



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 54 | Number 5

Article 1

6-1-1976

Child Abuse and Neglect Part II: Historical Overview, Legal Matrix and Social Perspectives on North Carolina

Mason P. Thomas Jr.

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Mason P. Thomas Jr., *Child Abuse and Neglect Part II: Historical Overview, Legal Matrix and Social Perspectives on North Carolina*, 54 N.C. L. REV. 743 (1976).

Available at: <http://scholarship.law.unc.edu/nclr/vol54/iss5/1>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

CHILD ABUSE AND NEGLECT PART II: HISTORICAL OVERVIEW, LEGAL MATRIX AND SOCIAL PERSPECTIVES ON NORTH CAROLINA*

MASON P. THOMAS, JR.†

The historical, social and legal development of reforms designed to provide more effective protection of children from parental abuse and neglect contains several themes: denial and repression of the fact of parental child abuse, periods of recognition and reform, and a tendency to seek simple solutions to complex problems without comprehensive evaluation of the underlying causes of child abuse. The most recent period of legal reform occurred between 1963 and 1967, when all fifty states enacted child abuse reporting laws, responding in part to concern about the so-called "battered child syndrome," because x-ray technology identified certain injuries in children that could not have been caused accidentally.

This article reviews the development of protective services for children in North Carolina. It examines the common law principles of family government, substitute methods of child care outside of the traditional family unit, the emphasis on local responsibility for the care of public charges, and the general unwillingness to invest state and local tax funds in child welfare programs. Attention will be paid to the influence of federal legislation and funding on the development of child protective services in North Carolina. The state followed the national trend in enacting two child abuse reporting laws in 1965 and 1971. This legislation is analyzed with certain areas identified for reform; the conclusion is reached that North Carolina's child abuse reporting law does not adequately deal with the complex problems related to parental child abuse and neglect.

* This article constitutes the second part of a two-part treatment on child abuse and neglect. *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix and Social Perspectives* appears in 50 N.C.L. Rev. 293 (1972).

† Professor of Public Law and Government, Institute of Government, University of North Carolina at Chapel Hill. The author wishes to thank Martha Sue Henley, 1974 summer research assistant at the Institute of Government, and Mary Cousar, a third-year student at Duke University School of Law during the 1974-75 academic year, for their substantial contributions to the research, organization, and content of this article.

HISTORICAL OVERVIEW

The foundation for family law in North Carolina is the English common law. The colonists followed the principles of common law, and later formally adopted them by statute. Under this legal system, the father was supreme. The courts assumed that parents would love and protect their own, and were reluctant to interfere in family government. Children were viewed as something like the chattels of their parents, with few individual rights. When the family could not care for a child, his fate depended primarily on economics. If the child had property or income, a guardian was appointed for his care, but if he were poor, his care was left to the state, which met this obligation through local government in the least expensive way possible. This practice often led to separating children from their parents solely because of poverty, since North Carolina was a poor state and the prevalent view, adopted from the English Poor Law philosophy, was that poverty was a sin.

Certain themes are clear in the development of laws respecting rights of parents and children. Before the Civil War, the law was more concerned with parental rights than with the needs of children for protection. Thus, parents were completely free to discipline their children so long as neither permanent physical injury nor malice was proved.

Since the Civil War, certain social and legal reforms have broadened the state's obligation to intervene in family life to protect children; they have culminated in the adoption of child abuse reporting laws in North Carolina, beginning in 1965. In the eighteenth and nineteenth centuries, however, apprenticeships and county poorhouses were the primary methods of substitute child care. Orphanages were established by private groups to rescue children from these public institutions in the last quarter of the nineteenth century. The General Assembly of North Carolina established the state's first juvenile reformatory in 1907 to separate child offenders and poor children from adult offenders in jails and prisons. When the constitutionality of the legislation creating the reformatory was attacked,¹ the North Carolina Supreme Court relied upon the doctrine of *parens patriae* to support the legislation and to broaden the power of the state to intervene in family life for protective reasons. In 1919, the General Assembly enacted legislation² to establish a juvenile court for the protection and treatment of dependent, ne-

1. See *In re Watson*, 157 N.C. 340, 72 S.E. 1049 (1911).

2. Law of Mar., 1919, ch. 97, [1919] N.C. Pub. Laws 243.

glected and delinquent children. This law also abolished apprenticeship as a method of child care. When the constitutionality of this legislation was challenged,³ again *parens patriae* provided a legal foundation for its acceptance. Public aid programs providing limited financial assistance to needy mothers began in the 1920s so that it would no longer be necessary to separate children from their mothers because of poverty.

Protective services for children have been provided to some families in North Carolina since the 1950s through the county welfare program. This concept, which entails casework services to help parents avoid the necessity of having their children separated from them, has been incorporated into law by statute in the Child Abuse Reporting Law of 1971.⁴

THE COLONIAL PERIOD TO THE CIVIL WAR

Common Law Principles of Family Government

Under early English common law, the father had rights to the custody and control of his children superior to those of the mother. As the common law developed in the colonies, the father's right to custody became interrelated with his duties to support, discipline, and educate, and with his right to the child's services. The early reported cases reflect the reluctance of the courts to interfere in family affairs.⁵ If parents failed grossly in meeting their parental duties and responsibilities, the courts could remove children from their custody.⁶

Most authorities agree that abandonment, neglect, and nonsupport of minor children were not crimes at common law. The father owed his children a legal duty to supply them with food, shelter, clothing, and medical care. If the father's neglect of one of these duties resulted in the child's death, the father was subject to criminal prosecution for murder or manslaughter. Financial inability to provide for these needs was not always an effective defense in a criminal prosecution.⁷

3. See *State v. Burnett*, 179 N.C. 735, 102 S.E. 711 (1920).

4. N.C. GEN. STAT. §§ 110-115 to -122 (Cum. Supp. 1975).

5. See *Wilson v. Mitchell*, 48 Colo. 454, 466, 111 P. 21, 25 (1910); *Busbee v. Weeks*, 80 Fla. 323, 85 So. 653 (1920); *Miner v. Miner*, 11 Ill. 43 (1849); *McDonald v. Short*, 190 Ind. 338, 130 N.E. 536 (1921); *McBride v. McBride*, 64 Ky. (1 Bush) 15 (1866); *Commonwealth v. Briggs*, 33 Mass. (16 Pick.) 203 (1834); *Ex parte Turner*, 151 N.C. 474, 66 S.E. 431 (1909); 2 KENT'S COMMENTARIES 205 (14th ed. 1896).

6. Thomas, *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C.L. REV. 293, 299-300 (1972).

7. 2 R. LEE, NORTH CAROLINA FAMILY LAW § 170 (3d ed. 1963).

Under the common law, both parents and others standing *in loco parentis* had the legal right to inflict reasonable punishment on a child for disciplinary reasons.⁸ Since the colonial father ruled the family, he was usually the disciplinarian. Physical punishment was considered the appropriate method of correction. What was considered reasonable corporal punishment during the colonial period seems quite harsh by contemporary standards.⁹

The courts were reluctant to interfere with a parent's right to discipline a child regardless of how severe or unwarranted the parental action may have been.¹⁰ Since the emphasis of the law during this period was on parental rights, a child had no right to bring a civil suit against his parents for injuries due to their negligence in correcting or disciplining him.¹¹ There were two basic reasons for this civil immunity. First, it was considered essential to maintaining family harmony. Secondly, legal support of parental authority was viewed as necessary to proper family government.

As a consequence, any protection of children from parental abuse came from that afforded by the criminal law. The operation of the criminal law as a sanction against parents was limited to the most flagrant cases of physical abuse. The requirements for criminal prosecution of a parent for physical mistreatment of a child were that the punishment cause permanent physical injury, or that it be inflicted out of parental malice rather than for purposes of correction.¹² To prosecute a parent or teacher for a permanent injury to a child, it was necessary to show that a person of ordinary prudence could have foreseen that a permanent injury would naturally or probably have resulted.¹³

8. See *State v. Pendergrass*, 19 N.C. 365 (1837).

9. HOME AND CHILD LIFE IN COLONIAL DAYS 130 (S. Glubok ed. 1969). Two states (Connecticut and Massachusetts) had seventeenth century statutes prescribing the death penalty for rebellious children. See 1 CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY, 1600-1865, at 37-39 (R. Bremner ed. 1970) [hereinafter cited as 1 CHILDREN AND YOUTH].

10. 3 R. LEE, *supra* note 7, § 249, at 181.

11. The North Carolina Supreme Court, in *Small v. Morrison*, 185 N.C. 577, 118 S.E. 12 (1923), assumed that this immunity was the rule at common law. Although the holding in that case addressed only ordinary negligence, the court implied that the ban was a general one that applied to all tort actions, including intentional torts.

12. *State v. Pendergrass*, 19 N.C. 365, 366 (1837). In this case, a school teacher's authority to discipline was delineated and held to be coextensive with that of a parent because teachers were considered to stand *in loco parentis*.

