JUVENILE & FAMILY COURT JOURNAL

VOLUME 61 • NUMBER 1

A Primer on Child Abuse and Neglect Law

By Sarah H. Ramsey and Douglas E. Abrams

ABSTRACT

This article surveys major aspects of child abuse and neglect law encountered by judges, lawyers, child advocates, and child care professionals. The authors, whose casebook, *Children and the Law: Doctrine, Policy and Practice* (West 4th ed. forthcoming 2010), is required reading in nearly seventy law schools, analyze both statutory and case law.

INTRODUCTION

Constitutional and Statutory Framework

Abuse and neglect laws rest on a delicate balance grounded in constitutional guarantees. On the one hand, the Supreme Court has articulated a Fourteenth Amendment substantive due process right to family integrity, which includes the right of parents to raise their children as they see fit without unreasonable state interference.[1] The

1 *See, e.g.,* Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Troxel v. Granville, 530 U.S. 57, 65 (2000) (plurality opinion) (calling the parental interest recognized in *Meyer* and *Pierce* "perhaps the oldest of the fundamental liberty interests recognized by" the Court).

Sarah H. Ramsey, J.D., LL.M., is a Professor of Law at Syracuse University College of Law. She directs the law school's Family Law and Social Policy Center and is a member of the New York State Bar Association's Children and the Law Committee.

Douglas E. Abrams, J.D., is an Associate Professor of Law at the University of Missouri, Columbia, where he teaches children and the law, family law, constitutional law, and American legal history. He has served as Associate Editor of *Juvenile and Family Court Journal* since 1993. Correspondence: abramsd@missouri.edu

Editor's Note: This article is adapted from Chapter 3 of *Children and the Law in a Nutshell,* by Sarah H. Ramsey and Douglas E. Abrams (3d ed. 2008), published by West (To order, call 800-328-9352, or visit http://west.thomson.com). Reprinted by permission.

© *2010 National Council of Juvenile and Family Court Judges*

Court has also applied privacy doctrines to sustain the integrity of family decision-making.[2]

Parents and other caregivers sometimes invoke these constitutional rights in an effort to thwart state intervention for "child maltreatment," a term that child advocates and other experts frequently use to encompass abuse and neglect.[3] Parental prerogatives, however, do not hold boundless constitutional protection. In 1944, in *Prince v. Massachusetts*, the Supreme Court specified that "[a]cting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control," and that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare."[4]

The Supreme Court has balanced constitutional imperatives and parental rights in numerous decisions after *Prince*. In 1972, for example, *Stanley v. Illinois* recognized not only "the interest of a parent in the companionship, care, custody and management of his or her children,"[5] but also "[t]he state's right—indeed, duty—to protect minor children through a judicial determination of their interests in a neglect proceeding."[6]

Where the court finds maltreatment, the state's *parens patriae* authority to protect the child clearly prevails over any constitutional interest asserted by the parents. The parents' Fourteenth Amendment interest is "limited . . . by the compelling governmental interest in protecting minor children, particularly in circumstances where the protection is considered necessary as against the parents themselves."[7] Reasonably anticipated harm, as well as actual harm, can be a basis for state intervention, because the state does not have to wait until the child is actually injured before removing the child from the parents' custody, temporarily or permanently.[8]

The propriety of official intervention may require fine line-drawing. At one end of the spectrum, intervention and removal seem clearly appropriate when a parent has severely beaten or maimed a child. At the other end, however, authorities have sometimes sought to remove children from their parents on little more than a conclusion that the parents follow an immoral lifestyle or have insufficient income to provide a "proper" home. Beyond constitutional and statutory doctrine, the decision whether to remove the child is made yet more difficult because removed children too often receive inadequate state-provided care. They may be placed in long-term foster care, for example, with multiple placements and minimal services that together compromise physical or emotional support throughout childhood and adolescence.[9]

2 *See, e.g.*, Roe v. Wade, 410 U.S. 113 (1973); Eisenstadt v. Baird, 405 U.S. 438 (1972); Griswold v. Connecticut, 381 U.S. 479 (1965).

3 *See, e.g.*, VINCENT J. FONTANA & DOUGLAS J. BESHAROV, THE MALTREATED CHILD: THE MALTREATMENT SYNDROME IN CHILDREN: A MEDICAL, LEGAL, AND SOCIAL GUIDE (5th ed. 1996).

4 321 U.S. 158, 166-67 (1944).

5 405 U.S. at 651.

6 *Id.* at 649.

7 Schatz Family v. Gierer, 399 F. Supp.2d 973, 988 (E.D. Mo. 2004).

8 *See, e.g.*, B.T.O. v. M.O., 91 S.W.3d 745, 749 (Mo. Ct. App. 2002).

9 *See generally* SARAH H. RAMSEY & DOUGLAS E. ABRAMS, CHILDREN AND THE LAW IN A NUTSHELL, ch.4 (3d ed. 2008).

The Child Protection System

Three major systems regulate households beset with maltreatment. The first system is the criminal law system, which may prosecute parents and other caregivers who inflict maltreatment. The second is the public welfare system, which may provide financial supports. The third is the civil child protection system, this article's focus. Juvenile court or family court proceedings alleging abuse or neglect are civil proceedings, though alleged perpetrators may also face criminal prosecution in the general jurisdiction court.

Once the juvenile court system began in 1899, child protection cases became a major part of the caseload.[10] In the early 1960s, maltreatment attracted the attention of the media, the public, the medical profession, and lawmakers because of reports on the "battered child syndrome."[11] Responding to widespread public concern, states enacted laws that required physicians to report suspected child abuse to state authorities. In 1974, Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA), which provided funding for state child abuse and neglect programs, established standards for child abuse and neglect reporting and investigation, required appointment of guardians ad litem for children in abuse and neglect cases, and established the National Center on Child Abuse and Neglect.[12]

In 1990, the U.S. Advisory Board on Child Abuse and Neglect called maltreatment a "national emergency" while reported incidents continued to increase, partly because of parents' drug use, the stresses of poverty, and improved reporting.[13] In 2007, child protection agencies received an estimated 3.2 million referrals concerning approximately 5.8 million children. Approximately 62% of these reports were investigated, with 61.3% of the investigations finding that the maltreatment was not substantiated. An estimated 794,000 children were determined to be maltreated. Fifty-nine percent of the maltreated children were neglected; 10.8% were physically abused; 7.6% were sexually abused; and 4.2% were emotionally maltreated. An estimated 1,760 children died from maltreatment. Parents were the perpetrators in 79.9% of the cases.[14]

Child maltreatment occurs at all socioeconomic levels and in all racial and ethnic groups. The child protection caseload, however, has a disproportionately large representation of low-income families and minority families (although a majority of victims are white). Observers disagree about whether this disproportionate representation is due to a greater incidence of maltreatment in these families, or whether these families are more likely to face intrusive interventions that are culturally, racially, and class biased.[15] Observers also disagree about the causes of child maltreatment, but most theories "recognize that the root causes can be organized into a framework of four principal

10 *See, e.g.*, DOUGLAS E. ABRAMS, A VERY SPECIAL PLACE IN LIFE: THE HISTORY OF JUVENILE JUSTICE IN MISSOURI 50-52 (2003).

11 C. Henry Kempe et al., *The Battered Child Syndrome*, 191 J. AM. MED. ASS'N 17 (1962).

12 Pub. L. No. 93-247, 88 Stat. 4; Pub. L. No. 104-235, 110 Stat. 3063.

13 U.S. ADVISORY BOARD ON CHILD ABUSE AND NEGLECT, CHILD ABUSE AND NEGLECT: CRITICAL FIRST STEPS IN RESPONSE TO A NATIONAL EMERGENCY (1990).

14 U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2007: SUMMARY (2009).

15 U.S. ADVISORY BOARD, *supra* note 13 at 18-19.

systems: (1) the child, (2) the family, (3) the community, and (4) the society."[16] Researchers have identified a number of common risk and protective factors in these categories.[17]

The child protection system's intervention on behalf of a maltreated child can involve multiple agencies, courts, professionals, and laws. Thus lawyers and courts may need to interpret and apply a bevy of state laws and regulations in the context of federal law. States have four sets of laws dealing with abuse and neglect—reporting statutes, child protective statutes, criminal statutes, and social services statutes. Definitions of abuse and neglect may differ somewhat in each statute because the statutes serve distinct functions. Since CAPTA, Congress has exercised extensive control over state child protection and child welfare systems by requiring states to comply with various mandates as conditions for receiving federal funds.

An abuse or neglect case might begin with a telephone call to the state's central "hot line" telephone number reporting suspicious circumstances, or with an emergency call to police. The reporter may be a teacher, physician, or neighbor. After child welfare authorities or police investigate the report, the matter may be closed because no intervention is needed, or because authorities might consider the parents' voluntary acceptance of services sufficient to remove risk to the child.

