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The Pennsylvania Child Protective Services Law

I. An Approach to the Problem

Nationwide, public agencies receive over 600,000 reports of suspected child abuse every year,¹ and 2,000 children die each year under circumstances in which abuse or maltreatment is suspected.² Professionals presently believe that in ten percent of child abuse cases, long-term separation of the parent and child is the only way to assure the child's physical safety. For the remaining ninety percent "treatment can be offered to help parents understand and redirect the anger that is usually at the base of their abusive behavior and to help them improve their overall care of their children."³

Child abuse is a profoundly complex problem, but an awareness of the growing frequency of abuse and an awareness of present professional opinion on the effective treatment of the problem have created a demand for adequate legislation in this area. To stop child abuse, the abused child must be brought to the attention of those who can provide help and protection. Moreover, to create programs for protection and treatment, the incidence of abuse and the magnitude and nature of the problem must be sufficiently documented. To these ends, reporting statutes have been enacted in every state in the Union.⁴

1. Statistics vary according to the method of recording and evaluation used.

Ray Helfer estimated the 1973 reporting rate as 350 reports per million population nationwide; this rate yields a figure of more than 70,000 reports for the year. Estimates of actual incidence vary; in fact, most are inconsistent. But all suggest a far more massive problem than that which is reported. According to Vincent DeFrancis, some 10,000 children are severely battered each year; at least 50,000 to 75,000 are sexually abused; 100,000 are neglected physically, morally or emotionally; and 100,000 suffer emotional neglect. Abraham Levine reports that neglect is estimated to be 2½ to 20 times more prevalent than abuse, with estimates ranging between 500,000 and 2,000,000 incidents a year. David Gil and John Noble, however, place the upper limits of physical abuse at least eight times higher than DeFrancis' overall estimate and twice as high as Levine's maximum estimate of neglect: approximately 2,500,000 to 4,000,000 incidents of abuse annually, or about 13,000 to 21,000 incidents per million population in the United States.

1 U.S. DEP'T OF H.E.W., Pub. No. (OHD) 75-30073, CHILD ABUSE AND NEGLECT, AN OVERVIEW OF THE PROBLEM 9-10 (1975). An excellent summary of the statistical reports can be found in Nagi, *Child Abuse and Neglect Programs: A National Overview*, CHILDREN TODAY, May/June 1975, at 13.

2. Besharov, *Building a Community Response to Child Abuse and Maltreatment*, CHILDREN TODAY, Sept./Oct. 1975 at 2.

3. Broeck, *The Extended Family Center*, CHILDREN TODAY, Mar./Apr. 1974, at 2.

4. Statutes making reporting of child abuse incidents mandatory exist in all but six states. Reporting is permitted in Alaska, Missouri, New Mexico, North Carolina, Texas, and Washington, but not required. Brown, *Child Abuse: Attempts to Solve the Problem by Reporting Laws*, 60 WOMEN LAW. J. 74 (1974).

On November 26, 1975, Pennsylvania's Child Protective Services Law (CPSL) became effective.⁵ The new statute's stated purpose is to encourage more complete reporting of suspected child abuse and to establish in each county a child protective service capable of investigating such reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve and stabilize family life wherever appropriate.⁶

The implementation of these complicated purposes required an extensive piece of legislation. This note will attempt to highlight the major areas of the new Law, the procedural problems encountered in its use, and its relation to the Juvenile Act.⁷ No attempt will be made to discuss the social or psychological causes of child abuse, or to consider approaches to the treatment of the problem. Lengthy and learned works are available elsewhere on these topics.⁸

II. Substance of the Law

A. *Focus: Delivery of Welfare Services*

The Child Protective Services Law is a service statute. When child abuse first came to public attention during the 1960's, some states passed laws in a visceral reaction to a shocking incident. In these laws the criminal aspect of child abuse was emphasized. Abuse reports were made to police, and criminal sanctions were imposed upon abusers. These statutes proved inadequate, and their relative ineffectiveness in eliminating child abuse from our communities mandated a more careful study of the problem and a more enlightened approach by legislatures.

If it is determined that a reporting statute is preferable to a criminal enforcement statute, then the legislature must answer the following questions: Who should report cases of suspected child abuse? Will reporting be mandatory or permissive? To whom will the reports be made—to the police or other enforcement agency, to a child protective or welfare agency, to the juvenile court, or to some other public or private agency? What injuries or disorders will be subject to mandatory reporting? What definitions will be ascribed to "child abuse"? What action will the community take upon receipt of a child abuse report? What standard of proof will be required to confirm a report as actual abuse?