13. *Drum v. Miller*, 135 N.C. 204, 216-17, 47 S.E. 421, 425 (1904). A tort claim was brought against a teacher who threw a pencil at a student to catch his attention and

Malice as a ground for prosecution was difficult to prove, since any witnesses were usually other family members, who would be reluctant to testify. Indeed, neither spouse could be a witness against the other in a criminal case. However, the courts could impute malice if the punishment were unusually severe.¹⁴

Early American law adopted the English common law view that children had few, if any, personal legal rights. Children were regarded as chattels of the family and wards of the state. If a child attained some other legal status, however, such as legatee under a will, intestate successor, or party injured by the negligence of a tortfeasor, he had certain property rights.¹⁵ Furthermore, in North Carolina parents were subject to suits brought on behalf of a child to protect his contract or property rights.¹⁶

The Influence of Poor Law Traditions Before the Civil War

The English Poor Law tradition assumed that poverty was akin to sin and productive of crime. Its operating principles were to spend little in public funds on the poor, since that status was their own fault, to place the basic responsibility for care and support of the poor on local government under laws of legal settlement, and to place poor children by the least costly method—apprenticeship to a master or placement in the county poorhouse.¹⁷

The concept of local responsibility was an important part of the Poor Law system.¹⁸ The county in which the parents had legal settlement (usually acquired by a year's residence) was responsible for support of dependent or orphaned children or for placing children who could not live in their own homes. The child's legal place of settlement followed that of his parents, and localities were careful to avoid spending their limited funds caring for a child whose legal settlement was in another community. Thus, a child who needed placement or a family

put out the child's eye. The court held that it would not allow recovery if a reasonable person would not have foreseen such consequences.

14. *State v. Dickerson*, 98 N.C. 708, 3 S.E. 687 (1887). A master, standing *in loco parentis*, was charged with disciplining his apprentice too harshly. The court said "if the whipping inflicted . . . was as cruel and merciless as the evidence tended to prove it was, the jury might well infer that it was done wantonly and maliciously; and in that case, the defendant would be guilty. . . . [M]anifest cruelty inflicted implies malice." *Id.* at 711, 3 S.E. at 688.

15. Rodham, *Children Under the Law*, 43 HARV. EDUC. REV. 487; 489 (1973).

16. 3 R. LEE, *supra* note 7, § 248 at 166-67.

17. 1 CHILDREN AND YOUTH, *supra* note 9, at 64-71.

18. Riesenfeld, *The Formative Era of American Public Assistance Law*, 43 CALIF. L. REV. 175, 178 (1955).

that needed public aid would be returned to the appropriate place of legal settlement.¹⁹ Criminal laws were adopted to assure that the dependent poor were returned to the proper place for care and support.²⁰

Methods of Substitute Child Care

(1) Apprenticeship

An apprenticeship was a child-placement plan under which a child was placed with a master for a specified period of time by a contract (called an indenture) that provided for free child care and training in a certain trade in return for the child's services. Apprenticeship was the most common method of substitute child care from the colonial period until the rise of orphanages.

Apprenticeships were used for several reasons—economic, educational, and social: They required no investment of public funds. They educated or trained a child so that he could be self-supporting at the end of his indenture. And they were thought to serve the social good of the state in that poor children would grow up knowing how to work and would become good, productive citizens—unlike many of their parents.²¹

The earliest record of an apprenticeship in North Carolina dates from 1695. Originally, apprenticeships were grounded in the English Poor Law philosophy and lacked statutory authority.²² In 1715, the English common law was adopted by statute in North Carolina,²³ and the prevailing child-placement practices were codified.²⁴ This colonial legislation required that the precinct court approve the placement of any child within the county who was not living with his parents. If a child

19. Thomas, *supra* note 6, at 301. In general a child's settlement follows his father's, except that an illegitimate child's settlement follows that of his mother. R. BROWN, *PUBLIC POOR RELIEF IN NORTH CAROLINA* 35 (1928) [hereinafter cited as *PUBLIC POOR RELIEF*].

20. Criminal penalties attached to violation of the settlement laws, to the laboring of poor people who were not settled in the county, and to taking a child as an apprentice or ward without either court approval or parental permission. R. Brown, *The Growth of a State Program of Social Services From Charities to Public Welfare*, ch. II, at 15, 25-26 (unpublished manuscript in Louis Round Wilson Library, UNC-Chapel Hill) [hereinafter cited as Brown], citing 25 *STATE RECORDS OF NORTH CAROLINA* 396 (1759), and 23 *id.* 70 (1715).

21. 1 *CHILDREN AND YOUTH*, *supra* note 9, at 64.

22. *PUBLIC POOR RELIEF*, *supra* note 19, at 146-47.

23. Law of 1715, ch. 31, § 6 (codified at N.C. GEN. STAT. § 4-1 (1969)).

24. *PUBLIC POOR RELIEF*, *supra* note 19, at 147.

had an estate sufficient to provide for his support, the court appointed a guardian, who was required to post a bond that was forfeited if he did not properly manage his ward's property. Other orphaned or abandoned children who lacked an estate sufficient to provide for their own support were to be apprenticed by the court during minority unless a relative agreed to support them.²⁵ This legislation, called "An Act Concerning Orphans," did not specify the legal duties of the master to the apprenticed child. The terms of early indentures suggest that the master had property rights in an apprenticed child similar to those in an indentured servant or a slave. Subsequent legislation governing apprenticeships provided minimal protections for apprenticed children. In some instances, this protection was provided by analogy to laws governing the master-slave and master-servant relationships.²⁶

Legislation adopted in 1755 provided for referring all orphans to the court through church government. The wardens of the parish were required to inform the annual orphans' court of all orphans who were not apprenticed or who had no guardian. All indigent orphans were to be apprenticed, and the legislation specified the legal duties of the master, including the requirement that the apprentice be taught to read and write. The orphans' court was to oversee the master-apprentice and the guardian-ward relationships. The court had authority to remove any child apprenticed if the master did not perform his duties. If the court received complaints about how a guardian treated a ward, it could make appropriate orders. Guardians were also required to make an annual accounting on the management of their wards' estates.²⁷

The categories of children subject to apprenticeship by the court were enlarged by subsequent legislation to include children other than those who had been abandoned or orphaned. In 1755, the court

25. Brown, *supra* note 20, ch. II, at 25-26, quoting 23 STATE RECORDS OF NORTH CAROLINA 577-83 (1762).

26. The text of "An Act Concerning Servants and Slaves, 1715," is reproduced in NORTH CAROLINA HISTORY TOLD BY CONTEMPORARIES 42-43 (H. Lefler ed. 1965) [hereinafter cited as NORTH CAROLINA HISTORY]. A later act is set out in Brown, *supra* note 20, ch. II, at 41-43, citing 23 STATE RECORDS OF NORTH CAROLINA 191 (1715). These laws specified the master's minimal duties and limited somewhat his scope of punishment, but provided no adequate statutory procedure for their enforcement.

27. However, protection of the apprentice and ward depended primarily on the ability and disposition of private parties to make complaint to the courts. No agency of the court or parish had any affirmative duty to investigate the treatment of a child by his master or guardian. Therefore, this practice did not necessarily increase the protection afforded children, but it did help the community assure that someone other than the state was legally responsible for their support until majority. PUBLIC POOR RELIEF, *supra* note 19, at 147-49; Brown, *supra* note 20, ch. II, at 26-30; *id.* ch. VI, at 4-5.

acquired jurisdiction over children whose parents were unable or unwilling to educate them.²⁸ In 1762, its jurisdiction was expanded to include all illegitimate children who were not born to slaves.²⁹ By 1901 the law had extended the court's apprenticeship jurisdiction to include the following:

Any poor child who is or may be chargeable to the county

All infants whose parents do not habitually employ their time in some honest, industrious occupation. . . .

All indigent infants . . . who on account of the neglect, crime, drunkenness, loudness or other vice of the parents, or person with whom such infants reside, are in circumstances exposing such infants to lead an idle and dissolute life.³⁰

Thus, the court had broad authority to remove from their homes poor children or children whose parents did not conform to community norms. This authority was subject to abuse. A child might be apprenticed because he fit within a statutory category subject to apprenticeship even though separation from his family was not necessary for his protection or education.³¹

Apprenticeship was the basic method of substitute child care in North Carolina for 200 years. During the last quarter of the nineteenth century the State Board of Charities was critical of apprenticeship as an inadequate approach to child care,³² and eventually the statutes authorizing apprenticeship through the local court were repealed³³ by the legislation that established the juvenile court in North Carolina in 1919.³⁴

(2) Public Vendue

Public vendue was a system of caring for the poor, including children, under which local government would contract with the lowest bidder at something like a public auction. Sometimes a child was "let"

28. NORTH CAROLINA HISTORY, *supra* note 26, at 43-44.

29. PUBLIC POOR RELIEF, *supra* note 19, at 149, *citing* 23 STATE RECORDS OF NORTH CAROLINA 581 (1762).

30. Law of Mar. 13, 1901, ch. 628, *amending* [1883] N.C. CODE § 11.

31. For some blatant examples, see *Ferrell v. Boykin*, 61 N.C. 9 (1866), in which the court asserted "its duty to bind out all free baseborn colored children, whether they are paupers or not," *id.* at 10, and *Midgett v. McBryde*, 48 N.C. 21 (1855). In both cases the legislature's assumptions that certain categories of parents were unfit and that certain children would be neglected were treated as irrebuttable.

