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Second Chances: Insuring that Poor Families Remain Intact by Minimizing Socioeconomic Ramification of Poverty

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SECOND CHANCES: INSURING THAT POOR FAMILIES REMAIN INTACT BY MINIMIZING SOCIOECONOMIC RAMIFICATIONS OF POVERTY

Cynthia R. Mabry *

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I. INTRODUCTION

In today's society, many children are surviving in deplorable living environments that reflect the level of neglect to which they are subjected daily. They are poor, malnourished, and unkempt. Their homes are unclean, unheated, and unsafe. Some of them live in homes without bathrooms, adequate sleeping accommodations, stoves, or refrigerators. As the head of each of these households, their caregivers—often unemployed single women—are unable, for economic

reasons, to provide adequate food, supervision, shelter, and other necessities of life for them.¹

In 1997, Congress amended the Social Security Act and enacted the Adoption and Safe Families Act of 1997 (the Act).² The focus of the amendment was to decrease the length of time allocated for permanently severing parental rights. A special provision was added to allow termination of parental rights and formulation of permanency plans for children who have been in state-sponsored foster care for fifteen of the most recent twenty-two months of their lives.³ With only a few exceptions, states were ordered to commence a termination proceeding after certain periods have elapsed, and to “identify, recruit, process, and approve a qualified family for an adoption.”⁴ On the other hand, the Act requires that reasonable efforts should be made to enable a child to either remain in or safely return to her biological parent’s home.⁵

Congress decreased the time for termination of parental rights because it was concerned that too many children were languishing in foster care for long periods of time while perfunctory attempts at rehabilitating families were made.⁶ A serious consequence that derived from this laudable objective of speeding up terminations is that some poor children, with proper assistance from various sources, should not be taken from their biological parents’ care. Under the Act, instead of reuniting and strengthening families, agencies will wrench children from their poor parents because their parents will be unable to provide the type of family life that meets state expectations within a relatively short period of time.

This article discusses the socioeconomic consequences of poverty and how poor families may be separated needlessly under Congress’ recent termination mandate. Because the majority of terminations or removals are based on neglect by poor parents, the focus is on supporting these parents with adequate services to strengthen the entire family instead of pulling it apart. In Part II, child neglect is

¹ See *In re Eric H., Jr.*, 1999 WL 68667 at 1 (Conn. Feb. 4, 1999); *Cooley v. Div. of Child & Family Servs.*, 946 P.2d 155, 156 (Nev. 1997) (describing squalor found in one mobile home); *W. Va. Dep’t of Human Serv. v. Peggy F.*, 399 S.E.2d 460, 461 (W. Va. 1990) (describing living conditions at home); Jacquelyn McCroskey & William Meezan, *Family Centered Services: Approaches and Effectiveness in 8 THE FUTURE OF CHILDREN* 54 (1998); JULIE A. NICE & LOUISE G. TRUBEK, *CASES AND MATERIALS ON POVERTY LAW* 420 (1997 & Supp. 1999) (reporting that women head more than half of poor families); Lori Klein, *Doing What’s Right: Providing Culturally Competent Reunification Services*, BERKELEY WOMEN’S L.J. 20 (1997) (stating that many parents involved in the child dependency system are single women); WILLIAM P. O’HARE, *KIDS COUNT DATA BOOK: STATE PROFILES OF CHILD WELL-BEING* (Annie E. Casey Foundation 1996); NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *PERMANENCY PLANNING FOR CHILDREN PROJECT, PROTOCOL FOR MAKING REASONABLE EFFORTS TO PRESERVE FAMILIES IN DRUG-RELATED DEPENDENCY CASES* 32 (1992) [hereinafter *PROTOCOL*].

² 42 U.S.C. § 671 (Supp. 1999).

³ See Act of Nov. 8, 1997, Pub. L. No. 105-89, 1997 U.S.C.C.A.N. (111 Stat. 2115) 2739; H.R. NO. 105-149; H.R. CONF. REP. NO. 105-217.

⁴ 42 U.S.C. § 675(3)(E) (Supp. 1999) (making exceptions when the child is living with a relative, a termination would not be in the child’s best interest, or the State has not provided necessary family services).

⁵ See *id.* § 671(a)(B)(ii).

⁶ See *id.* § 671(a).

defined through references to statutes, case law, and statistics. Parts III and IV set forth causes and effects of neglect with an emphasis on poverty. Part V explains how public agencies, private citizens, employers, lawyers, and judges may ensure that an appropriate support network is offered and available to poor families. The resounding theme throughout the article is that all of the foregoing constituencies should work together to give poor families a reasonable and realistic opportunity to provide adequate care for their children in their own homes.

II. DEFINING NEGLECT FOR TERMINATION PURPOSES

Termination of parental rights means that a parent's ability to make decisions regarding her child's education, well-being, and religious upbringing is permanently severed.⁷ There are two stages to termination of parental rights proceedings.⁸ In the adjudicatory stage—the first phase—the court determines whether one or more statutory grounds for termination exist.⁹ A common ground for termination of parental rights is neglect.¹⁰ Among the reported grounds for termination, neglect is even more pervasive than child abuse.¹¹

⁷ See *Santosky v. Kramer*, 455 U.S. 745, 748 (1982) (denying the right to physical custody, visitation, or communication with the child or to regain custody). See also OK. STAT. ANN. § 7006-1.3(A) (West 1999) (losing the right to custody, visitation, control, train, and educate a child); Douglas E. Cressler, *Requiring Proof Beyond a Reasonable Doubt in Parental Rights Termination Cases*, 32 U. LOUISVILLE J. FAM. L. 785, 794 (1994).

⁸ See *In re Beth Ann B.*, 513 S.E.2d 472, 475 (W. Va. 1998) (describing the phases according to the statute).

⁹ See *In re Danuael D.*, 724 A.2d 546, 551 (Conn. 1999); *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990) (terminating parental rights “only for grave and weighty reasons”); *In re Eric H., Jr.*, 1999 WL 68667 at 3 (Conn. Feb. 4, 1999); *Cooley v. Div. of Child & Family Servs.*, 946 P.2d 155, 158 (Nev. 1997) (enumerating grounds for termination); *Recodo v. Dep’t of Human Resources*, 930 P.2d 1128, 1133 (Nev. 1999); *In re Lilley*, 719 A.2d 327, 330 (Pa. 1998).

¹⁰ See ARIZ. REV. STAT. ANN. § 8-533(B)(2) (West 1999) (explaining that “abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child”); COLO. REV. STAT. ANN. § 19-3-604(b) (West 1999); CONN. GEN. STAT. ANN. § 17a-112(c)(3)(B) (West 1999); GA. CODE § 15-11-81(4) (1999); LA. STAT. ANN. art. 1015(3) (West 1999); MINN. STAT. ANN. § 260.221(6) -(7) (1999) (removing the child for “egregious harm” or neglect); MISS. CODE ANN. § 93-15-103(3)(6) (1999); MO. STAT. ANN. § 211.447.2(2)(c) (Vernon 1999); MONT. CODE ANN. § 41-3-609(2)(f) (1999); NEB. REV. STAT. § 43-292(2) (1999); N.H. STAT. ANN. § 170-C:5II, V (Michie 1999); NEV. REV. STAT. § 128.105(2)(b) (1999); N.M. STAT. ANN. § 32A-5-15(B)(2) (1999); 23 PENN. CONSOL. STAT. ANN. § 2511(a)(2) (Purdon 1998); TENN. CODE ANN. § 36-1-113(g)(3)(A)(i) (1999); VA. CODE § 16.1-283(B)(1) (Lexis 1999).

¹¹ See LEROY PELTON, *THE SOCIAL CONTEXT OF CHILD ABUSE AND NEGLECT* 34, 138-39 (1981) [hereinafter PELTON, *SOCIAL CONTEXT*]; Howard A. Davidson, *Protecting America's Children: A Challenge*, 35 TRIAL 23, 24 (1999) (suffering neglect without abuse).

States recognize several grounds for termination that are not discussed here. Parents may voluntarily relinquish their parental rights without justifying their decision. See *In re S.J.C.*, 507 S.E.2d 226, 228 n.1 (Ga. 1998) (indicating that the children's fathers had “surrendered” their rights). Chronic alcohol or drug abuse are other grounds for termination. See ARIZ. REV. STAT. ANN. § 8-533(B)(3) (West 1999); GA. CODE § 15-11-81(4)(B)(ii) (1999); ME. REV. STAT. ANN. tit. 22, § 4055(1)(c) (1999); MISS. CODE ANN. § 93-15-103(d)(i) (1999); MO. STAT. ANN. § 211.477.2(2)(b) (Vernon 1999); MONT. CODE ANN. § 41-3-

There are four basic types of child neglect: 1) physical, 2) educational, 3) emotional, and 4) general.¹² Forms of physical neglect include: abandonment,¹³ inadequate shelter; poor hygiene; inadequate clothing; inadequate supervision; inadequate nutrition; inadequate health care; and inattention to safety issues that over time cause serious physical or emotional injury.¹⁴ Educational neglect encompasses allowing chronic truancy, failing to enroll the child in school as required by law, and failing to attend to her special educational needs.¹⁵ Emotional

609(d) (1999); NEB. REV. STAT. ANN. § 43-292(4) (1999); VA. CODE § 16.1-283(B)(2)(b) (Lexis 1998); *In re A.M.N.*, 506 S.E.2d 693, 695 (Ga. Ct. App. 1998) (injecting heroin in the children's presence). There must be a reasonable belief that the parent will continue to abuse drugs for an "indeterminate period." ARIZ. REV. STAT. ANN. § 8-533(B)(3) (West 1999). *See also S.J.C.*, 507 S.E.2d at 229 (considering past conduct to determine whether deprivation likely will continue).

Also, a parent may lose parental rights upon her conviction of certain crimes. Applicable felonies tend to reveal that a parent is unfit to retain custody of her child. For example, a parent who has murdered or committed manslaughter of a child may not retain custody of other children. *See* ARIZ. REV. STAT. ANN. § 8-533(B)(4) (West 1999) (including conspiracy or solicitation of murder or manslaughter and aiding, abetting, or attempting to commit those crimes against children); ARK. CODE ANN. § 9-27-341(2)(I) (1999); GA. CODE § 15-11-81(4)(B)(iii) (1999); MINN. STAT. ANN. § 260.221(9) (1999); MISS. CODE ANN. § 93-15-103(f) (1999) (listing criminal offenses against the child); MO. STAT. ANN. § 211.477.2(4) (Vernon 1999); OKLA. STAT. ANN. § 7006-1.1(A)(7) (West 1999). *See also S.J.C.*, 507 S.E.2d at 229 (considering a mother's multiple convictions and other factors); *A.M.N.*, 506 S.E.2d at 696 (finding that parents had repetitive incarcerations and continued to steal while the children were present).

Likewise, some statutes provide that one parent who murders the child's other parent may lose his parental rights. *See* LA. REV. STAT. ANN. art. 1015(3) (West 1999). In addition, a parent who receives a lengthy sentence that will cause her child to be "deprived of a normal home for a period of years" may lose her parental rights. *See* ARIZ. REV. STAT. ANN. § 8-533(B)(4) (West 1999); COLO. REV. STAT. ANN. § 19-3-604(b)(III) (West 1999) (confining a parent for at least six years or thirty-six months if the child is under six years old); FLA. STAT. ANN. § 39.464 (West 1999); LA. REV. STAT. ANN. art. 1015(6) (West 1999); MONT. CODE ANN. § 41-3-609(2)(e) (1999); N.H. STAT. ANN. § 170-C:5 VI (Michie 1999). An exception is that the parent has made adequate provisions for the child's care during her incarceration. MICH. COMP. LAWS ANN. § 712A.19b(i) (1999).

¹² *See* ANN M. HARALAMBIE, *THE CHILD'S ATTORNEY—A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES* 172 (1993) [hereinafter HARALAMBIE].