If more intensive intervention and oversight are needed, however, or if the parents refuse to accept services voluntarily, the case may be referred to the juvenile court or family court for an order mandating services or removing the child from the home. When the maltreatment is severe, the criminal justice system may prosecute the perpetrators. The civil case alone might require coordination among not only social workers, physicians, psychologists, lawyers, and judges, but also service providers in such fields as day care, education, health care, housing assistance, benefit programs, drug and alcohol counseling, foster care, and probation. This vast array of treatment providers suggests an important lesson for lawyers who may encourage cooperation and bridge gaps in communication: "Child Advocacy necessarily depends on lawyers' collaboration with professionals trained in disciplines whose insights complement and enrich our own. . . . Child advocates should strive for a general understanding of these disciplines but must remain willing . . . to seek out trained professionals who know more about them than we do."[18]

REPORTING STATUTES AND INVESTIGATION

Statutory Structure

The identification of the battered child syndrome in 1962 was a catalyst for laws requiring physicians to report suspected child abuse to child welfare authorities or law enforcement. By 1967, all states had adopted such mandatory reporting laws. Within a

16 DAVID THOMAS ET AL., EMERGING PRACTICES IN THE PREVENTION OF CHILD ABUSE AND NEGLECT 4 (2003).

17 *Id.*

18 DOUGLAS E. ABRAMS & SARAH H. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE vi (3d ed. 2007).

few years, states had expanded the "mandated reporter" class to include other professionals—such as teachers and social workers—who have regular contact with children and are likely to know about the duty to report. Partly because of federal requirements, states have also expanded the kinds of maltreatment that must be reported. State laws still vary, however, concerning who must report, what must be reported, which agencies (social services or law enforcement, or both) receive mandatory reports, what penalties may be imposed for failure to report, and what civil liabilities may arise from reporting or failing to report. In all states, reports may also be made by persons who are not mandated reporters. Reporters may act anonymously by hot line telephone calls.

The Central Registry

Relatively few abuse and neglect reports actually reach the juvenile court or family court because they are screened out or resolved short of adjudication. Nationwide only about 18% of reports receive any significant intervention, and less than 3% of these proceed to adjudication. Even when no significant intervention occurs, however, reports may remain in a confidential central state registry to identify abusers and patterns of abuse.[19]

Registries are typically accessible by government entities such as law enforcement, departments of social services, and the judiciary. Specified private entities, such as day care centers, youth sports programs, and other organizations that engage employees or volunteers to work with children, may also be allowed access to screen potential applicants.[20] Where state law permits such private access, the law in effect creates a duty to investigate because failure to do so may help establish the entity's negligence in a later damage action by the victim of maltreatment committed by the employee or volunteer.

The standard for retaining a person's name in the registry may be so broad as to raise constitutional concerns. In *Valmonte v. Bane*, for example, the mother was reported as an abuser for slapping her daughter in the face with an open hand.[21] The county child welfare agency found that the mother had engaged in excessive corporal punishment, and the family court dismissed proceedings against her on the condition that the family receive counseling. Despite the dismissal, the mother's name remained in the New York state registry, which identified persons accused of abuse or neglect and communicated their names to potential child care employers.

In *Valmonte*, the U.S. Court of Appeals for the Second Circuit held that listing in the registry implicated the mother's Fourteenth Amendment due process liberty interest in her reputation and provided insufficient safeguards to protect that interest. The risk of erroneous listing was too great because the registry retained reports supported merely by "some credible evidence." The listed person could hold the state department of social services to a higher standard of proof, namely a fair preponderance of the evidence, only after being deprived of an employment opportunity solely because of inclusion in the Central Register. In response to *Valmonte*, New York law now provides that disclosure to

19 *See* CHILD MALTREATMENT 2007: SUMMARY, *supra* note 14.
20 *See e.g.*, Mo. Rev. Stat. § 210.150.
21 18 F.3d 992 (2d Cir. 1994).

a potential employer may be made only after the listed person has had an opportunity for an administrative hearing and a showing that the report is relevant to the prospective employment.[22]

Reporters' Liability

Federal mandates require that state reporting laws grant immunity from prosecution to persons who make good faith reports of known or suspected maltreatment.[23] In some states, a mandated reporter who fails to report suspected abuse may be held criminally or civilly liable under the reporting law. When there is no statutory penalty, however, some states refuse to imply a private right to sue.[24]

Some states permit injured parties to maintain tort actions alleging that a mandated reporter failed to file a report, though *Landeros v. Flood* demonstrates the difficulty of proving a claim.[25] To establish the defendant physician's negligence for failure to report serious abuse, the California Supreme Court required the child plaintiff to show that the defendant "in fact observed her various injuries and in fact formed the opinion that they were caused by other than accidental means."[26] Violation of the reporting act was a misdemeanor, but *Landeros* held that the criminal violation did not per se establish a civil claim. The state supreme court was concerned that creating tort liability might result in over-reporting. A Michigan case, however, resulted in a $900,000 verdict for a failure to report that proximately caused the child's death.[27] Even when the reporting statute does not create a private cause of action for failure to report, liability may be based on a claim that the physician's failure to report violated professional standards of care and thus constituted malpractice.[28]

Mandatory reporting acts can conflict with professional ethics codes mandating client confidentiality. State law, for example, may mandate reports from therapists and researchers, who may feel ethically bound to remain silent even though failure to report might be a crime. Most state reporting laws do not require attorneys to report.[29] Model Rule 1.6(b)(1) of the ABA Model Rules of Professional Conduct provides a limited exception to the lawyer's obligation to maintain client confidences: "A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . to prevent reasonably certain death or substantial bodily harm."

22 N.Y. Soc. Serv. L. § 422.

23 42 U.S.C. § 5106a.

24 *See, e.g.,* Cuyler v. United States, 362 F.3d 949 (7th Cir. 2004).

25 551 P.2d 389 (Cal. 1976).

26 *Id.* at 397.

27 Williams v. Coleman, 488 N.W.2d 464 (Mich. Ct. App. 1992).

28 *See, e.g.,* Becker v. Mayo Found., 737 N.W.2d 200 (Minn. 2007).

29 *See* Adrienne Jennings Lockie, *Salt in the Wounds: Why Attorneys Should Not Be Mandated Reporters of Child Abuse*, 36 N.M. L. Rev. 125 (2006).

The literature amply demonstrates the substantial physical and emotional harm that child abuse can cause victims immediately and in the long-term.[30]

LIMITS ON INTERVENTION

Investigations and Due Process

Searches and Inspections

A government official's entry into the home during a child maltreatment investigation constitutes a Fourth Amendment search. To examine children or inspect the home in the absence of consent or an emergency, the social service agency must secure a warrant by demonstrating the search's reasonableness.[31] When their parents have not consented for them, child victims who object to being searched are protected by the Fourth Amendment. In determining reasonableness, a court may balance the intrusiveness of the search against the state's compelling interest in protecting children and prosecuting abusers.[32]

Where a search by or on behalf of child protective authorities violates the Fourth Amendment, courts have refused to apply the exclusionary rule in child protective proceedings because exclusion of otherwise probative evidence may endanger the children's safety.[33] The Supreme Court seems to have foreclosed the question in *Pennsylvania Board of Probation and Parole v. Scott*, which refused to extend the exclusionary rule to "proceedings other than criminal trials."[34] In accordance with *Scott*, the rule remains applicable in parallel or later criminal proceedings charging maltreatment.

Inspections of the home or child that are part of a treatment plan or court-ordered disposition in a child maltreatment case, however, may not implicate the Fourth Amendment. In *Wyman v. James*, the Supreme Court held that a welfare department caseworker's visit to a recipient's home did not concern "any search by the . . . social service agency in the Fourth Amendment meaning of that term."[35] *Wyman* also concluded that even if the Amendment were implicated, the proposed home visit was reasonable and thus lawful where it was made by a caseworker, was not permitted outside working hours, and did not involve forcible entry or snooping. The court stressed that "[t]he focus is on the . . . child who is dependent. There is no more worthy object of the public's concern.

30 *See, e.g.*, Am. Acad. of Pediatrics, Comm. on Early Childhood, *Adoption and Dependent Care, Developmental Issues for Young Children in Foster Care*, 106 PEDIATRICS 1145 (2000); U.S. Advisory Board, *supra* note 13 at 18-19.

31 *See, e.g.*, Doe v. Heck, 327 F.3d 492 (7th Cir. 2003).

32 *See, e.g.*, Pelster v. Walker, 185 F. Supp.2d 1185 (D. Or. 2001) (in an investigation of suspected prostitution, a body cavity search of 13- and 15-year-old girls for DNA and other evidence to identify perpetrators was reasonable where examinations were conducted by a physician and nurse in a hospital pursuant to a warrant).

33 *See, e.g.*, State in re A.R., 937 P.2d 1037, 1043-44 (Utah Ct. App. 1997).

34 524 U.S. 357, 363 (1998).

35 400 U.S. 309, 317 (1971).

The dependent child's needs are paramount, and only with hesitancy would we relegate those needs, in the scale of comparative values, to a position secondary to what the mother claims as her rights."[36]

Emergency Removal of the Child

In an emergency, the investigator may remove a child from the home without prior judicial approval. The standard for emergency removal varies, with some courts requiring only a "reasonable and articulable suspicion that the child has been abused or is in imminent peril of abuse," but other courts requiring probable cause for suspicion.[37]

Self-Incrimination

The Fifth Amendment privilege against compulsory self-incrimination may sometimes hamper maltreatment investigations by permitting the alleged perpetrator to remain silent, at least where he or she is not presently subject to a court order relating to the child. In *Baltimore City Department of Social Services v. Bouknight*, the juvenile court placed the infant under its continuing oversight by asserting jurisdiction over the mother on a finding that she had committed serious recurring acts of physical abuse against him.[38] Shortly afterwards, the mother regained custody after signing a court-approved protective supervision order, which she later violated in nearly every respect. After reports of further serious abuse, the juvenile court ordered the mother to produce the child or reveal his whereabouts.