32. Brown, *supra* note 20, ch. XIV, at 3.

33. Law of Mar. 3, 1919, ch. 97, § 25, [1919] N.C. Pub. Laws 254.

34. PUBLIC POOR RELIEF, *supra* note 19, at 149-50.

to a stranger, and the value of the child's labor was considered in making and accepting the bid.³⁵

During this period, there was very limited "outdoor" relief to needy families, i.e. payment of public funds to them through local government. In a few instances, very small grants were made to families or to a relative who cared for a child.³⁶ This was most likely to happen if the child could not be apprenticed, either because he was too young or was mentally or physically handicapped.³⁷ This very limited system of public relief did not usually provide sufficient funds to enable indigent mothers to support their children within their own home. Thus, mothers would sometimes bid for the care of their own children through the public vendue system.³⁸

(3) POORHOUSES

During the colonial period, the limited funds for aid to the poor were administered, according to English law and custom, through church government by the Church Wardens or Wardens of the Parish.³⁹ After the Revolution, the administration of poor funds was transferred by law from the vestries of the parish to county governments operating through officials called overseers of the poor. The overseers of the poor were landowners appointed by the local courts, and they had the power to tax for the care of the poor.⁴⁰ Not all counties appointed overseers of the poor.

In 1785, North Carolina began enacting legislation that authorized another method of caring for the poor inherited from the English Poor Law tradition—the county poorhouse. Through a half-century of local and state enabling acts, many counties were authorized to levy taxes to construct and operate poorhouses, later called county homes.⁴¹ County poorhouses were usually administered by an overseer, selected in one of two ways. In some counties, he was appointed by county government and paid by county funds. In others, the office was auctioned through

35. 1 CHILDREN AND YOUTH, *supra* note 9, at 262.

36. N.C. STATE Bd. OF CHARITIES & PUBLIC WELFARE, SPEC. BULL. NO. 13, BRIEF HISTORY OF CARE OF THE UNDERPRIVILEGED CHILD IN NORTH CAROLINA 40 (1934) [hereinafter cited as BRIEF HISTORY].

37. PUBLIC POOR RELIEF, *supra* note 19, at 49.

38. BRIEF HISTORY, *supra* note 36, at 39-40; PUBLIC POOR RELIEF, *supra* note 19, at 37-40.

39. BRIEF HISTORY, *supra* note 36, at 39.

40. PUBLIC POOR RELIEF, *supra* note 19, at 26.

41. See generally *id.* at 28-67.

competitive public bidding; whoever submitted the lowest bid to operate the poorhouse and care for its inmates became its overseer. The bidding somewhat resembled the system of public vendue, and those who bid for the position considered the value of the inmates' labor in submitting their bids.⁴²

Beginning early in the nineteenth century, the use of apprenticeships became less popular with masters because slavery had become a ready source of cheap labor.⁴³ Thus, the county poorhouse became the cheapest way to care for poor and dependent children. In county poorhouses, children were mixed with others who could not support themselves in the individualistic rural society of this period, including vagrants, the insane, the mentally retarded or physically handicapped, prostitutes, and others who were simply poor. These children received no education unless the local enabling act authorizing construction of the poorhouse also provided for appointment of a schoolmaster.⁴⁴ When poorhouse children became old enough to work or to learn a trade, they were apprenticed if a master could be found for them. Some children were placed informally with anybody who would care for and support them without the formality of an indenture of apprenticeship.⁴⁵

A PERIOD OF SOCIAL REFORM FOR CHILDREN— THE CIVIL WAR TO 1935

The seventy-year period between the end of the Civil War and the enactment of the Social Security Act of 1935 brought a gradual awareness of the needs of North Carolina's poor, neglected, and dependent children. This awareness led to various social and economic reforms, including the development of private orphanages to provide an alternative to apprenticeships and the county poorhouse in placing children, enactment of legislation authorizing adoption,⁴⁶ child labor laws to protect children from oppressive or unhealthy working conditions,⁴⁷ the development of public education⁴⁸ and compulsory education laws,⁴⁹ and the beginning of a state-county public aid program for destitute

42. Brown, *supra* note 20, ch. III, at 22-23.

43. 1 CHILDREN AND YOUTH, *supra* note 9, at 262.

44. Brown, *supra* note 20, ch. V, at 2.

45. PUBLIC POOR RELIEF, *supra* note 20, at 151.

46. Law of Mar. 3, 1873, ch. 155, [1872-1873] N.C. Pub. Laws 254.

47. Law of Mar. 6, 1903, ch. 473, [1903] N.C. Pub. Laws 819.

48. Law of Apr. 12, 1869, ch. 184, [1868-1869] N.C. Pub. Laws 458.

49. Law of Mar. 3, 1923, ch. 136, §§ 347-57, [1923] N.C. Pub. Laws 418.

mothers with dependent children.⁵⁰ Along with these reforms for poor, neglected, and dependent children came other reforms in behalf of child offenders—juvenile institutions to remove children from jails and prisons, a juvenile court to provide for separate, specialized court for children younger than sixteen, and a system of juvenile probation through the county welfare program. It is historically significant to note that poor and homeless children were often committed to juvenile reformatories because no appropriate alternatives were available. Interestingly, the appellate decision upholding the constitutionality of the legislation creating the state's first juvenile reformatory involved a child whose only offense was vagrancy—he had no home or means of support because his father was in prison.⁵¹

The state has been an inadequate substitute parent for neglected, dependent, and delinquent children because of unsatisfactory financial support, questionable child placement practices, operation of inadequate programs in juvenile training schools, and the continuing influence of Poor Law traditions. The framework for the reforms of the post-Civil War period was provided by the North Carolina Constitution of 1868. The primary leadership for many of these reforms came from the State Board of Public Charities—a group of citizen leaders who, with inadequate funding, tried for years to lead a rather indifferent state toward facing some of the social and economic needs of its people.

Constitution of 1868

The aftermath of the Civil War found both North Carolina and its citizens in a state of destitution.⁵² The war left many children orphaned or abandoned. Consequently, to protect the community from having to assume responsibility for the support of dependent children, the General Assembly of 1868-69 enacted legislation to make it a crime for a parent to abandon or fail to support his children.⁵³

The North Carolina Constitution imposed upon state government additional responsibility for the care of dependent and orphaned children—an obligation that previously was borne by county government alone. The Constitution referred to the state's duty to provide for the "poor, the unfortunate and the orphan." It required that the General

50. Law of Feb. 26, 1923, ch. 260, [1923] N.C. Pub. Laws 583.

51. *In re Watson*, 157 N.C. 340, 72 S.E. 1049 (1911).

52. Aydlett, *The North Carolina State Board of Public Welfare*, 24 N.C. HIST. REV. 1 (1947).

53. BRIEF HISTORY, *supra* note 36, at 41.

Assembly establish a State Board of Public Charities to supervise charitable and penal institutions. It authorized houses of correction, houses of refuge (the term used during this period to refer to an institution for juvenile offenders and sometimes for dependent and neglected children), and orphanages for needy children.⁵⁴

Board of Public Charities

The General Assembly followed the constitutional mandate in 1869 by enacting legislation establishing a state-level Board of Public Charities composed of five persons appointed by the General Assembly. This legislation specified the duties of the Board to include supervising charitable and penal institutions, investigating conditions in county jails and almshouses, and obtaining reports from boards of county commissioners on jails, almshouses, and "outside paupers" cared for with public funds.⁵⁵ Since funds were not consistently appropriated for the Board's work until 1891, it was somewhat inactive for the first twenty years of its existence.⁵⁶ Individual members of the State Board devoted their time and attention to the Board's responsibilities and published reports that urged various reforms in behalf of children and the poor of the state. After 1891, when funding was more consistent, the Board had a small staff to give leadership and coordination to its activities.⁵⁷

The General Assemblies of 1917⁵⁸ and 1919⁵⁹ rewrote the statutes governing the state's welfare program to structure a county-administered program under the supervision of the State Board, which was renamed the State Board of Charities and Public Welfare. On the county level, the legislation provided for departments of public welfare supervised by boards to be responsible for dependent and delinquent children in the county. At the same time, the responsibilities of the state-level Board were enlarged with respect to agencies that provided services to children. The Board was to inspect and license child-caring institutions and to license child-placing agencies.⁶⁰

54. N.C. CONST. art. XI, §§ 4-5, 7-8.

55. Law of Apr. 10, 1869, ch. 170, [1868-1869] N.C. Pub. Laws 415.

56. See Aydlett, *supra* note 52, at 4-9.

57. *Id.* at 9-33.

58. Law of Mar. 6, 1917, ch. 170, [1917] N.C. Pub. Laws 320.

59. Law of Feb. 13, 1919, ch. 46, [1919] N.C. Pub. Laws 69.

60. Law of Feb. 13, 1919, ch. 46, [1919] N.C. Pub. Laws 69. The state's first private child-placement agency was the North Carolina Children's Home Society, established in 1903. This agency performed a service similar to apprenticeship in placing children in private foster homes rather than in institutions like orphanages. Aydlett, *supra* note 52, at 14.

Under the 1919 legislation establishing the juvenile court in North Carolina, the county superintendent of public welfare became the chief juvenile probation officer with responsibility for providing juvenile probation services.⁶¹ The State Board established a separate Division of Child Welfare in 1919 to encourage better services to children through county departments,⁶² but many counties did not set up their own programs until the 1930s.⁶³

Rise of Private Orphanages

Despite the mandatory wording of the Constitution of 1868, the state has never built and operated an orphanage. Instead, successive General Assemblies appropriated state funds to subsidize two private orphanages, one for whites (beginning in 1879) and one for blacks (beginning in 1891), both located in Oxford, North Carolina, and both operated by the Masonic Order.⁶⁴ In return for these state funds, these two institutions were required to report to each session of the General Assembly and to allow inspections by the Secretary of the State Board of Charities and Public Welfare.