5. PA. STAT. ANN. tit. 11, §§ 2201-2224 (Purdon Supp. 1976).

6. PA. STAT. ANN. tit. 11, § 2202 (Purdon Supp. 1976).

7. PA. STAT. ANN. tit. 11, §§ 50-101 to 50-337 (Purdon Supp. 1976).

8. See U.S. DEP'T OF H.E.W., PROCEEDINGS OF THE FIRST NATIONAL CONFERENCE ON CHILD ABUSE AND NEGLECT (Pub. No. (OHD) 77-30094, 1976 (conference was held Jan. 4-7, 1976); R. HELFER & C. KEMPE, THE BATTERED CHILD (1968); J. GOLDSTEIN, A. FREUD & A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD (1973); D. GIL, VIOLENCE AGAINST CHILDREN (1970); Thomas, *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N. CAR. L. REV. 293 (1972); *Symposium—Child Abuse*, 8 CREIGHTON L. REV. 729 (1975).

The new CPSL demonstrates the choices made by the Pennsylvania legislature on these and other issues. Pennsylvania has chosen primarily to provide rehabilitative services to a family caught in the cycle of child abuse. The CPSL has been held apart from the criminal system, and every effort is made to select procedures that will add the least pressure to an already strained parent-child relationship.

The CPSL mandates a program of publicity and education through the Pennsylvania Department of Public Welfare (DPW) and each child protective service, jointly and individually, for the public, for local welfare staff members, and for persons required to report.⁹ It also requires each child protective service (CPS) to make available a wide range of services for the prevention and treatment of child abuse.¹⁰ These services will be tailored to local needs. Welfare services are offered to the family when investigation of a report indicates that they are needed. If the services are refused, the CPS can initiate court proceedings to compel appropriate family therapy.¹¹

The Child Protective Services Law can be viewed, for purposes of discussion, as having four areas of concern: (1) the reporting system; (2) record keeping; (3) welfare services; and (4) court proceedings.

B. *The Reporting System*

The main thrust of the new CPSL is toward more complete reporting of cases of suspected child abuse. Although everyone sternly denounces child abuse on a theoretical level, in reality few citizens will involve themselves in reporting an incident of suspected abuse. Under the CPSL professional persons are *required* to report when they believe or suspect a child coming before them in their professional capacity is an abused child.¹² Any other person is *permitted* to make a report of suspected child abuse. Thus, the Pennsylvania statute has both mandatory and permissive reporting provisions. Persons who, in good faith,¹³ report a suspected case of child abuse are immune from any civil or criminal liability that might arise from such actions. Criminal penalties are imposed upon those who are *required* to report child abuse and fail to do so.¹⁴ In practical

9. PA. STAT. ANN. tit. 11 § 2213 (Purdon Supp. 1976).

10. PA. STAT. ANN. tit. 11 § 2216(d) (Purdon Supp. 1976).

11. PA. STAT. ANN. tit. 11, § 2217(9) (Purdon Supp. 1976).

12. PA. STAT. ANN. tit. 11, § 2204 (Purdon Supp. 1976). Subsection (c) specifically lists the following persons as being required to report suspected child abuse: licensed physicians, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, a Christian Science practitioner, school administrator, school teacher, school nurse, social services worker, day care center worker, mental health professional, peace officer or law enforcement official. The list is not intended to be exhaustive. PA. STAT. ANN. tit. 11, § 2204(c) (Purdon Supp. 1976).

13. Under PA. STAT. ANN. tit. 11, § 2211 (Purdon Supp. 1976) the good faith of any person required to report is presumed.

14. It is a summary offense for one required to report a case of suspected child abuse to wilfully fail to do so. Second or subsequent offenses are misdemeanors of the third degree. PA. STAT. ANN. tit. 11, § 2212 (Purdon Supp. 1976).

terms this means, for example, that an elementary school teacher who fails to report a case of suspected child abuse could be prosecuted for a summary offense or a misdemeanor of the third degree if the child comes to the attention of the authorities by some other means.

Mandatory reporting provisions force persons who work with children to make a definite decision about a child's well-being and to take affirmative action to have the child's circumstances investigated. In cases of extreme danger, the CPSL even permits the child to be taken into protective custody by medical personnel, police, or under court order. This custody is the ultimate form of child abuse reporting because it forces a hearing on whether protective custody should be continued.¹⁵ Although none of the original child abuse reporting acts in other states required the reporting of a dead child,¹⁶ the new Pennsylvania Law mandates a report to the coroner if "any person . . . required to report cases of suspected child abuse . . . has reasonable cause to suspect that a child died as a result of child abuse."¹⁷

Thus, the CPSL imposes an affirmative duty to report child abuse upon a wide sector of the public. It further encourages all persons to bring cases of abuse to official attention and seeks to protect from liability those who make a good faith effort to protect a child from harm. Prior to this legislative creation of a duty to report, child abuse cases were generally discovered in a haphazard fashion. A concerned teacher, a compassionate physician, or a responsible neighbor might draw a suspected child abuse case to the attention of the police. More frequently, a family receiving public social welfare services and under the regular supervision of social services personnel would find itself under official scrutiny for child abuse.¹⁸ In effect, children of the poor were protected more strictly, and their parents were held to more rigid standards of parenting, than children and parents who were financially independent of government welfare services. Studies indicate, however, that child abuse and neglect occur in families from all socioeconomic levels, religious groups, races and nationalities.¹⁹ It is, therefore, patently unfair to permit the welfare-dependent child to be helped and protected while reporting procedures

15. The procedure for taking and maintaining custody is discussed at note 45 and accompanying text *infra*. PA. STAT. ANN. tit. 11, § 2208 (Purdon Supp. 1976).