The Supreme Court assumed, without deciding, that the limited testimonial assertion inherent in producing the child would be sufficiently incriminating to trigger the Fifth Amendment privilege, but concluded that the challenged production order fell within the "required records" exception to the privilege. This exception removes Fifth Amendment protection from production of records that claimants must keep for the public benefit pursuant to "an essentially non-criminal and regulatory area of inquiry."[39] *Bouknight* held that the challenged production order fell within the recognized exception because the mother was the child's custodian pursuant to a juvenile court order that had required production of the child as part of a non-criminal regulatory scheme.[40]

The Court left open the possibility that in later criminal proceedings against the mother, the Fifth Amendment privilege might limit the state's ability to use the testimonial aspects of her act of production. In a later civil abuse or neglect proceeding, however, the court may draw a negative inference against a party invoking the privilege, provided some other evidence supports the inference.[41]

36 *Id.* at 318.

37 *See* Gomes v. Wood, 451 F.3d 1122 (10th Cir. 2006) (discussing the split among the federal courts of appeals).

38 493 U.S. 549 (1990).

39 *Id.* at 556-57.

40 *Id.* at 559.

41 *See* Baxter v. Palmigiano, 425 U.S. 308 (1976).

Grounds for Intervention

As noted at the beginning of this article, the state's *parens patriae* authority to intervene in family life to protect children is limited by the parents' constitutional rights to family integrity and to direct their children's upbringing. Identifying the boundaries of these limits, however, can be quite difficult in particular cases. Two recurrent issues are the degree of actual or threatened harm the state must show before it may intervene, and the level of assistance the state must provide to help the family resolve the risk before removing the child.

Both issues were addressed in *In re Juvenile Appeal*, which concerned a Connecticut mother of six children who was a welfare recipient known to the state Department of Children and Youth Services.[42] When her youngest child, a nine-month-old infant, died of unknown causes, the department removed the other children on an emergency basis. At an ex parte hearing two days after the death, the trial court granted the department temporary custody of the children to safeguard their welfare.

The state supreme court remanded with orders to set aside the temporary custody order because it found post-emergency intervention and removal unsupported by the requisite compelling state interest. The state's interest in intervention is compelling only when the children face serious physical illness, injury, or immediate physical danger. At the ex parte custody hearing, the state failed to show that the infant's death was caused by abuse; indeed an autopsy completed after the hearing exonerated the mother. The court held that removing the children from the home should be a remedy of last resort, used only when necessary to ensure their safety. "Even where the parent-child relationship is 'marginal,' it is usually in the best interests of the child to remain at home and still benefit from a family environment."[43]

Statutes and regulations often define abuse and neglect broadly in an effort to effectuate their child protective purposes, but breadth has its limits. Where the basis for state intervention in abuse or neglect cases appears tenuous, the due process void-for-vagueness doctrine may sometimes limit authority to intervene. The doctrine requires that a statute define its proscriptions "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."[44] Vagueness defenses appear most frequently in criminal prosecutions, but may also appear in civil proceedings controlled by statutes that, like child maltreatment statutes, enforce state-imposed obligations. Courts tend to reject vagueness challenges where the parent's conduct would appear clearly abusive or neglectful to reasonable persons, but vagueness challenges sometimes succeed where the wrongfulness of a parent's conduct is open to fair question.

42 455 A.2d 1313 (Conn. 1983).
43 *Id.* at 1319.
44 Kolender v. Lawson, 461 U.S. 352, 357 (1983).

PATTERNS OF ABUSE AND NEGLECT

This section identifies major categories of abuse and neglect. The section distinguishes between the two because state laws and reporting statistics frequently draw the distinction, even though cases frequently contain elements of both. For example, a case may concern malnourished children living without adequate medical care in a filthy home (indicia of neglect), but these children may also suffer from bruises, cuts, bumps, and burns (indicia of abuse).[45] Symptoms of neglect also may precede physical abuse. Because abuse and neglect overlap in so many cases, some authorities prefer using "maltreatment," the broader term introduced earlier in this article, to encompass all forms of physical or emotional injury to a child.[46]

Neglect

The General Concept

The United States Department of Health and Human Services identifies seven specific varieties of physical neglect that recur in the case law:

- *Refusal of Health Care* [Failure to provide or allow needed care in accord with recommendations of a competent health care professional for a physical injury, illness, medical condition, or impairment.]
- *Delay in Health Care* [Failure to seek timely and appropriate medical care for a serious health problem that any reasonable layman would have recognized as needing professional medical attention.]
- *Abandonment* [Desertion of a child without arranging for reasonable care and supervision. This category included cases in which children were not claimed within two days and cases where children were left with parents/substitutes who gave no (or false) information about their whereabouts.]
- *Expulsion* [Other blatant refusals of custody, such as permanent or indefinite expulsion of a child from the home without adequate arrangement for care by others or refusal to accept custody of a returned runaway.]
- *Other Custody Issues* [Custody-related forms of inattention to the child's needs other than those covered by abandonment or expulsion. For example, repeated shuttling of a child from one household to another, due to apparent unwillingness to maintain custody, or chronically and repeatedly leaving a child with others for days or weeks at a time.]
- *Inadequate Supervision* [Child left unsupervised or inadequately supervised for extended periods of time or allowed to remain away from home overnight without the parent/substitute knowing (or attempting to determine) the child's whereabouts.]

45 *See, e.g.,* In re S.T., 928 P.2d 393 (Utah Ct. App. 1996).

46 *See* VINCENT J. FONTANA & DOUGLAS J. BESHAROV, *supra* note 3.

- *Other Physical Neglect* [Conspicuous inattention to avoidable hazards in the home; inadequate nutrition, clothing, or hygiene; and other forms of reckless disregard of the child's safety and welfare, such as driving with the child while intoxicated, leaving a young child unattended in a motor vehicle, and so forth.][47]

A high percentage of maltreatment reports concern neglect, and a majority of neglect removal cases involve low-income families. The correlation between poverty and child maltreatment is not surprising, given the devastating impact poverty can have on families and children, negatively affecting parenting ability, access to necessities, and the child's environment. Poverty is associated with insufficient, unsafe housing and even homelessness, a lack of medical care, low quality day care, substandard education, and violence. Children living in poverty are more likely to have poor health, developmental delays and learning disabilities, less education, more emotional and behavioral problems, and various other problems than non-poor children.[48]

The parents' poverty is no longer a per se basis for a neglect finding. Statutes may specify that a neglect finding may be predicated on the parents' not providing adequate food, shelter, or clothing, but only where the parents are financially able to provide these necessities or have been offered state assistance. The risk remains, however, that neglect may be found even though the parents' deficiencies stem primarily from financial distress rather than from intentional failure to meet their children's basic needs. Low-income parents often live in substandard housing and their diets often fall short of recognized nutritional guidelines, for example. Where no clinic is available, the hospital emergency room is the primary health care facility used by many low-income households; repeated appearances frequently arouse suspicion of neglect or abuse. If a low-income family receives public assistance, the family's required contacts with the social services agency give the parents a higher profile with state authorities, and thus may make them more susceptible to identification for maltreatment. In severe economic times, the parents' homelessness or unemployment may invite state intervention if these setbacks leave the children without a regular domestic environment.

Failure to Protect

Parents are responsible for protecting their children from harm when they can do so. A parent who fails to intervene to protect a child (or who takes insufficient protective action) can be adjudicated neglectful, even though the parent was not the actual abuser of the child. Parents who fail to protect a child can have the child removed from their care and, when the maltreatment is severe, may even have parental rights terminated.

The state frequently alleges failure to protect when a mother does not intervene to stop her children being abused by their father, stepfather, or another male partner. In *In re Craig T.*, for example, a mother was adjudicated neglectful because she did nothing to protect her three-year-old son from an assault by his father in a shopping mall parking lot

47 *See* Andrea J. Sedlak & Diane D. Broadhurst, Third National Incidence Study of Child Abuse and Neglect 2-16 to 2-17 (U.S. Dep't of HHS 1996).

48 U.S. Advisory Board, *supra* note 13.

and denied that the assault had occurred.[49] No evidence indicated that she was afraid to intervene, and the New Hampshire trial court concluded that she was complicit in the attack. She also failed to protect her five-year-old daughter from witnessing the attack, which was so severe that it horrified witnesses.

In *In re T.G.*, the South Dakota Supreme Court upheld termination of parental rights of a mother who did not physically or sexually abuse her daughters but allowed them to travel with a known sexual abuser.[50] Further she knew that the children's stepfather had been convicted of child molestation and that he was abusing the daughters, but she nonetheless chose to live with him and expose the girls to him. She even tried to stop the children from discussing the abuse with authorities.