During the last quarter of the nineteenth century a number of other orphanages were founded, usually by private religious groups. Orphanages were considered a more appropriate placement for dependent or homeless children than the county poorhouse, and many children were transferred to them from the poorhouse.⁶⁵ Nevertheless, children were placed in poorhouses well into the twentieth century. As late as 1936, reports to the State Board indicated that more than 100 children resided in county poorhouses.⁶⁶ These children tended to be those who could be neither apprenticed nor admitted to private orphanages—the mentally retarded and the physically handicapped.⁶⁷

By 1920, the private orphanage movement in North Carolina had reached its peak. Religious leaders who built and supported these institutions sincerely believed that orphanage care was the best form of

61. Law of Mar. 3, 1919, ch. 97, [1919] N.C. Pub. Laws 243.

62. Aydlett, *supra* note 52, at 18-20.

63. 2 CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY, 1866-1932, 754 (R. Bremner ed. 1971) [hereinafter cited as 2 CHILDREN AND YOUTH].

64. Resolution of Mar. 14, 1879, [1879] N.C. Laws 546; Law of Mar. 9, 1891, ch. 530, [1891] N.C. Pub. Laws 584.

65. PUBLIC POOR RELIEF, *supra* note 19, at 125.

66. 1934-1936 N.C. STATE BD. OF CHARITIES & PUB. WELFARE BIENNIAL REP. 38.

67. PUBLIC POOR RELIEF, *supra* note 19, at 127.

substitute child care for poor, dependent, and orphaned children.⁶⁸ Thus, in its 1920-22 Biennial Report, the State Board of Charities and Public Welfare reported that 2,900 children were being cared for in twenty-five orphanages. At this time only two orphanages attempted to place children in foster homes—a method of substitute child care that was beginning to be explored.⁶⁹

The licensing authority of the State Board of Charities and Public Welfare became a political issue during this period. In 1919, the General Assembly enacted legislation requiring that all orphanages be licensed annually by the state through the State Board.⁷⁰ The leadership and administration of private child-care institutions objected, partly on the ground that the church should be able to do its work for children free from state interference. Because of the political influence of this group, the licensing law was amended in 1925 to exempt from licensing any orphanage owned by a religious denomination or fraternal order with a plant and assets valued at \$60,000—an exemption that applied to all but two of the state's orphanages.⁷¹ The Board did retain the power to inspect and require annual reports from all orphanages.⁷² This exemption for licensing continues in effect in 1976, despite the fact that most child-care institutions exempt from licensing receive appropriations of state funds from the General Assembly.⁷³

Adoption

The first law authorizing adoption of children was enacted by the General Assembly of 1872-73.⁷⁴ The primary concern of this early legislation was to protect parental rights and property rights of the child to be adopted, rather than to select the proper home for the child. The law required that the adopting parents post a bond if the "orphan had an estate." No provision was made for investigating the suitability of the adoptive parents.⁷⁵

68. *Id.* at 153.

69. 1920-1922 N.C. STATE Bd. OF CHARITIES & PUB. WELFARE BIENNIAL REP. 19-20.

70. Law of Feb. 13, 1919, ch. 46, [1919] N.C. Pub. Laws 69.

71. Law of Feb. 28, 1925, ch. 90, [1925] N.C. Pub. Laws 107.

72. *Id.*

73. However, legislation has been introduced in the 1975 session to eliminate these statutory exemptions from state licensing. S. 68 (H. 61), 1975 N.C. General Assembly, 1st Sess.

74. Law of Mar. 3, 1873, ch. 155, [1872-1873] N.C. Pub. Laws 254.

75. The law required only that the adopting parents appear to the court to be "proper and suitable persons." *Id.*

The development of child-placing agencies and the interest of the State Board of Charities and Public Welfare after 1900 resulted in a change of attitude toward appropriate child-placement practices, including adoption. New emphasis was placed on protecting the child, on selecting the plan to meet his needs (whether an institution, foster home, or relative), and on selecting the appropriate foster or adoptive home.⁷⁶ Thus, the focus gradually shifted from the value of the child's labor and the prevention of dependency, through educating or training the child in an apprenticeship, to the needs of the child. This shift was evident when the adoption law was rewritten in 1933 to require an investigation into the suitability for adoption of the particular child and the prospective adoptive home and parents. Further, a trial period of from one to two years was required before the adoption could become final.⁷⁷

Child Labor Laws

During the last quarter of the nineteenth century, North Carolina was changing from a completely rural state to one with embryonic industrial development. The economic value of a child's labor to a family became evident with the growth of the cotton industry, and the use of child labor increased as the textile industry emerged on a large scale around 1880.⁷⁸ Although by this time some legal responsibilities had been imposed on masters in relation to child apprentices, such as the requirement that they teach the apprentices to read and write⁷⁹ in addition to the teaching of a skilled trade, the factory tasks assigned to children were routine in nature, with little educational potential. The working conditions in factories were generally worse than the conditions under which children worked and were trained through apprenticeships, and more children went to work in factories than had previously been apprenticed. While apprenticeships were usually used to train and care for children whose parents were either dead or unable to provide support, with the beginning of industry any child could work in a factory and become a source of financial support to the family. Thus, rather than an economic burden, the child became an asset through the

76. PUBLIC POOR RELIEF, *supra* note 19, at 155.

77. Law of Apr. 3, 1933, ch. 207, [1933] N.C. Pub. Laws 309.

78. Davidson, *The Child Labor Problem in North Carolina, 1883-1903*, 13 N.C. HIST. REV. 105 (1936).

79. The later apprenticeship laws required academic instruction. Ch. 12, §§ 486(2) & (4), [1868] N.C. Code Civ. P. 178. Earlier, masters were often required by covenant to teach reading and writing to apprentices. Brown, *supra* note 20, ch. II, at 44. See also Wyatt v. Morris, 19 N.C. 108 (1836).

value of his services. Since there was widespread poverty in the state, many families felt the need for this source of income. Thus, child labor was considered necessary for the support of children or families who would otherwise be dependent on the county.⁸⁰

During this period various unsuccessful efforts at voluntary regulation of child labor and working conditions were made, and the child labor legislation that was introduced was not passed. Finally, in 1903, the General Assembly prohibited employment of children under age twelve in factories.⁸¹ In 1907, the child labor law was amended to provide that children who worked in factories must attend school at least four months out of the calendar year.⁸² While this legislation represented an ideal of social and educational reformers, it shared an important weakness with the apprenticeship system—inadequate enforcement. Indeed, strong public sentiment existed against enforcement of child labor legislation.⁸³

Public Education/Compulsory School Attendance

North Carolina adopted legislation providing for a public school system in 1839,⁸⁴ but there was little interest in strengthening the system until near the turn of the century. The Constitution of 1868 empowered the General Assembly to enact a compulsory education law,⁸⁵ and the legislation of 1869 created a system of public schools to provide four months of instruction per year to children between the ages of six and twenty-one.⁸⁶ Still, the system lacked funds, and the state appropriated no money to the public schools until 1899.⁸⁷ Attendance at school was generally poor, and the average term was a short ten weeks.⁸⁸

80. Davidson, *Child Labor Reforms in North Carolina Since 1903*, 14 N.C. HIST. REV. 109, 119-20 (1937).

81. *Id.* at 109-14.

82. Law of Mar. 9, 1907, ch. 463, [1907] N.C. Pub. Laws 670.

83. Davidson, *supra* note 80, at 110-11. Parents and industry cooperated to avoid the law. One way was through the "helper" system: children under the legal working age would help older members of the family, increasing their elders' productivity without actually being on the payroll. 2 CHILDREN AND YOUTH, *supra* note 63, at 679-80. Sufficient personnel were not provided for actual inspection and enforcement. For example, in 1910 only one man was employed to inspect factories and prosecute for violations. In that year 9,303 children under sixteen were employed in 281 cotton mills alone. NAT'L CHILD LABOR COMM., CHILD WELFARE IN NORTH CAROLINA 11 (1918).

84. M. NOBEL, A HISTORY OF THE PUBLIC SCHOOLS OF NORTH CAROLINA 300-01 (1930).

85. *Id.* at 287-89.

86. *Id.* at 314.

87. E. KNIGHT, PUBLIC SCHOOL EDUCATION IN NORTH CAROLINA 242-46 (1916).

88. A survey of sixty-three counties in 1873 revealed that the average daily attendance figure for white children was about thirty percent of the white school-age population. For black children the figure was twenty-four percent. *Id.* at 255-56.

But toward the end of the nineteenth century efforts at developing support of public education at the county level led to greater popular support of educational progress and eventually to increased state financial support.⁸⁹ During the first ten years of the twentieth century, appropriations doubled. Better teachers were hired, the school term was increased by a month, new schools were built, and the average daily attendance increased by forty-one per cent.⁹⁰ Educating children was seen as preferable to allowing them to work in the factories. Thus reformers sought to improve the school system rather than to emphasize strict enforcement of the child labor laws. School attendance was not made compulsory in North Carolina until 1923, when legislation was adopted requiring parents to send children between the ages of seven and fourteen to school each year for a period of time equal to the length of the local public school session.⁹¹ The age for required attendance was extended to sixteen in 1955.⁹²

Juvenile Justice System

The Constitution of 1868 authorized the state to establish "houses of refuge"—that is, juvenile reformatories or training schools. The movement for a juvenile reformatory began around 1870 under the leadership of the State Board of Public Charities. It gained support from successive governors who, concerned about the large number of boys in the state penitentiary,⁹³ advocated separating these children from adult offenders. The movement for a juvenile reformatory lasted until 1907, when the General Assembly enacted legislation establishing Stonewall Jackson Manual Training and Industrial School at Concord.⁹⁴ The constitutionality of this legislation was upheld by the North Carolina Supreme Court, which incorporated the doctrine of *parens patriae* into the state's legal system to broaden the power of the state to act as a substitute parent to delinquent and neglected children.⁹⁵

The General Assembly first adopted legislation providing separate court hearings for juveniles in 1915—the Probation Courts Act.⁹⁶ This

89. *Id.* at 334-37.