¹³ *See* ARIZ. REV. STAT. ANN. § 8-533 (B)(1) (West 1999); COLO. REV. STAT. ANN. § 9-3-604(a) (West 1999) (including surrendering physical custody to someone else and failing to manifest an intent to resume physical custody within a specified time); CONN. GEN. STAT. ANN. § 7a-112(c)(3)(A) (West 1999) (failing to "maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child"); D.C. CODE ANN. § 6-2301(9) (1999) (defining neglect); GA. CODE § 15-11-81(b)(3) (1997); IOWA CODE ANN. § 232.116(1)(b) (1999); LA. REV. STAT. ANN. art. 1015(4) (West 1999); MICH. COMP. LAWS ANN. § 712A.19b(3)(a) (1999); MINN. STAT. ANN. § 260.221(1) (1998); MISS. CODE ANN. § 93-15-103(3)(a) (1999); MO. STAT. ANN. § 211.4472(1) (Vernon 1998); MONT. CODE ANN. § 41-3-609(1)(b) (1999); NEB. REV. STAT. § 43-292(1) (1999); N.H. STAT. ANN. § 170-C:5I (Michie 1999); NEV. REV. STAT. § 128.105(2)(a) (1999); N.M. STAT. ANN. § 32A-5-15(B)(1) (1998); OKLA. STAT. ANN. § 7006-1.1(2) (West 1998); VA. CODE § 16.1-283(D) (Michie 1999); ROBERT D. GOLDSTEIN, *CHILD ABUSE AND NEGLECT CASES AND MATERIALS* 141 (1999) (defining abandonment); *Daniels v. Dep't of Human Serv.*, 953 P.2d 1, 8 (Nev. 1998) (finding that the five children had been abandoned).

¹⁴ *See* GOLDSTEIN, *supra* note 13, at 141. *See also id.* at 36-38 (charting types of neglect); VINCENT J. FONTANA & DOUGLAS J. BESHAROV, *THE MALTREATED CHILD* 36-39 (5th ed. 1996); LEROY PELTON, *FOR REASONS OF POVERTY* 2-5 (1989) [hereinafter PELTON, *FOR REASONS OF POVERTY*] (distinguishing dependency from neglect).

¹⁵ *See* GOLDSTEIN, *supra* note 13, at 37.

neglect includes inadequate nurturing, spousal abuse, permitting the child to use drugs and alcohol, refusing to secure (or delayed efforts to secure) psychological treatment, and allowing maladaptive behavior that over time causes or could cause serious developmental lags.¹⁶ Emotional neglect, sometimes referred to as psychological neglect, also encompasses “verbal abuse, demeaning, rejecti[ng], and terrorizing a child.”¹⁷ “General neglect may be manifested in the appearance of a severe diaper rash, poor skin hygiene, excessive hunger, dehydration, and malnutrition.”¹⁸

Generally, parents neglect their children by abandoning them. Sometimes, the child is left with a third party and her parent fails to return, but leaving a child alone or unsupervised is the way in which children are neglected most often.¹⁹ Neglect in any form, though, is abhorrent.

III. STATISTICAL DATA ON NEGLECT AND CHILDREN LIVING IN POVERTY

A. *Neglect Statistics*

Data that records the number of neglected children is heartbreaking. In recent years, there has been a significant increase in the number of reported incidents. A 1992 national incidence study revealed that 917,200 children were neglected.²⁰ Five years later, in 1997, child protective service agencies investigated more than two million reports of maltreatment. More than three million children were the subjects of those reports.²¹ Most of those victimized children (54%) were neglected. Three percent were physically (medically) neglected while 6% were emotionally neglected.²² In 2000, District of Columbia judges reported that 1600 new abuse and neglect cases are filed per year. Four out of five of those cases are

¹⁶ See *id.* at 28-29 (defining various types of neglect).

¹⁷ *Id.* at 13.

¹⁸ FONTANA & BESHAROV, *supra* note 14, at 37 (emphasis added). See also *In re S.J.C.*, 507 S.E.2d 226, 228, 229-30 (Ga. 1998); Ann MacLean Massie, *Withdrawal of Treatment for Minors in a Persistent Vegetative State: Parents Should Decide*, ARIZ. L. REV. 173, 193-94 (1993) (identifying medical neglect as a reason for state intervention).

¹⁹ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 35. See also *id.* at 113-16, 144-45 (describing acts of neglect).

²⁰ NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, THE ROLE OF EDUCATORS IN THE PREVENTION AND TREATMENT OF CHILD ABUSE AND NEGLECT 4 (1992) [hereinafter *ROLE OF EDUCATORS*]. See also Lelia Baum Hopper, *Improving Court Practice in Child Abuse and Neglect Cases*, VA. LAW. 32, 33 (Feb. 1999) (recording an increase in neglect reports).

²¹ National Clearinghouse on Child Abuse and Neglect Information, *Child Abuse and Neglect National Statistics Fact Sheet* at 1 (1999) <<http://www.calib.com/nccanch/pubs/stats.html>> [hereinafter *Fact Sheet*] (stating that many children suffer from more than one type of maltreatment).

²² *Fact Sheet*, *supra* note 21, at 1 (indicating an 18% increase in such cases since 1990). See also National Clearinghouse on Child Abuse and Neglect Information, *Victims of Maltreatment*, <<http://www.acf.dhhs.gov/programs/cb/stats/ncands97/d41.htm>>.

neglect matters.²³

A disproportionate number of children who are young, white, and female are neglected. Most neglected children are younger than seven years old and most of them (52%) are girls.²⁴ Contrary to popular belief, the majority of children who are neglected are not minority children. When neglected children are categorized by race, two-thirds (67%) of the reported child victims would be Caucasian. Only 29% would be African-American children.²⁵

Sadly, hundreds of children die as a result of severe neglect. Annually, approximately 10% (1,077) of neglected children become fatalities. In 1997, the estimated number of neglect-related deaths was 1,196. The largest percentage of the fatalities (77%) were three years old and younger.²⁶

²³ See Peter Slevin, *Judges Describe Agonizing Decisions*, WASHINGTON POST, Jan. 16, 2000, at C1 [hereinafter Slevin].

²⁴ See *Fact Sheet*, *supra* note 21, at 1. Accord National Clearinghouse on Child Abuse and Neglect Information, *In Fact . . . Answers to Frequently Asked Questions on Child Abuse and Neglect* at 2 <<http://www.calib.com/nccanch/pubs/infact.htm>> [hereinafter *Answers*] (indicating that its numbers were generated from official statistics); see also Aletha C. Huston, *Policies for Children: Social Obligation, Not Handout* at 305, 308, printed in *CHILDREN OF POVERTY* 273, 211 (Hiram E. Fitzgerald et al. eds., 1995).

²⁵ See *Answers*, *supra* note 24, at 2; *Fact Sheet*, *supra* note 21, at 1.

The unpleasantness of neglect are not confined to any particular racial group. However, more reports of neglect seem to be filed as a result of "life-style differences and from prejudice against minority, single-parent, or low-income families." ALBERT J. SOLNIT ET AL., *WHEN HOME IS NO HAVEN* 6 (1992). Consequently, children are removed from the homes of poor and minority parents at a significantly higher rate than from non-minority families. Compared with national child population statistics, the percentages of reported cases for African American and American Indian children is disproportionately high. See *Fact Sheet*, *supra* note 21, at 1. In the State of Florida, for example, although white and African American mothers from equal socioeconomic backgrounds abused drugs, only 1% of white mothers were reported to social services while 11% of African American mothers were reported. See PROTOCOL, *supra* note 1, at 1 (citing Ira J. Chasnoff et al., *The Prevalence of Illicit Drug or Alcohol Use During Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida*, 322 NEW ENG. J. MED. 1202-06 (1990)). "To ensure equity in decision-making among diverse cultural and racial groups, increased understanding is needed of the cultural and economic strengths and weaknesses of each family, regardless of class or color. Families are important to all children. Strengthening families is a goal second only to protecting children and every reasonable effort should be made to do both." PROTOCOL, *supra* note 1, at 1.

Prejudice flows through the child care system. A direct result of more frequent termination of parental rights of certain racial groups is that more children of color become available for adoption. The downside, though, is that children of color are not in as high demand for adoption as other children. See Margaret Beyer & Wallace J. Mlyniec, *Lifelines to Biological Parents: Their Effect on Termination of Parental Rights and Permanence*, 20 FAM. L.Q. 233, 246 (1986); *Daniels v. Dep't of Human Serv.*, 953 P.2d 1, 12 (Nev. 1998) (Springer, C.J., dissenting) (declaring that prospects for adoption of biracial children who were emotionally disturbed were not favorable). State governments appear to be destroying family ties of a large number of poor families with no concomitant benefit to children. This is especially disconcerting because of the danger that these harms are being inflicted disproportionately on poor children and children of color. See Martin Guggenheim, *The Effects of Recent Trends to Accelerate the Termination of Parental Rights of Children in Foster Care—An Empirical Analysis in Two States*, 29 FAM. L.Q. 121, 134 (1995).

²⁶ See *Fact Sheet*, *supra* note 21, at 1. See also National Clearinghouse on Child Abuse and Neglect Information, *Child Fatalities* <<http://www.acf.dhhs.gov/programs/cb/stats/ncands97/s6.htm>> (counting 967 fatalities in 1997 and estimating that 1,197 children may have died); Fern Shen, *Md. Child Abuse Deaths Up 50%*, WASHINGTON POST, Jan. 7, 2000, at B1 (reporting that the number of deaths increased).

It is important to note, however, that more children are neglected than represented in these statistics. An actual number is unavailable because, in many instances, no incident report will be filed, so children will not come to the attention of child protective services—the agency that compiles statistics on neglect.²⁷ Another reason that prevents accurate reporting is that parents represent 77% of the persons who inflict this maltreatment on children and many of them will not seek assistance from social services agencies.²⁸ As a consequence, a number of cases go unreported.²⁹

B. *Counting Children Who Live in Poverty*

Poverty is “the state of lacking means to meet subsistence needs.”³⁰ There is a strong correlation between child neglect and living in poverty.³¹ Children living in low-income families are at a much greater risk of neglect than other children.³² Generally, the poorer the family is, the severer the maltreatment.³³ Economic data show that children whose parents’ annual income is less than \$15,000 per year are more than twenty-five times more likely to be neglected than children whose parents earn more than \$30,000.³⁴

There are more children living in poverty in the United States of America than there are in any other Western nation.³⁵ Unlike the number of neglect reports, the number of children living in poverty has fluctuated at times, but has decreased slightly in the last three years.³⁶ In 1997, the percentage of poor children was

²⁷ See *Answers*, *supra* note 24, at 1.

²⁸ See *Fact Sheet*, *supra* note 21, at 1 (indicating that 10% of the other perpetrators are relatives). See also National Clearinghouse on Child Abuse and Neglect Information, *Perpetrators* <<http://www.acf.dhhs.gov/programs/cb/stats/ncands97/d6.htm>> (indicating that the overwhelming majority of perpetrators in every state were parents).

²⁹ See FONTANA & BESHAROV, *supra* note 14, at 74 (advocating that social workers conduct proper investigations and make appropriate case findings).

³⁰ NICE & TRUBEK, *supra* note 1, at 5.

³¹ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 24, 34, 104, 138-39; GOLDSTEIN, *supra* note 13, at 38; ROLE OF EDUCATORS, *supra* note 20, at 5. *But see* NICE & TRUBEK, *supra* note 1, at 719-20 (concluding that there is no logical relationship but that low income parents have greater contact with child protective services and that may result in triggering state intervention in poor families).

³² See GOLDSTEIN, *supra* note 13, at 38, 120 (finding a concentration of neglected children among poor families). *Cf.* Greg Duncan, *Making Welfare Reform Work for Our Youngest Children*, 71 SPECTRUM: J. STATE GOV'T 28 (1998) (registering a 6.8 times greater chance of neglect).

³³ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 153.

³⁴ See *Answers*, *supra* note 24, at 2. *Accord* GOLDSTEIN, *supra* note 13, at 38 (denoting low income as “a significant risk factor”).

³⁵ See Lewis E. Hill, *The Institutional Economics of Poverty: An Inquiry Into the Causes and Effects of Poverty*, 32 J. ECON. ISSUES 279 (1998).