16. Brown, *Child Abuse: Attempts to Solve the Problem by Reporting Laws*, 60 WOMEN LAW. J. 73, 75 (1974).

17. PA. STAT. ANN. tit. 11, § 2210 (Purdon Supp. 1976).

18. 1 U.S. DEPT OF H.E.W., Pub. No. (OHD) 74-30073, CHILD ABUSE AND NEGLECT, AN OVERVIEW OF THE PROBLEM 11 (1975).

Poor families and nonwhite families are reported more frequently than middle- and upper-class white for several reasons. Members of lower socioeconomic groups are the clients of welfare agencies, municipal hospitals, and out-patient clinics. Compared to middle- and upper-class families, they not only have more contacts with many different types of professionals, but their home lives and problems are also more open to professional scrutiny.

19. *Id.* See Gil, *Incidence of Child Abuse and Demographic Characteristics of Persons Involved*, in THE BATTERED CHILD 19 (1968); Hays, *Child Abuse: An Overview*, 8 CREIGHTON L. REV. 743, 744 (1975).

sanction, by non-discovery, abuse in more prosperous families. The CPSL attempts to widen the range of children protected against abuse by expanding the reporting procedures to all socioeconomic classes. A statewide, toll-free telephone number has been established for oral reports of child abuse.²⁰ The reports are made to child protective authorities²¹ who investigate the report and set into motion the other provisions of the Act.

C. Record Keeping

1. *Establishing and Using Records.*—The Child Protective Services Law requires DPW to establish and maintain records on cases of reported child abuse.²² These records serve two purposes. First, the carefully prepared documentation on the abuse of a particular child allows the state to provide ongoing help and protection for that child, and perhaps for other children in the same family. To ensure maximum reliability of these records, the statute and its companion regulations outline a procedure for investigating, filing, using, and expunging reports of child abuse.²³

The procedure is effected through two files, the pending complaint file, and the state-wide Central Register of Child Abuse. Both files are maintained within the DPW.²⁴ The pending complaint file holds all reports of child abuse that are under investigation. If the initial report is made directly to the DPW (as through the toll-free telephone), the DPW will transmit the report to the appropriate child protective service for investigation.²⁵ If the initial report is made to the child protective service, the CPS prepares a child abuse report summary and forwards it to DPW.²⁶ Information from child abuse reports available in the Central Register is provided to the CPS either with the initial report from the DPW or upon request by the CPS if the CPS received the initial report.

Every county public child welfare agency is required to establish a "child protective service" within each agency.²⁷ The CPS acts exclusively to implement the procedures of the Child Protective Services Law. The CPS must determine within thirty days of the initial report whether it is "unfounded,"²⁸ "founded,"²⁹ or "indicated."³⁰ At the thirty-day

20. PA. STAT. ANN. tit. 11, § 2214(c) (Purdon Supp. 1976).

21. Reports can also be made directly to local Child Protective Services. PA. STAT. ANN. tit. 11, § 2206(b) (1975).

22. PA. STAT. ANN. tit. 11, § 2214 (Purdon Supp. 1976).

23. In an effort to create a file of reliable information prior to enactment of the new statute all existing child abuse records were destroyed. PA. STAT. ANN. tit. 11, § 2214(p) (Purdon Supp. 1976). Present records, therefore, are compiled under stricter standards which protect the rights of parents and insure the welfare of children.

24. PA. STAT. ANN. tit. 11, § 2214(a) (Purdon Supp. 1976).

25. PA. STAT. ANN. tit. 11, § 2214(f) (Purdon Supp. 1976).

26. PA. STAT. ANN. tit. 11, § 2206(b) (Purdon Supp. 1976).

27. PA. STAT. ANN. tit. 11, § 2216 (Purdon Supp. 1976).

28. PA. STAT. ANN. tit. 11, § 2203 (Purdon Supp. 1976) defines "unfounded report" as "any report made pursuant to this act unless the report is a 'founded report' or unless an

“checkpoint” DPW may inquire into the performance of the CPS. On the basis of this inquiry, the DPW may take action to require strict enforcement of the provisions of the CPSL, including legal action and/or the withholding of reimbursement for all or part of the activities of the county public child welfare agency.³¹ If an abuse report is not verified within sixty days, it will be declared an “unfounded” report and be removed from the pending complaint file.³²

Reports that are determined to be “founded” or “indicated” are removed from the pending complaint file, and certain information is entered into the statewide Central Register.³³ Once each month the statewide Register is searched for children who have reached the age of eighteen and their reports are expunged.³⁴ Reports can also be amended or expunged upon the request of a subject³⁵ of an abuse report and after an appropriate administrative hearing.

