65. *Id.* § 424(9)-(12) (McKinney 1976).

66. YOUNG, TINT AND BREWER, *supra* note 49, at 31-32. See N.Y. SOC. SERV. LAW § 424(9) (McKinney 1976). If the parent refuses the services, the worker can initiate family court proceedings or refer the case to the district attorney for appropriate action in the criminal court. *Id.* § 424(10). The family court can place the family under supervision, and if the parent does not comply with the court order the court can place them in jail for not more than six months. N.Y. FAM. CT. ACT §§ 1052(v), 1055(c), 1057, 1062(c), 1072(b) (McKinney 1975). However, less than 25 percent of the cases terminate in court action. SELECT COMMITTEE, *supra* note 58, at 24. See also YOUNG, *supra* note 51, at 11.

67. N.Y. FAM. CT. ACT § 1032 (McKinney 1975).

68. *Id.* See also N.Y. SOC. SERV. LAW §§ 424(9)-(12) (McKinney 1976).

69. See note 64 *supra* and accompanying text. The court can place the child and order protective services so as to adjust the environment to return the child to the home. N.Y. FAM. CT. ACT § 1055(c) (McKinney 1975).

70. *Id.* § 1072(b).

71. *Id.* § 1055(b)(i).

72. *Id.* § 1055(d). For a discussion of constitutional rights of foster children, see 5 FORDHAM URBAN L.J. 155 (1976).

73. N.Y. SOC. SERV. LAW § 417(1) (McKinney Supp. 1976). See also N.Y. FAM. CT. ACT § 1024 (McKinney 1975).

without the consent of the parent.⁷⁴ If there is an imminent danger to the child's life, the protective service worker can remove the child without a prior court order.⁷⁵ Once the child is brought before the family court, it holds a hearing to determine whether the parent abused or maltreated the child.⁷⁶ If the court finds that the child has been abused or maltreated, the court holds a dispositional hearing to decide what should be done to improve the child's situation.⁷⁷

IV. The Effectiveness of the Child Protective System

A. The Increase in the Number of Reports

The Act has resulted in a general increase in the number of reports of abuse and maltreatment as a result of the expansion of the list of those individuals required to report.⁷⁸ In 1966, there were only 416 reports of abuse filed in New York State.⁷⁹ By 1972, the number of reports increased to 3,319.⁸⁰ Under the 1973 Act, the central state-wide register⁸¹ accepts reports of maltreatment in addition to those of abuse.⁸² Within one year, approximately 7,000 reports of abuse⁸³ and 49,000 reports of maltreatment⁸⁴ had been filed.

B. Problems in the Child Protective System

While the Act has succeeded in increasing the number of child abuse and maltreatment reports, the effectiveness of the system is limited by other factors such as the overload on the system and problems associated with the investigative process.

1. Overload on the system

The major objective of the Act was to increase the reporting of abuse and maltreatment.⁸⁵ However, the large number of cases re-

74. N.Y. SOC. SERV. LAW § 417(1) (McKinney 1976).

75. *Id.*

76. N.Y. FAM. CT. ACT §§ 1044, 1047 (McKinney 1975).

77. *Id.* §§ 1045, 1047.

78. YOUNG, TINT AND BREWER, *supra* note 49, at 7.

79. *Id.* at 10.

80. *Id.*

81. N.Y. SOC. SERV. LAW § 422(1) (McKinney 1976).

82. *Id.* § 422(2). See YOUNG, TINT AND BREWER, *supra* note 49, at 7.

83. The Mayor's Task Force noted the importance of expanding the register to accept reports of neglect. MAYOR'S TASK FORCE, *supra* note 31, at 18.

