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## Child Abuse - The Legislative Response

# CHILD ABUSE — THE LEGISLATIVE RESPONSE

BY VINCENT DE FRANCIS\*

*The subject of Mr. De Francis' discussion is child abuse legislation, the so-called reporting laws. The goals of these laws are early identification and protection of the victim of abuse. Mr. De Francis, after presenting the scope of the child abuse problem, analyzes typical provisions of these laws. He compares the statutory provisions of different states and criticizes the laws in light of their purpose, implementation, and effect. Mr. De Francis concludes that the child abuse reporting laws are steps in the right direction, but that they alone are insufficient to resolve the child abuse problem. More and better child protective services are needed to help the child and the family.*

## INTRODUCTION

FEW recent social issues have aroused public sensibility or created as much concern as has the problem of child abuse. Public awareness demonstrates that it is a shocking reality and a growing problem which is common to every community. Cases of abuse stem from the seemingly well regulated home or the country club district as well as from the seriously disorganized or broken home from the slum area. These cases are not limited by the economic or educational level of the parents. While it is true that today more cases are being reported, this fact does not necessarily mean a rising incidence of child abuse. It does seem to reflect greater awareness of a problem which for too long has been ignored or neglected by the community at large.

Current public indignation at this gross disregard for the rights of children frequently results in punitive action against the parents who transgress societal ideals about family responsibility for children. In the progress of pursuing sanctions against offending parents, the need for constructive planning and for services on behalf of the abused child is often relegated to a secondary consideration or is completely overlooked.

Since no accurate national statistics on the incidence of child abuse exist, several studies serve as an index to the size of the problem. A study by the Children's Division of The American Humane Association in 1962,<sup>1</sup> reviewed cases of child abuse reported in United States newspapers. These cases represented the grossest types of child abuse — situations which were reported to law enforcement authorities and which were deemed "newsworthy" by the local press. The cases studied represent only that portion of child abuse

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<sup>1</sup> De Francis, *Child Abuse — Preview of a Nationwide Survey* (1962).

incidence which was identified and reported. Educated estimates place the probable national incidence of serious child abuse at more than ten thousand cases a year. There are, no doubt, many additional thousands of cases in which the mistreatment is of less dangerous proportions.

### I. PURPOSE OF REPORTING LAWS

The need to discover and identify child victims of abuse required devising a casefinding tool such as the reporting law. Medical personnel came to be selected as the principal target group of the law's mandate because research and study could produce irrefutable evidence that child abuse can be determined by medical diagnosis.

The doctor is in a unique position in the child abuse case. Practitioners can exercise great care when examining children brought to them for treatment of injuries, and they do not have to accept unquestioningly glib stories about such injuries resulting from accidental cause. The use of x-rays and a study of all symptoms may reveal findings inconsistent with the history given and may provide the doctor with reasonable cause to suspect inflicted, rather than accidental, injury. Failure to recognize the "Battered Child Syndrome" could subject the child to additional or repeated injury and even death.

The logic and force of medical concern has focused attention on the doctor as probably the first responsible contact who has an opportunity to see and examine the child and the first competent person capable of assuming responsibility for positive action on behalf of the child. Thus, he is seen as the best resource for early identification and reporting of these cases.

But would doctors be willing to voice their suspicions by reporting these cases when the diagnosis of inflicted injuries was not clearcut, particularly in the face of denial by the parents? Would such reporting expose doctors to the possibility of a legal action for money damages? Would such reporting violate the privileged communication between doctor and patient?

The "reporting statute," requiring a report of a child abuse case and providing immunity from legal action to persons making such a report is the suggested answer to these questions. Proposed laws include waiver of the doctor-patient privilege and recommend waiver of the husband-wife privilege to enable one spouse to testify about abuse committed by the other.<sup>2</sup>

The core objective of the report under these laws is early identification of abused children so that they can be (1) treated for the present injuries and (2) protected from further abuse. Acquiring

<sup>2</sup> See § 1, Waiver of Privilege at 35 *infra*.

proper treatment for the child poses no serious problem except in cases where parents, for religious or other reasons, may refuse permission for medical care. Such care can be obtained by invoking the authority of the court to order it despite parental objections.<sup>3</sup>

Protecting the child from future harm raises alternative solutions. This problem must take into consideration the community pattern for treating the situation which has evolved. The basic circumstances determining the ultimate pattern employed are the emotional climate in the community toward violators of the moral code, the rule of law and order, and the community awareness and understanding in terms of social planning in the best interests of children.

#### A. *Punishment of Parents*

As noted earlier, the general attitude toward the problem of child abuse is shock and anger. A natural consequence is a desire to exact retribution — to punish parents for their acts of cruelty. Where this philosophy prevails, reporting legislation is frequently viewed as a tool for identifying parents who mistreat children so that society may deal with them for the crime of child abuse.

Perhaps the only merit of this approach is that justice, in the sense of retribution, will be served. Counterbalancing this factor however, are many negative factors. Criminal prosecution requires proof through evidence which establishes the guilt of a defendant beyond a reasonable doubt. In child abuse cases the acts usually take place in the privacy of the home, and parents usually are mutually protective. Hence, evidence to sustain the legal burden of proof and to identify the offending parent is difficult to obtain. An unsuccessful prosecution may subject the child victim to increased hazards, for he will be exposed to the care of a parent who, in addition to his other problems, may now be embittered by his experience with police and court. A disturbed parent may view the prosecution's failure to find him guilty of child abuse as a license to continue to abuse.

Moreover, if the goal of the law is punishment, fear of a potential prosecution may cause a parent not to seek needed medical care for the child. The doctors may resist such a law if by so doing they automatically become involved as witnesses in a criminal proceeding against the parents. The doctor may dislike being placed in such a punitive role. The net result could be a defeat of the law's objective to encourage reporting and early casefinding.

An additional consideration is the fact that punishment does not correct the fundamental cause of the parents' behavior. If these parents have mental, physical, and emotional inadequacies, prosecu-

<sup>3</sup> *E.g.*, *Raleigh Fitkin-Paul Morgan Memorial Hosp. v. Anderson*, 42 N.J. 421, 201 A.2d 537, *cert. denied*, 377 U.S. 985 (1964).

tion and punishment will not produce true change in their behavior. The basic motivational offender is even more unstable.

This critique is not meant to indicate that prosecution for child abuse is never permissible. Certainly the community has a duty to act against parents who commit crimes against children. But the decision of whether or not to prosecute in a given case should rest with the county prosecutor. In making this decision he must consider what happens to the children. No one making a decision to prosecute parents can afford to overlook the necessity of adequate planning for the abused child and other children in the family.

### B. *Protection of the Child*

Another approach to the child abuse problem is rooted in a philosophy which sees the purpose of casefinding as the discovery of children who, because of abuse, need the care and protection of the community.

The community carries out this responsibility by making available the protective social services which will prevent further abuse of the child and meet the child's needs through social services and planning to assure maximum protection. Discovery of these children is achieved if the reporting is directed to the child protective program in the community.

Child protective programs are especially qualified to reach families where children are neglected or abused. Their functional responsibility requires that they: (1) explore and determine the facts of neglect or abuse; (2) assess and evaluate the damage to children; (3) initiate appropriate social work services to remedy the situation; and (4) invoke the authority of the juvenile court in those situations where removal from parental custody must be sought in the best interests of the children.

The "helping-through-social-services" philosophy is beneficial to the parent, since it recognizes that destructive parental behavior is symptomatic of deeper emotional problems. Rarely is child abuse the product of wanton, willful, or deliberate acts of cruelty, but usually is the result of emotional immaturity and lack of capacity for coping with the pressures and tensions of modern living. The symptoms of the parents' disorganized state are manifested in defiant behavior and bursts of violence or anger directed at other people, including their children.

Many of these parents may themselves have been victims of parental neglect or abuse and their behavior is a reflection of what they were exposed to as children. Most of them are not capable of providing adequate care for their children in the absence of outside help. These parents need services to guide and counsel them toward

accepting their responsibilities as parents, to rebuild their damaged personalities, and to give them the strength and stability to successfully live up to parental roles. A statute utilizing protective social services provides this skilled service to the parents, protects the child, and yet permits legal action through juvenile courts in extreme situations. Thus, this method attains punishment when necessary, but more importantly, it benefits the community, the family, and the child.

## II. LEGISLATIVE ACTION

The attention of legislative bodies to the problem of child abuse has progressed at a pace with little precedent in recent legislative history. In the span of three legislative years since 1963, a total of forty-seven states enacted laws seeking reports of injuries inflicted on children.<sup>4</sup>

Some of the laws achieving passage in the three year period were hastily conceived and reflect public indignation against parents who abuse children. Most of them however, show awareness of the imperative need for protective social services on behalf of child victims.

These laws are characterized by many differences in form and substance. Some of the differences are minor and may be attributed to the differing administrative or organizational structure in each state. Other differences are more generic and reflect a variance in the philosophy of how to treat the problem of child abuse.

The laws also contain many areas of common agreement and areas of conformity with suggested legislation and guidelines developed by national agencies promoting mandatory reporting laws. The degree of conformity, the extent of common agreement, the stated or implied philosophy, and the strengths and weaknesses of the forty-seven enactments are reviewed and assessed in the analysis which follows.

### A. *Purpose*

The purpose clause of a statute is a declaration of state policy in regard to the subject matter of a specific law, or a statement which defines the intent sought to be served by a particular legislative act. The value of a purpose clause is that the legislature goes on record with an expression of the ultimate goal and objectives it seeks to achieve by the law. If any language of the act is ambiguous, the

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<sup>4</sup> Since preparation of this article two more states and the United States Congress have adopted child abuse legislation. The following analysis does not include these laws. Hawaii presently is the only state having no reporting legislation. See MISS. CODE ANN. § 7185 (Supp. 1966); VA. CODE ANN. § 63-307 (Supp. 1966).

purpose clause may be resorted to for interpretation or resolution of the ambiguity.

Approximately one half of the states with reporting laws incorporated a purpose clause into their statutes. Table Number One identifies the states with, or without, a purpose clause.<sup>5</sup> The expression of intent is usually clear and unequivocal: to provide for the protection of children who have had physical injury or injuries inflicted upon them. While specific wording may vary, this idea is expressed in all the purpose clauses.

After defining the primary goal, the legislatures describe the mechanism which they intend to set in motion in response to a report of child abuse under the act. All twenty-three states having a purpose clause employ this or substantially similar language — causing the protective services of the state to be brought to bear in an effort to protect the health and welfare of these children and to prevent further abuses.

Colorado's reporting law injects the added concept of stabilizing family life by use of this phrase: "to . . . preserve family life wherever possible."<sup>6</sup> Thus, to the primary goal is added language which broadens the statute's scope and application.

Whether the objectives enumerated in the purpose clause are, in fact, achieved, will depend almost entirely upon the methods employed by the law in terms of the procedural patterns prescribed in the act. For the twenty-four states which did not include a statement

<sup>5</sup> TABLE NUMBER 1:

States with Purpose Clause	Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Rhode Island, Utah, Vermont, Washington, West Virginia.
States Without Purpose Clause	Alabama, Alaska, Arizona, California, Connecticut, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Wisconsin, Wyoming.

For reference to the purpose clauses, see the following statutes: ARK. STAT. ANN. § 42-801 (Supp. 1965); COLO. REV. STAT. § 22-13-1 (1963); DEL. CODE ANN. tit. 16, § 1001 (Supp. 1966); FLA. STAT. ANN. § 828.041(1) (1965); GA. CODE ANN. § 74-111(d) (Supp. 1965); IDAHO CODE ANN. § 16-1624 (Supp. 1965); IND. ANN. STAT. § 52-1419 (Supp. 1966); IOWA CODE ANN. § 235A.1 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-716 (Supp. 1965); KY. REV. STAT. ANN. § 199.335 (Supp. 1966); ME. REV. STAT. ANN. tit. 22, § 3851 (1966); MINN. STAT. ANN. § 626.554(1) (Supp. 1965); MONT. REV. CODES ANN. § 10-901 (Supp. 1965); NEV. REV. STAT. § 200.501 (1965); N.H. REV. STAT. ANN. § 571:25 (Supp. 1965); N.J. STAT. ANN. § 9:6-8.1 (Supp. 1966); N.M. STAT. ANN. § 13-9-12 (Supp. 1965); OKLA. STAT. ANN. tit. 21, § 845 (Supp. 1966); R.I. GEN. LAWS ANN. § 40-13.1-1 (Supp. 1965); UTAH CODE ANN. § 55-16-1 (Supp. 1965); VT. STAT. ANN. tit. 13, § 1351 (Supp. 1965); WASH. REV. CODE ANN. § 26.44.010 (Supp. 1966); W. VA. CODE ANN. § 4904(80a) (Supp. 1965).