Where a battered woman, herself a victim, does not separate herself and the children from the batterer, she generally can be held responsible for failing to protect the children. Children are psychologically harmed by exposure to domestic violence and are also at risk of being physically harmed.[51] Some women domestic violence victims have successfully argued, however, that placing the children in foster care is not an appropriate remedy, but that rather the state should assist the mother in her efforts to escape the violence.[52] Some courts have also allowed a mother to use a battered woman syndrome defense when the state seeks to terminate her rights for failure to protect.[53]

Parents may also be found neglectful, and may even suffer termination of parental rights, when their failure to cooperate with the state in an abuse investigation leaves the perpetrator unidentified and the child at risk of future harm.[54]

Failure to Thrive

Failure to thrive, or growth deficiency, is a condition in which the child's weight and linear growth have fallen below standard measures or have significantly dropped without a physical cause. Children untreated can suffer permanent physical, cognitive, and behavioral problems. "Failure to thrive (FTT) in infants and children results from inadequate nutrition to maintain physical growth and development. . . . In its extreme form, FTT secondary to neglect may be fatal."[55]

49 744 A.2d 621 (N.H. 1999).

50 578 N.W.2d 921 (S.D. 1998).

51 *See, e.g.*, NAOMI R. CAHN, CHILD WITNESSING OF DOMESTIC VIOLENCE, IN HANDBOOK OF CHILDREN, CULTURE, AND VIOLENCE 3 (Nancy E. Dowd, Dorothy G. Singer & Robin Fretwell Wilson eds., 2006).

52 *See, e.g.*, Nicholson v. Williams, 203 F. Supp.2d 153 (E.D.N.Y. 2002).

53 *See, e.g.*, In re Betty J.W., 371 S.E.2d 326 (W.Va. 1988).

54 *See, e.g.*, In re Jeffrey R.L., 435 S.E.2d 162 (W.Va. 1993) (upholding termination of parental rights to a three-month-old infant who suffered from battered child syndrome and could not safely be returned home because perpetrator was unknown).

55 Am. Acad. of Pediatrics, Comm. on Child Abuse and Neglect and Comm. on Nutrition, *Failure to Thrive as a Manifestation of Child Neglect*, 116 PEDIATRICS 1234 (Nov. 2005).

Because "growth variants are common" in children, authorities seeking to prove FTT must show by expert testimony that the child started normally but failed to grow.[56] The showing is essential because FTT may also result from a medical condition without neglect:

> FTT can be unintentional, occurring with breastfeeding difficulties, errors in formula preparation, poor diet selection, or improper feeding technique. FTT can also be caused by organic diseases including but not limited to cystic fibrosis, cerebral palsy, HIV infection or AIDS, inborn errors of metabolism, celiac disease, renal disease, lead poisoning, or major cardiac disease. FTT may result if caregivers who are referred for assistance fail to avail themselves of community resources and/or assistance. FTT is often multifactorial, involving some combination of infant organic disease, subtle neurologic and/or behavioral problems, dysfunctional parenting behaviors, and parent-child interactional difficulties. Feeding difficulties, oral-motor dysfunction, food aversion, and/or appetite control often compound the problem.[57]

Psychological Maltreatment

The General Concept

The American Academy of Pediatrics defines "psychological maltreatment" as "a repeated pattern of damaging interactions between parent(s) and child that becomes typical of the relationship. In some situations, the pattern is chronic and pervasive; in others, the pattern occurs only when triggered by alcohol or other potentiating factors."[58] Psychological maltreatment occurs "when a person conveys to a child that he or she is worthless, flawed, unloved, unwanted, endangered, or only of value in meeting another's needs. The perpetrator may spurn, terrorize, isolate, or ignore or impair the child's socialization."[59]

Psychological maltreatment may be coupled with physical neglect or abuse, or it may occur separately. State statutes may not distinguish among emotional neglect, emotional abuse, and the emotional harm caused by physical neglect or abuse. An emotional neglect case also may be brought under more general statutory language such as "an environment injurious to the child's welfare." Acts of physical violence toward the child, including acts inflicted during efforts at discipline, may also support an emotional abuse finding. In some jurisdictions, a threat of emotional harm without a showing of actual harm is sufficient.[60]

Statutes that do specifically address psychological maltreatment may focus on the condition of the child. In Minnesota, for example, neglect includes "emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child

56 *Id. See also, e.g.*, In re S.P.W., 761 S.W.2d 193, 195 (Mo. Ct. App. 1988).

57 Am. Acad. of Pediatrics, *Failure to Thrive, supra* note 55.

58 *See* Am. Acad. of Pediatrics, Committee on Child Abuse and Neglect, *The Psychological Maltreatment of Children—Technical Report*, 109 PEDIATRICS 68 (2002).

59 *Id.*

60 In re Matthew S., 49 Cal.Rptr.2d 139 (Ct. App. 1996). *See also, e.g.*, Am. Acad. of Pediatrics, *supra* note 58.

which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture."[61] Statutes may also focus on parental behavior, such as persistent negative or belittling parental communications and interactions with children.

Expert Testimony

Evidence of emotional abuse or emotional neglect may be elusive because it usually consists of a pattern of behavior, without physical injury or an identifiable specific act or precipitating incident. The effects of emotional maltreatment may be incremental and cumulative for months or years. Even where a clear pattern appears, a causal relationship between the emotional maltreatment and resulting psychological harm may be difficult to establish. Causation may be demonstrated by documenting the dates and times of the alleged abusive acts and by identifying who was present each time. Psychiatric and psychological evaluation and testimony may be required. Because of difficulties of proof, some juvenile officers do not file an emotional abuse petition unless expert testimony will support it.

Expert testimony typically is also used to establish "failure to thrive." The physician first provides testimony that establishes "failure to thrive" symptoms and then rules out medical causes for the child's delayed development.

Abuse

The General Question of Proof

Physical abuse is "characterized by inflicting physical injury by punching, beating, kicking, biting, burning, or otherwise harming a child. Although the injury is not an accident, the parent or caretaker may not have intended to hurt the child. The injury may have resulted from overdiscipline or physical punishment that is inappropriate for the child's age."[62]

To sustain allegations of physical abuse, generally medical evidence must establish that the child's injury was not accidental. Even where the parties present no eyewitness testimony concerning the acts of abuse, a physician's testimony (accompanied by photographs and x-rays when appropriate) demonstrating that the injuries were non-accidental may constitute substantial evidence of abuse.[63]

Several common pathological conditions tend to suggest that the child's injuries were unlikely to have been self-inflicted. These conditions include, for example, patterned abrasions consisting of marks or bruises whose shape, size, and severity suggest

61 Minn. Stat. § 626.556(9).

62 National Center on Child Abuse and Neglect, Child Abuse and Neglect: A Shared Community Concern 2 (U.S. Dep't of HHS 1992).

63 *See, e.g.*, Douglas E. Abrams, Child Abuse and Neglect, in Missouri Juvenile Law, ch. 6, § 6.8, at 6-21 to 6-23 (3d ed. 2007).

they were produced by objects such as belts, cords, or sticks; patterned burns suggesting the child was held in scalding water or burned with cigarettes or other objects; and, particularly in young children, spiral fractures of the upper arm or leg indicating a twisting motion unlikely to have occurred by accident.

Physicians can also give expert testimony about the means used to inflict the injury and whether the explanation given for the injuries is reasonable. A parent, for example, may give an explanation that is unlikely to explain the injury (e.g., that the child fell from a chair causing multiple, fatal injuries); or that is implausible (e.g., that an infant climbed up to and turned on a hot water faucet); or that conflicts with the explanation given by the other parent.[64]

The Battered Child Syndrome

Some parents not only neglect their children's needs, but also beat, maim, tie up, torture, or even murder their children. In *Deborah S. v. Superior Court*, for example, the five-year-old California child had old and new bone fractures, scars and other eye injuries, missing teeth, multiple bruises and scars in various degrees of healing, and healed scalp lacerations.[65] All these injuries had been inflicted by his mother, who had also periodically confined the boy to his room, to a crib and to a closet, and had tied his wrists and ankles together with a sock in his mouth to prevent him from screaming.

Particularly when the child is young and has suffered multiple injuries over time, the child may fit the battered child syndrome, a condition identified in an influential article by Dr. C. Henry Kempe and his colleagues in 1962.[66] The battered child syndrome

> may occur at any age, but, in general, the affected children are younger than three years. In some instances the clinical manifestations are limited to those resulting from a single episode of trauma, but more often the child's general health is below par, and he shows evidence of neglect including poor skin hygiene, multiple soft tissue injuries, and malnutrition. One often obtains a history of previous episodes suggestive of parental neglect or trauma. A marked discrepancy between clinical findings and historical data as supplied by the parents is a major diagnostic feature of the battered child syndrome.[67]

The battered child is often admitted to the hospital during evening hours and often has had multiple visits to various hospitals. Parents frequently appear reluctant to give the physician or medical staff information about the child, the history or the present injuries. The parents may react inappropriately to news of an injury's severity, such as by appearing relatively calm to the diagnosis of a fractured femur. Significant inconsistencies between parents' explanations of injuries and the diagnosed condition, gaps between the estimated time of injury and the date of treatment, and an unusually confused social history also suggest a dysfunctional family. The child may have previous injuries in various stages of healing. Abuse may be shown where no new injuries occur while the

64 *See* JOHN E. B. MYERS, EVIDENCE IN CHILD, DOMESTIC AND ELDER ABUSE CASES § 410 (2005).