84. YOUNG, TINT AND BREWER, *supra* note 49, at 11.

85. SELECT COMMITTEE, *supra* note 58, at 5. One of the concerns of those fashioning this

ported, especially in New York City, has led to a work overload on the child protective service workers.⁸⁶ Moreover, since a protective service worker must spend much of his time in the investigative process, he is unable to provide adequate services to those who require them.⁸⁷ Each worker has the additional burden of filing forms, the number of which has increased since the passage of the Act.⁸⁸ The problem of providing the much needed services is aggravated by the filing of unfounded child abuse and maltreatment reports.⁸⁹ This situation indicates a need for more protective service workers.⁹⁰

2. *Problems with investigations and protective services*

The protective service workers are usually able to offer some services immediately upon contacting the family.⁹¹ When the family court orders the removal of a child from his home, the protective service worker will often continue to work with his family.⁹² However, many of the services that are available to the family when the child is in the home, are unavailable once the child is removed.⁹³

A child abuse investigation can have a detrimental effect on the parents. The parent often feels threatened and refuses to cooperate with the protective service worker.⁹⁴ "The investigation, no matter how 'tactfully' conducted, implies parental inadequacy at best and parental abusiveness at worst, reinforcing the parents' sense of guilt."⁹⁵ Furthermore, threats of an investigation can be used maliciously against a spouse or a neighbor.⁹⁶

The inadequacy of the training for protective service workers is an additional problem.⁹⁷ Often the worker cannot understand "the

law was to increase the reports of very young children who are abused. However, the number of these reports decreased from 953 in 1971 to 761 in 1974. YOUNG, *supra* note 51, at 8. The reason for this decrease has not been determined.

86. YOUNG, *supra* note 51, at 10.

87. *Id.*

88. *Id.*

89. YOUNG, TINT AND BREWER, *supra* note 49, at 13.

90. *Id.* at 24; YOUNG, *supra* note 51, at 10.

91. YOUNG, TINT AND BREWER, *supra* note 49, at 26.

92. *Id.* at 40.

93. *Id.* at 40-41.

94. *Id.* at 29.

95. YOUNG, *supra* note 51, at 13.

96. *Id.*

97. *Id.* at 11.

complex interplay of factors that may be present in the family”⁹⁸ which lead to child abuse.⁹⁹ Protective service workers suffer from “role conflict.” Since they are required both to investigate the family and to offer protective services¹⁰⁰ some workers feel they are placed in an adversary role¹⁰¹ which leads to problems with the parents.¹⁰²

It is doubtful that most workers can successfully determine which services the family needs.¹⁰³ The effectiveness of the services offered is also doubtful in light of evidence that children often are abused and neglected more than once.¹⁰⁴ Moreover, many areas of the state do not provide the full range of services which may be needed by a family.¹⁰⁵

V. Evidence Problems in Child Abuse and Maltreatment Cases

Since most child abuse and maltreatment occurs in the home without eye-witnesses, these cases present major problems of evidence.¹⁰⁶ Protective service workers must constantly be aware of the need to establish concrete evidence of abuse or neglect.¹⁰⁷ It is often impossible for them to find such evidence.

Prior to the passage of the CPPA, the courts struggled with problems of evidence.¹⁰⁸ In *In re S.*,¹⁰⁹ there were no eye-witnesses to the alleged neglect. The court borrowed the “*res ipsa loquitur*” doctrine from negligence law and stated:¹¹⁰

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* See also N.Y. SOC. SERV. LAW § 424(8) (McKinney 1976).

103. YOUNG, *supra* note 51, at 11.

104. YOUNG, TINT AND BREWER, *supra* note 49, at 43.

105. *Id.* at 22.

106. *In re Edwards*, 70 Misc. 2d 858, 860, 335 N.Y.S.2d 575, 579 (Fam. Ct. 1972). Since child abuse and maltreatment are civil and not criminal cases, evidence is not needed beyond a reasonable doubt; a preponderance of the evidence is sufficient. *In re S.*, 66 Misc. 2d 683, 688-89, 322 N.Y.S.2d 170, 177-78 (Fam. Ct. 1971). See N.Y. FAM. CT. ACT § 1046(b) (McKinney 1975).