<sup>6</sup> COLO. REV. STAT. § 22-13-1 (1963).



of purpose in their reporting law, an analysis of procedural patterns will be made, not to evaluate the adequacy with which objectives are implemented, but for the purpose of interpreting intent with regard to objectives. Lacking a definition of legislative intent, a study of the prescribed procedures will provide clues to help determine the probable purpose sought to be attained by the law and to assess priorities in objectives.

## B. *Jurisdiction*

For a situation to fall within the scope of the law's obligation to report, it must comply with the two jurisdictional elements found in the statutes: the age of a child subject to reporting and the existence of abuse or injury conforming to stated criteria.

### 1. Age

Considerable variation appears in the upper age limit used by the states in defining the age of the child coming within the protection of the reporting law. Four states limit reporting to children under age twelve; three states use the term "minor." Two states use the term "child" or "any child." Where a specific age is not used the law must be read in terms of other state law defining the terms. In the usual instance a person is considered to be a minor child until age twenty-one. Table Number Two shows the age limits used by the forty-seven states.<sup>7</sup>

<sup>7</sup> TABLE NUMBER 2:

Age	States
Under 12	Colorado, Georgia, Missouri, Oregon
Under 16	Alabama, Alaska, Arizona, Arkansas, Florida, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, New York, North Carolina, South Carolina, Tennessee, Vermont
Under 17	Louisiana, Michigan, Oklahoma
Under 18	Connecticut, Delaware, Idaho, Iowa, Kentucky, Montana, Nevada, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Texas, Washington, West Virginia
Under 19	Wyoming
Other	California-minor; Minnesota-minor; Nebraska-any child, incompetent, or disabled person; Utah-minor; Wisconsin-child.

The applicable age limits in the various states are found in the following statutes: ALA. CODE tit. 27, § 21 (Supp. 1965); ALASKA STAT. § 11.67.070 (Supp. 1966); ARIZ. REV. STAT. ANN. § 13-842.01(E) (Supp. 1966); ARK. STAT. ANN. § 42-802 (Supp. 1965); CAL. PEN. CODE § 11110 (West Supp.); COLO. REV. STAT. § 22-13-3 (1963); CONN. GEN. STAT. ANN. § 17-38a(a) (Supp. 1965); DEL. CODE ANN. tit. 16, § 1002 (Supp. 1966); FLA. STAT. ANN. § 828.041(2) (1965); GA. CODE ANN. § 74-111(a) (Supp. 1965); IDAHO CODE ANN. § 16-1625(c) (Supp. 1965); ILL. ANN. STAT. ch. 23, § 2041 (Smith-Hurd Supp. 1966); IND. ANN. STAT. § 52-1420 (Supp. 1966); IOWA CODE ANN. § 235A.2 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-714 (Supp. 1965); KY. REV. STAT. ANN. § 199.335(2) (Supp.

No indication is shown of the factors which were considered by the drafters when they determined the specific age limits contained in the law. One can only conjecture about what criteria they employed. In states where reporting is limited to children under twelve, a possible consideration could have been the notion that children over twelve are able to defend themselves or can speak for themselves. The validity of this concept is challenged by the fact that some children over twelve are mentally retarded or emotionally disturbed, handicapping conditions which would make them as vulnerable as children under twelve. Nebraska recognized this problem by bringing into the reporting law's jurisdiction "any child, or any incompetent or disabled person . . ."<sup>8</sup>

The other age limits of sixteen, eighteen, or nineteen were probably chosen to bring the reporting act into conformity with the jurisdictional age limits of the juvenile court in dependency and neglect cases. Age limits based on juvenile court jurisdiction seem most logical because the court is a valuable resource which may have to be invoked on behalf of the child by the protective social services in circumstances of acute risk and hazard.

## 2. Abuse or Injury

The other important element which brings a situation within the purview of the law is the existence of injury inflicted on a child. As with age, great variance exists in the language used to define this jurisdictional element. Nonetheless, common factors were found in the definitions of this element in every statute but one.

First is the concept that the diagnosis of inflicted injury does not have to be conclusive. The person reporting the case does not have to resolve any doubts he may have as to the true cause of the injuries. Thus if he suspects that the injuries may have been inflicted,

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1966); LA. REV. STAT. ANN. § 14:403A (West Supp. 1965); ME. REV. STAT. ANN. tit. 22, § 3852 (Supp. 1966); MD. ANN. CODE art. 27, § 11 A (Supp. 1966); MASS. GEN. LAWS ANN. ch. 119, § 39A (Supp. 1966); MICH. STAT. ANN. § 14.564(1) (Supp. 1965); MINN. STAT. ANN. § 626.554(1) (Supp. 1966); MO. ANN. STAT. § 210.105(1) (Supp. 1966); MONT. REV. CODES ANN. § 10-902 (Supp. 1965); Neb. Sess. Laws 1965, ch. 206, § 1; NEV. REV. STAT. § 200.502(1) (1965); N.H. REV. STAT. ANN. § 571:26 (Supp. 1965); N.J. STAT. ANN. § 9:6-8.3 (Supp. 1966); N.M. STAT. ANN. § 13-9-13 (Supp. 1965); N.Y. PEN. LAW § 483-d; N.C. GEN. STAT. § 14-318.2 (Supp. 1965); N.D. CENT. CODE § 50-25-01 (Supp. 1965); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1966); OKLA. STAT. ANN. tit. 21, § 846 (Supp. 1966); ORE. REV. STAT. § 146.740(2) (1965); PA. STAT. ANN. tit. 18, § 4330(b) (Supp. 1965); R.I. GEN. LAWS ANN. § 40-13.1-3(1) (Supp. 1965); S.C. CODE ANN. § 20-302.1 (Supp. 1965); S.D. Sess. Laws 1964, ch. 90, § 1; TENN. CODE ANN. § 37-1201 (Supp. 1966); TEX. REV. CIV. STAT. ANN. art. 695c-2(1) (Supp. 1966); UTAH CODE ANN. § 55-16-2 (Supp. 1965); VT. STAT. ANN. tit. 13, § 1352 (Supp. 1965); WASH. REV. CODE ANN. § 26.44.030 (Supp. 1966); W. VA. CODE ANN. § 4904(80b) (Supp. 1965); WIS. STAT. ANN. § 48.981(1) (Supp. 1966); WYO. STAT. ANN. § 14-28.1 (1965).

<sup>8</sup> Neb. Sess. Laws 1965, ch. 206, § 1.

he has an obligation to report. The various phrases used are shown in Table Number Three.<sup>9</sup>

The second general factor relates to a description or definition of the circumstances, in terms of the child's condition, which warrant the report. This factor has two components. One relates to the pres-

<sup>9</sup> TABLE NUMBER 3:

Wording to define "suspicion of inflicted injury"	States
"has reasonable cause to suspect"	Arkansas, California, Colorado, Connecticut, Florida, Georgia, Kentucky, Louisiana, Maine, New Hampshire, New Jersey, Oregon, South Dakota, Vermont
"has reason to believe"	Alaska, Iowa, Kansas, Maryland, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia, Wyoming
"having reasonable or just cause to believe"	Delaware, Illinois, Massachusetts, Missouri, South Carolina, Wisconsin
"of such nature as to reasonably indicate"	Alabama, Tennessee
"whose examination disclosed evidence. . . not explained by medical history as being accidental in nature"	Arizona, Indiana, North Dakota
"injuries which were, or may have been intentionally inflicted"	Michigan
"injuries which appear to have been caused"	Idaho, Minnesota

For precise phraseology used by the states, see the following statutes: ALA. CODE tit. 27, § 21 (Supp. 1965); ALASKA STAT. § 11.67.010 (Supp. 1966); ARIZ. REV. STAT. ANN. § 13-842.01 (Supp. 1966); ARK. STAT. ANN. § 42-802 (Supp. 1965); CAL. PEN. CODE § 11161.5 (West Supp.); COLO. REV. STAT. § 22-13-3 (1963); CONN. GEN. STAT. ANN. § 17-38a(a) (Supp. 1965); DEL. CODE ANN. tit. 16, § 1001 (Supp. 1966); FLA. STAT. ANN. § 828.041(2) (1965); GA. CODE ANN. § 74-111(a) (Supp. 1965); IDAHO CODE ANN. § 16-1641 (Supp. 1965); ILL. ANN. STAT. ch. 23, § 2042 (Smith-Hurd Supp. 1966); IND. ANN. STAT. § 52-1420 (Supp. 1966); IOWA CODE ANN. § 235A.3 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-717 (Supp. 1965); KY. REV. STAT. ANN. § 199.335(2) (Supp. 1966); LA. REV. STAT. ANN. § 14:403A (West Supp. 1965); ME. REV. STAT. ANN. tit. 22, § 3852 (Supp. 1966); MD. ANN. CODE art. 27, § 11A(c) (Supp. 1966); MASS. GEN. LAWS ANN. ch. 119, § 39A (Supp. 1966); MICH. STAT. ANN. § 14.564(1) (Supp. 1965); MINN. STAT. ANN. § 626.554(2) (Supp. 1966); MO. ANN. STAT. § 210.105(1) (Supp. 1966); MONT. REV. CODES ANN. § 10-902 (Supp. 1965); NEB. SESS. LAWS 1965, ch. 206, § 1; NEV. REV. STAT. § 200.502(1) (1965); N.H. REV. STAT. ANN. § 571:26 (Supp. 1965); N.J. STAT. ANN. § 9:6-8.3 (Supp. 1966); N.M. STAT. ANN. § 13-9-13 (Supp. 1965); N.Y. PEN. LAW § 483-d(1) (Supp.); N.C. GEN. STAT. § 14-318.2 (Supp. 1965); N.D. CENT. CODE § 50-25-01 (Supp. 1965); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1966); OKLA. STAT. ANN. tit. 21, § 846 (Supp. 1966); ORE. REV. STAT. § 146.750(1) (1965); R.I. GEN. LAWS ANN. § 40-13.1-3(1) (Supp. 1965); S.C. CODE ANN. § 20-302.1 (Supp. 1965); S.D. SESS. LAWS 1964, ch. 90, § 1; TENN. CODE ANN. § 37-1202 (Supp. 1966); TEX. REV. CIV. STAT. ANN. art. 695c-2(1) (Supp. 1966); UTAH CODE ANN. § 55-16-2 (Supp. 1965); VT. STAT. ANN. tit. 13, § 1352 (Supp. 1965); WASH. REV. CODE ANN. § 26.44.030 (Supp. 1966); W. VA. CODE ANN. § 4904(80b) (Supp. 1965); WIS. STAT. ANN. § 48.981(1) (Supp. 1966); WYO. STAT. ANN. § 14-28.1 (1965).

ence of an injury; the second, to the cause of that injury. Table Number Four shows the grouping of states by these components.<sup>10</sup>

Table Number Four reveals that there are two broad patterns into which fall more than two-thirds of the statutes. Group I uses wording which clearly juxtaposes the condition and cause — condition, "physical injury or injuries"; cause, "by other than accidental means." The states in Group II accomplish this juxtaposition but with different wording. Instead of "by accidental means," there is substituted the phrase, "as a result of abuse or neglect." The states in Group III merely combine the wording which is used by the other two groups. Texas substitutes "maltreatment" for the word "abuse."

