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Child Abuse Laws: Past, Present, and Future

In 1970, a five-month-old baby was admitted to a California hospital. The X-rays showed that his skull was fractured from ear to ear. His mother explained that the baby had fallen off a bed. The child was returned to the mother three days later. Twice within the next four weeks further medical treatment was required for injuries which included whip welts on the back, puncture wounds in the neck, and burned fingertips. The last time he was brought in he had strangulation marks and no respiration. Spontaneous respiration was restored but the baby suffered extensive brain damage. As a result, this small child will be confined in a home for the mentally retarded for the rest of his life. *Time* reported that

The mother's boyfriend was convicted of child beating and sentenced to from one to ten years in prison (the mother ... was not charged ...). Meanwhile, the child's father brought a \$5,000,000 suit against four doctors, for failing to report the attacks, and against the city and police chief ... for failing to investigate when another doctor did make charges.[1]

Under the California law in force at that time, physicians were required to report apparent nonaccidental injuries to the juvenile probation department and the local police authority [2]. Such reports were to cause local authorities to investigate and, if necessary, take action to protect abused children.

During the course of jury selection, the case was settled. The defendant's insurers agreed to place \$600,000 in trust which was expected to provide \$81,000 per year for the child's medical and custodial care. Any funds remaining at the end of each year or upon the death of the child were to be returned to the defendants' insurers [3]. In analyzing the case, the *American Society of Hospital Attorneys Newsletter* stated, "Apparently counsel for the defendants felt that failure to comply with the statutory reporting requirement created a presumption of negligence." [4]

This case [5] dramatically illustrates both the importance of reporting child abuse cases and demonstrates the tragedy that can occur if protective services are not provided to abused children.

Child Abuse—A Part of Man's History

Unfortunately, the plight of this California baby is not unique. Child abuse has existed since the beginnings of recorded history. In order to deal with child abuse, in 2000 BC the Code of Hammurabi provided that if a nurse allowed a suckling to die in her hands and substituted another, her breast should be amputated. An ancient Egyptian record discloses a case involving a child murderer who was ordered to carry the slain infant in her arms for three days and three nights. Numerous other examples of child abuse that have occurred in societies down through the centuries can be cited [6].

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In this country it wasn't until after the Civil War, some 50 years after the American Society for the Prevention of Cruelty to Animals (ASPCA) was founded, that the Society for the Prevention of Cruelty to Children (SPCC) was established. At that time there were few, if any, laws concerning the care of children. Parents were considered as having practically unlimited authority to exploit or discipline their children.

The founding of the SPCC was spurred by an incident involving a church worker who, while visiting an old woman in a tenement house, learned of a small child named Mary Ellen who was beaten daily by her stepmother [7]. She discovered that Mary Ellen was chained to her bed, was given only bread and water, and was seriously ill.

The church worker's efforts to obtain aid from the police, district attorney, and other government sources were fruitless. Finally, she went to the ASPCA, which promptly took action [6, pp. 13]. Mary Ellen was "... removed from her parents on the grounds that she was a member of the animal kingdom and that therefore her case could be included under the laws against animal cruelty."

Developments in Child Abuse Detection

It wasn't until 1946 that physicians made the connection regarding what is now considered the common association of subdural hematoma and abnormal X-ray changes in the long bones [8]. In 1955, the willful infliction of trauma evidenced on X-rays was described on radio, press, and television, creating an intense awareness on the part of the general public in this country and stimulating the development of social agencies to deal with the problem [6, pp. 16].

In the early 1960s Kempe conducted extensive studies in an effort to obtain a more accurate picture of the true incidence of the problem which he described as the "Battered Child Syndrome" [9]. A symposium on child abuse was sponsored by the American Academy of Pediatrics in 1961. The United States Children's Bureau, Department of Health, Education and Welfare, funded several grants to study child abuse. The American Medical Association, American Humane Association, and the Children's Bureau drafted proposed model legislation which would encourage the reporting of child abuse and provide a means of protecting children identified as being abused or neglected.