90. *Id.* at 340.

91. Law of Mar. 3, 1923, ch. 136, § 347, [1923] N.C. Pub. Laws 418.

92. Law of May 26, 1955, ch. 1372, § 20, [1955] N.C. Sess. Laws 1600 (codified as N.C. GEN. STAT. §§ 115-66 et seq.).

93. Aydlett, *supra* note 52, at 3, 10-11.

94. Law of Mar. 2, 1907, ch. 509, [1907] N.C. Pub. Laws 753.

95. *See In re Watson*, 157 N.C. 340, 72 S.E. 1049 (1911).

96. Law of Mar. 9, 1915, ch. 222, [1915] N.C. Pub. Laws 296.

legislation was significant in that it introduced a number of new concepts into state law, including juvenile delinquency, probation, and separate hearings for juvenile offenders. It provided special court procedures for youthful offenders who were eighteen years old or younger. It provided for separate, private trials for juveniles and for separate juvenile records, and made it a misdemeanor for a parent, guardian or person who controlled or employed a child to contribute to his delinquency.

Many of the concepts first established by the Probation Courts Act were incorporated into the 1919 legislation establishing the state's first juvenile court, which repealed the 1915 legislation.⁹⁷ The 1919 juvenile court law gave the clerk of superior court, as juvenile court judge, broad authority over children under sixteen who were dependent, neglected, delinquent or truant. The intent of this law was to provide a special court for these children with a new philosophy of treatment and protection that would be completely different from the punitive approach of the criminal courts.⁹⁸ Indeed, the law was more social than legal in its emphasis. In its efforts to remove juveniles from the adult adversary justice system, it created an informal system that left procedures to the discretion of the judge; no provision was made for protecting the rights of the children, nor was it even considered that the children had rights. When challenged, the constitutionality of the juvenile court law was affirmed; the law was found to be within the police power of the state under the doctrine of *parens patriae*.⁹⁹

In point of fact, the new juvenile court law made little substantive difference during its first thirty years of existence, except that it abolished apprenticeships as a method of substitute child care and removed children from the criminal courts to the special juvenile court. But the nonpunitive philosophy and informal procedures of the law seemed strange to many judges, who did not understand the new provisions or refused to follow their spirit. Child-caring institutions continued to be inadequate, and the implementation of juvenile probation services through county departments of public welfare was slow and uneven because of lack of both funds and interest in this new approach.¹⁰⁰

97. Law of Mar. 3, 1919, ch. 97, [1919] N.C. Pub. Laws 243.

98. See *State v. Burnett*, 179 N.C. 735, 102 S.E. 711 (1920).

99. *Id.* It is important to note that *In re Gault*, 383 U.S. 541 (1967), limits the right of the state to intervene as a substitute parent in delinquency cases by requiring that certain procedural due process rights be provided to alleged delinquents in juvenile hearings, including adequate written notice, the right to counsel, the privilege against self-incrimination, and the right to confront and cross-examine witnesses.

100. W. SANDERS, *NEGRO CHILD WELFARE IN NORTH CAROLINA* 185 (1933).

The new juvenile court had to operate with available personnel and resources. Dependent and neglected children were often overlooked in implementing juvenile court services,¹⁰¹ in part because of the shortage of institutions that would provide substitute care for dependent and neglected children, particularly if they were black. In 1936, only two of the twenty-seven child-caring institutions in the state would receive black children. This shortage of placement resources meant that some neglected and dependent children were committed to training schools that had been established for juvenile offenders.¹⁰²

Mother's Aid

The county-level welfare program of the early twentieth century consisted primarily of operating a county home and providing very limited "outside relief" consisting of money or goods to needy persons.¹⁰³ There was no public assistance program to enable needy mothers to keep their children in their own homes until 1923, when the General Assembly passed a bill entitled "An Act To Aid Needy Orphan Children in the Homes of Worthy Mothers."¹⁰⁴ This law authorized (but did not require) boards of county commissioners to pay limited public assistance¹⁰⁵ to mothers of children less than fourteen years of age who had lived in the county for one year and who were widowed, divorced, or deserted. The mother was required to have "sufficient mental, moral and physical fitness" to maintain a home for herself and her children. The program was to operate under the supervision of the State Board of Charities and Public Welfare, and its costs were to be shared equally by the state and the county. The state-level appropriation for the program could not exceed \$50,000 per year.

SOCIAL SECURITY AND CHILD ABUSE REPORTING LAWS— 1935 TO THE PRESENT

The years since 1935 have been characterized by federal assumption of leadership in planning and financing public programs to meet

101. Between 1929 and 1934, thirty-two of the county juvenile courts handled no dependency and neglect cases. During that same period, only ten county juvenile courts in the state handled an average of as much as one case per month. W. SANDERS & W. EZELL, *JUVENILE COURT CASES IN NORTH CAROLINA, 1929-1934*, at 45 (1937).

102. Brown, *supra* note 20, ch. XV, at 20-21.

103. PUBLIC POOR RELIEF, *supra* note 19, at 100-45.

104. Law of Feb. 26, 1923, ch. 260, [1923] N.C. Pub. Laws 583.

105. The law authorized assistance of up to \$15 per month for one child, \$10 per month for the second and \$5 for the third, the total per month not to exceed \$40. *Id.*

the needs of the poor. A basic thrust of the Social Security Act of 1935 was to provide federal funding for a new categorical public assistance program called Aid to Dependent Children (ADC), now known as Aid to Families with Dependent Children (AFDC). One purpose of this program was to avoid the necessity of separating parent and child because of poverty, a goal that the federal government has also worked toward by providing funding for services designed to strengthen the child's own home.

The emphasis at the federal level has gradually shifted from providing categorical public assistance to providing various services to families designed to maintain and strengthen family life. For example, in the 1960s the federal government took the lead in developing a proposed model law for reporting child-abuses that was influential in developing child protective services around the country at the state level.

Aid to Dependent Children

The Social Security Act of 1935¹⁰⁶ established several categorical public assistance programs, among them ADC, that provided payments to eligible needy children (1) whose mother or father had deserted, or was ill, dead, imprisoned, or otherwise unable to be the breadwinner, and (2) who lived in the home of certain specified relatives.¹⁰⁷ The Social Security Act included an appropriation of \$24,750,000 for grants to the states to finance ADC. Any state that enacted legislation to implement the federal program and that submitted a plan that received federal approval might receive federal funds equal to one-third of the total amount to be expended under this program.

North Carolina enacted legislation in 1937 to implement ADC and to accept federal grants for funding.¹⁰⁸ The legislation provided that its provisions were to be liberally construed, so that the intent to comply with the federal act might be effectuated. The North Carolina approach provided for county administration of ADC and uniform operation of the program throughout the state. Under the terms of the 1937 state legislation, "a dependent child" was a child under sixteen who lived in the home of specified relatives.¹⁰⁹ The child must have

106. Act of Aug. 14, 1935, ch. 531 §§ 401 ff., 49 Stat. 627 (codified at 42 U.S.C. §§ 601 et seq. (1970)).

107. *Id.* § 406 (codified at 42 U.S.C. § 600 (1970)).

108. Law of Mar. 20, 1937, ch. 288, §§ 31 et seq., [1937] N.C. Pub. Laws 520 (codified at N.C. GEN. STAT. §§ 108-38 et seq. (1975)).

109. The designated relatives were father, mother, grandfather, grandmother, broth-

been deprived of parental care by reason of his parent's death, physical or mental incapacity, or continued absence from the home, and he must have had no other means of support. The child must have resided in the state for one year, or if he were born in the state within one year before the aid was applied for, the mother must have been a resident of the state for one year before the child was born.¹¹⁰

The North Carolina implementing statute included a "suitable home" requirement as a condition of eligibility. To receive ADC aid, the relative who was raising the child was required to maintain a "safe and proper" home.¹¹¹ The State Board of Charities and Public Welfare was authorized to establish rules and regulations for applications, but the county boards of welfare were directed to ascertain the facts supporting the application, determine eligibility, and set the amount of the payment.

The North Carolina statute established limits on the amount of ADC payments to be made to dependent children that varied with the size of the household. These ceilings were low and were graduated to take advantage of the economies of scale in larger families.¹¹² In actual practice, most recipients received payments far below the statutory limits.¹¹³ Federal law provided for federal funds to pay one-third the total cost. The implementing state legislation required that one-third of the cost be provided by the counties, and the state was to pay the remaining third. Generally, the ADC payments were insufficient to meet the needs of approved applicants.¹¹⁴

er, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt. See Law of Mar. 20, 1937, ch. 288, § 35, [1937] N.C. Pub. Laws 520. Through subsequent changes in the federal and state programs, the persons with whom a child may live and be eligible for public assistance have been expanded to include a natural parent, adoptive parent, stepparent, and any other person related by blood, marriage or legal adoption. Certain children living in a licensed foster home or child-care institution are now also eligible. See N.C. GEN. STAT. § 108-24 (1975).

110. It should be noted that *Shapiro v. Thompson*, 394 U.S. 618 (1969), found state residence requirements to be unconstitutional. See also 40 N.C. ATT'Y. GEN. REP. 712 (1970).