The states in Group IV introduce distinctly new concepts. New Mexico and South Dakota introduce the notion of malnutrition.

<sup>10</sup> TABLE NUMBER 4:

Condition and Cause	States
I. Physical injury (or injuries) other than by accidental means	Colorado, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Missouri, New Hampshire, New Jersey, North Dakota, Oregon, Rhode Island, South Carolina, Vermont, Wisconsin, Wyoming
II. Physical injury as a result of abuse or neglect	Alabama, Alaska, Idaho, Illinois, Kansas, Nevada, New York, North Carolina, Ohio, Oklahoma, Tennessee, Utah, West Virginia
III. Injury other than by accidental means, result of abuse or neglect	Arkansas, Minnesota, Texas
IV. Introduce new concepts	Arizona, California, Iowa, Maryland, Massachusetts, Michigan, Montana, Nebraska, New Mexico, Pennsylvania, South Dakota, Washington

Statutory references: ALA. CODE tit. 27, § 21 (Supp. 1965); ALASKA STAT. § 11.67.010 (Supp. 1966); ARIZ. REV. STAT. ANN. § 13-842.01 (Supp. 1966); ARK. STAT. ANN. § 42-802 (Supp. 1965); CAL. PEN. CODE § 11161.5 (West Supp.); COLO. REV. STAT. § 22-13-1 (1963); CONN. GEN. STAT. ANN. § 17-38a(a) (Supp. 1965); DEL. CODE ANN. tit. 16, § 1001 (Supp. 1966); FLA. STATE ANN. § 828.041(2) (1965); GA. CODE ANN. § 74-111(a) (Supp. 1965); IDAHO CODE ANN. § 16-1641 (Supp. 1965); ILL. ANN. STAT. ch. 23, § 2042 (Smith-Hurd Supp. 1966); IND. ANN. STAT. § 52-1420 (Supp. 1966); IOWA CODE ANN. § 235A.3 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-717 (Supp. 1965); KY. REV. STAT. ANN. § 199.335(2) (Supp. 1966); LA. REV. STAT. ANN. § 14:403A (West Supp. 1965); ME. REV. STAT. ANN. tit. 22, § 3852 (Supp. 1966); MD. ANN. CODE art. 27, § 11A(c) (Supp. 1966); MASS. GEN. LAWS ANN. ch. 119, § 39A (Supp. 1966); MICH. STAT. ANN. § 14.564(1) (Supp. 1965); MINN. STAT. ANN. § 626.554(2) (Supp. 1966); MO. ANN. STAT. § 210.105(1) (Supp. 1966); MONT. REV. CODES ANN. § 10-902 (Supp. 1965); Neb. Sess. Laws 1965, ch. 206, § 1; NEV. REV. STAT. § 200.502(1) (1965); N.H. REV. STAT. ANN. § 571:26 (Supp. 1965); N.J. STAT. ANN. § 9:6-8.3 (Supp. 1966); N.M. STAT. ANN. § 13-9-13 (Supp. 1965); N.Y. PEN. LAW § 483-d(1) (Supp.); N.C. GEN. STAT. § 14-318.2 (Supp. 1965); N.D. CENT. CODE § 50-25-01 (Supp. 1965); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1966); OKLA. STAT. ANN. tit. 21, § 846 (Supp. 1966); ORE. REV. STAT. § 146.750(1) (1965); PA. STAT. ANN. tit. 18, § 4330(a) (Supp. 1965); R.I. GEN. LAWS ANN. § 40-13.1-3(1) (Supp. 1965); S.C. CODE ANN. § 20-302.1 (Supp. 1965); S.D. Sess. Laws 1964, ch. 90, § 1; TENN. CODE ANN. § 37-1202 (Supp. 1966); TEX. REV. CIV. STAT. ANN. art. 695c-2(1) (Supp. 1966); UTAH CODE ANN. § 55-16-2 (Supp. 1965); VT. STAT. ANN. tit. 13, § 1352 (Supp. 1965); WASH. REV. CODE ANN. § 26.44.030 (Supp. 1966); W. VA. CODE ANN. § 4904(80b) (Supp. 1965); WIS. STAT. ANN. § 48.981(1) (Supp. 1966); WYO. STAT. ANN. § 14-28.1 (1965).

New Mexico treats this factor as a cause of injury, whereas South Dakota considers it a condition. Washington adds a new element — sexual abuse as a cause for the injury.

Massachusetts does not relate the injury to a defined cause, but ties it to the act of a perpetrator; the wording "inflicted by a parent" would seem to imply that the act be willful because it connotes an act of commission. Four states inject the element of willful intent and, in contrast to Massachusetts, leave no doubt as to their meaning. Michigan provides, "who has physical injuries . . . *intentionally* inflicted . . ." <sup>11</sup> Montana directs, "has had serious injury or injuries inflicted upon him . . . as a result of abuse or neglect, or has been *willfully neglected* . . ." <sup>12</sup> Iowa provides, "has had physical injury . . . as a result of abuse or *willful neglect* . . ." <sup>13</sup> Oregon uses strong language to define the element of intentional or willful act. Injury is defined as "any physical injury to a child of the age of twelve or under caused by blows, beatings, physical violence or abuse where there is some cause to believe that such physical injury was intentionally or wantonly inflicted and includes wanton neglect, as revealed by a physical examination, which leads to physical harm to the child." <sup>14</sup>

Arizona, California, Maryland, Nebraska and Pennsylvania fall into a special category. These states incorporated the reporting law into their penal codes, and the circumstances or conditions for reporting are tied to the concept of crimes and punishments.

Arizona first defines the crime of permitting the life, health or morals of a minor "to be imperiled, by *neglect, abuse* or immoral associations . . ." <sup>15</sup> and prescribes the punishment for this misdemeanor. The next subsection of this law is the reporting act which seeks reporting by "any physician . . . whose examination of any minor discloses evidence of injury or *physical neglect*." <sup>16</sup>

California's 1965 amendment to its 1963 reporting law leaves the act in the penal code. The connotation of crimes and punishments is clearer in the amended law than it was in the earlier one. Deleted by the amendment is the provision for reporting to the nearest child welfare agency offering child protective services. In its place the District Attorney's Office was substituted. Since the role of the district attorney is to evaluate cases for purpose of prosecution, the direction

<sup>11</sup> MICH. STAT. ANN. § 14.564(1) (Supp. 1965). (Emphasis added.)

<sup>12</sup> MONT. REV. CODES ANN. § 10-902 (Supp. 1965). (Emphasis added.)

<sup>13</sup> IOWA CODE ANN. § 235A.3 (Supp. 1965). (Emphasis added.)

<sup>14</sup> ORE. REV. STAT. § 146.710(2) (1965).

<sup>15</sup> ARIZ. REV. STAT. ANN. § 13-842 (Supp. 1966).

<sup>16</sup> ARIZ. REV. STAT. ANN. § 13-842.01(A) (Supp. 1966).

which the law now takes is clearly in terms of handling reports of child abuse as reports of a crime.

An added factor to strengthen this assessment of the California law is the enactment of a new section which mandates copies of child abuse reports to be filed with the State Bureau of Criminal Identification. While this may be seen as a service in the nature of a central registry, with all of the benefits accruing from a central index (*i.e.*, an aid in medical diagnosis, etc.), placing the service in this Bureau adds confirmation to the assumption that child abuse is viewed as a crime.

The Maryland law, first defines the crime of child abuse as "Any parent, adoptive parent or other person who has the permanent or temporary care or custody . . . of a minor child under the age of sixteen 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 . . ." <sup>17</sup> It then describes the child whose condition must be reported as a child brought for treatment "under circumstances which indicate violation of the foregoing [penal act]."

In the Nebraska statute reportable injury and cause are identified by the phrase, "severe physical injury . . . willfully inflicted upon any child . . ." <sup>18</sup> The context of the law and the spelling out of a willful act leave no doubt as to the nature of the report as a report of a crime.

Pennsylvania's statute is a subsection of the penal law requiring medical practitioners to report situations where any person is brought for treatment "suffering from any wound or other injury inflicted . . . by means of a knife, gun, pistol or other deadly weapon, or in any other case where injuries have been inflicted . . . in violation of any penal law . . ." <sup>19</sup>

Although, it was not listed with this group because its application is other than merely the reporting of a crime, New York's law is also found in the penal code. The factor which removes reporting from the connotation of crimes and punishments inherent in the penal code is the law's direction that reports be made to resources not specifically identified with law enforcement. Reports of child abuse injuries are made "to a society for the prevention of cruelty to children or other duly authorized child protective agency or to a public welfare official . . ." <sup>20</sup> The clear intent is non-

<sup>17</sup> MD. ANN. CODE art. 27, § 11A(a) (Supp. 1966).

<sup>18</sup> Neb. Sess. Laws 1965, ch. 206, § 1.

<sup>19</sup> PA. STAT. ANN. tit. 18, § 4330(a) (Supp. 1965).

<sup>20</sup> N.Y. PEN. LAW § 483-d(1) (Supp.).

punitive and is designed to invoke social services on behalf of the reported children.

Several types of injuries may remain outside the statutory definitions of injuries. The child suffering from malnutrition has been described medically as the infant who fails to thrive. Although it is a different kind of neglect and abuse, the dangers to children subjected to it are as acute as the worst type of child battering. But only two states have included such injury under the reporting law. These provide that reportable events include "injury or injuries inflicted . . . as a result of abuse, neglect or starvation." The South Dakota statute contains the phrase, "having reasonable cause to suspect that any child . . . has been starved or has had serious physical injury . . ." <sup>21</sup>

Such provisions are worthy of commendation. The child whose health is seriously jeopardized by neglect or abuse resulting in malnutrition should also be the subject of the reporting law. Since the medical profession is the primary target group for reporting legislation, medical personnel are the logical and most qualified people to make this specific diagnosis and report these cases.

### C. *Nature of Abuse or Injury*

The question of whether the injury must be willfully inflicted before it is reportable warrants further consideration. A number of states seem to take the position that to be reportable the injury to children must be willfully or intentionally inflicted. While the legislation in Michigan, Montana and Oregon is not found in the penal law, these states clearly identify with the group which relates the reporting law to situations of willful or intentional injury.

A number of other states may be classed with the "willful intent" group because their statutory language is subject to that interpretation. Alabama law specifies "any wound or injury which . . . appears to be unusual or of such a nature (so as) to indicate . . . [it] was caused by physical abuse, child brutality, child abuse or neglect." <sup>22</sup> The coupling of child abuse with child brutality may infer either an intention to distinguish between the two or to identify them as synonymous. If the latter, then willful intent is implied.

Similarly, Utah's phrasing of "unusual or unreasonable physical abuse or neglect" may, by implication, be interpreted to mean a deliberate or intentional act. In the same vein is Iowa's legislative language which says, "abuse or willful neglect." Here, abuse is coupled with willful neglect implying that both are intentional.

In contrast, a large block of states evade the question of intentional injury by the use of the term, "as a result of abuse or neglect."

<sup>21</sup> S.D. Sess. Laws 1964, ch. 90, § 1.

<sup>22</sup> ALA. CODE tit. 27, § 21 (Supp. 1965).

Whether the terms "abuse" and "neglect" carry an implication of willful intent is debatable. Both, of course, may be intentional, but they need not be. Abuse may be defined as "physically harmful treatment."<sup>23</sup> A parent may treat a child badly or mistreat him without truly intending to cause injury. For example, the classic medical illustration of the battered child syndrome is a fracture of the arm caused by dragging or lifting a child by the arm, thereby twisting and breaking it. While this type of handling results in mistreatment and injury, there may be no intention to hurt the child. The action may be careless and thoughtless, but not intentional in the legal sense.