From 1963 to 1966, 42 states passed legislation to define, identify, and protect abused children. Today all 50 states have in effect child abuse reporting legislation.

Recent Trends in Child Abuse Laws

Since 1970 practically all of the state child abuse laws have been revised. (For a comprehensive analysis of state child abuse laws see Ref 10.) Some significant legislative trends are discussed below.

Most of the statutes enacted from 1963-1966 required only medical personnel to report cases of suspected abuse. In 1964, the American Medical Association House of Delegates adopted a position statement [11] which provided, in part, the following:

Approaches which involve no more than the enactment of a law compelling physicians to report instances to the police, where there is reasonable cause to suspect that a child has been abused are inadequate. Such children do not always come to the attention of the physician, and making it mandatory that he report suspected cases could make it less likely that abused children would receive needed medical care. Knowing of this requirement, the adults involved might avoid seeking medical aid for the child to protect themselves.

The physician is not the only individual who sees children showing evidence of possible physical abuse. Visiting nurses, social workers, school personnel, lawyers, marriage counselors, and others often learn of cases before medical care is sought. Consequently, it would seem illogical to compel only the physician to report suspected instances of child abuse.

Getting at the roots of this problem requires more than mandatory medical reporting of cases of child abuse that have already occurred. It demands adjustment of the environment to protect the child and his siblings against willful physical injury. Assuring this protection is a task that involves not only the physician but other professional people as well as community agencies.

Today most states have added to the list of those mandated to report nurses, dentists, hospitals, social workers, teachers, and school administrators. In some states, coroners, law enforcement officers, members of the clergy, psychologists, chiropractors, child care centers, and lawyers are also required to report. Since most authorities now agree that a wide base of reporting is necessary to ensure proper identification of abused children, approximately half of the states specifically include statutory language encouraging reports from neighbors, friends, relatives, and others not mandated to report.

There also has been a trend to expand the definition of child abuse to include both physical abuse and neglect. A good example of an expanded definition can be found in the current Arizona law [12]:

“Abuse” means the infliction of physical or mental injury or the causing of deterioration of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his health, morals or emotional well-being is endangered.

Another trend has been to require reporting to agencies not primarily associated with criminal activities, such as police departments, but to agencies dealing primarily with social services, such as welfare departments. Thus, state intervention now takes the form of services to prevent further abuse, enhance the welfare of the child, and to preserve family life, if possible, rather than to gather evidence for later use in the criminal prosecution of an abusing parent.

Other Legislative Trends

All states now provide statutory immunity for those who report. No immunity from civil or criminal liability is provided for those who fail to report. Also, because of the common statutory recognition of the confidentiality of the physician-patient relationship, most states have passed specific legislation waiving this privilege in child abuse matters.

To gather data on child abuse and neglect and to facilitate the identification of child abusers, approximately two thirds of the states have established registers to store information on child abuse. In many of these states, physicians, policemen, social workers, and courts may directly or through their local welfare agencies gain access to the information contained in these registers when needed in their treatment of those they believe to be abused or neglected.

In several states, if the physician feels that a child is in danger of further injury, he may hold the abused child against parental wishes even if no medical treatment is required. Of course, as soon as possible, the local child protective agency should be notified. It may also be necessary to seek a temporary court order in such a situation authorizing the temporary removal of the child from parental custody. Such orders can be granted quickly, even over the telephone, if necessary.

Emergency treatment to safeguard the life or prevent serious harm to an abused or neglected child should be rendered without delay. Emergency medical care is authorized under the well-recognized doctrine of implied consent [13]. If the parents or guardian refuse to consent to treatment, a court order authorizing further care, if needed, should be obtained as soon as possible. Several states authorize, by statute, examination by a physician or by those required to report of a child suspected of being abused, even where no emergency exists.