The Central Register operates to correlate reports of child abuse from all sources and all counties within the state. This is especially valuable in discouraging “hospital hopping” and “physician skipping” by abusive parents. It also gives some protection to children of transient, migrant, and military families who were previously exempt from any practical local supervision.

The second major purpose of the DPW child abuse records is to provide statistical information on child abuse that can be utilized in developing programs of protection and family rehabilitation. Specific information is entered from unfounded, founded, and indicated reports

investigation by the appropriate child protective service determines that the report is an ‘indicated report.’ ”

29. PA. STAT. ANN. tit. 11, § 2203 (Purdon Supp. 1976) defines “founded report” as “a report made pursuant to this act if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused.” CPS workers seldom attempt to have the court confirm an abuse report before the hearings provided under the Juvenile Act through PA. STAT. ANN. tit. 11, § 2208(c) (Purdon Supp. 1976). The report would become founded after such a hearing which would be, under the definition, a “judicial adjudication.”

30. PA. STAT. ANN. tit. 11, § 2203 (Purdon Supp. 1976) defines “indicated report” as a report made pursuant to this act if an investigation by the child protective service determines that substantial evidence of the alleged abuse exists based on (I) available medical evidence and the child protective service investigation or (II) an admission of the acts of abuse by the child’s parent or person responsible for the child’s welfare.

31. PA. STAT. ANN. tit. 11, § 2214(j) (Purdon Supp. 1976).

32. PA. STAT. ANN. tit. 11, § 2214(k) (Purdon Supp. 1976). Information from unfounded reports can be included in the Research File of Non-Identifiable Information, but it is limited to the following: (1) date or dates and the nature and extent of the alleged instances of suspected child abuse; (2) the age of the children involved; (3) the locality in which the suspected abuse occurred; (4) the fact that the report was unfounded; (5) the result of any legal proceeding brought on the basis of the report of suspected child abuse, omitting names and addresses. Child Protective Services Reg., § 2-23-136, 6 PA. BULL. 841 (1976) (to be codified at Title 55 of Pa. Code).

33. PA. STAT. ANN. tit. 11, § 2214(h) (Purdon Supp. 1976).

34. PA. STAT. ANN. tit. 11, § 2214(n) (Purdon Supp. 1976).

35. “Subject” is not defined in the CPSL as either the abusive parent or the abused child. PA. STAT. ANN. tit. 11, § 2215(d) (Purdon Supp. 1976).

into a Research File of Non-Identifiable Information.³⁶ An annual report,³⁷ compiled from these statistics, must be submitted to the Governor and the General Assembly on the operations of the Central Register and each county's CPS. This full statistical analysis is used to appraise the legislature of the need for change, repeal, or passage of additional legislation in the area of child abuse.

2. *Confidentiality of Records*.—All child abuse records are confidential. "All reports, report summaries and other accompanying information obtained pursuant to investigations of suspected child abuse in the possession of the Unit, a county public child welfare agency, or a CPS are confidential."³⁸ Criminal sanctions are imposed upon anyone who releases confidential information to unauthorized persons.³⁹

For proper investigation of suspected child abuse cases and implementation of family rehabilitation services, confidentiality is an absolute necessity. However, it may pose procedural problems at the local level. This is best illustrated in a county that adopts for implementation of the CPSL a "local plan"⁴⁰ that involves multidisciplinary teams,⁴¹ in a county in which the DPW solicitor is also affiliated with the District Attorney's Office, or in a county in which the police must accompany the CPS staff members on home visits to protect them from neighborhood violence. Information obtained through contacts with CPS cannot find its way into police reports or criminal complaints. Persons who serve in dual capacities must not confuse their responsibilities. The CPSL makes all information obtained through CPS *absolutely* confidential.⁴² Therefore, attorneys or police officers, for example, who are made aware of criminal activity through their work with CPS⁴³ are under an affirmative duty,

36. See note 32 *supra*.

37. PA. STAT. ANN. tit. 11, § 2219 (Purdon Supp. 1976).

38. Child Protective Services Reg., § 2-23-123, 6 PA. BULL. 840 (1976) (to be codified at Title 55 of Pa. Code).

39. PA. STAT. ANN. tit. 11, § 2215(g) (Purdon Supp. 1976). Only the following are "authorized persons": (1) an authorized official of a child protective service acting in the course of his duties; (2) a physician examining or treating a child; (3) a director of any hospital or medical institution at which a child is being treated; (4) a guardian ad litem for the child; (5) an official of DPW conducting an audit of CPS performance; (6) a court of competent jurisdiction pursuant to a court order. PA. STAT. ANN. tit. 11, § 2215(a) (Purdon Supp. 1976).

40. PA. STAT. ANN. tit. 11, § 2216(c) (Purdon Supp. 1976) requires that once each year the child protective service within each county public child welfare agency submit a "local plan" for the implementation of the Act at the local level. The plan must include the organization, staffing, mode of operations and financing of the child protective service, as well as provisions for inter-agency relations and purchase of service.