Nor is the term "neglect" intentional in the legal sense. Neglect is defined as "not to care or attend to [something] sufficiently or properly; or to fail to carry out [an expected or required action] through carelessness or by intention."<sup>24</sup> Child neglect is usually unintentional and a product of carelessness or functional inadequacy. Lending force to the argument that intent may not necessarily be ascribed, even by implication, to an act of abuse or neglect is additional language in some statutes. Montana categorizes the acts as abuse or neglect or willful neglect,<sup>25</sup> clearly introducing intent in the latter category. Utah describes the acts as "unusual or unreasonable physical abuse or neglect . . . ."<sup>26</sup> This language indicates a higher degree of culpability than with acts of abuse or neglect.

Thus, except for the states where willful intent is defined or implied as a necessary element of the injury to the child, the injury which must be reported need not result from a deliberate act of commission or omission. All that is required is an injury to the child resulting from some act, or from an omission, without regard to intent. This conclusion is supported by the statutory language defining reportable injuries as an "injury or injuries caused other than by accidental means." That language excludes from mandatory reporting only such injury as may properly be attributed to accident. Excluded would be accidents such as a fall from a crib or from a chair or down a flight of stairs. But if any suspicion exists concerning the truth of the history given in regard to accidental cause, the suspicion must be resolved in favor of reporting.

#### D. *Identify Perpetrator of Abuse*

Many states introduced the requirement that the reporting source identify the perpetrator of the act. The perpetrator must fall within a class of persons responsible for the care of the child. Phraseology

<sup>23</sup> WEBSTER, THIRD NEW INT'L DICTIONARY (14th ed. 1961).

<sup>24</sup> *Ibid.*

<sup>25</sup> MONT. REV. CODES ANN. § 10-902 (Supp. 1965).

<sup>26</sup> UTAH CODE ANN. § 55-16-2 (Supp. 1965).



such as "by parent or caretaker," or "by a parent, step-parent, legal guardian or any other person having custody" requires that the person be identified.

Meeting this requirement places the reporter in an accusatory role — particularly in states where intentional infliction of injury must also be spelled out. It is far less demanding upon the reporting source to report only cases where the circumstances are suspicious — where, if he is a doctor, he cannot reconcile the symptoms with the history — without the necessity to identify either intent or perpetrator. Making the simpler, nonaccusatory report does not require the doctor to struggle with his conscience or with ethical considerations. Those problems will arise and will become acute if he has to point a finger at a parent as the willful perpetrator of the injury. Table Number Five groups the states according to their requirements on this point.<sup>27</sup>

The philosophy requiring a nonaccusatory report was adopted in nine states. In those states, the report need recite only the suspicion of inflicted injury without identification of who did it.

<sup>27</sup> TABLE NUMBER 5:

Type of Report	States
Non-accusatory	Alabama, Alaska, Arizona, Illinois, Iowa, Kansas, Minnesota, Montana, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin
Accusatory	Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, Rhode Island, South Carolina, South Dakota, Vermont, Wyoming

The type of report required can be found in the following statutes: ALA. CODE tit. 27, § 21 (Supp. 1965); ALASKA STAT. § 11.67.010(a) (Supp. 1966); ARIZ. REV. STAT. ANN. § 13-842.01 (Supp. 1966); ARK. STAT. ANN. § 42-802 (Supp. 1965); CAL. PEN. CODE § 11161.5 (Supp.); COLO. REV. STAT. § 22-13-3 (1963); CONN. GEN. STAT. ANN. § 17-38a(a) (Supp. 1965); DEL. CODE ANN. tit. 16, § 1003 (Supp. 1966); FLA. STAT. ANN. § 828.041(2) (1965); GA. CODE ANN. § 74-111(a) (Supp. 1965); IDAHO CODE ANN. § 16-1641 (Supp. 1965); ILL. ANN. STAT. ch. 23 § 2044 (Smith-Hurd Supp. 1966); IND. ANN. STAT. § 52-1420 (Supp. 1966); IOWA CODE ANN. § 235A.4 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-717 (Supp. 1965); KY. REV. STAT. ANN. § 199.335 (Supp. 1966); LA. REV. STAT. ANN. § 14:403A (West Supp. 1965); ME. REV. STAT. ANN. tit. 22, § 3852 (Supp. 1966); MD. ANN. CODE art. 27, § 11A(c) (Supp. 1966); MASS. GEN. LAWS ANN. ch. 119, § 39A (Supp. 1966); MICH. STAT. ANN. § 14.564(1) (Supp. 1965); MINN. STAT. ANN. § 626.554(2) (Supp. 1966); MO. ANN. STAT. § 210.105(1) (Supp. 1966); MONT. REV. CODES ANN. § 10-902 (Supp. 1965); Neb. Sess. Laws 1965, ch. 206, § 1; NEV. REV. STAT. § 200.503(2) (e) (1965); N.H. REV. STAT. ANN. § 571:27 (Supp. 1965); N.J. STAT. ANN. § 9:6-8.3 (Supp. 1966); N.M. STAT. ANN. § 13-9-12 (Supp. 1965); N.Y. PEN. LAW § 483-d; N.C. GEN. STAT. § 14-318.2 (Supp. 1965); N.D. CENT. CODE § 50-25-01 (Supp. 1965); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1966); OKLA. STAT. ANN. tit. 21, § 846 (Supp. 1966); ORE. REV. STAT. § 146.710(2) (1965); PA. STAT. ANN. tit. 18, § 4330(b) (Supp. 1965); R.I. GEN. LAWS ANN. § 40-13.1-3(1) (Supp. 1965); S.C. CODE ANN. § 20-302.1 (Supp. 1965); S.D. Sess. Laws 1964, ch. 90, § 2; TENN. CODE ANN. § 37-1202 (Supp. 1966); TEX. REV. CIV. STAT. ANN. art. 695c-2(1) (Supp. 1966); UTAH CODE ANN. § 55-16-2 (Supp. 1965); VT. STAT. ANN. tit. 13, § 1352 (Supp. 1965); WASH. REV. CODE ANN. § 26.44.030(1) (Supp. 1966); W. VA. CODE ANN. § 4904(80b) (Supp. 1965); WIS. STAT. ANN. § 48.981(1) (Supp. 1966); WYO. STAT. ANN. § 14-28.2 (1965).

The basic question is whether a child has been injured as a result of some cause other than that given in the child's medical history. Whether the injury was inflicted intentionally or resulted from an act of commission or omission without deliberate intention to injure should not be material for purposes of reporting, if the root objective is to protect the child from further injury. Nor is it important to identify at the time of report who perpetrated the injury. The questions of intent and identity of the offender become material only in regard to the action taken by the community after a report is made. Both would be important issues in the communities where punitive action is initiated against the offender. But in communities where the action is directed toward providing protective social services and taking remedial steps to protect the child and change neglectful or abusive behavior in the home, these issues are of minor concern.

In the last analysis, however, it is more important that the person or institution making the report should not be burdened with the responsibility for evaluating whether the suspected injury was willfully or intentionally inflicted, or to point to the possible offender. The reporting source should be charged only with responsibility for reporting such injuries which probably are not the result of an accident. After ruling out the probability of accident the reporting source should be free of any other obligation for further diagnosis. All other determinations must be the responsibility of the community resource designated to receive the report and investigate the circumstance in more detail.

### III. IMPLEMENTATION OF THE CHILD ABUSE STATUTES

The states have adopted various means for achieving the stated goals of the reporting laws. The means of implementing the acts will be analysed and assessed in light of the purpose of the act.

#### A. *Source of the report*

All but three of the forty-seven statutes designate the medical profession as the principal target group of reporting legislation. Medical practitioners constitute the most logical and responsible group to come in contact with children whose injuries require treatment. They are also the most competent to make the diagnosis that an injury was probably not caused by accident.

However, the statutory language designating who falls into the category of the medical profession has many differences. The terms used to define who in the medical field are covered by the law range

from the simple statement, "any physician" (Maryland, Michigan, Texas, and Missouri), to a detailed enumeration such as is used in Illinois, "any physician, surgeon, dentist, osteopath, chiropractor, podiatrist or Christian Science practitioner." Many states include a phrase about hospital personnel such as "any interne, resident physician, hospital superintendent or manager, or any nurse, pharmacist and laboratory technician." Common to a majority of the states is inclusion of a provision which fixes responsibility for reporting in a hospital setting. Specifically, this provision provides that where the attending physician is treating the child while on hospital service he shall notify the person in charge of the hospital or his designated delegate who shall take responsibility for the report.

The three states which do not follow the general patterns are Nebraska, Tennessee, and Utah. These states impose responsibility for reporting on *any person* having knowledge (Tennessee); or "having cause to believe" (Utah); or "having reason to believe" (Nebraska) that injury has been inflicted.

In addition to requiring reporting from medical personnel, a number of states included other professional groups. Alabama, Kansas, and Alaska added social workers and school teachers to the reporting group. Ohio and West Virginia also included social workers, visiting nurses and teachers, but they qualified their responsibility by the phrase, "acting in their official capacity."

Nevada is even more inclusive; in addition to the medical group it lists social workers, teachers, school authorities, attorneys, and clergymen. New Mexico adds social workers, visiting nurses, teachers, and ordained ministers of any established church.

North Carolina limits the term "social worker" to employees of county departments of welfare and substitutes "school administrators" for "teachers." Wisconsin retains the broader category of "social workers" but also uses the phrase "school administrators" in place of the more frequently used "teachers."

South Carolina and South Dakota use categories unique to themselves. South Carolina adds to the general description of medical personnel "medical officers of the United States on duty in this State . . . ." <sup>28</sup> South Dakota says, "or any law enforcement officer. . . ." <sup>29</sup>

Broadening the law's coverage, in terms of who reports, results

<sup>28</sup> S. C. CODE ANN. § 20-302.1 (Supp. 1965).

<sup>29</sup> S.D. Sess. Laws 1964, ch. 90, § 1.

in putting into legislative mandate the moral obligation of citizens to come to the aid of neglected, abused, and exploited children by invoking in their behalf the protective social services of the community. Nebraska, Tennessee, and Utah implement the concept that casefinding is an obligation of all citizens by carrying the idea to its logical conclusion. Their laws direct that *any* person having knowledge of child abuse is required to report. Universal application of the law would assure appropriate protection of the maximum number of children. The simplicity with which they designate who must report makes the obligation an unavoidable duty of all responsible persons with knowledge or suspicion of specific instances of child abuse.

Realistically, and as a matter of practical experience, members of the helping professional disciplines are more likely to respond to that duty. This would be true not only because their professional ethics would not permit them to ignore a serious responsibility, but also because their duties would place them in frequent contact with children and afford them greater opportunity to see and observe signs of neglect and abuse. Yet the national experience of Child Protective Service agencies documents the fact that a large proportion of reports of child neglect or abuse come from non-professional sources.<sup>30</sup> Common sources of original reports are relatives, neighbors, and friends. These people have reported in the past without benefit of the immunity which modern reporting law provides for those who report in good faith. The reporting law, with its immunity protections, would probably encourage even more reporting from these non-professional sources.

### B. *Mandatory or Permissive Reporting*

Reporting legislation is a device for compelling or inducing persons with knowledge of suspected child abuse to report the facts to the agency designated by the law. Consensus favors the concept of mandatory legislation. Forty-one of the forty-seven states made their law mandatory. Six states — Alaska, Missouri, New Mexico, North Carolina, Texas and Washington — passed permissive reporting laws.

What can be said for the permissive law is that it may induce some reporting sources to report because of the immunities granted

<sup>30</sup> Child Protective Services have been in existence in some communities since 1875. See THE AMERICAN HUMANE ASSOCIATION, *THE FUNDAMENTALS OF CHILD PROTECTION* (1955).

by the law. But, regardless of the protections which the law provides for those who do report, the choice to report is theirs to make. Under a permissive law the decision will probably be based on the personal convictions and personal convenience of the potential reporter rather than on the consequences to the child if the report is not made.

Supporters of permissive legislation advance another argument to justify their position. Under mandatory reporting, they say, parents who abuse children may be deterred from seeking medical treatment for the child because they know the doctor must report the case. The argument is specious and falls of its own weight. If fear of exposure through mandatory reporting is a deterrent, it is not cured by a permissive law. An abusing parent will not know, until after he has brought a child for treatment, whether the doctor will exercise his option to report under permissive legislation. His doubts about the consequences of seeking treatment could be an equally deterring factor whether the law is mandatory or permissive.