Other recent revisions in the reporting laws have provided that (1) a guardian *ad litem*

be appointed to represent the "best interests" of the child when formal court action is contemplated, (2) that abused children be represented by a licensed attorney at all stages of court hearings, and (3) that a special court be established to hear only child abuse and neglect cases. Connecticut has enacted a special rule of evidence which provides that an inference of abuse or neglect will be made where a child sustains an injury and no adequate explanation of the cause is made [14].

It is evident that the trend of state activity on child abuse and neglect is to provide whatever is necessary in legislation to identify and protect all children who are subject to abuse or neglect.

Recent Federal Legislation

On 31 Jan. 1974, the Child Abuse Prevention and Treatment Act [15] was signed into law focusing national attention and federal funds on the problems of child abuse and neglect. The law provides for the creation of the National Center on Child Abuse and Neglect, within the Office of Child Development. The Secretary of the Department of Health, Education and Welfare, through the Center, is authorized to make grants to, and enter into contracts with, public agencies or nonprofit private organizations for demonstration programs and projects designed to prevent, identify, and treat child abuse and neglect. The Center is to compile, analyze, and publish annually a summary of research on child abuse and neglect, develop and maintain an information clearinghouse on programs dealing with child abuse, compile and publish training materials for persons working in the fields which deal with child abuse, provide technical assistance to public and nonprofit private agencies, and administer demonstration program grants.

The grants are being awarded under this Act for demonstration programs designed to prevent, identify, and treat child abuse and neglect including innovative projects which show promise of successfully preventing or treating child abuse and neglect.

Funds are also available for use by the various states to assist the states in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

To be eligible to receive these funds, the states are required to meet certain criteria. Some of these include

1. Receiving reports concerning known and suspected instances of child abuse and neglect;
2. Promptly investigating and, when necessary, acting to protect the allegedly abused child and other children in the home;
3. Providing for methods to preserve the confidentiality of records developed; and
4. Establishing cooperation among law enforcement officials, courts, and appropriate state agencies providing human services.

A total of \$60,000,000 is appropriated under this Act over a three-year period to accomplish the above-stated purposes. The first report to Congress of the programs assisted under this Act is mandated for 30 June 1975. The regulations implementing this Act are now available [16].

New Model Law Being Developed

Another federal program currently in being is the drafting of a New Model Child Abuse Reporting Law. A grant from the Department of Health, Education and Welfare to the Institute of Judicial Administration was awarded in fiscal year 1974 to conduct certain research activities and to draft what is now being called the "Model Child Abuse and Neglect Reporting Act." A special advisory committee was established to advise the Institute in this project. This committee was composed of 43 members representing

various disciplines, organizations, and interest groups. The final draft of this Model Act was submitted to the Office of Child Development on 3 Jan. 1975 for its review.

The Model Act is composed of proposed sections, alternative sections, and extensive commentary. It is expected that the Office of Child Development will release the final version of this Model Act soon.

The Professional's Responsibility in Child Abuse

When a professional fulfills his legal and moral duty to see that protective services are provided to abused or neglected children, he is acting as a true professional. What excuse can a professional give if he fails to act by refusing to accept his own responsibility toward these unfortunate children?

All 50 states and the federal government have made the decision through legislative action that intervention is appropriate in suspected child abuse cases. Certain professionals listed in the statutes have been charged by the states to act when they suspect child abuse. Thus, it is these professionals who must become familiar with their state laws, must maintain communication with the social agencies and courts charged with the responsibility for seeing to the welfare of abused and neglected children, and must act as required under the law when confronted with a suspected child abuse case. To do otherwise is to add further risks to the life and health of these children as well as place any reluctant professionals in jeopardy of being sued in a civil action for damages, prosecuted in a criminal action for failing to discharge their duties as required by law, or both. It is in the child's interest, the professional's interest, and society's interest for the professional to act in accordance with his legal and moral duty.

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