65 50 Cal.Rptr.2d 858 (Ct. App. 1996).

66 C. HENRY KEMPE ET AL., *supra* note 11.

67 *Id.* at 17-18.

child is hospitalized or in a protective environment. Especially in cases of serious abuse, the child appears frequently withdrawn, non-communicative, and developmentally far below chronological age. Speech, language, and behavior patterns appear retarded and not age appropriate.[68]

In both criminal and civil cases, the battered child syndrome has become a well-recognized medical diagnosis that can be established through expert testimony, which indicates (without identifying the perpetrator) that the child's injuries were not accidental.

The Shaken Baby Syndrome

The shaken baby syndrome, identified in the early 1970s, is "a serious form of child maltreatment most often involving children younger than 2 years but may be seen in children up to 5 years old."[69] The maltreatment is caused by a person who severely shakes an infant, resulting in whiplash-type injuries. No external injury is seen, but the shaking can cause blindness, severe brain injury, and even death. A combination of factors, including the infant's weak neck muscles and relatively large head, result in the injury. Controversy surrounds the scientific validity of the syndrome, however, particularly when diagnosis is based solely on retinal and brain hemorrhages. The National Institute of Neurological Disorders and Stroke has a more expansive list of injuries: "subdural hemorrhages (bleeding in the brain), retinal hemorrhages (bleeding in the retina), damage to the spinal cord and neck, and fractures of the ribs and bones."[70] Death occurs in 15% to 38% of shaken baby syndrome cases.[71]

The Target Child

Some parents single out one child for abuse while leaving other children in the household unharmed. Social workers investigating abuse may see the unharmed children and either remain unaware of the "target child's" presence, or assume the child is safe because the other children appear well. Proper training for social workers should emphasize the necessity for careful attention to all children in a household.[72]

Corporal Punishment

The General Concept

Abuse may result from misguided efforts to discipline a child through corporal punishment such as spanking. As a general matter, "[c]orporal punishment involves the

68 *Id.*

69 Comm. on Child Abuse and Neglect, Am. Acad. of Pediatrics, *Shaken Baby Syndrome: Rotational Cranial Injuries—Technical Report*, 108 PEDIATRICS 206 (July 2001).

70 National Institute of Neurological Disorders and Stroke, http://www.ninds.nih.gov/disorders/shakenbaby/shakenbaby.htm#.

71 *Id.*

72 *See, e.g.*, DOUGLAS E. ABRAMS & SARAH H. RAMSEY, *supra* note 18 at 330-31.

application of some form of physical pain in response to undesirable behavior. Corporal punishment ranges from slapping the hand of a child about to touch a hot stove to identifiable child abuse, such as beatings, scaldings, and burnings."[73]

Commentators continue to disagree about the efficacy of corporal punishment amid changing social mores.[74] Both criminal and civil law in the United States, however, have traditionally found reasonable corporal punishment of children justified and thus not abusive. Many parents thus seek to justify physical abuse by characterizing their conduct as reasonable and necessary discipline.

Section 147 of the Restatement (Second) of Torts provides that a parent "is privileged to apply such reasonable force or to impose such reasonable confinement upon his child as he reasonably believes to be necessary for its proper control, training, or education." Section 150 of the Restatement considers these factors in determining the reasonableness of punishment: whether the actor is a parent; the child's age, sex, and physical and mental condition; the nature of the child's offense and his apparent motive; the influence of his example upon other children of the same family or group; whether the force or confinement is reasonably necessary and appropriate to compel obedience to a proper command; and whether it is disproportionate to the offense, unnecessarily degrading, or likely to cause serious or permanent harm.

A child protection act's definition of "abuse" may be critical to determining whether corporal punishment exceeds the bounds of reasonableness. Some jurisdictions require a showing of actual harm, but other jurisdictions find abusive discipline on proof of a substantial risk of serious injury, without the need to show substantial injury itself.[75]

Domestic Violence Statutes

Some children have successfully used domestic violence statutes to secure court orders of protection against their abusive parents. In *Beermann v. Beermann*, for example, the South Dakota court granted a protective order to a fourteen-year-old girl who wanted to continue to visit her father, but wanted him to stop his abusive behavior during her visits.[76] The court noted a number of advantages to using the domestic violence statute rather than the child protection statute, including that the domestic violence victim could fill out the standard forms herself and could get immediate relief.

73 Committee on Psychosocial Aspects of Child & Family Health, Am. Acad. of Pediatrics, *Guidance for Effective Discipline*, 101 PEDIATRICS 723 (1998).

74 *See, e.g.*, Stanford B. Friedman et al., *The Short- and Long-Term Consequences of Corporal Punishment; Introduction*, 98 PEDIATRICS vi (1996).

75 *See, e.g.*, Raboin v. North Dakota Dep't of Human Servs., 552 N.W.2d 329, 334 (N.D. 1996) (corporal punishment administered by the parents with a wooden or plastic spoon or belt that caused slight bruising on the children's buttocks did not yet demonstrate "serious physical harm or traumatic abuse as a result of the parents' spankings"); In re C. Children, 583 N.Y.S.2d 499, 500 (App. Div. 1992) ("It is sufficient to show that the child was subjected to a substantial risk of physical injury").

76 559 N.W.2d 868 (S.D. 1997).

Sexual Abuse

Sexual abuse cases comprise a relatively small percentage of the overall child protective services caseload (about 10%), but surveys of adults have indicated that as many as a million children may be victimized each year.[77] Because of shame and embarrassment, sexual abuse is underreported by child and adult victims alike.[78]

According to the American Academy of Pediatrics,

> [s]exual abuse occurs when a child is engaged in sexual activities that he or she cannot comprehend, for which he or she is developmentally unprepared and cannot give consent, and/or that violate the law or social taboos of society. The sexual activities may include all forms of oral-genital, genital, or anal contact by or to the child or abuse that does not involve contact, such as exhibitionism, voyeurism, or using the child in the production of pornography. . . . Sexual abuse includes a spectrum of activities ranging from rape to physically less intrusive sexual abuse.[79]

Usually the sex abuser is known to the victim. Men are more likely than women to be the abusers. Girls are at higher risk of sexual abuse, although boys may be less likely to report because of the shame of being a victim and concerns about being labeled homosexual.[80] Female children whose parents have divorced "face a significantly elevated risk of being sexually abused by either a parent, a parent's partner, or a person outside the home."[81]

Even in a civil case where the burden of proof is lower than in criminal cases, proving child sexual abuse is often difficult because of a lack of physical evidence or of adult witnesses other than the perpetrator (or at least none willing to testify). Requiring a child to testify can be traumatic, even where the state invokes the child witness protection law, which typically permits child victims of maltreatment to testify by videotape or closed-circuit television in civil proceedings and criminal prosecutions.[82] Some jurisdictions have amended their evidence rules to facilitate the use of a child's out-of-court statements because the child victim called to testify in a civil proceeding might be unwilling to give accurate information, might not be found competent, or might make a poor witness.

In the end, evidentiary difficulties may lead the juvenile court to base its decision on other grounds, such as parental unfitness, even when evidence of sexual abuse exists.[83]

77 *See* Diana J. English, *The Extent and Consequences of Child Maltreatment*, 8 THE FUTURE OF CHILDREN 39 (Spring 1998).

78 *See, e.g.*, William Winslade et al., *Castrating Pedophiles Convicted of Sex Offenses Against Children: New Treatment or Old Punishment?*, 51 SMU L. REV. 349, 357-60 (1998).

79 Am. Academy of Pediatrics, *The Evaluation of Sexual Abuse in Children*, 116 PEDIATRICS 506 (2005).

80 *See, e.g.*, William Winslade et al., *supra* note 78 at 357-60.

81 Robin Fretwell Wilson, *Children at Risk: The Sexual Exploitation of Female Children After Divorce*, 86 CORNELL L. REV. 251, 252 (2001).

82 *See* Maryland v. Craig, 497 U.S. 836 (1990) (upholding child witness protection law against Sixth Amendment confrontation clause challenge).

83 *See, e.g.*, Adoption of Quentin, 678 N.E.2d 1325 (Mass. 1997).

Newborns with Positive Toxicologies

Babies are more likely to be born healthy if their mothers have prenatal medical care, receive good nutrition, and abstain from alcohol, tobacco, and controlled substances during pregnancy. In the child abuse and neglect context, much attention has focused on pregnant women's use of illegal drugs.

As a federal funding eligibility requirement, the Keeping Children and Families Safe Act of 2003 requires states to notify child protective services if a newborn exhibits symptoms of prenatal exposure to illegal drugs.[84] The Act addresses only illegal drugs, even though alcohol is a greater problem. "The consensus . . . at this point," says one leading physician, "is that most of the adverse effects that had been reported due to cocaine and crack use were from alcohol use . . . [Alcohol] is the leading cause of birth defects due to an ingested environmental substance in [America]."[85] Smoking during pregnancy is also very harmful to the fetus.