³⁶ See Guang Guo, *The Timing of the Influences of Cumulative Poverty on Children's Cognitive Ability and Achievement*, 77 SOC. FACES 257 (1998) (demonstrating a huge increase from the 1980s to 1993).

19.9%, or 14.1 million. In 1998, the year for which most recent data is available, the number of poor children who were younger than eighteen years old was 13.5 million (18.9%).³⁷ In the same year, the rate of poverty for children who were younger than six years old who lived in female-headed households was 54.8%—five times the rate for children from the same age group who lived in a home with a married couple.³⁸

The racial breakdown of poor children also differs from neglect statistics. The numbers of children of color who are poor are much higher than the numbers for neglected children. For example, 37% of African American children and 34% of Hispanic children are living in poverty.³⁹ Comparatively, only 15% of white children are poor.⁴⁰

At this juncture, it must be emphasized that all poor parents do not neglect their children.⁴¹

[T]here are literally thousands of women with children living in real and abject poverty who are nevertheless absolutely superb, wonderful and caring mothers. On top of that, many of them are single parents who get little or no help from absent fathers. These are mothers who positively would never consider leaving their child simply because times are hard or money is short.⁴²

Yet the data explicitly show that a significant percentage of the total population of children live in poverty and are neglected. The numbers of neglected children compared with the numbers of those who live in poverty demonstrate that there is a very high probability that poor parents will be accused of neglect and that the state will intervene to provide some aid or to temporarily or permanently remove the children from their home. Therefore, states must be cognizant of the social problems associated with poverty as they strive to assist families in need.

³⁷ See United States Commerce Department Press Release, *Household Income at Record High; Poverty Declines in 1998* (1999) (copy on file with author); U.S. Census Bureau, *Income and Poverty 1998—Press Briefing on 1998 Income and Poverty Estimates* (September 30, 1999); Sari Horwitz, *1 in 3 D.C. Children Living in Poverty*, WASHINGTON POST, Nov. 4, 1999, at A1. See also NICE & TRUBEK, *supra* note 1, at 8 (citing statistics from 1974 through 1995).

³⁸ See United States Census Bureau, *Income and Poverty 1998*, <<http://www.census.gov/hhes/income/income98/prs99asc.html>>. See also NICE & TRUBEK, *supra* note 1, at 3 (recounting 1995 figures).

³⁹ See Children's Defense Fund, *Fair Start FAQs* (May 1998) [hereinafter *Fair Start*] (copy on file with author).

⁴⁰ See *id.*

⁴¹ See ROLE OF EDUCATORS, *supra* note 20, at 5 (noting that “individuals respond differently to their environment and while one family in the same apparent situation becomes abusive, another will not”).

⁴² *Baugh v. Merritt*, 489 S.E.2d 775, 780 (W. Va. 1997) (Maynard, J., dissenting).

IV. CAUSES OF CHILD NEGLECT IN POOR FAMILIES

A thorough discussion of this topic must include reasons that parents neglect their children. Although neglect stretches along the entire spectrum of socioeconomic groups, most children who are deemed to be in such danger that state intervention is warranted are poor children.⁴³ A few causes are common among these families.

A. *Economic Conditions*

1. Poverty

A parent's financial status often affects her children's living environment. Poverty can cause a ripple effect that engulfs the whole family. Although the parent endeavors to provide proper care, unemployment, inadequate or lack of housing, lack of food, lack of day care support, and lack of money to acquire necessities may cause her to neglect her children.⁴⁴

Some legislators recognized the correlation between the parent's socioeconomic status and her inability to provide acceptable care for her children. Therefore, the parent's economic circumstances is one of the factors included in statutory guidelines for determining whether a child is neglected and the court must consider whether those circumstances hindered her ability to provide adequate care for her child.⁴⁵ For example, the District of Columbia Code provides that a neglected child is one

whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent . . . to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent⁴⁶

⁴³ See FONTANA & BESHAROV, *supra* note 14, at 74 (advocating that social workers conduct proper investigations and make appropriate case findings).

⁴⁴ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 34; HARALAMBIE, *supra* note 12, at 172 (reporting that the typical situation involves neglect due to poverty); ROLE OF EDUCATORS, *supra* note 20, at 5; Steven Choy, *The Psychological Perspective* 57, 77-79, printed in INTERDISCIPLINARY PERSPECTIVES IN CHILD ABUSE AND NEGLECT (Faye F. Untalan & Crystal S. Mills eds., 1992) (naming several causes of neglect); Daniels v. Dep't of Human Serv., 953 P.2d 1, 2 (Nev. 1998) (indicating parental deficiencies).

⁴⁵ See CONN. GEN. STAT. § 17a-112(e) (West 1999); N.Y. FAM. CT. § 614(1)(d) (West 1999); N.Y. GEN. STAT. § 7B-1111(a)(2) (1999) (forbidding termination solely on the basis of poverty); Eric H., Jr., 1999 WL 68667 at 7 (finding that the parents' "predicament [was] a consequence of their own actions").

⁴⁶ D.C. CODE ANN. § 16-2301(9)(B) (1999) (emphasis added). See also FLA. STAT. ANN. § 39.464 (1999) (excusing neglect that is the result of lack of financial resources); N.Y. SOC. SERV. § 384-b(7)(a) (McKinney 1999); MD. FAM. LAW CODE ANN. 5-313(c) (1999) (neglecting a child even though financially able to care for her); TEXAS FAM. CODE § 161.001(1)(F) (Vernon's 1999) (supporting a child "in accordance with the parent's ability"); VA. CODE § 16.1-283(C) (Lexis 1999) (indicating that neglect must be "without good cause"); W. VA. CODE § 49-1-3(h)(A) (Lexis 1999).

That is to say that even in situations where children are adjudged neglected, the parent may be excused from a neglect finding if the maltreatment is caused by a lack of financial means to provide for the children.⁴⁷

Following the legislators' lead, courts in several jurisdictions have noted the impact of poverty on a parent's ability to care for her children. In *In re T.G.*,⁴⁸ the child protective services agency removed four young children from their home after just one visit. Prior to the decision to remove the children, a police officer answered a call to visit one home and found two children with their deceased grandmother. The officer reported that the children were extremely dirty and they needed baths. He described the condition of the grandmother's home as deplorable. Trash was strewn throughout the rooms. A foul smelling odor permeated the home. Unprotected electrical wires were hanging from the ceiling and walls, and there were holes in the floor and in the ceiling.⁴⁹

Later, the children's mother arrived with two more children who were unusually dirty. The officer drove the children and their mother to their own home and was dismayed to find the same conditions that existed at the grandmother's home. Although there was no evidence of malnourishment, the children were hungry and there was an inadequate supply of food in the house. Food that did exist was spoiled. Based on his observations, the officer took the children to child protective services. Afterward, a social worker made a separate visit to both homes and reached the same conclusion as the officer about conditions in those homes.⁵⁰

At the initial hearing, however, evidence revealed that the parents struggled to care for their children properly. Their efforts were hampered by the fact that the only income that they had was the mother's monthly social security check. The father often borrowed money to purchase food for his family.⁵¹ Considering the evidence presented, despite a strong dissent by one appellate court judge,⁵² the majority ruled that these parents were not unfit and that they had not neglected their children. The court held that "[t]he relevant focus for the court in neglect proceedings is the children's condition, not parental culpability. State intervention is justified only after it is demonstrated that the need arises from some

⁴⁷ See *In re B.C.*, 582 A.2d 1196, 1198 (D.C. App. 1990) (interpreting the District of Columbia neglect statute). See also PA. CONSOL. STAT. ANN. § 2511(b) (Purdon 1999).

⁴⁸ 684 A.2d 786, 787-88 (D.C. 1996).

⁴⁹ See *id.* at 787-88. See *id.* at 791-93 (King, J., dissenting).

⁵⁰ See *id.* at 791-93 (King, J., dissenting) (adding that the children were so dirty that they had to be bathed several times and they emitted a foul odor).

⁵¹ See *id.* at 789. See also *In re T.S.*, 464 So. 2d 677, 684 (Fla. 1985) (refusing to terminate rights because of indigency); *In re Ardoin Children*, 667 So. 2d 1144, 1146-47 (La. 1996) (attributing all of the mother's difficulties to her "financial and mental limitations"); *In re Jamie M.*, 472 N.E.2d 311, 314 (N.Y. 1984) (finding it difficult to find housing without money or employment). But see *New Jersey Div. J Youth & Family Serv. v. A.W.*, 512 A.2d 438, 452 (N.J. 1986) (de-emphasizing the parent's economic status because the children had sustained "substantial emotional or developmental injury").

⁵² See *T.G.*, 684 A.2d at 791-94 (concluding that "the condition of the children and their homes were the product of the parents' long-term failure to provide even minimal care for their children rather than from the lack of financial means to correct it").

act or failure to act on the part of the parent which endangers the welfare of the child.”⁵³ The court reasoned that there was no evidence of maltreatment and that the agency had acted only upon their observations during a single home visit.⁵⁴ The parents had provided the best care that they could render for their children by borrowing money and sharing a social security check.⁵⁵ The factual evidence, the court concluded, supported the legal conclusion that the parents’ lack of financial means was the cause of their living conditions.⁵⁶

Moreover, the court was very concerned that for one year after the children were removed from their home, social services had not made any attempts to reunify the family.⁵⁷ Actually, the agency had not offered to help the parents in any way. Not even a telephone call had been placed in an effort to contact them. When the parents notified the agency that they had located a more suitable home, no agency representative took the time to inspect that home.⁵⁸ Based on the evidence that was before it, the court ruled that the agency “should have taken an active role in spurring repair of the family by, for example, calling the parents immediately—and repeatedly, if necessary—to develop a strategy for reunification.”⁵⁹

2. Reductions in Aid to Families with Dependent Children (AFDC)

In 1935, Congress first enacted legislation to aid needy families. Now the program is known as Aid to Families with Dependent Children (AFDC).⁶⁰ The legislation ensured that funds would be available to support poor families.⁶¹ By 1993, 3.6 million mothers were receiving AFDC to purchase necessities for their 9.7 million children.⁶² Many of them also received food stamps and other aid including assistance from the Women, Infants, and Children (WIC) program.⁶³ More than half of the people who remained dependent on AFDC were children.⁶⁴

⁵³ *Id.*

⁵⁴ *See id.* at 789. *Accord* *Doe v. G.D.*, 370 A.2d 27, 33 (N.J. 1976) (concluding that even though the sleeping quarters were dirty and substandard, there was not neglect).

⁵⁵ *See T.G.*, 684 A.2d at 790-91.

⁵⁶ *See id.*

⁵⁷ *See id.* at 787.

⁵⁸ *See id.*

⁵⁹ *Id.* at 790. *See also In re Jamie M.*, 472 N.E.2d 311, 314 (N.Y. 1984) (failing to assist the parents to find employment to gain financial stability for securing a suitable home).

⁶⁰ Lucy A. Williams, *Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 *FORDHAM URB. L.J.* 1159, 1174 (1995).

⁶¹ *See* 42 U.S.C. § 601 (Supp. 1999).

⁶² *See* U.S. Census Brief, Statistical Brief, *Mothers Who Receive AFDC Payments, Fertility and Socioeconomic Characteristics* (March 1995).

⁶³ *See id.* *See also* Gregory Acs et al., *Does Work Pay? An Analysis of the Work Incentives Under TANF*, at 6 (July 1998) (for the Urban Institute) [hereinafter *Does Work Pay?*].

⁶⁴ *See* KATHERINE S. NEWMAN, *NO SHAME IN MY GAME* 269 (1999).