111. Law of Mar. 20, 1937, ch. 288, § 36, [1937] N.C. Pub. Laws 520.

112. The maximum amount allowed for a monthly ADC payment was \$18.00 for one child, \$12.00 for each additional dependent child, with a ceiling of \$65.00 for a household unless extraordinary circumstances existed making this amount insufficient. Law of Mar. 20, 1937, ch. 288, § 34, [1937] N.C. Pub. Laws 520.

113. A survey of actual payments revealed that the average payment was much less than the ceiling. The majority of monthly payments ranged either from \$8 to \$16 or \$10 to \$18. See 1936-1938 N.C. STATE BD. OF CHARITIES & PUB. WELFARE BIENNIAL REP. 82-83 [hereinafter cited as 1936-1938 REP.].

114. The ADC program has not always made payments equivalent to one hundred percent of budgeted need. A study in 1946-1948 revealed that an average of only sixty-

The thrust of the Social Security Act in establishing ADC was to strengthen and expand the policies of the mothers' aid program while eliminating its emphasis on morality and middle-class values. The intention of the federal law was to have children grow up in their own homes with their own families.¹¹⁵ Children in institutions were not eligible for ADC.¹¹⁶

Ironically, the legislation that established ADC had a vast potential for upsetting traditional family structures. If both parents were in the home, even if both were unemployed, the family was ineligible to receive benefits. Therefore, an unemployed father could make his wife and children eligible for ADC only by abandoning the family.¹¹⁷ Furthermore, before 1950 the Social Security Act did not authorize any federal financing to support the mother or other caretaker of the children.¹¹⁸ Therefore, it was often necessary for the entire household to survive on the limited ADC payments that were intended to support the dependent children alone.

The Social Security Act made no requirement of a "suitable home" as a condition of eligibility. The inclusion of such a limitation in the implementing legislation in North Carolina was a holdover from the mothers' aid laws, which stated that only "deserving" mothers were eligible. A number of studies of the ADC program during this period report that the "suitable home" provisions in state laws were used to discriminate against black or illegitimate children in southern states, or to justify low payments in such cases.¹¹⁹ There is no documented evidence that North Carolina ever applied the notion of "worthiness" as a qualification for ADC at the state level, but some county welfare

one percent of the budgeted need of ADC families was being met. For example, a family with three children was supposed to require \$101 per month for basic necessities under existing standards. In a case in which the family averaged a monthly income of \$26, the ADC payment averaged \$36. See 1946-1948 N.C. STATE BD. OF CHARITIES & PUB. WELFARE BIENNIAL REP. 23 [hereinafter cited as 1946-1948 REP.]. The Division of Social Services of the North Carolina Department of Human Resources reports that the 1973 North Carolina General Assembly appropriated sufficient state funds to increase payments from eighty-six percent to one hundred percent of budgeted need.

115. See SOCIAL SECURITY BD., AID TO DEPENDENT CHILDREN UNDER THE SOCIAL SECURITY ACT (Informational Serv. Circular No. 6, June 1937).

116. See note 109 and accompanying text *supra*.

117. W. BELL, AID TO DEPENDENT CHILDREN 28 (1965).

118. North Carolina amended its ADC statutes to include a provision for including the caretaker of the children in the budget in 1951. The ceiling for payments to the adult caretaker was \$27.00 per month. See Law of Apr. 14, 1951, ch. 1098, § 4, [1951] N.C. Sess. Laws 1131.

119. W. BELL, *supra* note 117, at 34, 42; G. MYRDAL, AN AMERICAN DILEMMA, 359-60 (1962).

boards may have done so.¹²⁰ At the national level, the Social Security Board recommended the repeal of "suitable home" provisions as an eligibility requirement in 1945.¹²¹ North Carolina was one of fifteen states to do so in the following decade.

In spite of its flaws, ADC was a major step forward in providing economic help to families with young children. Children no longer had to be placed in foster homes, child-care institutions or training schools because of poverty if they were eligible for ADC through the death, absence, or incapacity of one parent.

Services to Children

The Social Security Act of 1935 established a plan to provide certain services to children without regard to actual financial need, including an appropriation of \$1.5 million for the first fiscal year to be spent on child welfare services.¹²² The Children's Bureau was authorized to formulate a plan for establishing, extending, and strengthening services, in cooperation with the various state public welfare agencies, for the protection and care of homeless, dependent, and neglected children and children in danger of becoming delinquent. The intended beneficiaries of these federally funded services were children in rural areas, presumably because these areas lacked services and professional personnel. The federal money was to pay part of the cost of services and to help the states develop support arrangements to assist rural areas in providing child welfare services. Although the federal appropriations were relatively small, they represented a new concept in federal funding: Congress had recognized the need for social services to children. Because the funding was limited, special emphasis was placed on services to children within their own home, rather than on foster care placement.¹²³

North Carolina's plan for child welfare services was approved by the Children's Bureau on April 9, 1936.¹²⁴ The state received a flat grant of \$10,000 and a supplemental amount from the remainder of the

120. A survey of the races of children receiving ADC during 1936-1938 revealed that whites outnumbered blacks by about 3.5 to one. Of the 22,196 children receiving ADC in fiscal 1938, 17,129 were white, 4,949 were black and 118 were Indian. 1936-1938 REP., *supra* note 113, at 86.

121. W. BELL, *supra* note 117, at 51.

122. Act of Aug. 14, 1935, ch. 531, § 521, 49 Stat. 633 (codified at 42 U.S.C. § 701-16 (1970)).

123. RUSSELL SAGE FOUNDATION, SOCIAL WORK YEAR BOOK 1947, at 98.

124. 1936-1938 REP., *supra* note 113, at 57.

appropriation, computed by the ratio of its rural population to the total rural population of the United States.¹²⁵ The available funds were allocated for the following services: placement, maintenance, and supervision of child welfare staffs in county public welfare departments; consultant services to counties that had no child welfare workers; psychological services for children; and a tri-county demonstration and training project in cooperation with the University of North Carolina at Chapel Hill.¹²⁶ During the first two years of the plan's operation, child welfare workers were placed in eighty-one counties on a full- or part-time basis.¹²⁷ Although these workers were originally state employees, they functioned as staff members of the county's department of public welfare.¹²⁸

The case load for a child welfare worker was intended to be smaller than that of a public assistance worker because of the special skills and time required to deal with a variety of type of problems affecting children.¹²⁴ The areas of responsibility of these workers included behavior problems and delinquency, family conflict, psychological problems, illegitimacy, neglect and cruelty.¹³⁰ The primary focus was on casework services to children within their own homes, but the child welfare worker provided placement services in foster homes (if available) when such services were considered appropriate.

While the system of child welfare services grew slowly during the first ten years,¹³¹ it expanded more rapidly in the early 1950s as a result of the emphasis placed on services to children in the White House Conference on Children and Youth held in December, 1950.¹³² The program continued to emphasize services to children in their own homes to prevent family disintegration and to strengthen family relationships. Indeed, the term protective services was developed administratively to refer to activities directed toward this goal. More than half the children receiving services in 1952 lived in their own homes or with relatives.¹³³

125. Act of Aug. 14, 1935, ch. 531 § 521, 49 Stat. 633 (codified at 42 U.S.C. § 701-16 (1970)).

126. 1936-1938 REP., *supra* note 113, at 58.

127. *Id.* at 59.

128. *Id.* at 62. Now child welfare services are provided by county employees.

129. *Id.*

130. *Id.*

131. In 1948, there were thirty-seven child welfare workers in twenty-six counties, an increase of nineteen in ten years. See 1946-1948 REP., *supra* note 114, at 54-55.

132. 1948-1950 N.C. STATE BD. OF CHARITIES & PUB. WELFARE BIENNIAL REP. 41.

133. Of the 12,482 children receiving services in 1952, 5,898 lived at home with one or both parents and 1,417 lived with relatives. 1950-1952 N.C. STATE BD. OF CHARITIES & PUB. WELFARE BIENNIAL REP. 41.

Since 1935, several changes have occurred in federal priorities in the funding of services to children. Originally, child welfare services were provided with federal funds without regard to actual financial need. The 1962 amendments to the Social Security Act appropriated new funds for services to children who received public assistance under AFDC while maintaining the same level of funding for child welfare services. Thus the emphasis in federal funding was expanded to provide services to supplement public aid. Changes in federal policy regarding funding for services has meant that, over the last forty years, the state and its counties have not had a constant level of federal funding for services.

Recently the emphasis in federal funding of services changed again with the 1975 amendments to the Social Security Act. In contrast to the uniformity of services throughout the state emphasized in the past, the state and counties have some choices in which services they will provide, depending on local needs and priorities. Federal funds are now available to pay for services both to recipients of public assistance and to moderate income families. Further, federal funding for services to abused and neglected children has no relation to receipt of AFDC or to the income level of the child's family.¹³⁴

NORTH CAROLINA'S TWO CHILD-ABUSE REPORTING LAWS

North Carolina has had two laws applicable to reports of child abuse and neglect, the first enacted in 1965 and the second in 1971. These laws will be discussed separately, since their development reflects the inadequacy of the voluntary approach taken by the earlier statute, and a growing awareness of the problem of child abuse and neglect.