41. Multidisciplinary teams are cooperative units of professionals in community health, mental health, social services, education, law and law enforcement used to develop, review and implement treatment plans for abused children and their families. Child Protective Services Reg. § 2-23-69, 6 PA. BULL. (1976) (to be codified at Title 55 of Pa. Code); see 2 U.S. DEP'T OF H.E.W., Pub. No. (OHD) 75-30074, CHILD ABUSE AND NEGLECT, THE ROLES AND RESPONSIBILITIES OF PROFESSIONALS 42 (1975).

42. PA. STAT. ANN. tit. 11, § 2215 (Purdon Supp. 1976).

43. Since drug abuse and child abuse are often coexistent within a family, such a conflict of interest cannot be anticipated to be unusual. These conflicts are not, of course,

enforced by criminal penalties, *not* to disclose information of that activity.⁴⁴

The confidentiality of child abuse records must be rigidly enforced to make programs under the Act work to protect the children of Pennsylvania. Confidentiality is the cornerstone of the most important aspect of the Child Protective Services Law—child welfare services. It creates the proper conditions for implementation of protective and rehabilitative programs for the child and the family. Awareness of the possible conflict between the aims of the CPS program and the local criminal justice system should provide guidelines for the construction of local plans. When conflict cannot be avoided, those in possession of confidential information must be made to assume full responsibility for its use and misuse.

D. Court Proceedings

1. *General Provisions.*—The Child Protective Services Law authorizes the enforcement of child care standards and protection of the child through court proceedings. It must be emphasized, however, that the focus of the CPSL is not upon the power of the court to compel parents to submit to the discretion of welfare agencies. The CPSL provides for resort to the court only in emergency situations and in situations of extreme danger to the child's well-being. When the wide range of voluntary social welfare plans fails to protect the child or rehabilitate the family, the power of the court can bring new direction to the situation.

The CPSL provides for court intervention when a child must be taken into protective custody. Under a new power granted by the CPSL,⁴⁵ a physician, or the director of a medical institution at which a child is being treated, may take a child into custody if it is "immediately necessary to protect the child from further serious physical injury, sexual abuse or serious physical neglect." The CPS must be notified of the custody⁴⁶ and they, in turn, must obtain a court order permitting the child to remain in custody.⁴⁷ Custody cannot be maintained for longer than seventy-two hours without a detention hearing. If, at this hearing, it is determined that custody should continue, the CPS must file a petition with the court under the procedures of the Juvenile Act.⁴⁸

limited to drug abuse. Any number and type of illegal activities or grounds to suspect illegal activities may be part of a child abuse report and investigation.

44. For a list of the only persons authorized to receive this confidential information, see note 39 *supra*. Wilful release of confidential information is a misdemeanor of the third degree. PA. STAT. ANN. tit. 11, § 2215(g) (Purdon Supp. 1976).

45. PA. STAT. ANN. tit. 11, § 2208 (Purdon Supp. 1976).

46. The parents, guardian, or custodian of the child must also be notified in writing within twenty-four hours, and informed of the whereabouts of the child and the reasons for taking the child into custody. PA. STAT. ANN. tit. 11, § 2208(b) (Purdon Supp. 1976).

47. A judge of the court of common pleas must be available twenty-four hours a day, 365 days a year, to decide custody actions brought by a child protective service. PA. STAT. ANN. tit. 11, § 2208(a)(2) (Purdon Supp. 1976).

48. PA. STAT. ANN. tit. 11, § 50-314 (Purdon Supp. 1976) provides:

Under the new CPSL there is a presumption that a child should be taken into custody and thereby separated from his family only in cases of extreme abuse or danger of abuse. This presumption is supported by the requirement that only a qualified medically-trained person, a doctor, can

A petition, which shall be verified and may be on information and belief, may be brought by any person including a law enforcement officer. It shall set forth plainly:

(1) The facts which bring the child within the jurisdiction of the court and this act, with a statement that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency is alleged, that the child is in need of treatment, supervision or rehabilitation.

(2) The name, age, and residence address, if any, of the child on whose behalf the petition is brought.

(3) The names and residence addresses, if known to the petitioner, of the parents, guardian, or custodian of the child and of the child's spouse, if any. If none of his parents, guardian, or custodian resides or can be found within the State, or if their respective places of residence address are unknown, the name of any known adult relative residing within the county, or if there be none, the known adult relative residing nearest to the location of the court.

(4) If the child is in custody and, if so, the place of his detention and the time he was taken into custody.

PA. STAT. ANN. tit. 11, § 50-315 (Purdon Supp. 1976) provides:

(a) After the petition has been filed the court shall fix a time for hearing thereon, which, if the child is in detention, shall not be later than ten days after the filing of the petition. If the hearing is not held within such time, the child shall be immediately released from detention. The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons shall also be directed to the child if he is fourteen or more years of age or is alleged to be a delinquent. A copy of the petition shall accompany the summons.

(b) The court may endorse upon the summons an order (i) directing the parents, guardian, or other custodian of the child to appear personally at the hearing, and (ii) directing the person having the physical custody or control of the child to bring the child to the hearing.