Recent cuts in federal benefits will have a serious impact on the number of children who are adjudged neglected. Enactment of the Personal Responsibility and Work Opportunities Reconciliation Act of 1996⁶⁵ (PRWORA), wielded a devastating blow to poor families with children as it abolished AFDC. Under the PRWORA, AFDC became Temporary Assistance for Needy Families (TANF). TANF is a block grant program that serves three purposes. First, as the AFDC program did, it provides assistance to needy families, but it does not require cash payments. Second, it emphasizes work and marriage by ending dependence on welfare and promoting self-sufficiency. Third, it promotes curtailment of social problems attributed to poverty through prevention of out-of-wedlock pregnancies.⁶⁶

Unlike the TANF program, PRWORA requires welfare recipients to work or engage in certain work activities after they have received benefits for only twenty-four months.⁶⁷ Regardless of whether beneficiaries actively seek employment, public assistance is terminated after a five-year term expires.⁶⁸ Although this is a short period of time, state legislators have the option of imposing even shorter self-sufficiency deadlines.⁶⁹ Noncompliance with these time restraints will result in a reduction of state funding.⁷⁰ On the other hand, state agencies have the option of exempting the time limits for up to 20% of their TANF beneficiaries. Also, if state representatives decide to do so, they may utilize state funds to aid families that have exhausted their TANF benefits.⁷¹

A very troubling provision of PRWORA is the one that eliminates an entitlement to benefits.⁷² The Act provides that nothing in its language "shall [] be interpreted to entitle any individual or family to assistance under any State program funded under this part."⁷³ As a result, a state could decide that a family will not receive any benefits at all.

Another negative consequence of PRWORA is that parents who are suddenly dismissed from the welfare rolls may be left without adequate income because many are unable to find suitable and steady employment.⁷⁴ One study

⁶⁵ 42 U.S.C. § 602(a) (Supp. 1999).

⁶⁶ See *id.* § 602 (a)(1)-(3). Unmarried teenagers would not get any benefits unless they completed their high school education and lived with a supervising adult. *Id.* § 608(a)(1)(B). See Candice Hoke, *State Discretion Under New Federal Welfare Legislation: Illusion, Reality and a Federalism-based Constitutional Challenge*, 9 STAN. L. & POL'Y REV. 115, 116-119 (1998) (explaining the PRWORA provisions).

⁶⁷ See 42 U.S.C. § 602(a)(1)(A)(ii) (Supp. 1999); *id.* § 607(d) (listing allowable work activities).

⁶⁸ See *id.* § 608(a)(1)(B).

⁶⁹ See *id.* § 602(a)(1)(A)(ii).

⁷⁰ See *id.* § 609.

⁷¹ See *id.* § 608(a)(7)(c).

⁷² See 42 U.S.C. § 603 II (Supp. 1999).

⁷³ *Id.*

⁷⁴ See NEWMAN, *supra* note 64, at 269. *But see* Children's Defense Fund, *Welfare in the States* at 1 (1999) (copy on file with author) (indicating that 40% to 60% find employment at below poverty level wages and that one-fifth of them return to welfare within a few months).

revealed that over a two-year span of time, only 29% of those who either voluntarily or involuntarily left welfare under PRWORA limitations found jobs within three months of leaving welfare.⁷⁵ In some places, like the District of Columbia, the employment rate is much lower. In late 1999, only 1,559 of approximately 6,000 former welfare recipients were employed.⁷⁶ Throughout the country, many former welfare recipients accepted part-time employment because no full-time positions were available.⁷⁷ Those who found full-time employment are not experiencing better lifestyles because with their low wages, they are not earning enough to adequately care for their families.⁷⁸ The Urban Institute has predicted that welfare reform under PRWORA will cause 1.1 million children to become poverty-stricken.⁷⁹

The key word in TANF is temporary. Some families may not get any benefits. If benefits are provided, they may not be provided long enough to help parents correct whatever problem placed them in jeopardy of losing their children. This is especially true when the breadwinner is someone who is uneducated, inexperienced, and unskilled.

B. *Substance Abuse*

Another cause of neglect among poor parents is drug abuse.⁸⁰ More than 700,000 women use illegal substances during their pregnancy.⁸¹ They often continue to use drugs after the child is born.⁸² As a result, child protective services has reported national increases in incidents of drug use as a factor in removal of children from their home. Thirty-six percent of the children involved in one year-long study were removed from their home because their parents abused controlled substances.⁸³

Many children are removed from their home because their parents engaged in drug-induced child maltreatment.⁸⁴ Children whose parents are substance abusers

⁷⁵ See NEWMAN, *supra* note 64, at 269.

⁷⁶ See Sari Horwitz, *Employment After Welfare Lags in D.C.*, WASHINGTON POST, Dec. 5, 1999, at C1.

⁷⁷ See NEWMAN, *supra* note 64, at 269.

⁷⁸ See Eileen Sweeney et al., Center on Budget and Policy Priorities, *Windows of Opportunity* at 1, 7 (Jan. 2000) [hereinafter *Windows of Opportunity*] (advocating worker stipends as a supplement to low earnings).

⁷⁹ See S. Zedlewski et al., *Potential Effects of Congressional Welfare Reform Legislation on Family Incomes*, URBAN INSTITUTE PRESS, July 26, 1996, at 1.

⁸⁰ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 104; FONTANA & BESHAROV, *supra* note 14, at 37. See *In re S.J.C.*, 507 S.E.2d 226, 228 (Ga. 1998) (finding that mother was addicted to drugs).

⁸¹ See PROTOCOL, *supra* note 1, at 1; HARALAMBIE, *supra* note 12, at 173-74.

⁸² See PROTOCOL, *supra* note 1, at 1.

⁸³ See *id.* at 5-6.

⁸⁴ See ROLE OF EDUCATORS, *supra* note 20, at 5. On the other hand, it would be a grave mistake for one to make a generalization that presupposes that alcoholics and drug users neglect their children. Some of

are “more than four times likelier to be neglected than children of parents who are not substance abusers.”⁸⁵ The parents’ addiction affects family economics because some drug-addicted parents use money from the family budget to purchase drugs. They further neglect their children by staying away from home during drug binges. Moreover, children may be neglected when their parents’ ability to care for them is impaired or impeded after they ingest drugs.⁸⁶ Many parents’ rights have been terminated based upon their inability to parent a child as a result of drug abuse.⁸⁷

C. Stress

Some parents develop neglectful ways in response to exterior forces that create tension in their homes. Poor mothers who are subjected to higher levels of psychological distress are less affectionate, responsive, and nurturing.⁸⁸ The mother’s ability to be affectionate and caring depends upon the “frequency of hassles or crises [she has] experienced.”⁸⁹

“Stressful events may include recent unemployment, problems within the family or job, medical problems with the parent or child, recent interpersonal crises, and death within the family.”⁹⁰ An exterior force like employment stress begins to affect the entire family. It begins when a parent is dehumanized and alienated at work. Consequently, she is overly stressed and insecure about continued employment and fears that she will not be able to retain her home if she loses her job.⁹¹ The weight of the stress causes her to become severely depressed and to develop low self-esteem. Tension builds and she becomes engrossed with her own problems and neglects her children.⁹² “The more stressful and negative the

them do not neglect their children. See PELTON, SOCIAL CONTEXT, *supra* note 11, at 104.

⁸⁵ See *Answers*, *supra* note 24, at 3.

⁸⁶ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 105; *In re C.V.*, 719 A.2d 1246, 1248 (D.C. 1998) (compromising her parenting abilities with drugs usage); *Daniels v. Dep’t of Human Serv.*, 953 P.2d 1, 3 (Nev. 1998) (alleging that the parent used the rent money to purchase drugs).

⁸⁷ See, e.g., *In re Ashley G.*, 252 Cal. Rptr. 902, 906 (Cal. Dist. Ct. App. 1988); *In re CEW* (Appeal of USW), 541 A.2d 625, 627 (App. D.C. 1988); *In re R.J.*, 436 N.W.2d 630, 635 (Iowa 1989); *In re S.C.*, 439 N.W.2d 500, 505-06 (Neb. 1989); *In re Stefanel Tyesta C.*, 556 N.Y.S.2d 280, 283 (N.Y. 1990) (finding neglect based on parental cocaine use and cocaine in the newborn child’s system); *In re Desiree W.*, 648 N.Y.S.2d 26, 27 (N.Y. 1996); *W. Va. Dep’t of Health & Human Resources v. Daniel B.*, 507 S.E.2d 132, 134 (W. Va. 1998) (terminating father’s rights for history of drug abuse and failing to improve). See generally Mary E. Tyler, Annotation, *Parent’s Use of Drugs as Factor in Award of Custody of Children, Visitation Rights, or Termination of Parental Rights*, 20 A.L.R. 5th 534 (1995).

⁸⁸ See Vonnie C. McLoyd, *Poverty, Parenting, and Policy: Meeting the Support Needs of Poor Parents*, in CHILDREN OF POVERTY 263, 273, 274, 281 (Hiram E. Fitzgerald et al. eds., 1995) (citing numerous studies).

⁸⁹ *Id.*

⁹⁰ Choy, *supra* note 44, at 79; CHILDREN’S DEFENSE FUND, POVERTY MATTERS: THE COST OF CHILD POVERTY IN AMERICA 22 (1997) [hereinafter POVERTY MATTERS] (using harsh and inconsistent discipline).

⁹¹ See ROLE OF EDUCATORS, *supra* note 20, at 5, 6.

stress is for the parent, the higher the risk is for neglect.”⁹³

D. *Parent’s History of Neglect and Dysfunctional Family Life*

Some parents were neglected themselves when they were children.⁹⁴ This generational cycle of neglect yields neglectful parents who lack self-esteem and do not know how to nurture a child.⁹⁵ “If parents . . . suffer from the long-term effects of deprivation in their own childhood, they may lack the capacity to protect, nurture, guide, and stimulate their children.”⁹⁶

E. *Large Families*

Poor caregiving is more frequent in larger families when the parents have financial problems.⁹⁷ Some parents do not know how to cope with large numbers of children. They are unable to discipline the children, to manage care for them, or to provide adequate shelter. This leads to frustration, especially when the children are unmanageable.⁹⁸ “[A] single parent [may] attempt to raise a large family in cramped and unsafe living quarters with no help and little money [L]apses in irresponsibility on the part of the impoverished mother might cause her children to go hungry during the last few days of the month.”⁹⁹

Also, if a mother has several children, it is more difficult for her to convince a friend or relative to care for the children so that she will get temporary relief from parenting responsibilities.¹⁰⁰ The mother who has no support network may be forced to choose between leaving her children unattended or delaying essential chores such as shopping or laundry.

⁹² See PELTON, SOCIAL CONTEXT, *supra* note 11, at 320-21.

⁹³ Choy, *supra* note 44, at 79.

⁹⁴ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 146-48; FONTANA & BESHAROV, *supra* note 14, at 37; ROLE OF EDUCATORS, *supra* note 20, at 7. A Supreme Court of Nevada justice observed that “[t]he overwhelming majority of [parents] who have appeared before me for sentencing were subject to abuse and neglect as children.” *Recodo v. Dep’t of Human Resources*, 930 P.2d 1128, 1135 (Nev. 1999) (Shearing, J., concurring). *Accord In re Lilley*, 719 A.2d 327, 329 (Pa. Super. Ct. 1998) (calling it “the equivalent of a death sentence to the familial relationship”); *Montgomery v. State Dep’t of Human Resources*, 917 P.2d 949, 956 (Nev. 1996) (describing the termination decision a “civil death penalty”).

⁹⁵ FONTANA & BESHAROV, *supra* note 14, at 37.

⁹⁶ SOLNIT ET AL., *supra* note 25, at 4-5 (passing “deficits and deviations” from one generation to another).

⁹⁷ See ROLE OF EDUCATORS, *supra* note 20, at 4.

⁹⁸ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 105.

⁹⁹ *Id.* at 34-35.

¹⁰⁰ See *id.* at 106, 322; ROLE OF EDUCATORS, *supra* note 20, at 7 (showing how parents get frustrated when a new baby is added to the family). Education about contraception and/or abortions would help parents to make educated choices about the size of their families. See DAVID OLDS ET AL., U. S. DEP’T OF JUSTICE, JUVENILE JUSTICE BULLETIN, PRENATAL AND EARLY CHILDHOOD NURSE HOME VISITATION 3 (Nov. 1998) [hereinafter Olds, Hill, and Rumsey] (recording fewer pregnancies among women who participated in a home visitation program).