1965 Child Abuse Reporting Law

Following the national trend, North Carolina enacted its first child-abuse reporting law in 1965.¹³⁵ That law was voluntary, authorizing physicians, nurses, school personnel, and welfare workers to report suspected cases of child abuse and neglect to the county director of public welfare in the county in which the child lived. The county department was required to investigate each case reported to determine whether the report was accurate. The department would also determine

134. Interviews with Chief of the Family Services Section, Division of Social Services, N.C. Department of Human Resources, Nov. 15, 1974, March 9, 1976.

135. N.C. GEN. STAT. §§ 14-318.2 to .3 (Supp. 1975).

who caused the abuse or neglect and would take appropriate protective action to prevent the child from being subjected to further abuse, neglect, injury, or illness. Anyone who reported under the law or testified in a court case resulting from such a report was given immunity from civil or criminal liability unless he acted in bad faith or with malice. The law also waived the traditional physician-patient privilege so that a physician could testify in court in child-abuse cases in which he had provided medical evaluation or treatment for the child.

Before this law was passed, some efforts had been made to adopt legislation similar to the Children's Bureau model, a mandatory law applicable to physicians only that contained criminal sanctions for failure to report suspected cases. A segment of medical leadership within North Carolina opposed this approach, with the result that the legislation adopted was a voluntary law applicable to physicians and to a limited number of other professionals who might have occasion to know about child abuse and neglect in their regular professional contacts.

The 1965 reporting law proved to be an inadequate approach to the problem. Presumably because the statute was voluntary, the level of reporting was unimpressive. For example, in 1967 only 438 cases of suspected abuse or neglect were reported within the state.¹³⁶ Further, the range of professionals authorized to report seemed too narrow, since it did not include certain groups who would also have occasion to suspect or know about abused or neglected children. Since the law was codified in Chapter 14 of the General Statutes, which deals with criminal law, professionals who were more familiar with the parts of the General Statutes that deal with the welfare program or with medical care or child welfare might never refer to the statute's provisions. Finally, this codification suggested that the law's intent was to punish parents or others responsible for neglect or abuse rather than to protect children. By 1971, the total number of reported cases of suspected child abuse or neglect during the six-year period the law had been in existence was only 2,968.¹³⁷

1971 Child Abuse Reporting Law

In 1971 the North Carolina General Assembly repealed the 1965 voluntary reporting law and enacted a more comprehensive, mandatory

136. Data supplied by Central Registry of Abuse and Neglect Cases, Division of Social Services, N.C. Department of Human Resources [hereinafter cited as Registry].

137. *Id.*

reporting law designed to remedy the inadequacies of the earlier legislation.¹³⁸ The 1971 statute contained a provision that made child abuse, as defined, a criminal misdemeanor.¹³⁹ With minor amendments, the 1971 reporting law remains the basic legislation in this area and constitutes the state's primary policy in the field.

A summary of the basic features of the 1971 reporting law, as amended, follows:

(1) Its statement of legislative purpose indicates that the primary thrust of the reporting law is (a) to identify children suspected to be neglected or abused and to assure that protective services will be available to protect these children from further abuse or neglect; and (b) to preserve family life when possible by enhancing the capacity of the parents for good child care.¹⁴⁰

(2) The law is mandatory rather than voluntary. It requires professionals to report *suspected* cases of child abuse or neglect; nonprofessionals must report cases of child abuse when they have actual knowledge. There are no criminal sanctions for failure to report for professionals or nonprofessionals.¹⁴¹

(3) Reportable child abuse is defined primarily in terms of physical injuries or likelihood of physical injuries to a child less than eighteen years of age. Such injuries must be other than accidental and must cause or create a substantial risk of death, disfigurement, impairment of physical health, or loss or impairment of the functioning of a body organ. The definition of reportable child abuse also encompasses the creation of a substantial risk of such physical injuries or impairment of health, and includes the performance of sex acts upon a child that are contrary to law.¹⁴²

(4) Reportable neglect is more broadly defined,¹⁴³ since its definition is coextensive with that of all neglect cases that come within the juvenile jurisdiction of the district court. Reportable neglect exists

138. N.C. GEN. STAT. §§ 110-115 to -122 (1975).

139. *Id.* § 14-318.2 (Supp. 1975).

140. *Id.* § 110-116 (1975).

141. *Id.* § 110-118(a). A professional person is defined by section 110-117(5) to include "a physician, surgeon, dentist, osteopath, optometrist, chiropractor, podiatrist, physician-resident, intern, a registered or practical nurse, hospital administrator, Christian Science practitioner, medical examiner, coroner, social worker, law-enforcement officer, mental health worker, psychologist, public health worker, or a school teacher, principal, school attendance counselor or other professional personnel in a public or private school."

142. *Id.* § 110-117(1) (1975).

143. *Id.* § 110-117(4) (1975); *id.* § 7A-278(4) (1969).

when there is any child less than eighteen years of age "who does not receive proper care or supervision or discipline from his parent, guardian, custodian, or other person acting as a parent, or who has been abandoned, or who is not provided necessary medical care or other remedial care recognized under state law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law."¹⁴⁴

(5) While the thrust of the reporting law is to identify children who risk abuse so that appropriate protective services may be provided, the law also contains a punitive element that applies to parents or caretakers who abuse children. If child abuse is confirmed after investigation, the county department of social services is required to report its findings in writing to the district attorney, who must determine whether criminal prosecution of the parents or caretaker is appropriate.¹⁴⁵

(6) Instances of child abuse or neglect may be reported in person, by telephone, or in writing. If done personally or by telephone, the reporter must confirm the report in writing when requested by the county director of social services. If the reporter is a professional, the report must also include his opinion of the nature, extent, and causes of the injuries or condition that resulted from the abuse or neglect.¹⁴⁶

(7) Two sections of the reporting law give immunity from civil or criminal liability to those who report in good faith.¹⁴⁷ Also, the 1971 legislation amends separate statutes dealing with the physician-patient privilege and the husband-wife privilege under the law of evidence so that neither will be a ground for excluding evidence regarding child abuse or neglect by a doctor or a spouse.¹⁴⁸ This might be important in certain cases that go to court, because child abuse or neglect frequently occurs in the privacy of the home, where only the nonabusing parent may be available as a witness with actual knowledge.

(8) The law allows a hospital to retain custody of an abused child who is admitted for treatment in certain situations for his protection.¹⁴⁹

(9) The statute spells out the many responsibilities of the

144. *Id.* § 7A-278(4) (1969).

145. *Id.* § 110-119(3) (1975).

146. *Id.* § 110-118(b).

147. *Id.* §§ 110-118(c), 110-120.

148. *Id.* § 8-53.1 (Supp. 1975); *id.* § 8-57.1.

149. *Id.* § 110-118(d) (1975).

county director of social services and the department of social services to conduct investigations following receipt of a report of child abuse or neglect.¹⁵⁰

(10) The reporting law requires that the Department of Human Resources maintain a central registry of abuse and neglect cases in order to compile data for appropriate study of these problems and to identify repeated abuses of a child or of other children in the same family. The law requires that these data be furnished by county departments of social services; the data are protected as confidential, subject to policies adopted by the Social Services Commission that provide for appropriate use of the data for study and research.¹⁵¹

Implementing the 1971 Reporting Law

Legislation may offer a structure for providing services, but effective implementation is another matter. When the mandatory law became effective on July 1, 1971, its statistical effect was a dramatic increase in the number of reports of child abuse and neglect. For example, the number of confirmed cases of child abuse and neglect for fiscal year 1970-71 (the last year that the voluntary law was in effect) was 1,784.¹⁵² In contrast, the number of confirmed cases of child abuse and neglect increased to 4,397 for fiscal 1971-72—the first year that the mandatory law was in effect. Table 1 contains the available data from the central registry on numbers of abuse and neglect cases reported and confirmed for each fiscal year since the reporting law became mandatory:

Table 1¹⁵³

	No. Reported		No. Confirmed		Totals	
	Abuse	Neglect	Abuse	Neglect	Rep'd	Confirmed
July, 1971 - June, 1972	1,100	5,775	657	3,740	6,875	4,397
July, 1972 - June, 1973	1,602	8,462	746	5,351	10,064	6,097
July, 1973 - June, 1974	1,900	9,572	711	4,987	11,278	5,635
July, 1974 - June, 1975	1,946	9,331	1,050	4,724	11,277	5,774

150. *Id.* § 110-119. These duties include: investigate following a report to determine the facts; evaluate the extent of abuse or neglect to determine the extent to which child is at risk; notify reporter if no neglect or abuse is found; decide whether court action is needed to remove child when abuse or neglect is found and initiate a juvenile petition in cases in which the child needs to be removed for his protection; report confirmed child abuse cases to district attorney; submit reports of suspected and confirmed child abuse and neglect to the central registry of abuse and neglect cases at the state level in the Division of Social Services, Department of Human Resources.

151. *Id.* § 110-122.

152. Registry, *supra* note 136.

153. *Id.*

The many problems in implementing the law involve statutory interpretation, funding for services, adequacy of personnel in numbers and training, and the difficulties of offering protective services to a family that has been reported but does not wish any services or interference from an outside agency. One problem has been making professionals and nonprofessionals aware of their legal responsibility to report. Further, some professionals who know about the reporting law and their legal responsibilities do not report for various reasons. Table 2 shows the sources of reports for calendar year 1973. This table shows that two-thirds of the reports of child abuse and neglect were made by relatives, neighbors, and police. Even though physicians generally know about the child abuse reporting law, they are known to be reluctant to report. During 1973, physicians made one per cent of the reports.