(c) If it appears from affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering his health or welfare or those of others, or that he may abscond or be removed from the jurisdiction of the court or will not be brought before the court notwithstanding the service of the summons, the court may issue a warrant of arrest.

(d) A summons and warrant of arrest shall be in such form and shall be served as prescribed by the Rules of Criminal Procedure.

(e) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, his counsel, with the consent of the parent, guardian, or other custodian, or guardian ad litem, may waive service of summons in his behalf.

PA. STAT. ANN. tit. 11, § 50-316 (Purdon Supp. 1976) provides:

(a) Hearings under this act shall be conducted by the court without a jury, in an informal but orderly manner, and separate from other proceedings not included in section 3.

(b) The district attorney, upon request of the court, shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the State.

(c) If requested by the party or ordered by the court the proceedings shall be recorded by appropriate means. If not so recorded, full minutes of the proceedings shall be kept by the court.

(d) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings under this act. Only the parties, their counsel, witnesses, and other persons accompanying a party for his assistance, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his delinquency are being heard.

The juvenile's right to counsel is set forth in PA. STAT. ANN. tit. 11, § 50-317 (Purdon Supp. 1976), and provision for other basic rights is made in PA. STAT. ANN. tit. 11, § 50-318 (Purdon Supp. 1976).

make this decision without a court's approval. This latter provision offers immediate protection to an abused child by increasing the discretionary power of specialists in health care. Yet, the rights of parents are also protected by requiring less highly trained personnel—welfare workers—to obtain permission from the court before taking custody.

The CPSL permits a child to be taken into custody by the police under court order as provided by section 11 of the Juvenile Act,⁴⁹ and expressly forbids a child protective services worker from entering the home of any individual to take custody of a child without a court order.⁵⁰ This provision would also seem to encourage trust among those involved in a child abuse report.⁵¹ Parents need not fear overreaching by CPS workers offering welfare services, doctors are no longer powerless to render immediate help in extreme cases, and children can hope for some balancing of rights and duties that will focus on their well-being.

2. *Procedure in Cases of Child Abuse.*—When the CPS petitions the court for custody in a child abuse case, the procedure is as specified in the Juvenile Act.⁵² The CPS can aver that the subject is an “abused child”⁵³ under the Child Protective Services Law, or a “deprived child”⁵⁴ under the Juvenile Act. The basis of the petition will be deter-

49. PA. STAT. ANN. tit. 11, § 2208(a)(1) (Purdon Supp. 1976) states: “A child may be taken into custody: (1) as provided by section 11 of the act of December 6, 1972 (P.L. 1464, No. 333), known as the ‘Juvenile Act.’ ” PA. STAT. ANN. tit. 11, § 50-308 (Purdon Supp. 1976) (section 11 of the Juvenile Act), provides:

A child may be taken into custody:

(1) Pursuant to an order of the court under this act;

(2) Pursuant to the laws of arrest;

(3) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his surroundings, and that his removal is necessary; or

(4) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has run away from his parents, guardian, or other custodian; or

(5) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has violated conditions of his probation.

50. PA. STAT. ANN. tit. 11, § 2217(7) (Purdon Supp. 1976).

51. M. Brady, *Prevention and Parenting: As These Issues Relate to the Minority Family* in U.S. DEP'T H.E.W., PROCEEDINGS OF THE FIRST NATIONAL CONFERENCE ON CHILD ABUSE AND NEGLECT 55 (Pub. No. (OHD) 77-30094, 1977) (conference was held Jan. 4-7, 1976). The classic work on the separation of a child from his parents is J. BOWLBY, *CHILD CARE AND THE GROWTH OF LOVE* (2d ed. 1965).

52. The procedure from petition to hearing is prescribed at PA. STAT. ANN. tit. 11, § 50-314 (Purdon Supp. 1976) through PA. STAT. ANN. tit. 11, § 50-320 (Purdon Supp. 1976).

53. An “abused child” is a child under eighteen years of age who exhibits evidence of sexual abuse, serious physical neglect, or serious physical or mental injury not explainable by the available medical history as being accidental, if the abuse, neglect or injury has been caused by the acts or omissions of the child's parents or custodian. PA. STAT. ANN. tit. 11, § 2203 (Purdon Supp. 1976).

54. Deprived Child means a child who: (i) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals; or (ii) has been placed for care or adoption in violation of law; or (iii) has been abandoned by his parents, guardian, or other custodian; or (iv) is without a parent, guardian, or legal custodian; or (v) while subject to compulsory school attendance is habitually and without justification truant from school.