If she leaves her children alone, she is gambling with their safety; if she stays with them, it may mean being unable to provide proper food or other immediate necessities. Thus some mothers are caught up in difficult and dangerous situations that have less to do with their adequacy and responsibility as parents than with the hard circumstances of their lives.¹⁰¹

F. *Gender and Age*

More than 80% of parents who neglect their children are younger than forty years old. Approximately two-thirds (62%) of these neglectful parents are female.¹⁰² One of the reasons that most women are the perpetrators of neglect is that women head more than half of the poor households.¹⁰³ Many became mothers when they were teenagers. “[A]dolescent parents . . . are a high-risk group for an array of problems: economic difficulties, health problems, housing problems, job instability, and problems in child rearing.”¹⁰⁴ Consequently, a number of ill-prepared, young women are struggling to rear children.¹⁰⁵

G. *Child’s Disability or Illness*

Some children and premature infants—especially those who are physically, mentally, or learning disabled—need extra attention. Sometimes, their parents find it difficult to cope with a disabled child’s special needs. The child’s problems may be excessively burdensome or a strain for her parent. Neglect occurs when the parent is unable to cope with the constant demands of rearing a disabled child.¹⁰⁶

In summary, these are just a few of the reasons that parents neglect their children. “Often the causes [of neglect] lie in a complex combination of circumstances and must be examined on a case-by-case basis.”¹⁰⁷ These combinations of causes demonstrate that there are some deep-seated personal and

¹⁰¹ PELTON, SOCIAL CONTEXT, *supra* note 11, at 35.

¹⁰² See *Fact Sheet*, *supra* note 21, at 1; *Answers*, *supra* note 24, at 2 (revealing that the type of maltreatment differs according to gender); National Clearinghouse for Child Abuse and Neglect Information, *Child Maltreatment 1997, Highlights*, at 3 (1997).

¹⁰³ See NICE & TRUBEK, *supra* note 1, at 89, 420.

¹⁰⁴ ROLE OF EDUCATORS, *supra* note 20, at 54; *cf.* *Cooley v. Div. of Child & Family Servs.*, 946 P.2d 155, 159 (Nev. 1997) (testifying that other 16-year-old mothers exerted reasonable efforts to provide proper care for their children).

¹⁰⁵ See ROLE OF EDUCATORS, *supra* note 20, at 5; FONTANA & BESHAROV, *supra* note 14, at 13; *Cooley*, 946 P.2d at 155 (attempting to assist a 16-year-old mother).

¹⁰⁶ See ROLE OF EDUCATORS, *supra* note 20, at 6 (citing S.J. GOLD, WHEN CHILDREN INVITE CHILD ABUSE (1986)).

¹⁰⁷ ROLE OF EDUCATORS, *supra* note 20, at 6 (demonstrating how a few psychological and sociological causes may combine to cause neglect).

social problems that parents confront. Any plan that is designed to strengthen families and keep them intact must be designed to address a myriad of serious problems like these. In some instances, poverty may cause outsiders to conclude that a parent is neglecting her child. A closer look may reveal that the parent is offering the best care that she can under the circumstances. When these families and their problems are identified, social workers should offer services to support the parents' efforts to cope with all of the challenges that beset them:

Although the stresses of poverty certainly have psychological effects, the strong relationship between poverty and . . . neglect suggests that remediation of situational defects should take precedence over psychological treatments. These parents' behavior problems are less likely to be symptoms of unconscious or intra psychic conflicts than of concrete antecedent environmental conditions, crises, and catastrophes. It is these causes that must be addressed.¹⁰⁸

V. EFFECTS OF POVERTY ON CHILDREN

Children are directly and profoundly affected by their parents' economic status. What living in poverty physically and mentally does to children is significant for determining the importance of services and efforts to keep the families intact. The following is a summary of some of the emotional and physical effects of poverty on children. Sometimes, these effects continue to resonate in an adult's life when she has grown up poor.

A. *Physical and Emotional Effects*

Among poor children, there are behavioral as well as physical indicia of neglect. "Impoverished children are 2 to 3 times as likely to suffer from physical and mental disabilities as children who are not poor."¹⁰⁹ Neglected children may be persistently hungry and beg or steal food. Their physical problems and medical and dental needs are not attended to properly because their parents are unable to pay for health services. Often they are tired and lethargic.¹¹⁰ They cannot pay attention at school because they are sick or have some untreated visual impairment.¹¹¹ Depending upon the child's age and the intensity and duration of poverty, chronic malnutrition may endanger the child's immune system and a variety of negative health effects may develop.¹¹²

¹⁰⁸ PELTON, SOCIAL CONTEXT, *supra* note 11, at 36; *see also id.* at 20-21.

¹⁰⁹ Hill, *supra* note 35, at 279.

¹¹⁰ *See* FONTANA & BESHAROV, *supra* note 14, at 38. *See also In re A.M.N.*, 506 S.E.2d 693, 696 (Ga. Ct. App. 1998) (noting that the child could not read, had underdeveloped speech and motor skills, and behavioral problems).

¹¹¹ *See* CHILDREN'S DEFENSE FUND, HEALTHY START 2 (1997).

¹¹² *See* Hill, *supra* note 35, at 279; HARALAMBIE, *supra* note 12, at 175.

Long-term emotional problems develop from severe emotional neglect that poor children sustain. Low self-image and self-esteem often exist among neglected children. Chronic emotional neglect could hinder a child's ability to develop emotional bonds with others. Antisocial behavior from biting to criminal misconduct may result.¹¹³

Other deficiencies that may arise from a neglectful and poverty stricken upbringing include developmental lags. These deficiencies may be manifested in speech disorders and learning disabilities. Poor nutrition affects a child's central nervous system and may cause permanent brain damage or some other serious mental dysfunction.¹¹⁴

B. *Lack of Proper Education*

There is a cognizable relationship between poor children's education and the amount of money that their parents earn. That is, "poverty infringes on the amount of schooling children complete."¹¹⁵ Poor children score lower on standardized tests. They are twice as likely to repeat a grade. Often they drop out of school or, because they develop behavioral problems, they are expelled from school more often than other children.¹¹⁶ A factor that has a huge impact on poor children's success in school is that they tend to go to school sporadically. Either they do not have a guardian who encourages them to seek an education or their guardian has low expectations for their achievements at school so there is no incentive to excel.¹¹⁷

Additionally, the school facilities in which many poor children are educated and the equipment in these schools are inadequate, obsolete, and not conducive to inspiring them to learn. Poor children are educated at some of the worst substandard public schools in the country because the communities that support the schools do not have the property tax base with which to finance a quality education. Teachers in these schools are rated from inexperienced to incompetent.¹¹⁸ Consequently, poor children are not properly educated. Without an education, many of them will never have a chance to rise above the poverty line.

¹¹³ See HARALAMBIE, *supra* note 12, at 172; FONTANA & BESHAROV, *supra* note 14, at 39; *Answers*, *supra* note 24, at 3 (indicating the high likelihood that a neglected child would be arrested either as an adult or a juvenile and the probability of committing a violent crime).

¹¹⁴ See Hill, *supra* note 35, at 279; POVERTY MATTERS, *supra* note 90, at 8, 24 (reciting learning and behavioral problems associated with poor nutrition).

¹¹⁵ Susan Weinger, *Children Living in Poverty: Their Perception of Career Opportunities*, 79 FAMILIES IN SOCIETY: J. OF CONTEMP. HUM. SERVICES 320 (1998).

¹¹⁶ See POVERTY MATTERS, *supra* note 90, at 5, 11; Eugene Lewit et al., *Children and Poverty: Analysis and Recommendations*, THE FUTURE OF CHILDREN 4, 8 (Summer/Fall 1997) (declaring that the effects differ according to whether the family is temporarily poor, as most families are, or experiencing long-term hardships).

¹¹⁷ See Hill, *supra* note 35, at 279.

¹¹⁸ See *id.*; see also POVERTY MATTERS, *supra* note 90, at 28; Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989) (finding huge disparities between schools in poor districts and rich districts).

C. *Future Aspirations*

Living in poverty may impair a poor child's future outlook. If she perceives that her parents and neighbors are not successful and her parents and neighbors do not have opportunities to excel, she may develop a belief that better chances will not be available for her either. Consequently, she will not be motivated to attempt to achieve greater success than her parents. That defeatist attitude may further limit her progress in adulthood.¹¹⁹

A long-lasting negative influence of growing up poor and reduced "educational attainment" is that poverty may continue to engulf the adult person who was poor when she was a child.¹²⁰ For example, failure to obtain at least a high school diploma will "contribute to childhood poverty's stranglehold on adult economic productivity."¹²¹ Also, an uneducated adult may be unable to master basic skills and to learn to perform tasks that would help her to acquire employment with an income above the poverty level.¹²²

VI. SERVICES FOR ENABLING POOR PARENTS TO RETAIN OR REGAIN CUSTODY OF THEIR CHILDREN

If the time lines in the Act are strictly enforced, a fit and loving parent could be separated from her child simply because her parent is poor.¹²³ Poverty alone should not be a ground for termination of parental rights. "Children cannot be taken from poor parents and placed permanently in the home of substitute parents simply because their 'emotional needs' would be better served or because they might have a cleaner, neater, or richer environment."¹²⁴

Essentially, if appropriate services are provided for poor parents, the unfitness is only temporary. Parental rights should not be terminated when there is "a reasonable likelihood that the parent's perceived unfitness at the time of trial may be only temporary."¹²⁵ When a parent cannot provide food to feed her child, fuel to warm her home, and proper housing to shelter her child, the state should assist her in acquiring those necessities. One way of assisting a parent in need is to refer her to organizations that provide those services.¹²⁶ The following subsections

¹¹⁹ See Weinger, *supra* note 115, at 320.

¹²⁰ See Lauren David Peden, *I Want to Give Back*, PARADE MAGAZINE, Jan. 2, 2000, at 10 (quoting Jewel Kilcher as saying "[W]hen poverty bites you hard at a young age, you don't get over it . . . It affects how you see the world.").

¹²¹ Weinger, *supra* note 115, at 320.

¹²² See *id.*; POVERTY MATTERS, *supra* note 90, at 14 (growing up "less educated and less productive").

¹²³ See *Champagne v. Welfare Div.*, 691 P.2d 849, 857 (Nev. 1984).

¹²⁴ *Id.* at 856 n.6.

¹²⁵ *In re C.T.*, 724 A.2d 590, 599 (D.C. 1999) (finding that the parent was attempting to rehabilitate himself so that he could regain custody of his children).

¹²⁶ See *Harris v. Lynchburg Div. of Soc. Serv.*, 288 S.E.2d 410, 415 (Va. 1982).

discuss how various entities should assist poor parents to prevent neglect or to remedy situations that give rise to neglect.

A. Agency Obligations

When the parent's neglectful behavior places the child's physical safety at risk, state intervention, and even removal of the child, may be warranted.¹²⁷ However, in situations where the child's physical safety or mental stability is not at risk, a program of accessible services should be implemented to keep that family together.¹²⁸ "Child removal is the primary strategy used to deal with . . . neglect, and relatedly, [] woefully few supports are offered to remediate poverty-related environmental, situational, and personal problems and to obviate child placement."¹²⁹ State agencies are obligated to provide that support. This section provides insight regarding how agencies may offer meaningful support to needy families.

1. Reasonable Efforts and Reunification Services

In *Santosky v. Kramer*,¹³⁰ the Supreme Court of the United States ruled that the agency's "first obligation" is to provide services to reunite a biological family.¹³¹ Although it predated the federal legislation by fifteen years, the *Santosky* ruling is consistent with the provision of the Act that requires state agencies to either leave the family intact or make diligent efforts to reunite its members. Section 671 of the Act explicitly requires that agencies deploy "reasonable efforts . . . to preserve and reunify families."¹³² The agencies must identify familial problems and make "affirmative, repeated and meaningful efforts to assist" parents in overcoming those problems.¹³³ These efforts should be made prior to removal of a child from her home and before a child is placed in foster care.¹³⁴ In situations where removal is necessary, measures must be taken to ensure that the family will be reunited quickly.¹³⁵

Provisions in the amended Act provide some guidance to state agencies for this very important charge. At section 625, the Act lists the purposes of child welfare services. Enumerated purposes include:

¹²⁷ See SOLNIT ET AL., *supra* note 25, at 6.

¹²⁸ See *id.* at 6.

¹²⁹ McLoyd, *supra* note 88, at 287.