Some states explicitly define neglect to include prenatal exposure to a controlled substance. Minnesota, for example, provides that neglect includes "prenatal exposure to a controlled substance . . . used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance."[86] In other states, however, a positive toxicology for a controlled substance alone does not prove abuse because it fails to establish that the infant will be at substantial risk; a positive toxicology report in conjunction with other evidence, however, may support a neglect finding.[87]

Experts disagree about whether drug-using pregnant women should face criminal prosecution or be committed civilly for treatment. It has been argued that minority and poor female substance abusers are considerably more likely to be reported to authorities than other women.[88] Many medical associations oppose prosecution of mothers who deliver babies harmed by substance abuse during pregnancy because they believe that the threat of prosecution would deter many expectant mothers from seeking drug treatment and general prenatal care.[89]

Nationwide, prosecutions under child endangerment and criminal abuse statutes have generally failed because courts have held that a fetus is not a "child" within the meaning of these statutes, or that prosecution for prenatal substance abuse was outside

84 P.L. 108-36.

85 Linda Carroll, *Alcohol's Toll on Fetuses: Even Worse Than Thought*, N.Y. TIMES, Nov. 4, 2003, at F1 (quoting Dr. Kenneth Warren, of the National Institute on Alcohol Abuse and Alcoholism).

86 MINN. STAT. § 626.556(2)(f)(6).

87 *See, e.g.*, In re Dante M., 661 N.E.2d 138 (N.Y. 1995).

88 *See, e.g.*, Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991).

89 *See, e.g.*, Am. Med. Ass'n, Bd. of Trustees, *Legal Interventions During Pregnancy: Court-Ordered Medical Treatments and Legal Penalties for Potentially Harmful Behavior by Pregnant Women*, 264 J. AM. MED. ASS'N 2663, 2667 (1990).

legislative intent.[90] Perhaps because of reliance on statutory interpretation, most courts have not wrestled with constitutional questions of whether prosecution of addicted pregnant mothers would violate their equal protection, procedural due process, or substantive due process privacy rights or whether prosecution would constitute cruel and unusual punishment.[91] In *Ferguson v. City of Charleston*, however, the Supreme Court held that the defendant state hospital violated the Fourth Amendment by performing diagnostic urine tests on pregnant women without their informed consent and then providing positive test results to police for possible prosecution for cocaine use.[92] *Ferguson* concluded that the interest in threatening criminal sanctions to deter pregnant women from using cocaine did not justify departure from the general rule that the Amendment prohibits an official nonconsensual search without a valid warrant.

RESPONSIBILITIES OF CHILD PROTECTIVE SERVICES

No Duty to Intervene

In *DeShaney v. Winnebago County Department of Social Services*, the Supreme Court held that due process does not impose an affirmative obligation on states to protect persons, including children, from harm.[93] The *DeShaney* plaintiffs were a mother and her son Joshua, a four-year-old beaten and permanently injured by his father, with whom he had lived. The defendants were social workers and local officials who had received reports that the boy was being abused, had reason to believe the reports were true, but did not remove him from his father's custody. In January 1982, the Department of Social Services (DSS) investigated the complaints Joshua's stepmother made to police and concluded that no action was needed. A year later, DSS obtained a court order placing Joshua in the temporary custody of a hospital that had reported the boy as abused. The case was dismissed and Joshua was returned to his father, who had agreed to DSS requirements. DSS assigned a caseworker to make monthly visits to Joshua's home and received two more hospital reports of abuse. The agency also received neighbors' reports of abuse through police. The caseworker visited the home almost twenty times, recorded incidents of abuse, but did nothing more.

DeShaney held that Fourteenth Amendment due process limits the state's power to act, but does not guarantee persons minimal levels of safety and security against the violence or other conduct of private actors. Nor does due process confer an affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests.

DeShaney also rejected the plaintiffs' argument that a "special relationship" existed between the state and Joshua because the state had undertaken to protect him from harm.

90 *See, e.g.*, State v. Martinez, 137 P.3d 1195, 1196 (N.M. Ct. App. 2006).

91 *See, e.g.*, Margaret P. Spencer, *Prosecutorial Immunity: The Response to Prenatal Drug Use*, 25 CONN. L. REV. 393, 410-26 (1993).

92 532 U.S. 67 (2001).

93 489 U.S. 189 (1989).

The injuries inflicted on the boy occurred not while he was in state custody, but while he was in the custody of his father, who was not a state actor. According to the Court, by returning the child to his father's custody, the state placed him in a situation that was no worse than if the state had not acted at all.

Tort Liability

DeShaney did not foreclose state tort remedies for children injured in Joshua DeShaney's circumstances, but barriers exist even in states that do not invoke sovereign immunity to preclude tort recovery. In *Boland v. State*, for example, a child died from a beating before the agency received and investigated a misrouted hotline telephone report.[94] New York's intermediate appellate court held that the claimant father had demonstrated a special relationship between the child and the state because the "detailed and comprehensive statutory scheme at issue . . . was designed to protect a discrete and limited class of individuals," namely abused children.[95] The court also held that the father had demonstrated that the state officer negligently failed to perform a ministerial act—routing the hotline call to the correct child protective office.

The father lost, however, because he failed to establish proximate causation. *Boland* required proof that:

> had the hotline report been correctly routed in the first instance, a timely investigation would have ensued, with the investigator assigned to the case interviewing the stepmother and the children prior to the infliction of [the victim's] fatal injuries and, based upon such interview, concluding that the stepmother posed such an imminent danger to the children's health that they would have been summarily removed from the home.[96]

Systemic Problems

Unfortunately, the lack of intervention that resulted in Joshua DeShaney's injuries is all too likely to happen again. A U.S. General Accounting Office study of selected child protective services offices found that "[i]ncreases in the number of maltreatment cases, the changing nature of family problems, and long-standing systemic weaknesses have placed the CPS [Child Protective Services] system in a state of crisis and undermined its ability to fully carry out the responsibilities for abused and neglected children."[97]

The report pinpointed three chronic problems:

> First, child maltreatment reports have risen steadily across the country. The caseloads of CPS units have grown correspondingly, and CPS units often cannot keep pace with this workload. Second, these caseloads are increasingly composed of families whose problems have grown more troubling and complicated, with substance abuse a common and pervasive

94 638 N.Y.S.2d 500 (App. Div. 1996).

95 *Id.* at 506.

96 Boland v. State, 693 N.Y.S.2d 748 (App. Div. 1999).

97 U.S. General Accounting Office, Child Protective Services: Complex Challenges Require New Strategies 4 (1997).

> condition. Finally, systemic weaknesses—such as difficulty maintaining a professional and skilled workforce, inconsistently implementing policies and procedures, a lack of automated case management in recordkeeping systems, and poor working relationships between CPS and the courts—have further weakened CPS units.[98]

The GAO concluded that "[t]he combined effect of difficult caseloads and systemic weaknesses (1) overburdens caseworkers and dilutes the quality of their response to families and (2) may further endanger the lives of children coming to the attention of CPS."[99]

A more recent evaluation of state child welfare systems found that no states met federal performance standards for the goals of safety, permanency, and well-being for children in foster care or receiving in-home services.[100]

Wrongful Removal

DeShaney stemmed from failure to remove the child from the parent, but children can also suffer harm from unnecessary or improper removal. Nonetheless, it has been held that parents cannot maintain a federal suit against caseworkers or the department of social services attorney for bringing a dependency action that resulted in a wrongful removal. In *Ernst v. Child and Youth Services*, for example, the U.S. Court of Appeals for the Third Circuit conferred absolute immunity on child welfare workers on the ground that they act in a quasi-prosecutorial capacity in dependency proceedings[101]:

> Like a prosecutor, a child welfare worker must exercise independent judgment in deciding whether or not to bring a child dependency proceeding, and such judgment would likely be compromised if the worker faced the threat of personal liability for every mistake in judgment. Certainly, we want our child welfare workers to exercise care in deciding to interfere in parent-child relationships. But we do not want them to be so overly cautious, out of fear of personal liability, that they fail to intervene in situations in which children are in danger.[102]

THE REASONABLE EFFORTS REQUIREMENT

During some periods of our nation's history, removing maltreated children from their parents was considered the best approach to child protection. Placing the children in institutions or with other families was considered sounder policy than trying to

98 *Id.*

99 *Id.*

100 Children's Bureau, U.S. Dep't of Health and Human Servs., Federal Child and Family Services Review: General Findings (2004).

101 108 F.3d 486 (3d Cir. 1997).

102 *Id.* at 496.

rehabilitate the parents. In other periods, however, removal was considered less desirable because of concerns about family integrity and the harm caused to children by removal and extended foster care placement.[103]

After years of debate on these issues and documentation of children harmed by removal, Congress passed the Adoption Assistance and Child Welfare Act of 1980 (AACWA). The Act was intended to require states to keep abused or neglected children in their own homes when possible and to require states to move aggressively to reunite the family when removal was necessary. If reunification was not possible within a reasonable time, the child would be placed for adoption. AACWA makes eligibility for specified federal funding contingent on a state's agreement, before placing a child in foster care, that the state will make reasonable efforts "to prevent or eliminate the need for removal of the child from his home, and . . . to make it possible for the child to return to his home."[104]

By 1997, however, Congress had become concerned that the states were making too much, rather than too little, effort to reunite families of abused and neglected children. The Adoption and Safe Families Act of 1997 (ASFA) requires states to meet stringent time requirements for terminating parental rights when children cannot be returned home. The Act also specifies that in some cases, states are not required to make reasonable efforts to reunite families before moving to terminate parental rights. Reasonable efforts are not required when the parent has subjected the child to aggravated circumstances such as abandonment, torture, chronic abuse, or sexual abuse; when parental rights of the parent to a sibling have been terminated involuntarily; or when the parent has:

> (I) committed murder . . . of another child of the parent; (II) committed voluntary manslaughter . . . of another child of the parent; (III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or (IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent.[105]

Some critics charge that despite the reasonable efforts requirement, states often do not provide adequate services to parents of maltreated children. Because of funding limitations, the services provided may not be appropriate to the parents' needs or may not continue for a sufficient time. Disagreement also persists concerning the proper division of responsibility between the child protective system and the welfare system, and between parents and the state.