The better answer probably lies in a combination of mandatory reporting and a broadened base of reporting sources to include other than the medical profession. With the parent subject to possible exposure by other than medical sources, he will probably want to minimize the effects of his abuse by taking the child for treatment as soon as possible. Only if the reporting law is made mandatory can we be sure that no child, identified as needing protection, is left unaided. To make the law permissive emasculates its intent and purpose. It results only in suiting the convenience of the reporting source and, too often, may fail to bring protection to children in grave hazard.

### C. *Time for Report*

An overwhelming majority of the states emphasize the importance of urgent action in reporting suspected inflicted injury. Usual language is the phrase, "an immediate oral report shall be made by telephone or otherwise." Another common phrase is "forthwith by telephone or otherwise." Most of the states calling for an immediate oral report have the added requirement that this be "followed by a report in writing." Specific time limits are not usually indicated with one exception — Delaware. In that state the person reporting is to report not later than three days after the discovery.<sup>31</sup>

<sup>31</sup> DEL. CODE ANN. tit. 16, § 1003 (Supp. 1966).

Idaho, Maryland, Nebraska and North Carolina do not define how the report is to be made; Massachusetts does not specify as to oral or written report but directs that it be made in accordance with the rules of the Department of Public Welfare. Florida and North Dakota direct that the report be in writing. However, North Dakota adds the qualification that if the circumstances are such as to warrant immediate action it shall be made orally by telephone or otherwise. California says the report shall be made "by telephone and in writing." Kansas, Montana, New Mexico, and West Virginia require the report to be in writing but, "if it is not in writing, in the first instance, it shall be reduced to writing as soon as may be after it is made orally by telephone or otherwise."

#### D. *Contents of the Report*

Most states adopted, in whole or part, the suggested language of the several model acts regarding the necessary contents of the report. These acts were proposed by national agencies promoting reporting laws. Essentially, the information sought in the report is:

1. The name and address of the child;
2. The name and address of the child's parents;
3. The nature or extent of the injuries;
4. Evidence of previous injuries and the nature and extent of previous injuries; and
5. Any other information which in the opinion of the physician may be helpful in establishing the cause of the child's injuries and the identity of the perpetrator.

Six states — Idaho, Maryland, Massachusetts, Nebraska, New York, and Wisconsin — do not define the area of content in the reporting law.

#### E. *Recipient of the Report*

A critical determination for the lawmakers is the decision about which resource to designate for receiving reports of child abuse. On this important decision rests the effectiveness of the reporting law in achieving the goals cited in its purpose clause. The right choice will bring into play the appropriate resources. A poor or bad choice may produce results not contemplated by the law. For example, if the declared legislative intent is to make available the protective social services to prevent further abuse, safeguard and enhance the welfare

of such children, and to preserve family life wherever possible, the logical procedure, consistent with the stated goals, would be to immediately invoke the services of the social agency charged with that special function. Reporting them should be directed to specific child protective agencies or to the department of public welfare, where child protective services are a functional responsibility of its child welfare unit. As a second line of protective social services, an appropriate designation to receive reports could be the family or juvenile court. Either referral would involve a psycho-social investigation of each case, with evaluation of the circumstances surrounding each act reported. The needs of the child victim, the possibility of continuing hazard to the child, *and the risk to other children in the family*, would be assessed. Also evaluated would be the potential for a social work treatment of the problem to achieve all the goals defined in the statement of purpose. If a study of the case shows need to assure protection of the child by removal from parental custody, the authority of the juvenile court could be readily brought into play by the protective service agency or the court's own probation staff.

On the other hand, given the same declaration of purpose as above, a reaching of the objectives hampered, if not defeated, by selection of some other resource to receive reports. If, for example, the legislature were to designate a law enforcement agency to receive the report, that choice would not be consonant with the declared intent. A law enforcement agency might be the police or the sheriff or the prosecuting attorney of the community. Their orientation, their functional responsibilities, and their modus operandi are not in tune with the legislative intent of "invoking the protective social services." Such a choice would be more compatible with a legislative intent to view the occurrence in terms of crimes and punishments. Social services are not a component of the law enforcement agency. Law enforcement personnel are trained to investigate and oriented to determine whether a crime has been committed. While some personnel in large police forces are given special training as juvenile officers, these constitute but a minute proportion of the country's police force. Thus, reporting to law enforcement agencies gives little assurance that such reporting will, in fact, invoke protective social services.

1. Pattern in Statutes with Purpose Clause.

Table Number Six represents the reporting pattern in the twenty-

four states having a purpose clause in their reporting statute.<sup>32</sup> In

<sup>32</sup> TABLE NUMBER 6:

Purpose	State	Report to:
"to invoke protective social services"	Georgia	Protective service agency, if none, to police
	Idaho	Department of Public Assistance
	Maine	State Department of Welfare and County Attorney
	Rhode Island	Dept. of Social Welfare
	Tennessee	Juvenile Court
	New Mexico	District Attorney
	Colorado	Law Enforcement Agency
	Utah	Law Enforcement Agency or State Dept. of Welfare
"to cause the protective services of the State —to protect the health and welfare —prevent further abuse"	Florida	Juvenile Court
	New Hampshire	Bureau of Child Welfare
	Vermont	Department of Social Welfare
	Indiana	County Dept. of Welfare or law enforcement
	Kentucky	Oral to police, written to State Child Welfare
	Arkansas	Police Authority
	Washington	Law Enforcement Agency
	"to provide for protection of children —who may be further threatened by the conduct of those responsible for their care"	Iowa
Delaware		Family Court
Kansas		Juvenile Court
Oklahoma		Public child protective agency, public welfare official, sheriff, County Attorney, police
Minnesota		Police authority and County Welfare Department
Montana		County Attorney
New Jersey		County Prosecutor
West Virginia		Prosecuting Attorney
Nevada	Police or Sheriff	

Purpose clauses are found in the statutes cited note 5 *supra*. Agencies to which the reports are made are designated in the following statutes: ARK. STAT. ANN. § 42-801 (Supp. 1965); COLO. REV. STAT. § 22-13-3(3) (a) (1963); DEL. CODE ANN. tit. 16, § 1003 (Supp. 1966); FLA. STAT. ANN. § 828.041(2) (Supp. 1965); GA. CODE ANN. § 74-111(b) (Supp. 1965); IDAHO CODE ANN. § 16-1641 (Supp. 1965); IND. ANN. STAT. § 52-1419 (Supp. 1966); IOWA CODE ANN. § 235A.4 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-717 (Supp. 1965); KY. REV. STAT. ANN. § 199.335 (Supp. 1966); ME. REV. STAT. ANN. tit. 22, § 3852 (Supp. 1966); MINN. STAT. ANN. § 626.554(2) (Supp. 1966); MONT. REV. CODES ANN. § 10-902 (Supp. 1965); NEV. REV. STAT. § 200.502(1) (1965); N.H. REV. STAT. ANN. § 571:27 (Supp. 1965); N.J. STAT. ANN. § 9:6-8.3 (Supp. 1966); N.M. STAT. ANN. § 13-9-13 (Supp. 1965); OKLA. STAT. ANN. tit. 21, § 846 (Supp. 1966); R.I. GEN. LAWS ANN. § 40-13.1-3(1) (Supp. 1965); UTAH CODE ANN. § 55-16-3 (Supp. 1965); WASH. REV. CODE ANN. § 26.44.030 (Supp. 1966); W. VA. CODE ANN. § 4904(80b) (Supp. 1965).



eight states the purpose of the reporting statute was defined as "invoking protective social services." Five states, Georgia, Idaho, Maine, Rhode Island, and Tennessee, implement procedures toward that goal by designating an appropriate agency to carry out the intent. Named by these states were the state or county department of welfare or the family or juvenile court. One of the eight states, New Mexico, negates the declared objective by designating that reports be made to the District Attorney.

Colorado and Utah compromise the question. Colorado requires reports to the proper law enforcement agency (police or sheriff), but it uses law enforcement simply as a means for transmitting the report immediately to the county department of welfare which is mandated to investigate and offer social services. Utah's compromise is in terms of giving a choice to the reporter who may report "to the city police or county sheriff or office of the Utah State Welfare Department."

In Arkansas, Florida, Indiana, Kentucky, New Hampshire, Vermont, and Washington, the purpose is given as "causing thereby the protective services of the state to be brought to bear to protect the health and welfare of such children and prevent further abuse." Of these, the implementation of Florida, New Hampshire, and Vermont remains consistent with the stated intent. Florida requires the juvenile court to be notified; New Hampshire requires reports to be made to the Bureau of Child Welfare; and Vermont directs the reports to the Department of Public Welfare. Arkansas and Washington require that the report go to an agency whose function is not consonant with the stated objective — Arkansas directs report to "an appropriate police authority" and Washington designates the recipient as a law enforcement agency.

Indiana straddles the issue by requiring that reports go to the county department of welfare or "to the law enforcement agency having jurisdiction."

Kentucky requires an immediate oral report to an appropriate police authority, to be followed as soon thereafter as possible, by a written report (to police) with a copy to the Department of Child Welfare for investigation. Construing this language in the light of the stated purpose it would seem that major service is contemplated from the Department of Welfare, with the police acting on the oral report in cases of emergency.

The remaining nine of the twenty-four states with a purpose clause express an intent to provide for the protection of children who have had injury and who may be further threatened by the conduct of those responsible for their care and protection.

Protection in the protective social services context, is provided for by Delaware and Kansas which designate the family court and juvenile court respectively, as the agencies to receive reports of abuse. Iowa's law directs reports to the county department of social welfare, thus putting in motion the protective social services. However, where the reporting source believes immediate protection is needed it shall also report to an appropriate law enforcement agency for emergency action. Iowa also provides that if the reporting source is other than a health resource (*e.g.*, doctor or hospital) the report may be directed to any county department of social welfare, a county attorney, or a law enforcement agency; but the receiving agency, if other than a county department of social welfare, must promptly refer the report to the county department of social welfare.

Minnesota directs reports to both the appropriate police authority and the county department of welfare; but the police are directed to immediately notify the county department of welfare upon receipt of a report. This would seem to emphasize exploration and service by the child welfare program, a supposition fully supported by the legislative mandate to the county department of welfare.

Oklahoma seems to incorporate a priority system. The law states that reports shall be made to a public child protective agency, to a public welfare official having responsibility for the enforcement of laws for the protection of children, to a sheriff, the county attorney, or to the police. If the order in which the various agencies are named is indicative of a priority preference, then the protective intent will be carried out in accordance with the priority designation.

Nevada directs reports to any police department or sheriff's office.

Montana, New Jersey and West Virginia round out the total of states with declared intent. These states direct reports to the county prosecutor, thereby involving an assessment of the facts with a view toward possible prosecution of the offenders.

## 2. Pattern in Statutes without a Purpose Clause

Table Number Seven shows the reporting pattern in the twenty-

three states without a purpose clause.<sup>33</sup> Analysis of the procedural pattern employed to implement the law furnishes clues to the intended objective of the law.