PA. STAT. ANN. tit. 11, § 50-102(4) (Purdon Supp. 1976).

minative of burden of proof and of specific rights granted under the two statutes. Under the CPSL, the burden of proof on the question of abuse is statutorily shifted from the petitioner to the parent.⁵⁵ That is, evidence of "serious physical injury, sexual abuse, or serious physical neglect . . . shall be prima facie evidence of child abuse by the parent or other person responsible for the child's welfare." The parent must, in effect, prove that the injuries are *not* child abuse.⁵⁶ Further, the child will be represented by his own attorney, a guardian ad litem appointed by the court.⁵⁷ The parent cannot waive the child's right to an attorney as he can under the Juvenile Act.⁵⁸

Presently, cases that come to the attention of the CPS through the new reporting Law usually are presented to the court under the Juvenile Act. The major reason for this procedure seems to be the threshold standard established by the definition of "abused child," or, more exactly, the standard mandated by the adjective "serious" in the definition of "abused child." To maintain a petition against the parent under the CPSL the incident that classifies a case as "abuse" must be of a "serious" nature. The Juvenile Act, however, through its definition of "deprived child" reaches cases of neglect and cases of abuse that do not rise to the level of "serious" injury, but may be indicative of a "serious" family problem. Therefore, although the burden of proof is more favorable to the petitioner under the new CPSL, the standard for evaluating the initiating incident is lower in the Juvenile Act. The welfare worker can be more certain that the action will be maintained and that the case will survive to a final decision in the petitioner's favor under the Juvenile Act.

This procedure of discovery under the Child Protective Services Law and prosecution under the Juvenile Act causes no problems provided the CPS makes the election between statutes while fully aware of the advantages of each act, and the result achieved promotes the interests of the child, the family, and the state. In cases of actual abuse, however, and especially in cases of sexual abuse, all the special provisions of the new law should be utilized in the child's interest.

3. *Guardian ad Litem*.—The Pennsylvania law has followed the trend of protecting the abused child's right to due process through ap-

55. PA. STAT. ANN. tit. 11, § 2222(3) (Purdon Supp. 1976).

56. For a discussion of evidentiary problems in child abuse cases see Note, *Evidentiary Problems in Criminal Child Abuse Prosecutions*, 63 GEO. L.J. 257 (1974), and Note, *Evidentiary Problems of Proof in Child Abuse Cases*, 13 J. FAM. L. 819 (1974).

57. The child's need for his own attorney is gaining widespread recognition. See Note, *Seen and Not Heard: The Child's Need for His Own Lawyer in Child Abuse and Neglect Cases*, 29 OKLA. L. REV. 439 (1976); Note, *A Recommendation for Court Appointed Counsel in Child Abuse Proceedings*, 46 MISS. L.J. 1072 (1975). The case that gave juveniles the right to counsel in delinquency adjudicatory hearings, and effectively revised attitudes toward children's legal rights is *In re Gault*, 387 U.S. 1 (1967). See T. BECKER, *CHILD PROTECTIVE SERVICES AND THE LAW* 6-7 (1968).

58. PA. STAT. ANN. tit. 11, § 50-317 (Purdon Supp. 1976).

pointment of his own attorney.⁵⁹ Pennsylvania has rejected the hindsight approach that a child's interests were best represented by the party that won.

The provision for a guardian ad litem should be carefully considered when a court proceeding is initiated by CPS.⁶⁰ In a child abuse proceeding, the child is in a unique position. In contrast to delinquency proceedings, which review a child's own activities, a hearing to determine abuse or neglect questions the acts of the child's custodians. The court will rule upon the child's status, not his behavior. The parents may be subjected to criminal proceedings upon a finding of abuse.⁶¹ It is obvious that there may be a conflict of interest between the parent and the child. The new CPSL prevents parents from waiving the child's right to counsel. The guardian ad litem provides important protection for an abused child. His only concern is the child's well-being; he speaks for the child's rights. This is especially true in cases of sexual abuse in which intrafamily pressures may prevent a child from testifying in his or her own behalf.

Further, although the petitioner or prosecutor in a child abuse hearing may represent the child in presenting evidence of abuse, "heavy caseloads and lack of time and personnel in both the court and welfare bureaucracies curtail investigation and individualized treatment."⁶² Under the new Pennsylvania Law, the guardian ad litem is

charged with the representation of the child's best interests at every stage of the proceeding and shall make such further investigation necessary to ascertain the facts, interview witnesses, examine and cross-examine witnesses, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child.⁶³

The child's attorney may also petition the court to order local welfare agencies to provide services to a child, and may petition the court to "terminate or alter conditions of placement . . . of a child."⁶⁴

The CPSL and its companion regulations fail to define any particular procedure for the appointment of a guardian ad litem, other than a

59. Other states have mandated the appointment of an attorney in child abuse proceedings. California requires appointment of counsel for an allegedly abused child at the first court appearance and all subsequent proceedings. CAL. WELF. & INST. CODE § 634.5 (West 1972). New York has a system of "law guardians" who have a dual role as lawyer and protector to insure due process and help the court in proper disposition of the case. Appointment is mandatory when the minor has no private counsel. N.Y. FAM. CT. ACT § 241-49 (McKinney Supp. 1974). Kansas mandates appointment of a guardian ad litem for the child at all juvenile proceedings. KAN. STAT. § 38-821 (1973). His duties are the same as those under the Pennsylvania Act. His appointment is automatic if within five days of service of notice of a neglect hearing the court has not been advised of retention of private counsel by the child or parent. KAN. STAT. § 38-817(a) (1973).