¹³⁰ *Santosky v. Kramer*, 455 U.S. 745 (1982).

¹³¹ See *id.* at 748.

¹³² 42 U.S.C. § 671(a)(15)(B) (Supp. 1999).

¹³³ See Richard W., 696 N.Y.S.2d 298, 299 (N.Y. 1999).

¹³⁴ See 42 U.S.C. § 671(a)(15)(B)(i).

¹³⁵ See *id.* at § 671(a)(15)(B)(i), (ii). In some cases, however, reunifying the family after foster care placement "is more difficult to achieve than the prevention of placement the first place." McLoyd, *supra* note 88, at 288.

(A) protecting and promoting the welfare of . . . neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in [] neglect . . .; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the family. . . .¹³⁶

On the other hand, the Act does not proceed to define reasonable efforts or to provide examples or models by which state agencies could develop a program of reasonable efforts.

Following the mandate in the federal statute, state legislatures passed legislation that requires agencies to make reasonable efforts to enable parents to avoid removal or to reunify families.¹³⁷ The phrase “reasonable efforts” is not defined clearly in most state statutes either.¹³⁸ For example, section 8-533 of the Arizona statute provides that agencies have an obligation to make diligent efforts to reunite families by providing “appropriate services” to aid parents who are in danger of losing their children.¹³⁹ The State of Missouri defines reasonable efforts

¹³⁶ 42 U.S.C. § 625.

¹³⁷ See CAL. WELF. & INST. CODE § 319 (West 1999); COLO. REV. STAT. ANN. § 19-3-502(2.5) (West 1999) (requiring a summary of efforts or an explanation if no services are offered); CONN. GEN. STAT. § 17a-112(d)(2) (1999); FLA. STAT. ANN. § 39.41(4)(e) (West 1999); MD. CODE ANN. FAM. LAW § 5-524 (1999); N.Y. FAM. ACT (29A) §§ 1027(6), 1028, 1055(c) (McKinney 1999); N.Y. SOC. SERV. LAW § 348-b (i)(a) (iii) (McKinney 1999) (stating that the state’s first obligation is to “help the family with services to prevent its break-up or to reunite it if the child has already left home”); VA. CODE § 16.1.252(E)(2) (Lexis 1999).

¹³⁸ See, e.g., *In re Jessica B.*, 718 A.2d 997, 1004 (Conn. App. Ct. 1998) (opining that the Connecticut statute does not define the term).

¹³⁹ See ARIZ. REV. STAT. ANN. § 8-533(B)(7) (West 1999). See also MINN. STAT. ANN. § 260.221, subd. 5 (1999) (requiring specific findings about the “nature and extent” of the agency’s efforts); *Jessica B.*, 718 A.2d at 1004; *In the interest of Eric H., Jr.*, 1999 WL 68667 1, 3 (Conn. Super. Ct.) (requiring reasonable efforts to reunify the parent with the child).

Admittedly, in some instances, reunification services will be inappropriate, and they will not be required. When such services will be detrimental to the child, they should not be ordered. See N.J. STAT. ANN. § 30:4C-15.1(d) (West 1999). For example, one mother had not been in contact with her children for years, and she had failed to make an effort to comply with past reunification plans. The court found that reunification services should not be extended because they would be detrimental to the children. See *In re S.J.C.*, 507 S.E.2d 226, 230 (Ga. 1998).

Although the Act requires reasonable efforts to reunite parents and their children, it provides an exception when certain exigent circumstances exist. Thus, an agency is not required to make reasonable efforts to reunify a family when a court determines that (1) the parent has “subjected the child to aggravated circumstances . . . [including] torture, chronic abuse, and sexual abuse;” (2) the parent murdered or committed voluntary manslaughter of another child; (3) the parent committed a felonious assault causing serious bodily injury the child who is the subject of the action or another child; or (4) the parent’s rights were terminated involuntarily with respect to one of the child’s siblings. See 42 U.S.C. § 671(a)(15)(D) (Supp.

as “the exercise of reasonable diligence and care by the division to utilize all available services related to meeting the needs of the juvenile and the family.”¹⁴⁰

Comparatively speaking, the West Virginia Legislature gave its Department of Human Services much more direction. In section 49-6D-3(a) of the West Virginia Code, the legislature delineates certain matters to which the department should give priority. For example, the case plan should contain certain items including “a listing of specific, measurable, realistic goals to be achieved; . . . [a] description of the departmental and community resources to be used in implementing the proposed actions and services; . . . [a] list of the services which will be provided; . . . [t]ime targets for the achievement of goals or portions of goals.”¹⁴¹

Because there is no explanation of what the phrase “reasonable efforts” means in most state statutes, courts have resorted to fashioning their own expectations of reasonable efforts. For example, in New Jersey, courts look for “[r]easonable attempts by an agency authorized by the division to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure.”¹⁴² There is no uniformity because definitions that are available vary from state to state. Usually, however, reunification goals consist of developing a case plan for the parents, providing services to correct the deficiency in the family, scheduling visitation, and notifying parents about their child’s progress (when the child has been removed).¹⁴³

Several states properly follow the rule that termination should not be ordered when the social services agency fails to make reasonable efforts or to offer reasonable services.¹⁴⁴ A determination regarding the reasonableness of an agency’s efforts is done on a case-by-case basis.¹⁴⁵ For that reason, in many situations, it will be up to the courts to ensure that agencies fulfill their obligations to these families.

One case illustrates this point. Two parents were living in poverty with

1999) (including aiding, abetting, attempting, conspiring, and soliciting to commit a child’s murder or voluntary manslaughter).

¹⁴⁰ MO. ANN. STAT. § 211.183(2) (West 1999).

¹⁴¹ W. VA. CODE § 49-6D-3(a) (1999). *See also* D.C. CODE ANN. § 16-2320(a)(1) (1999) (enumerating certain services); *see also* MINN. STAT. ANN. § 260.012(b) (West 1999); N.Y. SOC. SER. LAW § 384-6(8)(f) (McKinney 1999).

¹⁴² N.J. STAT ANN. § 30:4c-15.1(c) (West 1999); *Jessica B.*, 718 A.2d at 1004 (“doing everything reasonable, not everything possible”).

¹⁴³ *See* N.J. STAT. ANN. § 30:4C-15.1(c) (West 1999).

¹⁴⁴ *See, e.g.*, CAL. WELF. & INST. CODE § 366.26(c)(2) (West 2000); CONN. GEN. STAT. ANN. § 17a-112 (West 1999); W. VA. CODE § 49-6-5b(b)(3) (1999) (deciding not to file a termination petition when the department has not made reasonable efforts to provide services necessary for the child’s return); *In re Richard W.*, 696 N.Y.S.2d 298, 299 (N.Y. App. Div. 1999) (failing to adequately address the parent’s special needs); *Welfare of K.P.C.*, 366 N.W.2d 711, 714 (Minn. 1985) (concluding that the parent could have improved her circumstances with the county’s help). *But see In re Justin T.*, 640 A.2d 737 (Me. 1994) (terminating rights even though agency failed to make reasonable efforts).

¹⁴⁵ *See In re Eden*, 710 A.2d 771, 771 (Conn. App. Ct. 1998).

their children. Shortly after their second child was born, social services intervened and took the child into its custody. In its petition to terminate the parents' rights, the state alleged that the parents could not support the child financially or emotionally. Also, the state contended that the child was not receiving adequate medical treatment, food, clothing, or shelter.¹⁴⁶ At the hearing, the court heard evidence that the father had been employed continuously. Unfortunately, however, he was a construction worker whose gross salary was only \$205 per month. Another socioeconomic condition that the parents grappled with was that because they could not pay rent and utilities, they were forced to move often. Hence, their home life was very unstable.¹⁴⁷

The court determined that the Department of Pensions and Securities had failed to provide any aid for that family. Hence, the court held that the evidence did not support a termination of parental rights. The majority wrote that "[p]overty . . . in the absence of abuse or lack of caring, should not be the criteria for taking away a wanted child from the parents. Such should particularly be the case when there has been no apparent aid given toward keeping the family together by the agency seeking its termination."¹⁴⁸

Under the revised federal statute, reasonable and appropriate efforts to assist the family are prerequisites to removal or termination.¹⁴⁹ Therefore, before a parent's rights could be terminated, a state must prove that "diligent efforts to encourage and strengthen the parental relationship" were made.¹⁵⁰ In the absence of an offering of appropriate services, removal of a child from her home or termination of the parents' rights is improper.¹⁵¹ When parents are poor, agencies must ensure that they offer services to address the underlying poverty-related problems that cause neglect. "An agency assuredly need not guarantee that parents will no longer be poor or unemployed, but neither can it, without more, simply impose on impoverished parents the usual plan, including the requirement, for return of their child, that they have a means of support and suitable home."¹⁵²

¹⁴⁶ See *In re Hickman*, 489 So. 2d 601, 602 (Ala. 1986).

¹⁴⁷ See *id.*

¹⁴⁸ *Id.* at 602-03. *Accord* A.S.C., 671 A.2d 942, 946 n.7 (D.C. App. 1996); *R.C.N. v. Georgia*, 233 S.E.2d 866, 867 (Ga. 1997) (reversing a decision that a poor young mother was neglectful); *Tipton v. Dep't of Pub. Welfare*, 629 N.E.2d 1262, 1268 (Ind. 1994) (finding that father's poverty alone was not enough for removal of the child from the home); *Brock v. Commonwealth*, 268 S.W. 315, 316 (1925) (declaring that poverty is not a crime); *Champagne v. Welfare Div.*, 691 P.2d 849, 859 (Nev. 1984) (concluding that the parents were not neglectful for any reason other than poverty).

¹⁴⁹ See 42 U.S.C. § 671(a)(15) (Supp. 1999). See also *Cain v. Virginia*, 402 S.E.2d 682, 684 (Va. 1991) (failing to contact the mother for approximately five months); *In re Jamie M.*, 472 N.E.2d 311, 312-13 (N.Y. 1984) (failing to establish a plan for one year).

¹⁵⁰ *Santosky v. Kramer*, 455 U.S. 745, 748 (1982) (quoting N.Y. FAM. CT. § 641.1(d)).

¹⁵¹ *Harris v. Lynchburg Div. of Soc. Serv.*, 288 S.E.2d 410, 415 (Va. 1982); A.S.C., 671 A.2d at 949.

¹⁵² *Jamie M.*, 472 N.E.2d at 314.

2. Social Worker Assignments

Since 1985, the number of reported neglect incidents has increased significantly.¹⁵³ Among other reasons, mandatory reporting statutes¹⁵⁴ (that encumber practically everyone who comes into contact with a child) have caused an increase in reported incidents. More children will receive state protection, so increased reporting is a positive outcome. On the other hand, this positive outcome yielded negative results. Increased reporting created a tremendous caseload of neglect matters. As a consequence, social workers are overwhelmed. They do not have time to properly investigate reports of suspected neglect. When neglect reports are substantiated, social workers often feel frustrated and helpless because they cannot locate proper services to support families in need of assistance.¹⁵⁵

While the state is engaged in strengthening the family, the relationship between the social worker and the parent is a very important one. Of course, empirical studies reveal that some parents are pleased with their social worker while others are displeased, but, typically, parents reject this intrusion.¹⁵⁶ Thus, social workers should strive to build rapport with parents and to develop a "trusting, supportive, and cooperative" relationship with them so that they will seek the help that they need.¹⁵⁷

In some respects, the way that the child protective system is managed does not comport with building trusting relationships. One hindrance is that sometimes more than one social worker will monitor a family's progress.¹⁵⁸ In an ideal situation, only one case manager would work with each family. This consistent relationship would foster confidence and trust between the social worker and the

¹⁵³ See Judge Leonard P. Edwards, *Improving Implementation of the Federal Adoption Assistance*, JUV. & FAM. CT. J., v. 45, No. 3, at 3 (1994).

¹⁵⁴ See, e.g., VA. CODE § 63.1-248.3 (Lexis 1999); W. VA. CODE § 49-6A-2 (Lexis 1999).