<sup>33</sup> TABLE NUMBER 7:

Implied Purpose	State	Report to:
To invoke protective social services	Alaska	Dept. of Welfare, if none, police
	Illinois	State Department of Welfare
	Massachusetts	State Department of Welfare
	North Dakota	Director, Division of Child Welfare —Emergency to Juvenile Commissioner or State Attorney
	New York	SPCC or Dept. of Public Welfare
	North Carolina	County Director of Welfare
	Wyoming	County Dept. of Welfare
	Pennsylvania	Judge, Juvenile Court or Child Protective Service
	South Carolina	Juvenile Court (proper authority with jurisdiction over minors)
	South Dakota	Judge of the County Court
May invoke protective social services, if reporter chooses, or law enforcement	Alabama	Police, sheriff or nearest child protective agency
	Connecticut	Commissioner of Health, Commissioner of Welfare, local police, state police
	Michigan	Prosecuting Attorney, County Dept. of Welfare, state officer of State Dept. of Welfare
	Texas	Juvenile Court, County Attorney, law enforcement, county probation officer
Invoke law enforcement machinery	Arizona	Municipal or county peace officer
	California	Head of police, sheriff or District Attorney
	Louisiana	Municipal police or nearest law enforcement agency
	Maryland	Appropriate law enforcement agency
	Missouri	Appropriate law enforcement agency
	Nebraska	County Attorney
	Oregon	Medical Investigator
Tennessee	Judge having juvenile jurisdiction in county where child resides	

The following statutes indicate to whom the reports should be directed: ALA. CODE tit. 27, § 21 (Supp. 1965); ALASKA STAT. § 11.67.020 (Supp. 1966); ARIZ. REV. STAT. ANN. § 13-842.01A (Supp. 1966); CAL. PEN. CODE § 11161.5 (West Supp.); CONN. GEN. STAT. ANN. § 17-38a(b) (Supp. 1965); ILL. ANN. STAT. ch. 23, §§ 2043, 2047 (Smith-Hurd Supp. 1966); LA. REV. STAT. ANN. § 14:403B (West Supp. 1965); MD. ANN. CODE art. 27, § 11A(d) (Supp. 1965); MASS. GEN. LAWS ANN. ch. 119, § 39A (Supp. 1966); MICH. STAT. ANN. § 14.564(2) (Supp. 1965); MO. ANN. STAT. § 210.105(2) (Supp. 1966); Neb. Sess. Laws 1965, ch. 206, § 1; N.Y. PEN. LAW § 483-d(1); N.C. GEN. STAT. § 14-318.2 (Supp. 1965); N.D. CENT. CODE § 50-25-01 (Supp. 1965); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1966); ORE. REV. STAT. § 146.750 (1965); PA. STAT. ANN. tit. 18, § 4330(b) (Supp. 1965); S.C. CODE ANN. § 20-302.1 (Supp. 1965); S.D. Sess. Laws 1964, ch. 90, § 2. TENN. CODE ANN. § 37-1202 (Supp. 1966). TEX. REV. CIV. STAT. ANN. art. 695c-2(1) (Supp. 1966); WIS. STAT. ANN. § 48.981(1) (Supp. 1966); WYO. STAT. ANN. § 14-28.2 (1965).

Twelve of these twenty-three states obviously designed the law to invoke the protective social services of the community on behalf of abused children. The key to this conclusion is their choice of social service agencies to receive reports of abuse.

Alaska, Massachusetts and North Dakota designated the state department of welfare as recipient of the report. All but Massachusetts provided an alternative action to meet emergencies. Alaska provides that if no office of the department is available the report may go to the nearest local law enforcement agency,<sup>34</sup> but the department must be advised of this additional report. North Dakota directs that, if immediate action is warranted, the report may go to the juvenile court or to a juvenile commissioner.

North Carolina and Wyoming law request that the report be made to the county department of welfare. New York directs reporting to the Society for the Prevention of Cruelty to Children, or other duly authorized child protective agency, or to the (county) department of welfare. New York's position is interesting in that although the law is placed in the penal code, the purpose of the law seems nonpunitive because the report goes to the protective social services in the community. Pennsylvania is in a similar situation, with reporting requirements located in the penal code, but the juvenile court receives reports of abuse.

Ohio and Wisconsin fall into a special category. Ohio law directs reports to municipal or county peace officers. However, upon receipt of the report that officer must refer it to an appropriate county department of welfare which is then mandated to investigate and provide social services to protect the child and preserve the family. This is almost identical to the Colorado law.

In Wisconsin, while the county child welfare agency or the sheriff may receive the reports, the county child welfare agency will always be involved because the recipient of the report must notify the other within forty-eight hours. The sheriff may also refer to the district attorney if he feels legal action is necessary. In any case, the child welfare agency is directed to act in accordance with its powers and duties, thereby seemingly assuring a protective social service to child and family.

South Dakota directs that the report be made to the juvenile court.<sup>35</sup> South Carolina is not very specific. The law orders reports be made to the proper county authority having jurisdiction over minors or to the sheriff. Subject to local interpretation, it would seem that the juvenile court would fit best the description of "proper county authority with the jurisdiction over minors."

<sup>34</sup> ALASKA STAT. § 11.67.020(a) (Supp. 1966).

<sup>35</sup> S.D. Sess. Laws 1964, ch. 90, § 2.

Four of the remaining eleven states permit reporting to protective social services or to law enforcement agencies. The choice seems to be left to the person making the report, unless the order in which the agencies are named may be deemed to be indicative of priority. Alabama permits reporting to the police or sheriff or to the nearest child welfare agency with child protective services. Connecticut asks that the report go to the State Commissioner of Health, the State Welfare Commissioner, to the local police department or to the resident state policeman. Michigan directs the report in quadruplicate with one copy to the prosecuting attorney, one copy to the county department of welfare, one copy to the Lansing office of the State Department of Welfare and one copy to the Probate Court. Texas lists the receiving agencies as the juvenile court judge, the district attorney, the county attorney, local law enforcement agency, or the county probation officer.

The remaining states in this group direct reports to law enforcement authorities, although different resources are named. Arizona names municipal or county peace officers. California asks for reports to the head of the police department, sheriff, or district attorney; Louisiana to the municipal police department or the nearest law enforcement agency; Maryland to the appropriate law enforcement agency; Missouri to an appropriate law enforcement agency; and Nebraska to the county attorney. Oregon stands alone in directing reports to the medical investigator. These seven states patently regard reports of child abuse as matters requiring police investigation, implying a policy of arrest and prosecution where the facts are substantiated by the investigation.

Where the reporting source has an option to choose which agency it reports to, the probability exists that the ultimate community action taken on the report will vary with the agency chosen. This seeming flexibility of action may be the result of a deliberate decision by the legislature to give an option to the reporting source. On the other hand, it may be the result of indecision on the part of legislature — a lack of conviction about which is the better action — or, more likely, it may represent a compromise of conflicting views. A third possibility is that the legislature wished to provide alternative courses of action in the event that the first choices were not available in a given community.

#### *F. Responsibility of Agency Receiving Report*

As discussed earlier, the effectiveness of reporting laws in accomplishing the intended objective rests on the agency chosen to

receive the report because these agencies operate within defined functional areas. Thus, what the agency does about the report, how quickly it acts and how responsibly it provides service, will determine the adequacy and degree of protection which the community makes available to abused children.

It would seem helpful, however, if in addition to making the proper choice, the legislature were to provide direction or guideline to indicate what is expected and to impose responsibility upon the agency charged with receiving the report. To a degree, the purpose clause with its expression of intent and goals provides a blueprint for action. However, twenty-four of the twenty-seven statutes carry more explicit directions which mandate particular action or permit options for discretionary action by the agency receiving the report.

An interesting study in this connection relates to a breakdown of the forty-seven states in accordance with the presence or absence of a purpose clause and/or a mandate to the receiving agency. While the number of states which have purpose clauses (23) and mandates (25) to the receiving agency is approximately the same, the two groups are not identical. Table Number Eight identifies the states in relation to purpose clause and legislative mandate.<sup>36</sup>

<sup>36</sup> TABLE NUMBER 8:

Category	States
I. Purpose clause and legislative mandate	Colorado, Delaware, Indiana, Iowa, Kentucky, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Rhode Island, Tennessee, Washington, West Virginia
II. Purpose clause but no legislative mandate	Arkansas, Florida, Georgia, Idaho, Kansas, Maine, Oklahoma, Utah, Vermont
III. Legislative mandate but no purpose clause	Alaska, Illinois, Maryland, Massachusetts, Nebraska, North Carolina, North Dakota, Ohio, Oregon, Wisconsin, Wyoming
IV. No purpose clause, no legislative mandate	Alabama, Arizona, California, Connecticut, Louisiana, Missouri, New York, Pennsylvania, South Carolina, South Dakota, Texas

Legislative mandates are listed in the following statutes (statutes with purpose clause in note 5, *supra*): ALASKA STAT. § 11.67.040 (Supp. 1966); COLO. REV. STAT. § 22-13-4 (1963); DEL. CODE ANN. tit. 16, § 1003 (Supp. 1966); ILL. ANN. STAT. ch. 23, § 2047 (Smith-Hurd Supp. 1966); IND. ANN. STAT. § 52-1422 (Supp. 1966); IOWA CODE ANN. § 235A.5 (Supp. 1965); KY. REV. STAT. ANN. § 199.335 (Supp. 1966); MD. ANN. CODE art. 27, § 11A (Supp. 1966); MASS. GEN. LAWS ANN. ch. 119, § 39B (Supp. 1966); MINN. STAT. ANN. § 626.554(4) (Supp. 1966); MONT. REV. CODES ANN. § 10-903 (Supp. 1965); Neb. Sess. Laws 1965, ch. 206, § 3; NEV. REV. STAT. § 200.504 (1965); N.H. REV. STAT. ANN. § 571:25 (Supp. 1965); N.J. STAT. ANN. § 9:6-8.5 (Supp. 1966); N.M. STAT. ANN. § 13-9-14 (Supp. 1965); N.C. GEN. STAT. § 14-318.3 (Supp. 1965); N.D. CENT. CODE § 50-25-03 (Supp. 1965); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1966); ORE. REV. STAT. § 146.740 (1965); R.I. GEN. LAWS ANN. § 40-13.1-4 (Supp. 1965); TENN. CODE ANN. § 37-1204 (Supp. 1966); WASH. REV. CODE ANN. § 26.44.050 (Supp. 1966); W. VA. CODE ANN. § 4904(80c) (Supp. 1965); WIS. STAT. ANN. § 48.981(1) (Supp. 1966); WYO. STAT. ANN. §§ 14-21, 14-28.3 (1965).

The importance and value of legislative language defining the responsibility of the agency receiving reports of child abuse is vividly emphasized by the examples cited below. Minnesota's law contains a concise statement of responsibility: "The county welfare agency shall investigate complaints of neglect and abuse of children and offer protective social services in an effort to protect the health and welfare of these children and to prevent further abuses."<sup>37</sup> Other statements range from Kentucky's two-word mandate, "[to the Department of Child Welfare] . . . for investigation,"<sup>38</sup> to the minutely detailed instruction found in Iowa.<sup>39</sup>

Between these extremes is the language in the Colorado law adopted in whole or in part by Illinois, Nevada, Ohio and Rhode Island. In those states the law defines the duties and imposes limitations on the receiving agencies. For the police department (or sheriff), Colorado law states that upon receipt of a report "it shall be the duty of the law enforcement agency to refer such report to the department [county department of welfare]."<sup>40</sup> The limitation is equally clear. "No child upon whom a report is made shall be removed from his parents . . . by a law enforcement agency without consultation with the department unless, in the judgement of the reporting physician and the law enforcement agency, immediate removal is considered essential to protect the child from further injury or abuse."<sup>41</sup>

This limitation recognizes the importance of a decision to remove a child from his home. Such a step is not only a major infringement of parental rights, but also, it may have long lasting and damaging effects on the child. Removal must be predicated on a clearcut evaluation of imperative need and the child's best interests. Consultation with the department provides a basis for this evaluation with the opinion of the department or the physician supporting the action of the police.

The Colorado law then defines the duties of the department. The department shall: (1) investigate to determine the cause of the injury and who was responsible; (2) provide social services to protect the child and preserve the family; (3) advise the law enforcement agency of its investigation; (4) if further action is necessary, (a) refer the case to the district attorney for prosecution or (b) file a petition of neglect in the juvenile court.<sup>42</sup>

<sup>37</sup> MINN. STAT. ANN. § 626.554(4) (Supp. 1966).

<sup>38</sup> KY. REV. STAT. ANN. § 199.335 (Supp. 1966).

<sup>39</sup> IOWA CODE ANN. § 235A.5 (Supp. 1965).

<sup>40</sup> COLO. REV. STAT. § 22-13-4(1) (1963).