Problems with housing illustrate these controversies. Homelessness is a significant factor leading to foster care placements. Some state courts have held that the social services agency can be ordered to provide housing as part of a reasonable efforts requirement when family reunification cannot otherwise be achieved because of the family's homelessness. In *In re Nicole G.*, for example, the Rhode Island Supreme Court rejected the agency's arguments that the "[l]egislature did not create or envision it as a housing

103 *See, e.g.*, DOUGLAS E. ABRAMS, *supra* note 10 at 22-27, 79, 170, 173.
104 42 U.S.C. § 671(a)(15)(B).
105 *Id.* § 671(a) (15) (D).

or income-maintenance agency," and "that if the court may order it to make rental-subsidy payments, critical moneys and energies will be diverted from its primary mission of preserving and reunifying families."[106]

Some courts, however, have interpreted the reasonable efforts requirement to allow removal of a child because the home was filthy, without requiring the state to provide a cleaning service that would be substantially less expensive than foster care. In *In re N.M.W.*, for example, the Iowa Court of Appeals found that the chronic unsanitary conditions of the mother's apartment were sufficient basis for a neglect adjudication because they presented health hazards, especially animal feces scattered throughout the living area.[107] Even in the absence of actual harm, the court permitted the agency to remove the child as a preventive measure. The mother was told she could regain custody of the child when she removed the pets and cleaned the apartment, but she did neither.

TERMINATION OF PARENTAL RIGHTS

When the state's efforts to keep a family together fail, the state may move to terminate parental rights, typically to free the child for permanent placement, with adoption usually preferred. Termination generally severs all parent-child ties permanently, particularly when the child is being freed for adoption by strangers. After termination, for example, the parent usually becomes a legal stranger to the child so that the child has no right to support or inheritance from the parent, and the parent has no right to see the child or know the child's whereabouts.

Because termination is such a drastic remedy (sometimes called the "death sentence" of maltreatment law), the Supreme Court has been sympathetic to parents' arguments that termination proceedings should carry greater due process protections than the usual civil case. Making termination of parental rights more difficult, however, is not necessarily in the best interests of maltreated children, who may end up consigned to "foster care limbo," unable to return to the abusive or neglectful home but also not free for adoption. This section concerns parents' due process protections and then examines some grounds for termination not seen in the decisions discussed earlier in this article.

Due Process Protections for Parents

In *Lassiter v. Department of Social Services*, the Supreme Court held, 5-4, that due process does not require appointment of counsel for indigent parents in all termination proceedings, but rather permits the trial court to determine the need for appointment on a case-by-case basis.[108] *Lassiter* determined the Fourteenth Amendment due process claim by applying the three factors identified in *Mathews v. Eldridge*: "the private interests at stake, the government's interest, and the risk that the procedures used will lead to

106 577 A.2d 248, 250 (R.I. 1990).
107 461 N.W.2d 478 (Iowa Ct. App. 1990).
108 452 U.S. 18 (1981).

erroneous decisions."[109] "A parent's desire for and right to the 'companionship, care, custody and management of his or her children,'" *Lassiter* began, "is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'"[110] The indigent parent's interest, however, was not strong enough to prevail in all circumstances against "the presumption that there is no right to appointed counsel in the absence of at least a potential deprivation of physical liberty."[111] *Lassiter's* slim majority concluded that due process would require appointment of counsel only when "the parent's interests were at their strongest, the State's interests were at their weakest, and the risks of error were at their peak."[112]

A year after *Lassiter*, the Court held in *Santosky v. Kramer* that due process permits termination of parental rights only where the state establishes one or more grounds for termination by at least clear-and-convincing evidence, a standard of proof higher than the ordinary civil preponderance-of-the-evidence standard.[113] *Santosky* held that the clear-and-convincing standard is appropriate where the individual interests at stake are "particularly important" and "more substantial than mere loss of money."[114] Applying the three *Eldridge* factors in the context of termination dispositions, the Court found the parental interest commanding, the risk of error from using a preponderance standard substantial, and the countervailing governmental interest favoring that standard comparatively slight.

In 1996, in *M.L.B. v. S.L.J.*, the Supreme Court held that due process and equal protection prohibit states from conditioning an appeal from termination orders on the parent's ability to pay record preparation fees.[115] *M.L.B.* stressed the importance of family life and the "unique kind of deprivation" worked by termination orders:

> Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as "of basic importance in our society," rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect. . . . In contrast to matters modifiable at the parties' will or based on changed circumstances, termination adjudications involve the awesome authority of the State "to destroy permanently all legal recognition of the parental relationship."[116]

Additional Grounds for Termination

In a termination of parental rights proceeding, the state typically must establish (by at least the clear-and-convincing evidence mandated by *Santosky*) one or more statutory grounds for termination and that termination is in the child's best interests. Abuse and neglect were discussed earlier in this article. This section discusses additional grounds for termination.

109 424 U.S. 319 (1976).
110 *Lassiter*, 452 U.S. at 27 (citation omitted).
111 *Id.* at 31.
112 *Id.*
113 455 U.S. 745 (1982).
114 *Id.* at 756 (citation omitted).
115 519 U.S. 102 (1996).
116 *Id.* at 127-28 (citation omitted).

Out-of-Home Placement

Where (as in *Santosky*) a child has been in foster care, the state may move to terminate parental rights on the ground that the parents have failed to take corrective actions necessary to allow the child to return home safely within a reasonable time. To overcome constitutional objections, the state must show that it clearly articulated to the parents the requirements for return of custody. In addition, the state may need to prove that it made reasonable efforts to reunite the family by helping the parents meet the requirements. In termination proceedings asserting this ground, the underlying basis for the initial removal is not at issue. The dispositive issues are the time in foster care and whether the parents and state have complied with the state's requirements.

Some states have made the passage of time alone a basis for termination. Because delays may be no fault of the parent, terminating parental rights based solely on the passage of time may violate the parent's substantive due process rights to the child's custody; delays may be due to court administrative needs, waiting lists for services such as drug treatment programs, and other problems unrelated to the parent's fitness.[117]

Parental Absence

The court may terminate parental rights when a parent abandons a child or makes only token efforts to visit and communicate with the child while routinely failing to pay child support. Parental absence constitutes abandonment only when the parent abandoned the child intentionally and without just cause.[118]

A parent's long-term incarceration may establish abandonment by leaving the parent unable to support or maintain contact with a child. Incarceration per se may not be a basis for termination, but imprisonment can be a factor the court considers. In *Vance v. Lincoln County Department of Public Welfare*, for example, the Mississippi Supreme Court upheld termination of the parental rights of a mother who had concurrent sentences of fifty and thirty years for murder and armed robbery.[119] Mississippi law permitted termination of parental rights based on a "substantial erosion of the relationship between the parent and child which was caused at least in part by the parent's . . . prolonged imprisonment."[120] Efforts to place the child with relatives had failed.

If the incarcerated parent can afford private care or has relatives who can care for the child, a state might have no interest in or grounds for termination. Many prison systems permit children to visit their incarcerated parents, but children have no constitutional right to such visitation.[121]

117 *See, e.g.*, In re H.G., 757 N.E.2d 864 (Ill. 2001). *But see* In re Jagger L., 708 N.W.2d 802 (Neb. 2006) (upholding termination on the ground that the child had been "in an out-of-home placement for fifteen or more months of the most recent twenty-two months," in addition to other grounds).

118 *See, e.g.*, In re Adoption of B.O., 927 P.2d 202 (Utah Ct. App. 1996).

119 582 So.2d 414 (Miss. 1991).

120 *Id.* at 417.

121 *See* Overton v. Bazzetta, 539 U.S. 126 (2003).