107. YOUNG, TINT AND BREWER, *supra* note 49, at 34.

108. See *In re S.*, 46 Misc. 2d 161, 259 N.Y.S.2d 164 (Fam. Ct. 1965).

109. *Id.*

110. *Id.* at 162, 259 N.Y.S.2d at 165. Within two months after being returned to her mother's custody, the child sustained bruises covering her body and arms, a deep abrasion on the bridge of her nose, deep scalp lacerations and a broken arm. The proceedings were brought by an employee of the New York Foundling Home. *Id.* Even though there was no

the condition of the child speaks for itself, thus permitting an inference of neglect to be drawn from proof of the child's age and condition, and that the latter is such as in the ordinary course of things does not happen if the parent who has the responsibility and control of an infant is protective and non-abusive.

In a 1966 decision, a court stated that if the petitioner could establish the existence of a child's injury sustained while in the lawful custody of the parent, the petitioner would establish a prima facie case of neglect, giving the parent the burden of proving the child sustained the injury accidentally.¹¹¹

The Family Court Act now provides for the admissibility in child abuse and maltreatment cases of evidence which would ordinarily not be admissible in a court of law.¹¹² Statements of a child relating to any allegations of abuse or neglect are admissible as evidence even if they would ordinarily constitute hearsay.¹¹³ However, these statements must be corroborated.¹¹⁴ In addition, the Family Court Act waives the doctor-patient and husband-wife privileges in abuse and maltreatment cases.¹¹⁵

Furthermore, the court need not base its decision on direct evidence of abuse or neglect.¹¹⁶ In *In re M.*,¹¹⁷ the court held that a child, whose mother waited twelve hours before bringing the child for medical attention, was neglected.¹¹⁸ The court found that the injuries resulting from acts or omissions by the parent constituted prima facie evidence of abuse or neglect.¹¹⁹ In *In re Edwards*,¹²⁰ the family

direct evidence of abuse and maltreatment the court deemed the child neglected. *Id.*

111. *In re Young*, 50 Misc. 2d 271, 273, 270 N.Y.S.2d 250, 253 (Fam. Ct. 1966).

112. One example of this type of evidence is the use of prior medical history. N.Y. FAM. CT. ACT § 1046 (a)(vi) (McKinney 1975). *In re D.*, 63 Misc. 2d 1012, 314 N.Y.S.2d 230 (Fam. Ct. 1970).

113. N.Y. FAM. CT. ACT § 1046(a)(iv) (McKinney 1975).

114. *Id. In re Hawkins*, 76 Misc. 2d 738, 351 N.Y.S.2d 574 (Fam. Ct. 1974).

115. N.Y. FAM. CT. ACT § 1046(a)(vii) (McKinney 1976).

116. *In re S.*, 66 Misc. 2d 683, 322 N.Y.S.2d 170 (Fam. Ct. 1971).

117. 78 Misc. 2d 407, 357 N.Y.S.2d 354 (Fam. Ct. 1974).

118. *Id.* at 412, 357 N.Y.S.2d at 358.

119. *Id.* at 411, 357 N.Y.S.2d at 357-58. See N.Y. FAM. CT. ACT § 1046(a)(ii) (McKinney 1975).

[P]roof of injuries sustained by a child or of the condition of a child of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the care of such child shall be prima facie evidence of child abuse or neglect, as the case may be, of the parent or other person legally responsible.

court removed a child from his home stating that "when the warning flags from the storms of abuse and neglect are still flying and there is a clear and present danger to the children the court must exercise its proper function in removing the other child from the home."¹²¹

Evidence that another child in the same home had been abused previously is admissible as evidence of abuse or maltreatment.¹²² In *In re G.*,¹²³ an infant had been in the custody of her mother for seven months without being abused or maltreated.¹²⁴ The court held there was a danger of abuse, basing its decision on evidence that the mother's first child had been removed from her home because she had abused the child.¹²⁵ In *In re Anthony*,¹²⁶ the court denied a mother custody of her newborn child on the basis of the mother's prior history of neglecting her other children.¹²⁷ Another court has held that evidence of beatings two months prior to the alleged abusive conduct is admissible.¹²⁸

The Family Court Act also provides that if the court concludes the evidence before it is not sufficient to prove abuse, the court can amend the abuse petition to allege neglect, which is less difficult to establish.¹²⁹

Id.