<sup>41</sup> COLO. REV. STAT. § 22-13-4(2) (1963).

<sup>42</sup> COLO. REV. STAT. § 22-13-5 (1963).

North Dakota introduces an important concept — the need to protect siblings of the abused child and the need for social services to the parents: "The division of child welfare and the county welfare board shall provide protective services for the injured or neglected child and his siblings as may be necessary for their well-being, and shall offer such other social services, as the circumstances warrant, to the parents. . . ." <sup>43</sup>

Montana, Nebraska, New Mexico, New Jersey, and West Virginia, which require that reporting be directed to the county prosecutor, define the duties of that official upon receipt of the report. The language is substantially of two types — one, as in West Virginia, relates to prosecution; the other, as in New Mexico, permits referral for social services. The New Mexico law reads: "The district attorney . . . shall investigate the report immediately to determine who caused the reported injury or abuse. If it is found that a parent . . . inflicted the injury or abused the child, the district attorney immediately shall take such action as may be necessary to prevent further injury. . . . The district attorney shall also, whenever he deems it appropriate, notify the local office of the department of public welfare . . . for investigation and report or other appropriate action. . . ." <sup>44</sup> West Virginia provides: "The prosecuting attorney . . . shall forthwith investigate, or cause to be investigated . . . to determine the cause of such injury and determine the person or persons responsible, if any. If it is found that any person wilfully inflicted such injury or abuse on such child, the prosecuting attorney shall immediately take . . . such action as may be necessary to prevent any further injury or abuse . . . and to punish the person . . . responsible. . . ." <sup>45</sup>

### G. *Immunity under the Law*

The granting of immunity against criminal or civil action to persons reporting under the act is an important element of the law. Freedom from fear of retaliation by angry parents is considered necessary to promote reporting. The medical profession, a special target group of the law, felt itself particularly vulnerable to lawsuits without such protection. All forty-seven statutes provide some form of immunity. While the language varies, the import is the same — to provide a defense against civil or criminal actions based

<sup>43</sup> N.D. CENT. CODE § 50-25-03 (Supp. 1965).

<sup>44</sup> N.M. STAT. ANN. § 13-9-14 (Supp. 1965).

<sup>45</sup> W. VA. CODE ANN. § 4904(80c) (Supp. 1965).



on the making of the report. Table Number Nine shows the classification of states by the type of immunity provided.<sup>46</sup>

Typical language is: Any person participating in good faith in the making of a report pursuant to this act or participating in a judicial proceeding resulting therefrom shall in so doing be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. The inclusion of the concept of "good faith," which was done in thirty-five states, is important because the law would be inequitable if it were to provide absolute protection in the face of a malicious intent to injure the party against whom a report is made. Some states establish a "good faith" standard although in other wording. For example, Kansas provides, "without malice"; Maine applies the phrase "unless done in bad faith or with malicious purposes"; North Carolina provides, "unless such person acted in bad faith or with malicious purpose."

<sup>46</sup> TABLE NUMBER 9:

Immunity Granted if in Good Faith	Alaska, Connecticut, Delaware, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Vermont, Wisconsin, Wyoming
Immunity Granted Presumption of Good Faith	Arkansas, Florida, Illinois, Montana, New Mexico, South Carolina, Tennessee, West Virginia
Immunity Granted No Mention of Good Faith	Alabama, Arizona, California, Colorado, Idaho, Maryland, Nebraska, New Jersey, Ohio, Pennsylvania, Texas, Washington

Immunity provisions are contained in the following statutes: ALA. CODE tit. 27, § 23 (Supp. 1965); ALASKA STAT. § 11.67.050 (Supp. 1966); ARIZ. REV. STAT. ANN. § 13-842.01(c) (Supp. 1966); ARK. STAT. ANN. § 42-804 (Supp. 1965); CAL. PEN. CODE § 11161.5 (West Supp.); COLO. REV. STAT. § 22-13-6 (1963); CONN. GEN. STAT. ANN. § 17-38a(c) (Supp. 1965); DEL. CODE ANN. tit. 16, § 1003 (Supp. 1966); FLA. STAT. ANN. § 828.041(4) (1965); GA. CODE ANN. § 74-111(c) (Supp. 1965); IDAHO CODE ANN. § 16-1641 (Supp. 1965); ILL. ANN. STAT. ch. 23, § 2045 (Smith-Hurd Supp. 1966); IND. ANN. STAT. § 52-1423 (Supp. 1966); IOWA CODE ANN. § 235A.7 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-718 (Supp. 1965); KY. REV. STAT. ANN. § 199.335 (Supp. 1966); LA. REV. STAT. ANN. § 14:403C (West Supp. 1965); ME. REV. STAT. ANN. tit. 22, § 3854 (1966); MD. ANN. CODE art. 26, § 11A(g) (Supp. 1966); MASS. GEN. LAWS ANN. ch. 119, § 39A (Supp. 1966); MICH. STAT. ANN. § 14.564(3) (Supp. 1966); MINN. STAT. ANN. § 626.554(5) (Supp. 1966); MO. ANN. STAT. § 210.105(3) (Supp. 1966); MONT. REV. CODES ANN. § 10-904 (Supp. 1965); Neb. Sess. Laws 1965, ch. 206, § 2; NEV. REV. STAT. § 200.505 (1965); N.H. REV. STAT. ANN. § 571:28 (Supp. 1965); N.J. STAT. ANN. § 9:6-8.6 (Supp. 1966); N.M. STAT. ANN. § 13-9-15 (Supp. 1965); N.Y. PEN. LAW § 483-d(2); N.C. GEN. STAT. § 14-318.2 (Supp. 1965); N.D. CENT. CODE § 50-25-04 (Supp. 1965); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1966); OKLA. STAT. ANN. tit. 21, § 847 (Supp. 1966); ORE. REV. STAT. § 146.760 (1965); PA. STAT. ANN. tit. 18, § 4330(b) (Supp. 1965); R.I. GEN. LAWS ANN. § 40-13.1-6 (Supp. 1965); S.C. CODE ANN. § 20-302.3 (Supp. 1965); S.D. Sess. Laws 1964, ch. 90, § 3; TENN. CODE ANN. § 37-1206 (Supp. 1966); TEX. REV. CIV. STAT. ANN. art. 695c-2(3) (Supp. 1966); UTAH CODE ANN. § 55-16-4 (Supp. 1965); VT. STAT. ANN. tit. 13, § 1354 (Supp. 1965); WASH. REV. CODE ANN. § 26.44.060 (Supp. 1966); W. VA. CODE ANN. § 4904 (80d) (Supp. 1965); WIS. STAT. ANN. § 48.981(2) (Supp. 1966); WYO. STAT. ANN. § 14-28.4 (1965).

Eight of the thirty-five states establish a presumption of good faith in regard to the report: "Every report made pursuant to this act shall be presumed to have been made in good faith." Out of these eight, only Illinois identifies the presumption of good faith as a rebuttable one by the use of the term — "prima-facie." Whether the other seven are also subject to rebuttal is not clear, and as yet untested.

It would seem that the twelve states which do not qualify immunity by the test of good faith provide uncontestable immunity. This question has also not yet been tested by litigation.

Other differences in the nature of immunity exist. Four states — Idaho, Maryland, Massachusetts, and Nebraska — seem to provide immunity only in civil cases. Idaho says, "immunity from civil liability . . ." <sup>47</sup> and Maryland provides, "immune from any civil liability. . . ." <sup>48</sup> The Massachusetts language is ambiguous; "any information contained in such report . . . shall not constitute slander or libel." <sup>49</sup> Nebraska's statute is equally unclear; "the information contained in any report . . . shall be absolutely privileged and shall not constitute slander, libel, breach of confidence, or invasion of any right of privacy." <sup>50</sup> Whether the latter two are limited to civil actions is uncertain.

Wisconsin stands alone as being the only state to provide immunity solely from criminal liability.

#### H. *Penalty under the Law*

The penalty clause is a provision which makes it a misdemeanor for a person to willfully violate provisions of the act. In this instance, the duty is the obligation to report, if in possession of information which tends to indicate that the child was injured by other than accidental means, or injured in the specific manner described by the state reporting law. The clause is a device for enforcing the law.

Opinions differ regarding the value of a penalty clause in a law of this nature. The chief argument against the penalty clause is the fact that failure to report must be willful. It is difficult, if not impossible, to establish willful intent in a failure to report because of the fact that suspicions about the cause of a child's injury are uniquely subjective and not provable by objective standards. These injuries are vastly different from a clearly identifiable gunshot wound or stab wound, the frequent subjects of other mandatory

<sup>47</sup> IDAHO CODE ANN. § 16-1641 (Supp. 1965).

<sup>48</sup> MD. ANN. CODE art. 27, § 11A(g) (Supp. 1966).

<sup>49</sup> MASS. GEN. LAWS ANN. ch. 119, § 39A (Supp. 1966).

<sup>50</sup> Neb. Sess. Laws 1965, ch. 206, § 2.

reporting legislation. Since suspicion that given injuries were inflicted rather than accidental is a weighted, subjective diagnosis, prosecution for failure to report would be confronted with insurmountable problems of proof, which may render the penalty clause ineffective.

Lack of agreement on the merits of the clause was reflected in the fact that the forty-seven states were evenly divided on the point. Twenty-four incorporated a penalty clause into the law, and twenty-three omitted that provision. As might be expected, six of the twenty-four without penalties are the states which made their reporting laws permissive rather than mandatory. Table Number Ten lists the states with, or without, a penalty clause.<sup>51</sup>

Differences exist in the language used and the penalties prescribed by the twenty-four laws. Substantially, the wording reads, "Anyone knowingly and willfully violating the provisions of this act shall be guilty of a misdemeanor." The severity of penalties ranges from Vermont's low of a fine of not more than \$25.00, to Pennsylvania's high of one year in jail, a \$500.00 fine, or both.

### I. *Waiver of Privilege*

Because the medical profession expressed concern over the propriety of divulging confidential matter disclosed to them in the doctor-patient relationship, the reporting act provides a waiver of that privilege. By such waiver, a doctor is freed from legal or ethical restrictions against revealing confidential information.

A similar privilege exists between husband and wife. Neither may divulge information damaging to the other in any criminal

<sup>51</sup> TABLE NUMBER 10:

With Penalty Clause	Alabama, Arizona, Arkansas, Delaware, Florida, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Wisconsin, Wyoming
Without Penalty Clause	Alaska, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Maryland, Massachusetts, Missouri, Montana, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, Texas, Washington, West Virginia

Statutes from those states with a penalty clause are found in the following statutes: ALA. CODE tit. 27, § 25 (Supp. 1965); ARIZ. REV. STAT. ANN. § 13-842.01(D) (Supp. 1966); ARK. STAT. ANN. § 42-806 (Supp. 1965); DEL. CODE ANN. tit. 16, § 1003 (Supp. 1966); FLA. STAT. ANN. § 828.041(6) (1965); KAN. GEN. STAT. ANN. § 38-720 (Supp. 1965); KY. REV. STAT. ANN. § 199.335(6) (Supp. 1966); LA. REV. STAT. ANN. § 14.403E (West Supp. 1965); ME. REV. STAT. ANN. tit. 22, § 3855 (Supp. 1966); MICH. STAT. ANN. § 14.564(5) (Supp. 1965); MINN. STAT. ANN. § 626.554(7) (Supp. 1966); Neb. Sess. Laws 1965, ch. 206, § 4; NEV. REV. STAT. § 200.507 (1965); N.H. REV. STAT. ANN. § 571:30 (Supp. 1965); N.J. STAT. ANN. § 9:6-8.7 (Supp. 1966); ORE. REV. STAT. § 146.990 (1965); PA. STAT. ANN. tit. 18, § 4330(b) (Supp. 1965); S.C. CODE ANN. § 20-302.4 (Supp. 1965); S.D. Sess. Laws 1964, ch. 90, § 5; TENN. CODE ANN. § 37-1203 (Supp. 1966); UTAH CODE ANN. § 55-16-6 (Supp. 1965); VT. STAT. ANN. tit. 13, § 1355 (Supp. 1965); WIS. STAT. ANN. § 48.981(3) (Supp. 1966); WYO. STAT. ANN. § 14-28.6 (1965).

proceedings without a release from the spouse against whom the evidence is being given. Since, in child abuse cases the only witnesses to the abuse may be the parents themselves, some reporting laws make the husband-wife privilege inapplicable.