¹⁵⁵ See FONTANA & BESHAROV, *supra* note 14, at 72-73; HARALAMBIE, *supra* note 12, at 194 (being unable to monitor every child); PELTON, FOR REASONS OF POVERTY, *supra* note 14, at 77 (praising overburdened caseworkers and criticizing the system under which they labor); Edwards, *supra* note 153, at 7; *Child Maltreatment*, *supra* note 102, at 1 (indicating that an assessment worker's average annual caseload is 81 investigations); Slevin, *supra* note 23, at C1; Daniels v. Dep't of Human Serv., 953 P.2d 1, 7 (Nev. 1998) (opining that social workers were carrying heavy caseloads).

Attorneys who represent the children are overloaded, too. In 1993, one attorney wrote that she and four other attorneys were responsible for more than a staggering 1,100 cases each. See Georgene Siroky, YOUTH LAW NEWS, July-August, 1993, at 20.

¹⁵⁶ See PELTON, FOR REASONS OF POVERTY, *supra* note 14, at 107-10 (finding that those who were pleased felt that way because the social worker had performed civic acts beyond their duties, and that others were disliked for "running" the parent's personal life).

¹⁵⁷ McLoyd, *supra* note 88, at 288, 290 (acknowledging however that policies requiring unannounced visits, and intrusive questioning make development of such relationships difficult and recommending separation of the investigatory role from the helping/supportive role). *Accord* Carlita B., 408 S.E.2d 365, 379 (W. Va. 1991) (urging the Department of Human Services to be "cooperative, encouraging, and supportive"); see also MICHAEL SHAPIRO, SOLOMON'S SWORD 81 (1999) (describing the terror that parents associate with a case worker's visit).

¹⁵⁸ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 107.

parent who needs her assistance.¹⁵⁹ Additionally, too often states intervene because of cultural biases toward certain parents. “The CPS system inappropriately intervenes in too many cases where a family’s principal problems are related to poverty rather than based on parental behaviors that place children at risk of serious harm.”¹⁶⁰

Computerized reporting and data banks would be very useful for overworked social workers. With computerization, all relevant and pertinent information could be retrieved from one source even when the social worker is traveling from one home to another. Additionally, when multiple case workers must be assigned to one family, aggressive use of technology would enhance case tracking and prevent duplication of services or reunification efforts.¹⁶¹

Once assigned to a family, social workers should fulfill their obligation, as stated in the National Association of Social Workers’ Code of Ethics, to “provide clients with accurate and complete information regarding the extent and nature of the services available to them.”¹⁶² To create an effective case plan with maximum use of available services, the social worker must answer the following question: “What are those family and individual factors that contribute to the observed dysfunction?” The plan for intervention should be designed based on the answer to that inquiry.¹⁶³

When the case plan is devised, the social worker must inform the parent of the state’s expectations. Clear, written objectives should be explained for guiding the parent toward regaining autonomy in rearing her child. At a minimum, the social worker should ensure that the parent receives a copy of the case plan.¹⁶⁴ A court cannot hold the parent responsible for complying with a plan when she does not know what is expected of her.¹⁶⁵

Each agency should design a program that requires all social workers to inform parents who are in need of assistance about general and specific parent aide

¹⁵⁹ See PROTOCOL, *supra* note 1, at 26.

¹⁶⁰ See Davidson, *supra* note 11, at 24. See also *supra* note 25 and cases cited therein.

¹⁶¹ See FONTANA & BESHAROV, *supra* note 14, at 75. See also 42 U.S.C. §§ 675(1), 675(5)(A)(B) (Supp. 1999) (requiring states to keep records); HARALAMBIE, *supra* note 12, at 42 (charting the services offered, completed, and maintained); Daniels v. Dep’t of Human Serv., 953 P.2d 1, 7 (Nev. 1998) (managing to keep adequate records despite heavy caseloads).

¹⁶² NATIONAL ASSOCIATION OF SOCIAL WORKERS, CODE OF ETHICS F-6 (1980).

¹⁶³ See Larry Lister, *The Social Work Perspective*, in INTERDISCIPLINARY PERSPECTIVES IN CHILD ABUSE AND NEGLECT 17, 28 (Faye F. Untalan & Crystal S. Mills eds., 1995).

¹⁶⁴ See W. VA. CODE § 49-6-5(a) (Lexis 1999) (describing the content of the case plan); W. VA. CODE § 49-6-2(b) (Lexis 1999) (requiring that the case plan be filed with the court); T.D. v. Baldwin, 643 N.E.2d 1315, 1320-21 (Ill. 1994) (failing to send a copy of the case plan to the parent).

¹⁶⁵ See T.D., 643 N.E.2d at 1320. “The family case plan essentially serves as a road map by which the parents, the Department, and the circuit court can chart the parents’ progress during the improvement period. As a result, it is especially important to alert the parents as to what they must do in order to regain custody of their children.” Tiffany Marie S., 470 S.E.2d 177, 191-92 (W. Va. 1996). *But see* W. Va. Dep’t of Human Serv. v. Peggy F., 399 S.E.2d 460, 464 (W. Va. 1990) (reminding the parties that the “ultimate goal is restoration of a stable family environment, not simply meeting the requirements of the case plan”).

programs and help them to enroll in those programs.¹⁶⁶ A checklist of services, like the one published by the Edna McConnell Clark Foundation,¹⁶⁷ and specific resources should be developed so that beleaguered social services workers consistently provide quality service to all parents.¹⁶⁸ For example, all checklists should include inquiries about whether the family needs support in basic areas such as acquiring food, clothing, health care, day care, housing, and employment. Once a plan is written and filed with the court, social workers should make periodic home visits to monitor the parent's progress as well as the child's progress.¹⁶⁹

3. Parental Support Services to Diminish the Impact of Poverty

a. *General Types of Services*

"[S]ocial agencies must be able to recognize and be prepared to alleviate or eliminate the conditions and factors in the environment that can lead to parental delinquency."¹⁷⁰ In addition to the usual support services in the areas of housing, day care, transportation, education, and job training, poor parents may need assistance to address certain social problems, such as healing drug or alcohol dependency. Three categories of family services may aid poor families and allow them to remain intact. First, social services include child care, health care, and monetary support. Second, family support services are designed "to strengthen families and help them to raise their children well."¹⁷¹ Examples of family support services are parenting skills classes and support groups.¹⁷² Through these services, a parent receives instruction on how to nurture her child through playing, telling stories, reading, talking, and listening.¹⁷³ Third, family preservation services are set up for counseling and assisting families when there has been child maltreatment.¹⁷⁴

¹⁶⁶ See *In re Jessica B.*, 718 A.2d 997, 1005 (Conn. App. Ct. 1998).

¹⁶⁷ See Edna McConnell Clark Foundation, *Making Reasonable Efforts: Steps for Keeping Families Together* (National Council of Juvenile and Family Court Judges, Child Welfare League of America, Youth Law Center, and National Center for Youth Law), *Reasonable Efforts Checklist* (1991) (copy on file with author).

¹⁶⁸ See Lister, *supra* note 163, at 30 (listing a variety of resources).

¹⁶⁹ See McLoyd, *supra* note 88, at 289.

¹⁷⁰ FONTANA & BESHAROV, *supra* note 14, at 73, 109.

¹⁷¹ McCroskey & Meezan, *supra* note 1, at 55; Edwards, *supra* note 153, at 7 & n.55 (describing services provided for families in crisis); *State Office for Serv.*, 1999 WL 77907, at 7 (discussing services offered).

¹⁷² See McCroskey & Meezan, *supra* note 1, at 55.

¹⁷³ See *Baugh v. Merritt*, 489 S.E.2d 775, 781 (W. Va. 1997) (listing things that a poor mother could do for her child at no cost).

¹⁷⁴ See McCroskey & Meezan, *supra* note 1, at 55; Edwards, *supra* note 153, at 7 & n.55 (describing services provided for families in crisis); *State Office for Serv.*, 1999 WL 77907 at 7 (discussing services offered).

b. *Integrated Services*

To become responsible caretakers, some parents may need comprehensive services packages from interdisciplinary teams of multiple professionals and agencies.¹⁷⁵ For these parents,

Several basic approaches can be used to improve [their] parenting function: eliminate or diminish social or environmental stresses, reduce demands on the mother to a level within her capacity (through child day care placements, homemakers, baby sitters), provide emotional support, sympathy, parenting education, supportive case work, and resolve or diminish the inner psychic conflict.¹⁷⁶

To accomplish the goal of providing integrated services, competent treatment by a few skilled professionals may be necessary.¹⁷⁷ Recommended services may come from the following professionals: 1) public health nurses, 2) psychologists and psychiatrists, 3) pediatricians and other family physicians, 4) social support services personnel, 5) early childhood and parenting skills educators, and 6) substance abuse counselors. A few professionals may need to work together to prepare and implement a recovery plan for the entire family while other professionals direct their attention toward correcting an individual family member's specific problems.¹⁷⁸ For example, a mother may be referred for outpatient counseling and gender-specific treatment to address difficulties that single women encounter in rearing children.¹⁷⁹

c. *Particularized Services for Poor Parents*

Typical services that are ordered for parents who have been accused of neglect are: "family planning, parenting education, substance abuse treatment, crisis intervention, domestic violence services, emergency housing assistance, emergency shelter assistance, and respite care."¹⁸⁰ By comparison, the services that

¹⁷⁵ See FONTANA & BESHAROV, *supra* note 14, at 73, 109. See also W. VA. CODE § 49-5D-2 (Lexis 1999) (coordinating delivery of services for neglected children); Carlita B., 408 S.E.2d 365, 377 (W. Va. 1991) (consolidating a "multidisciplinary effort among the court system, the parents, attorneys, social service agencies, and any other helping personnel involved in assisting the family").

¹⁷⁶ FONTANA & BESHAROV, *supra* note 14, at 41; McLoyd, *supra* note 88, at 288-89.

¹⁷⁷ See PROTOCOL, *supra* note 1, at 3; HARALAMBIE, *supra* note 12, at 173 (listing necessary services and resources).

¹⁷⁸ See PROTOCOL, *supra* note 1, at 25; FONTANA & BESHAROV, *supra* note 14, at 74 (encouraging professionals to work together). See also Eric H. Jr., 1999 WL 68667, at 3 (listing reunification efforts).

¹⁷⁹ See PROTOCOL, *supra* note 1, at 29-31 (advising that these families' needs may include intensive day treatment, assignment to half-way houses, and therapeutic foster care and respite care for a parent in treatment); Daniels v. Dep't of Human Serv., 953 P.2d 1, 4 (Nev. 1998) (structuring a plan with therapeutic foster care).

¹⁸⁰ National Clearinghouse for Child Abuse and Neglect Information, *Services to Prevent Child Maltreatment* <<http://www.acf.dhhs.gov/programs/cb/stats/ncands97/s2.htm>> (copy on file with author).

poor parents request most frequently are: child care, homemaking, babysitting, financial assistance, and housing assistance.¹⁸¹ For those reasons, the following paragraphs discuss the most frequently ordered and most frequently requested services.

i. Parenting Classes and Parent Aid

Some teenage parents as well as adult parents need to be trained to be good parents and to bond with their children.¹⁸² Because so many young people become parents, the National Center on Child Abuse and Neglect advocates that parenting skills should be taught in high school classrooms. Accordingly, educators are urged to implement mandatory parenting skills programs for both boys and girls.¹⁸³ As a component of the program, daycare should be provided during regular school hours so that the young parent may complete her education.¹⁸⁴ Moreover, young parents should be encouraged to participate in social and extracurricular activities so that they will not feel lonely and isolated from their peers.¹⁸⁵

Another parenting program available at some teaching hospitals involves observation of a new parent with her newborn infant before the parent takes the child home. Hospital staff and nurses monitor interaction between the parent and her child and offer parenting advice if needed. To provide further support, some of the same hospitals offer follow-up care after the parent goes home with her child.¹⁸⁶

With the advent of new technology, answers to questions about parenting are at parents' fingertips as soon as a problem emerges. A few web sites that focus on parenting issues have been posted.¹⁸⁷ Parents who are perplexed by a certain problem may simply log on to a web site and retrieve a solution. Poor parents who do not have access to web sites may visit their local public library and use computers for free.