60. See note 57 *supra*.

61. Child abuse is, of course, covered under the standard criminal statutes prohibiting assault, rape, murder, etc.

62. Note, *Seen and Not Heard*, *supra* note 57, at 442.

63. PA. STAT. ANN. tit. 11, § 2223 (Purdon Supp. 1976).

64. PA. STAT. ANN. tit. 11, § 2223(b) (Purdon Supp. 1976).

requirement that the person appointed be an attorney-at-law.⁶⁵ This leaves the appointment totally within the discretion of the court and leaves the arrangements for a system of appointment with local officials of the court or CPS. The procedure for supplying attorneys to serve as guardians ad litem in abuse proceedings becomes strictly a local concern under the CPSL. In Philadelphia, some of the guardians are supplied through a federally funded unit, and others are supplied through the local bar association on a pro bono basis. If the parents in an abuse case are not represented by the local Legal Services or Legal Aid Association, a guardian could be appointed from that staff. Otherwise, it would seem that the expense of the guardian ad litem would fall to the county. The CPSL, however, fails to assign this responsibility to any particular county agency; nor does it indicate whether any state funding is available. This deficiency in the CPSL creates a practical ambiguity in the procedure for appointing and compensating attorneys as guardians ad litem and operates to defeat one of the most valuable and necessary provisions of the Child Protective Services Law. Without a concerted effort by local courts or welfare officials to supply a pool of attorneys for this task under their local plan, it can be anticipated that, to avoid mandatory appointment of counsel for the abused child, child abuse cases will be presented to the court under the Juvenile Act instead of the new CPSL.

III. Concluding Remarks—Practical Problems and Constitutional Challenges

To date, no cases have been reported under the new CPSL. A case challenging the constitutionality of the Juvenile Act is pending in the Superior Court of Pennsylvania, however. The appellant in *In re James Sharpe, Jr.*⁶⁶ argues that the “void for vagueness” doctrine applies to the Juvenile Act because the statute fails to provide fair warning of both the kind of conduct permitted and the kind of conduct proscribed. Appellant specifically refers to the vague definition of “deprived child.” In *Alsager v. District Court of Polk County*⁶⁷ an Iowa federal district court held an Iowa statute with a similar definition of “deprived child” unconstitutional. The court observed that the statute imposed a standard of care that was “susceptible to multifarious interpretations which prevent the ordinary person from knowing what is or is not prohibited. An examination of these phrases will not inform an ordinary person as to what conduct is required or must be avoided in order to prevent parental termination.”⁶⁸

The Juvenile Act is further challenged in *Sharpe* as an impermissible delegation of discretion from the state legislature to the state courts. The vague definition of “deprived child” allegedly gives judges broad

65. PA. STAT. ANN. tit. 11, § 2223(a) (Purdon Supp. 1976).

66. No. 1307 (Pa. Super. Ct. Oct. Term 1976).

67. 406 F. Supp. 10 (S.D. Iowa 1975).

68. *Id.* at 18.

power to assert authority on the basis of their personal values and individual interpretation of the statute.⁶⁹ This, it is argued, violates the requirement that the legislature establish minimal guidelines to govern law enforcement.⁷⁰

These same arguments can be advanced against the definition of "abused child"⁷¹ in the Child Protective Services Law. The vagueness of the statute does permit social workers, courts and other medical and administrative personnel to make highly subjective determinations on the applicability of the abuse statute to specific parent-child relationships. The provisions of the CPSL are triggered by cases of *physical* or *mental* injury. No attempt is made in the CPSL to define either of these concepts, the latter being especially confusing and prone to subjective interpretation.

Since child abuse can lead to parental deprivation of custody as well as criminal sanctions against those who fail to report cases of abuse, attacks upon the constitutionality of the CPSL can be anticipated. The decision in the *Sharpe* case will have a great impact by either encouraging or discouraging such attacks. It is difficult to define with absolute precision the terms necessarily inherent in a statute on child abuse or deprivation. The subject is as vast and varied as the families of the Commonwealth. Some discretion must be given to the courts and professionals who seek to protect the children of our society. The new CPSL has attempted to provide a balance of protections for the safety of the child, the rights of parents, and the responsibilities of child-abuse reporters. Nevertheless, the legislature may have to provide more concrete procedural guidelines for the courts and more specific definitions of abuse to make the CPSL practical at the local level. Otherwise the Child Protective Services Law may operate on only one of its four levels; it may become a mere information-gathering act, creating statistics that inadequately defend an abused child.

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69. Cited as precedent in *Sharpe* are: *Burstyn v. Wilson*, 343 U.S. 495 (1952); *United States v. Cardiff*, 344 U.S. 174 (1952).

70. Cited as precedent in *Sharpe* is: *Smith v. Goguen*, 415 U.S. 566, 574 (1974).

71. PA. STAT. ANN. tit. 11, § 2203 (Purdon Supp. 1976).