Not all states waived these privileges and the pattern is irregular. Table Number Eleven shows a breakdown of the forty-seven states in terms of the type of privilege waiver found in the law.<sup>52</sup> Fourteen states provide waiver of both privileges. Five states waive the doctor-patient privilege "or similar privilege or rule against disclosure." It may be argued that this clause ("or similar privilege . . .") can be construed to include the husband-wife privilege. However, if more strictly interpreted, the phrase may apply only to similar medical privilege, *i.e.*, nurse-patient, or hospital-patient.

Twelve states used a waiver for the doctor-patient privilege only. Idaho only waived the husband-wife privilege. The balance of fifteen states provided neither waiver.

<sup>52</sup> TABLE NUMBER 11:

Type of Privilege	State
Doctor- patient and Husband-wife	Alabama, Alaska, Arkansas, Delaware, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, New Hampshire, North Dakota, Oregon, South Dakota
Doctor- patient "or similar"	Kansas, Montana, Nevada, New Mexico, Oklahoma
Doctor-patient only	Arizona, Colorado, Florida, Illinois, Nebraska, North Carolina, Ohio, Pennsylvania, Utah, Washington, Wyoming
Husband-wife only	Idaho
No waiver of Privilege	California, Connecticut, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, Rhode Island, South Carolina, Tennessee, Texas, Vermont, West Virginia, Wisconsin

The following statutes provide for waiver of privileges: ALA. CODE tit. 27, § 24 (Supp. 1965); ALASKA STAT. § 11.67.060 (Supp. 1966); ARIZ. REV. STAT. ANN. § 13-842.01(C) (Supp. 1966); ARK. STAT. ANN. § 42-805 (Supp. 1965); COLO. REV. STAT. § 22-13-7 (1963); DEL. CODE ANN. tit. 16, § 1003 (Supp. 1966); FLA. STAT. ANN. § 828.041(5) (1965); IDAHO CODE ANN. § 16-1641 (Supp. 1965); ILL. ANN. STAT. ch. 23, § 2046 (Smith-Hurd Supp. 1966); IND. ANN. STAT. § 52-1425 (Supp. 1966); IOWA CODE ANN. § 235A.8 (Supp. 1965); KAN. GEN. STAT. ANN. § 38-719 (Supp. 1965); KY. REV. STAT. ANN. § 199.335(5) (Supp. 1966); LA. REV. STAT. ANN. § 14:403D (West Supp. 1965); MICH. STAT. ANN. § 14.564(4) (Supp. 1965); MINN. STAT. ANN. § 626.554(6) (Supp. 1966); MO. ANN. STAT. § 210.105(4) (Supp. 1966); MONT. REV. CODES ANN. § 10-905 (Supp. 1965); NEB. REV. STAT. § 25-1207 (1963); NEV. REV. STAT. § 200.506 (1965); N.H. REV. STAT. ANN. § 571:29 (Supp. 1965); N.M. STAT. ANN. § 13-9-16 (Supp. 1965); N.D. CENT. CODE § 50-25-05 (Supp. 1965); OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1966); OKLA. STAT. ANN. tit. 21, § 848 (Supp. 1966); ORE. REV. STAT. § 146.770 (1965); PA. STAT. ANN. tit. 18, § 4330(b) (Supp. 1965); S.D. Sess. Laws 1964, ch. 90, § 4; UTAH CODE ANN. § 55-16-5 (Supp. 1965); WASH. REV. CODE ANN. § 26.44.060 (Supp. 1966); WYO. STAT. ANN. § 14-28.5 (1965).

## J. *Special Provisions*

### 1. Religious Healing

Special provisions are present in some statutes which have serious implication. Of special significance is an exception to the reporting law in the statutes of Alabama, Minnesota, and Ohio. Each of these states defines the reportable injury as one which appears to have been caused by abuse or neglect. Use of the word "neglect" gives rise to the special provisions. Their purpose is to exclude from a possible definition of neglect the child who is under "spiritual" treatment.

The intent and purpose of the exception is stated clearly in the Minnesota statute: "Provided, however, that no provision of this section shall be construed to mean that a child is neglected or lacks proper parental care solely because said child's parent, guardian, or custodian in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care of such child."<sup>53</sup> Alabama's clause reads: "provided, however, that a child who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered a physically neglected child for the purposes of this section."<sup>54</sup> The Ohio law states, "Nothing in this section shall be construed to define as a physically neglected child, any child who is under spiritual treatment through prayer in accordance with the tenants and practice of a well-recognized religion in lieu of medical treatment, and no report shall be required as to such child."<sup>55</sup>

Both Alabama and Ohio inject an element not found in the Minnesota language. This factor is the requirement that the spiritual treatment be under a duly accredited religious practitioner (Alabama) or in accord with the tenants of a well-recognized religion (Ohio). This provision seems important to rule out the fraud or the quack-healer, and also the parent whose reliance on prayer may be a manifestation of emotional illness rather than adherence to religious conviction.

The author has grave reservations about these exclusions. In twenty-five years of practice in the child protective field, numerous cases were found in which a child's life was endangered by parental refusal to permit needed emergency surgery or a blood transfusion. Where parental objection is based on religious grounds, a neglect petition in the juvenile court seeking a court order to permit necessary medical treatment becomes the only recourse open to the com-

<sup>53</sup> MINN. STAT. ANN. § 626.554(2) (Supp. 1966).

<sup>54</sup> ALA. CODE tit. 27, § 21 (Supp. 1965).

<sup>55</sup> OHIO REV. CODE ANN. § 2151.42.1 (Page Supp. 1966).

munity for safeguarding the child's life. In many of these cases, after court orders were obtained, parents expressed relief at being freed of the onus to resolve the conflict between the prohibitions of their religious tenants and a genuine concern, and despair, for the child's life.

The language employed in these special clauses result in preventing the reporting and identification of the child. What is more important, however, is the possibility that the exclusion of these children from being considered neglected may also create a bar to the filing of a petition in juvenile court should it become necessary to obtain a court order to save a child's life.

## 2. Central Registry

Another clause in some reporting laws deals with the creation of a central registry for child abuse cases. California amended its reporting law in 1965 to add a section requiring a central registry. Responsibility for this record keeping is given to the State Bureau of Criminal Identification and Investigation. The records will consist of all reports of "suspected infliction of physical injury upon a minor by other than accidental means . . . and reports of arrests for, and convictions of, violations of Section 273a . . ." <sup>56</sup> The Bureau is charged with an obligation to, "transmit to the city police department, sheriff or district attorney information detailing all previous reports of suspected infliction of physical injury upon the same minor or another minor in the same family by other than accidental means and reports of arrests for, and convictions of violation of Section 273a, concerning the same minor or another minor in the same family." <sup>57</sup> Information for the registry is forwarded to the bureau by the head of a city police department, sheriff, or district attorney, all of whom are designated to receive reports in the reporting law. The section goes on to say that the information sent by the Bureau to police, sheriff, and district attorney is to be made available as follows: "Reports and other pertinent information received from the bureau [by police, sheriff or district attorney] shall be made available to any licensed physician and surgeon, dentist, resident, intern, chiropractor, religious practitioner . . . or probation department and to any agency offering child protective services." <sup>58</sup>

The value of a central registry is self-evident. But the advisability of a registry under the auspices of a Bureau of Criminal Identification is subject to question in child abuse cases, since use of the registry is primarily intended for purposes of diagnosis. Knowledge

<sup>56</sup> CAL. PEN. CODE § 11110 (West Supp.).

<sup>57</sup> *Ibid.*

<sup>58</sup> CAL. PEN. CODE § 11161.5 (West. Supp.).

of prior experience with the same family will weigh the scales in terms of suspecting possible abuse in situations where the diagnosis cannot be readily made. A registry will also reveal any shopping around for medical services in cases of repeated injuries to the same child or to other children in the same family.

To place the registry in a police-oriented setting serves only to stress punitive ends and criminal identification. Many local communities have set up central registries, but under auspices of welfare departments or health departments — a framework fulfilling the intended use of the registry as an aid in diagnosis, medical treatment, and services to children and families. The Illinois reporting law also has a provision for a central registry, but responsibility for the registry is placed with the State Department of Welfare.

### 3. Appropriations

A special clause in the Illinois law is an example of sound legislative planning and genuine understanding of special needs created by new obligations under new law. The reporting law mandates the Illinois Department of Children and Family Services to investigate reports of child abuse and to offer protective social services. The department is also directed to set up a central registry of all reported cases. Recognizing that these obligations add a new and heavy burden to the department, the legislature made a special appropriation of \$50,000 to the department's budget to permit expansion of the program to meet the added responsibility.

A parallel occurrence took place in Michigan. The reporting law was enacted in 1964. In 1965, the legislature authorized the State Department of Social Welfare to initiate a Child Protective social service program to fill a long-term need brought into clearer focus by the 1964 reporting act. With the authorization, the legislature made an appropriation of \$50,000 to the Department to match Federal Child Welfare funds, the total sum to be used for creation and expansion of the new program.

### CONCLUSION

The rush by states to press through legislation seeking reports of child abuse cases attests to wide recognition of the problem and of the dangers to its victims. That forty-seven laws were enacted in the short span of three years bears witness to general acceptance of the urgent necessity to do something on behalf of abused children.

To think that these laws will end the child abuse problem is naive and unrealistic. This legislation is only a beginning. It is solely a tool for discovering and identifying the child who is abused. The states which have enacted reporting legislation have taken no more

than the first step in the process to involve the full compliment of services necessary to treat the problem, protect the child, and preserve the family. Unless this fact is understood fully, and accepted completely, there is danger that communities with reporting laws will become complacent under the mistaken notion that there need be no further concern about child abuse and neglect.

One area which requires immediate attention is the child protective services. These services are essential to the investigation, diagnosis, and treatment of abused children and their parents. This specialized child welfare service however, is not universally available. A 1955 study revealed many serious local and statewide gaps in the availability of child protective services.<sup>59</sup> A current study is showing a more widespread extension of child protective services, but large gaps still remain. An encouraging development seen by the new survey, is the definite pressure for expansion of these programs to cover all communities in every state.

The lack of or inadequacy of present child protective services is usually due to one of the following reasons: (1) the local or state child welfare program lacks a clear legal base for providing child protective services; (2) the legal base is permissive, rather than mandatory, and the appropriating body has failed to allocate funds; (3) there is a legal base and a child protective program has been initiated, but funds are insufficient to expand services to meet more than a minimal part of the community needs. The obvious conclusion is that legislative action is necessary to authorize and maintain child protective services or to appropriate necessary and sufficient funds if these protective social services are to meet the needs of abused and neglected children.

Two states have taken this next step as a direct outgrowth of reporting legislation. The Illinois and Michigan legislatures have demonstrated the importance of better services by providing adequate funds.

In the 1962 amendments to the Social Security Act, Congress required provision of child protective services by the new definition of Public Child Welfare Services. Without equivocation, the definition clearly requires that child protective services be part of all public child welfare programs. However, at the same time, congressional appropriations did not keep pace with the actual need. If existing public child welfare services are to expand to include the new program, additional funds must be made available. Congress can play a leading role in providing funds to meet the needs of the child abuse problem. It must make available sufficient new child welfare funds

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<sup>59</sup> THE AMERICAN HUMANE ASSOCIATION, CHILD PROTECTIVE SERVICES IN THE UNITED STATES (1956).



to stimulate, and underwrite, in part, the development of more adequate child protective services.

But with or without federal aid, states and communities must promote the creation or expansion of child protective services so that all neglected and abused children may be protected from parental failures and their parents helped to achieve more adequate parental roles.