Abuse of a Sibling

As mentioned earlier, some parents abuse one child—the "target child"—but do not physically harm their other children. Under the doctrine sometimes called "anticipatory abuse," abuse of a child is probative of how the parents might treat the child's siblings in the same circumstances.[122] Courts consider not only that the abuse of one child is a high risk factor indicating a dangerous environment and a likelihood of abuse of other children, but also that witnessing such abuse harms children who are not yet abused themselves.[123] In extreme cases, the court may terminate parental rights to a child based entirely on proof of abuse of a sibling, even where no evidence is adduced concerning injury to the child and where all evidence concerns the sibling. "When faced with a potentially harmful situation, the juvenile court does not have to wait until harm is done before it can act."[124]

Mental Incapacity, Mental Illness or Immaturity

A parent's mental incapacity is not typically a per se basis for termination but also does not justify a lesser level of care by the parent. Courts focus on the child and on the parent's ability to care for the child, rather than on the parent's disability.[125] The Americans with Disabilities Act (ADA) does not provide the parent a defense against conduct that would otherwise justify termination because termination proceedings are not "services, programs or activities" within the meaning of the Act.[126]

In *In re B.S.*, for example, the Vermont Supreme Court found the ADA inapplicable, but held that even if it did apply, the mother had suffered no discrimination because state law did not make mental disability, by itself, a ground for termination.[127] A mentally disabled parent, the court continued, could meet the four criteria for determining the best interests of the child under the termination statute:

> (1) the interaction and interrelationship of the child with the child's natural parents, foster parents, siblings, and others who may significantly affect the child's best interests, (2) the child's adjustment to home and community, (3) the likelihood the natural parent will be able to resume parental duties within a reasonable period of time, and (4) whether the natural parent has played and continues to play a constructive role in the child's welfare.[128]

Because the touchstone is the best interests of the child, courts have similarly held that a parent cannot invoke his or her own adolescence to avoid a ground for termination otherwise established. In *In re McCrary*, for example, the Ohio Court of Appeals held that a maximum two-year time limit on reunification efforts did not violate the due process

122 *See, e.g.*, In re Marino S., 795 N.E.2d 21 (N.Y. 2003).
123 *Id.*
124 In re M.A.T., 934 S.W.2d 2, 4 (Mo. Ct. App. 1996).
125 *See, e.g.*, In re D.A., 862 N.E.2d 829 (Ohio 2007).
126 42 U.S.C. §§ 12131-12134.
127 693 A.2d 716 (Vt. 1997).
128 *Id.* at 720.

rights of the minor, who had given birth when she was fifteen.[129] The mother urged that because minor parents often lack the social and emotional maturity necessary to rear a child, the limit should not begin to run until she turned eighteen and thus reached majority. The court of appeals found it "simply unacceptable" to allow the child "at such a developmentally critical stage of its life to languish in a state of temporary custodianship."[130]

EXPEDITING TERMINATION PROCEEDINGS

ASFA requires states to initiate termination of parental rights proceedings in some cases marked by severe parental misconduct or the passage of time. The requirement applies

> in the case of a child who has been in foster care under the responsibility of the State for fifteen of the most recent twenty-two months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent. . . . [131]

ASFA's requirements do not apply, however, where the child is being cared for by a relative, where the state documents a compelling reason why termination would not be in the best interests of the child, or where the state has not yet provided the family reasonable services necessary for safe return of the child to the home.

Some state termination statutes create rebuttable presumptions that termination is in the child's best interests for serious parental misconduct that exceeds the ASFA requirements. Such misconduct includes causing the child to be conceived as a result of rape, incest, lewd conduct with a child under sixteen, or sexual abuse of a child under sixteen; murdering or intentionally killing the child's other parent or being incarcerated with no possibility of parole.[132]

THE ROLE OF THE CHILD'S ATTORNEY

The Supreme Court has not extended the constitutional right to counsel to children in protection proceedings, and only a few states have conferred such a right under their

129 600 N.E.2d 347 (Ohio Ct. App. 1991).
130 *Id.* at 353.
131 42 U.S.C. § 675(5)(E).
132 *See, e.g.*, IDAHO CODE § 16-2005.

state constitutions.[133] Virtually all states, however, have statutes requiring appointment of a representative for the child, who may be designated an attorney for the child, a guardian ad litem, a law guardian, or some other title. CAPTA conditions eligibility for specified federal funding on a state's providing a guardian ad litem "in every case involving an abused or neglected child which results in a judicial proceeding."[134] CAPTA does not require that the guardian ad litem be an attorney and has been amended to specifically allow lay persons to be guardians ad litem.

Some states use trained lay volunteers, rather than attorneys, to represent children in abuse and neglect cases. These volunteers are frequently called Court Appointed Special Advocates, or CASAs. CASA volunteers are used in a variety of models of representation; they may proceed independently, provide assistance to attorneys, or serve in addition to attorneys, sometimes with separate counsel to advocate their position in court.

In states that use attorneys as representatives, the role of the child's attorney is often ambiguous. Some lawyers pay little or no attention to their child client, believing they should advocate for what they believe is best for the child. Other attorneys believe they should advocate for what the child client wants and, as much as possible, try to advise and confer with the child as if he or she were an adult. Some jurisdictions expect the attorney to fulfill both roles. Underlying this ambiguity is concern about the child client's capacity, frequently coupled with a lack of clarity about the purpose of representation in a particular case.

This ambiguity is not resolved by the major model professional codes, the American Bar Association Model Rules of Professional Conduct and its predecessor, the Model Code of Professional Responsibility. Rule 1.14(a) of the Model Rules, for example, provides that "when a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." The Rules are silent, however, about what standard should be used to judge the client's decision-making abilities.

Studies of representation of children in abuse and neglect cases have reported that the quality of representation is often low. The right to counsel means the right to effective counsel, though attorneys are often overwhelmed with their caseloads. In *Kenny A. ex rel. Winn v. Perdue*, for example, one attorney testified that

> she had "failed to personally meet or speak with 90 percent of [her] own clients," and that there are cases where no one ever reviewed the medical, social service, education, or other records for a child, met with the foster care provider, or even met with the child. She also testified that because of her caseload, she often does not have time . . . to monitor whether

133 *See, e.g.*, Kenny A. ex rel. Winn v. Perdue, 356 F.Supp.2d 1353 (N.D. Ga. 2005); In re Jamie TT, 599 N.Y.S.2d 892 (App. Div. 1993).

134 42 U.S.C. § 5106a.

> her child client is in a safe foster care placement. In fact, she admitted, "I don't know where a lot of the children I represent are."[135]

In an effort to improve quality, in 1996 the ABA adopted Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.

Malpractice and Immunity

If the child's representative assumes a traditional attorney's role, the usual malpractice standards should apply.[136] If the attorney assumes a guardian ad litem role, however, the attorney may qualify for the quasi-judicial immunity that most courts have conferred on these representatives:

> A guardian ad litem serves to provide the court with independent information regarding the placement or disposition that is in the best interests of the child. This independent determination is crucial to the court's decision. The threat of civil liability would seriously impair the ability of the guardian ad litem to independently investigate the facts and to report his or her findings to the court. As a result, the ability of the judge to perform his or her judicial duties would be impaired and the ascertainment of truth obstructed.[137]

Role at Trial and Confidentiality

Because of ambiguity about the attorney's role, it may be unclear whether the child's attorney may or must testify, or whether attorney-child communications are confidential. In some jurisdictions, the child's representative can be cross-examined if his or her recommendations are based on an independent investigation that includes facts that have not been made part of the evidence. If the recommendations are based on evidence that has been presented to the court, however, cross-examination is not permitted because the recommendations are analogous to counsel's arguments on how the evidence should be viewed.[138] If the representative does testify, some courts protect the attorney-client privilege, though other courts do not.[139]

CONCLUSION

The stakes remain high for judges, advocates, and other professionals intimately involved in preventing, diagnosing, adjudicating, and treating child maltreatment:

135 356 F. Supp.2d 1353, 1363 (N.D. Ga. 2005).

136 *See, e.g.*, Marquez v. Presbyterian Hosp., 608 N.Y.S.2d 1012 (Sup. Ct. 1994).

137 Ward v. San Diego County Dep't of Social Servs., 691 F.Supp. 238, 240 (S.D. Cal. 1988).

138 *See, e.g.*, In re J.E.B., 854 P.2d 1372 (Colo. Ct. App. 1993).

139 *Compare* Nicewicz v. Nicewicz, 1995 WL 390800 (Ohio Ct. App. 1995) (guardian ad litem, who was an attorney, allowed to testify about conclusions and recommendations, but asserted the privilege concerning confidential communications with the child) and In re Order Compelling Production of Records of Maraziti, 559 A.2d 447 (N.J. Super. A.D. 1989) (communication between attorney and daughters of the defendant were protected by attorney-client privilege) *with* In re Christina W., 639 S.E.2d 770 (W.Va. 2006) (guardian ad litem must disclose information to a court to safeguard the best interests of the child, even when the child client had been assured by the attorney that their communications would be kept confidential) and Ross v. Gadwah, 554 A.2d 1284 (N.H. 1989) (privilege does not apply to guardian ad litem, even when the guardian is an attorney).

> Maltreated children are more likely than their peers to have significant depression. They also are more apt to engage in violent behavior, especially if they have been subjected to physical abuse, and their social and moral judgments often are impaired. Maltreated children also tend to lag behind their peers in acquiring new cognitive and social skills, so that their academic achievement is chronically delayed.[140]
>
> The ill effects of child maltreatment can be long-lasting and even inter-generational. [T]he rate of depression among adult women who report having been sexually abused as children is quite high. Adult survivors of sexual abuse also are especially likely to report concerns about their sexual adequacy. Similarly, aggressiveness is a remarkably persistent personality trait in abused boys and often is part of a pattern of continuing antisocial behavior. Although most maltreated children do not become maltreating parents, the risk of their doing so is markedly greater than if they had not been abused themselves.[141]

The ill effects of child maltreatment may indeed be long-lasting and even inter-generational, but so may be the positive effects of successful prevention, intervention, treatment, and care, the goals of readers of these pages.

140 U.S. Advisory Board on Child Abuse and Neglect, *supra* note 13 at 5.
141 *Id.*