Table 2
Sources of Reports in Child Abuse and Neglect Cases
in North Carolina, 1973¹⁵⁴

Source of Reports	Number of Children			Percent		
	Total	Neglect	Abuse	Total	Neglect	Abuse
Total	10,650	9,360	1,290	100.0	87.9	12.1
Private Medical						
Doctor	120	50	70	1.1	0.5	0.6
Hospital or Clinic	240	130	110	2.3	1.2	1.0
Police	860	760	100	8.0	7.1	0.9
County Department of Social Services	240	230	10	2.3	2.2	0.1
Court	320	300	20	3.0	2.8	0.2
Private Social Agency	20	20	—	0.2	0.2	—
Public Social Agency	240	190	50	2.3	1.9	0.5
School or Child Care Facility	930	760	170	8.7	7.1	1.6
Public Health/ Visiting Nurse	290	260	30	2.7	2.4	0.3
Relative	3,230	2,880	350	30.3	27.0	3.3
Neighbors	2,890	2,720	170	27.1	25.5	1.6
Ministers	80	70	10	0.8	0.7	0.1
Other	740	600	140	7.0	5.6	1.3
Unknown	450	390	60	4.2	3.7	0.6

154. Data supplied by Division of Social Services, Department of Human Resources, from a random sample of ten percent of the number of cases of neglect and abuse reported to the Registry during 1973. See also N.C. DEP'T. OF HUMAN RESOURCES, DIV.

The available data also show that ninety-five children died in North Carolina in neglect and abuse cases during the four years since the mandatory law became effective—fifty-six from abuse and thirty-nine from neglect.¹⁵⁵

Criminal Sanctions for Child Abuse and Neglect

Child abuse and neglect cases, particularly those in which children are seriously injured or die, can lead to a number of types of criminal charges against parents or other caretakers, including murder, manslaughter, and assault. North Carolina has two criminal statutes specifically related to such cases: General Statutes section 14-316.1 makes it a misdemeanor for a parent or other person who has custody of a child to fail to exercise reasonable diligence in the child's care, protection, or control, causing him to be neglected; section 14-318.2 makes child abuse by a parent or other person who provides care or supervision to a child a misdemeanor.

Section 14-316.1 was originally enacted in 1919 as a part of the state's first juvenile court law.¹⁵⁶ It was transferred to the criminal law statutes when the juvenile court laws were revised by the 1969 General Assembly.¹⁵⁷ While it is very broadly worded and subject to constitutional attack for vagueness, the statute has been upheld as constitutional.¹⁵⁸ Section 14-318.2, which was enacted in 1971 as a part of the legislative package that included the mandatory reporting law, also provides for discretion on the part of the district attorney in whether to prosecute a confirmed child abuser. This statute has been interpreted to provide for three separate offenses: (1) inflicting physical injury upon the child; (2) allowing physical injury to be inflicted upon him; (3) creating or allowing to be created a substantial risk of physical injury. In *State v. Fredell*¹⁵⁹ a mother was charged, convicted, and sentenced for inflicting physical injuries upon her two-year-old son,

OF SOCIAL SERV., SPEC. REP. NO. 30, NEGLECT AND ABUSE OF CHILDREN IN NORTH CAROLINA (January, 1975) (particularly Table I C at 9, containing similar data for 1972).

155. Registry, *supra* note 136.

156. Law of Mar., 1919, ch. 97, § 19, [1919] N.C. Pub. Laws 252. See also *State v. Ferguson*, 191 N.C. 668, 132 S.E. 664 (1926), interpreting the 1919 legislation in a case involving contributing to delinquency.

157. Law of June 19, 1969, ch. 911, § 4, [1969] N.C. Sess. Laws 1047.

158. *State v. Sparrow*, 276 N.C. 499, 173 S.E.2d 897 (1970). See also *State v. Mason*, 18 N.C. App. 433, 197 S.E.2d 79 (1973); *State v. Worley*, 13 N.C. App. 198, 185 S.E.2d 270 (1971).

159. 283 N.C. 242, 195 S.E.2d 300 (1972).

causing him to be diagnosed a "battered child." On appeal, she challenged the constitutionality of the statute on the ground of vagueness. The North Carolina Supreme Court ruled that the portion of the statute under which the mother was tried—concerning intentional infliction of physical injury—was constitutional, and that she had no right to challenge the constitutionality of other portions of the statute, since the three parts were severable.

IS NORTH CAROLINA'S APPROACH ADEQUATE?

Public and legislative interest in solving the complex problems related to child abuse and neglect was extensive during the late 1960s. Now that North Carolina has strengthened and expanded its reporting law, the attitude seems to be that the problems have been solved. The state appears to be seeking simple and inexpensive solutions to complex problems. But the state clearly has not solved the complex and difficult problems related to parental child abuse and neglect by enacting a reporting law. The law is designed to identify children risking abuse or neglect, so that appropriate protection may be provided. It does not deal with the more difficult and fundamental problems concerning the causes of child abuse, such as poverty, current concepts of child discipline, and the vicious circle in which children who are abused become abusing parents. In truth, we are only beginning to understand the problem.

A number of questions have been raised about the adequacy of the 1971 reporting law itself. Should there be statutory civil or criminal sanctions for failure to report? Should the definition of reportable neglect be rewritten in more specific fashion, less subject to subjective interpretation? Should emotional or psychological neglect be reportable? If so, how would these types of neglect be defined in the statutes?

One might also raise a number of questions about the effectiveness of the reporting law's implementation. The law seems to assume that reports will be made, that the protective services approach will be effective, and that there are staff available at the county level who are qualified to provide protective services and who are available when needed to evaluate reports of child abuse and neglect. But it is not clear that the protective services approach is effective in all cases, nor is it clear which professionals are qualified to provide protective services or whether adequate personnel are available when needed in all counties. The need for stable funding to support services and personnel is clear.

A number of other social and legal issues relate to the central registry of abuse and neglect cases maintained in the Department of Human Resources. The registry was intended to provide data and information about child abuse and neglect and to protect children whose parents move from county to county. In reality, it is an incomplete data base for drawing conclusions about the problem, since not all cases are reported at the county level to the county department of social services, and not all county departments report cases to the registry as they are legally required to do. Further, the raw data in the registry have not been adequately analyzed and used to inform the public about the nature and extent of child abuse and neglect within the state. The registry is maintained by hand, not automation. It should be computerized, with terminals available for information at the county level, so that the history available on any child or perpetrator of abuse or neglect who has ever been reported to the registry could be easily acquired. But if the registry were computerized, difficult legal issues may arise with respect to the right to privacy of parents or perpetrators concerning who has access to the computerized information. At present, the central registry contains the names of parents, children, and perpetrators of abuse and neglect in both *reported* and *confirmed* cases. There is no procedure at present for removing a name when the reported neglect or abuse is not confirmed.

The United States Congress enacted the Child Abuse Prevention and Treatment Act in 1974.¹⁶⁰ This federal legislation established the National Center on Child Abuse and Neglect, which provides federal grants to states that meet the requirements of the federal law. North Carolina meets most of the federal requirements through the Child Abuse and Neglect Reporting Law of 1971, but the state is not yet eligible for federal funds because of one deficiency that will require state-level legislation and appropriations. The federal law states that in any abuse or neglect case that results in a judicial proceeding, the state must provide for appointment of a guardian ad litem to represent the child in the proceeding. The North Carolina statutes dealing with the juvenile jurisdiction of the district court authorize a judge to appoint a guardian of the person for a child in a neglect case when the child comes into court without a parent or when the court finds the appointment of such a guardian in the best interests of the child. However, this authority is permissive rather than mandatory. Further, there are no

160. Act of Jan. 31, 1974, Pub. L. No. 93-247, § 1191, 88 Stat. 4, *as amended*, Act of Jan. 4, 1975, Pub. L. No. 93-644, § 8(d)(1), 88 Stat. 2310 (codified at 42 U.S.C.A. §§ 5101-5106 (Cum. Supp. 1976)).

state funds with which to pay a guardian ad litem in such a case. This deficiency in the state system means that North Carolina does not receive federal funds that would otherwise have been allocated to it. The following amounts would have been available for North Carolina had the state been eligible:

<i>Funding Period</i>	<i>Amount</i>
July, 1974 - June, 1975	\$5,170
July, 1975 - June, 1976	\$63,800
July, 1976 - June, 1977	\$86,987 ¹⁶¹

Since available federal funding for child abuse and neglect services may increase, it seems wise for the North Carolina General Assembly to consider appropriate statutory changes to qualify in its 1977 session. Further, some confusion exists over exactly what the term guardian ad litem means in the federal law. Should a guardian ad litem be an attorney? Is such a guardian an adequate substitute for legal counsel for the child?

Public information and concern about the complex problems related to child abuse and neglect within North Carolina are not now sufficient to lead to the changes necessary for comprehensive solutions.¹⁶² It is interesting to speculate about what will be required to create the necessary climate for increased public concern—a sensationalized case in which a child dies, new technology, or new diagnostic or treatment methods which prove more effective than existing techniques. It is clear from history that the problem will not go away and that it will surface as an area for reform and change in the future.

161. Registry, *supra* note 136.

162. For further information about child abuse and neglect in southern Appalachia see N. POLANSKY, R. BORGMAN, & C. DESAIX, *ROOTS OF FUTILITY* (1972). See also N. POLANSKY, C. DESAIX, & S. SHARLIN, *CHILD NEGLECT: UNDERSTANDING AND REACHING THE PARENT, A GUIDE FOR CHILD WELFARE WORKERS* (1972).