It is important to note that this evidence, though admissible, is not sufficient to prove abuse or neglect in all cases. *In re J.*, 72 Misc. 2d 683, 340 N.Y.S.2d 306 (Fam. Ct. 1972).

120. *In re Edwards*, 70 Misc. 2d 858, 862, 335 N.Y.S.2d 575, 580-81 (Fam. Ct. 1972).

121. *Id.*

122. *In re Anthony*, 81 Misc. 2d 342, 366 N.Y.S.2d 333 (Fam. Ct. 1975). N.Y. FAM. CT. ACT § 1046(a)(i) (McKinney 1976) provides that "proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of, or the legal responsibility of, the respondent." *Id.*

123. 74 Misc. 2d 606, 344 N.Y.S.2d 422 (Fam. Ct. 1973).

124. *Id.* at 608, 344 N.Y.S.2d at 424.

125. *Id.* at 607, 344 N.Y.S.2d at 423. The court used section 1046(a)(i) of the Family Court Act in dealing with the proof of neglect. *Id.* It ordered a social investigation of the mother's home and her relationship with the child as well as psychiatric services. *Id.* at 610, 344 N.Y.S.2d at 426.

126. 81 Misc. 2d 342, 366 N.Y.S.2d 333 (Fam. Ct. 1975).

127. *Id.* at 345, 366 N.Y.S.2d 336.

128. *In re Iris C.*, 46 App. Div. 2d 910, 363 N.Y.S.2d 7 (2d Dep't 1974). The court found the evidence admissible to show a continuing condition. The evidence was, however, insufficient to prove abuse. The court used the evidence to impeach the parents' credibility when they claimed they used a cloth belt to spank the child. It overruled the finding of abuse and found the child neglected. *Id.* at 910, 363 N.Y.S.2d at 8.

129. N.Y. FAM. CT. ACT § 1031(c) (McKinney 1975).

VI. Conclusion

A parent's right to raise his children in the manner he chooses includes the right to use varying degrees of care and punishment.¹³⁰ When this care is not sufficient, removal of the child is justified. Return of the child to his home is the primary goal of New York's child protective system.¹³¹ Protective service workers must have sufficient time and resources to make such a return possible.¹³²

The advent of the reporting law constituted a major advance in dealing with the problem of child abuse and maltreatment. However, the effectiveness of the child protective system remains in doubt. The New York child protective laws require certain individuals to report incidents of child abuse¹³³ and dictate how the reports will be handled.¹³⁴ If family court adjudication is required, the Act states that the case must be handled in accordance with the procedures specified in the Family Court Act.¹³⁵

There has been an increase in the reporting of child abuse and maltreatment, but these reports enter a system that cannot effectively handle them. Thus, the new statute does not effectively protect the child from abuse and maltreatment, or rehabilitate the family.

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130. Certain community service societies believe a child should be removed from his family only if there is imminent danger to his life. See Statement by Community Service Society, Joint Public Committee of the Temporary Committee on Child Welfare 2 (April 9, 1976).

131. Unless the child is placed for adoption he cannot be placed in a home for more than eighteen months without another hearing. N.Y. FAM. CT. ACT § 1055 (McKinney Supp. 1976).

132. YOUNG, *supra* note 51, at 13; YOUNG, TINT AND BREWER, *supra* note 49, at 40-41.

133. N.Y. SOC. SERV. LAW § 413 (McKinney 1976).

134. *Id.* § 416.

135. *Id.* § 417(1).