Under circumstances where the child's safety is not in danger, placement outside the home may not be the "least detrimental alternative" to parenting classes.¹⁸⁸ For example, one mother's children were removed after a social worker visited her home several times and reported that the home was filthy. Finally, the

¹⁸¹ See PELTON, FOR REASONS OF POVERTY, *supra* note 14, at 53.

¹⁸² See ROLE OF EDUCATORS, *supra* note 20, at 51; HARALAMBIE, *supra* note 12, at 175.

¹⁸³ See ROLE OF EDUCATORS, *supra* note 20, at 53. In addition to basic parenting skills, some schools already offer support from teachers and counselors regarding budgeting and time management. *Id.*

¹⁸⁴ See *id.* at 54.

¹⁸⁵ See *id.*

¹⁸⁶ See HARALAMBIE, *supra* note 12, at 175.

¹⁸⁷ See Children's Defense Fund, *Parent Resource Network, Parenting Education and Skills* <http://www.childrendefense.org/prn_skills.html> (listing several resources for aid). See also Terry McManus, *Moms and Dads Find Support Online* at 9 (visited Nov. 7, 1999) <www.accessmagazine.com> (listing Web sites including www.parentsplace.com and www.zerotothree.org, and reporting that parents find them very helpful).

¹⁸⁸ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 114, 116; HARALAMBIE, *supra* note 12, at 175 (suggesting that public health nurses could teach inexperienced parents to feed their children properly).

social worker placed the children with a state agency because of “inadequate housing.”¹⁸⁹ “Child abuse and neglect are very serious matters, but so is the decision to seek to remove a child from his natural home.”¹⁹⁰ Instead of removing the children from their home, that mother should have been taught how to clean her home. That would have been the least detrimental alternative to placement of the child with an agency.

ii. Employment Assistance

Parenting education alone may not be enough to save a family from a state-imposed breakup.¹⁹¹ Some poor working parents are striving to provide comfortable lifestyles for their children and are unable to do so because their income is below the poverty level. The most recent reports indicate that the average quarterly salary for former welfare recipients was only \$2,571—still below the poverty level.¹⁹² Work with low wages will not solve issues derived from poverty, but meaningful, dignified, well-paying employment will make a difference for poor parents.¹⁹³

Federal employment assistance is available, but it does not enable working poor parents to provide adequate care for their families. The federal government’s mandatory minimum wage increases that are inching up by a few cents each time will not help some working parents to rise above the poverty line. The most recent proposal is for an increase from \$5.15 to \$6.15.¹⁹⁴ Minimum wage increases affect women more than men because, on average, they earn less income than men. The one-dollar increase will raise their income but, considering child care and transportation expenses, single women who are heads of their households will be pushed even further below the poverty line.¹⁹⁵

The federal Earned Income Tax Credit (EITC)¹⁹⁶ allows low wage earners to receive a tax credit based on the size of the family and the family’s aggregate income.¹⁹⁷ This benefit is underutilized by eligible recipients because they do not

¹⁸⁹ PELTON, SOCIAL CONTEXT, *supra* note 11, at 115. *See id.* at 116 (lacking money to buy food).

¹⁹⁰ *Id.* at 116; HARALAMBIE, *supra* note 12, at 175 (suggesting that public health nurses could teach inexperienced parents to feed their children properly).

¹⁹¹ *See* McLoyd, *supra* note 88, at 289 (indicating that parenting education usually coupled with other services).

¹⁹² *See 27 States Get Welfare Reform Bonuses*, WASHINGTON POST, Dec. 5, 1999, at A4 (fearing that many people who leave welfare will not get any benefits); Sharon Parrott, Center on Budget and Policy Priorities, *Welfare Recipients Who Find Jobs: What Do We Know About Their Employment and Earnings?* at 1 (visited Nov. 15, 1998) <<http://www.cbpp.org/11-16-98wel.htm>> (copy on file with author).

¹⁹³ *See* 146 CONG. REC. S373-02 (daily ed. Feb. 7, 2000) (statement of Senator Bayh). *See also* NEWMAN, *supra* note 64, at 269.

¹⁹⁴ *See* Jared Bernstein et al., *The Minimum Wage Increase: A Working Woman’s Issue* (Sept. 16, 1999) (Issue Brief No. 133 for the Economic Policy Institute) (copy on file with author).

¹⁹⁵ *See id.*

¹⁹⁶ 26 U.S.C. § 32 (Supp. 1999).

¹⁹⁷ *See id.* *But see Does Work Pay?*, *supra* note 63, at 3 (concluding that dramatic increases will

know that they qualify for it.¹⁹⁸ Before they can apply, the recipients would have to work for a specified time to become eligible. In addition, unless the wage earners adjust their income withholding, they must wait for months to file their tax forms and to receive a refund.¹⁹⁹

Private employers could contribute by hiring parents who are financially incapable of providing suitable care for their children. Through wage subsidy programs, employers may be encouraged to employ poor parents. Under one incentive program, employers receive a tax credit for wages paid to certain "hard-to-hire" workers such as former welfare recipients.²⁰⁰

Other employers who participate in job programs can help poor parents, especially young and unskilled ones. Employers who get involved in these programs develop relationships with high school teachers and administrators. The employers rely upon vocational instructors to train prospective employees to develop certain skills that they will need at the job site. In turn, the employer hires graduates from the program.²⁰¹

Locating jobs is just one step toward empowering poor parents. After a parent is hired, programs to support the parent's work efforts must be available to ensure that the parent retains employment. For example, poor parents who live a long distance from available employment need commuting subsidies so that they can travel to work.²⁰² Some of them may need assistance to move to suburbs of metropolitan areas where jobs are more plentiful.²⁰³ Furthermore, in any work program, the availability of child care, discussed *infra*, will be essential to the parent's ability to keep a job.²⁰⁴

Therefore, to successfully aid parents in need, job programs must focus on personal, social, and economic support systems. Six things must be in sync in order for any jobs program to succeed. The parent must have the motivation and appropriate skills to do the work. The parent must be trained in a sound skills training program. The parent must be trained to do work for which she will be paid wages that would elevate her and her family above the poverty line. After the parent is trained properly, a job must be available for her. When she is hired, the

occur).

¹⁹⁸ See NICE & TRUBEK, *supra* note 1, at 830.

¹⁹⁹ See *Does Work Pay?*, *supra* note 63, at 15 (failing to adjust their withholding to anticipate the EITC). See also Weinger, *supra* note 115, at 16 (concluding that families consisting of more than two children will not rise above the poverty level with this credit); *Windows of Opportunity*, *supra* note 78, at 6-10 (advocating for creation or expansion of state earned income tax credits).

²⁰⁰ See NEWMAN, *supra* note 64, at 270 (opining that the programs have not been fully successful because employers are concerned about hiring these workers). See also 26 U.S.C. § 1396(c)(3) (Supp. 1999).

²⁰¹ See NEWMAN, *supra* note 64, at 276-84 (discussing programs in Germany, Japan, and in Chicago).

²⁰² See *id.* at 273 (describing Bridges to Work programs).

²⁰³ See *id.* (leaving the ghetto for jobs in suburbia); CHILDRENS DEFENSE FUND, WELFARE IN STATES (1997) (needing transportation to the suburbs because public transportation often does not go to suburbs) (copy on file with author).

²⁰⁴ See NEWMAN, *supra* note 64, at 273.

parent must maintain the motivation and skills to keep the job. Finally, the parent's "life circumstances," such as availability of child care, must allow her to work.²⁰⁵ "Hence, the success of [jobs] programs depends on making changes in individuals, on macroeconomic conditions, and on support systems, such as care for children and other dependents."²⁰⁶

It will take time for parents to find steady jobs. It will take time for them to master the skills that they will need to earn raises. It may take months for them to qualify for certain benefits like EITC and to receive them. Unfortunately, the Act does not allow parents enough time to remedy their employment situations.

iii. Housing Assistance

Housing assistance will be necessary for parents who live in substandard housing. Agency funds should be available to parents for locating and paying for temporary and permanent housing.²⁰⁷ To help parents find habitable and affordable homes for their families, agencies should refer them to housing authorities that assist poor families. Also, they should inform parents about the location of suitable and low-income housing when that information is available.²⁰⁸

At the federal level, the United States Department of Housing and Urban Development (HUD) provides vouchers and certificates to assist low-income families in securing "decent, safe, and sanitary housing."²⁰⁹ HUD contracts with public housing agencies to finance the operation of state or tribal housing programs.²¹⁰ Not only does the certificate program require that the landlord agree to participate in the program, it also requires the landlord to charge rent that does not exceed the fair market rent that HUD sets for an apartment unit.²¹¹ Under HUD's section 8 rental certificate program, the housing authority pays the landlord of privately owned rental housing the difference between the amount that the parent in

²⁰⁵ See Huston, *supra* note 24, at 273. See also Weinger, *supra* note 115, at 11, 13-14 (requesting transportation and child care assistance for low-income families).

²⁰⁶ Huston, *supra* note 24, at 273. See also Lewit et al., *supra* note 116, at 16 (listing a number of factors including lack of education, job skills, and child care, that hinder a poor parent's ability to earn more money to support the family).

²⁰⁷ See *Baugh v. Merritt*, 489 S.E.2d 775, 782 (W. Va. 1997) (Maynard, J., dissenting) (citing *Gibson v. Ginsberg*, No. 78-2375 (W.Va. Sept. 28, 1981)) (needing money for rent or for temporary hotel stays).

²⁰⁸ See *In re Jamie M.*, 472 N.E.2d 311, 313 (N.Y. 1984) (opining that no references were made). Cf. *In re Nicole G.*, 577 A.2d 248, 249 (R.I. 1990) (ordering agency to provide adequate housing); *New York City Housing Auth. v. Miller*, 390 N.Y.S.2d 806, 809 (1997) (distinguishing between an order to provide accommodations and an order to provide assistance in acquiring accommodations).

²⁰⁹ United States Housing Act of 1937, 42 U.S.C. § 1437f (Supp. 1999); 24 C.F.R. § 982.501 (listing three kinds of tenancy under the program). See also *Does Work Pay?*, *supra* note 63, at 16 (reporting that one in five families that receive cash assistance from the federal government also receive housing assistance).

²¹⁰ See 24 C.F.R. § 982.1(a)(1) (1999); *Section 8 Rental Certificate Programs* <<http://www.hud.gov:80/progdsc/certif8.html>> (copy on file with author); *Section 8 Rental Voucher Programs* <<http://www.hud.gov:80/progdsc/voucher.html>> (copy on file with author); *Section 8 Rental Certificate Programs* <<http://www.hud.gov:80/progdsc/certif8.html>> (copy on file with author).

²¹¹ See 24 C.F.R. § 982 (1999).

a low-income household may contribute and the actual rent charged for the unit.²¹² The parent's contribution usually is the difference between 30% of her adjusted monthly income and the rent.²¹³

HUD's voucher program gives parents more flexibility than the certificate program offers. The voucher program gives parents an option of choosing to live in a place where the rent is higher than the fair market rent that HUD imposes. The rationale for the voucher program is that some parents may live in areas where there is a high-demand for units. Therefore, landlords may be unwilling to accept HUD's fair market rent.²¹⁴ If the unit that the parent chooses meets quality standards, the housing authority will pay the difference between 30% of her adjusted income and the public housing authority's payment standard for that geographical area.²¹⁵ Another benefit of the voucher program is that it enables poor people to move out of public housing complexes to other locations where they can find jobs.²¹⁶

HUD's voucher and certificate programs assist more than 1.7 million families.²¹⁷ In late December 1999, President Clinton announced that he was asking Congress to increase the amount of funds to support HUD's voucher program. As a result, 120,000 families would receive vouchers. Moreover, as breadwinners, 32,000 former welfare beneficiaries would be eligible for a voucher.²¹⁸ Still, a significant number of disadvantaged families will not have affordable and suitable housing.²¹⁹

To supplement federal housing programs, private companies could help parents who need to find suitable housing for rearing their children. Habitat for Humanity International (HHI) is one of those companies. HHI is a non-profit, Christian organization that builds homes for indigent families. Volunteers build the homes with assistance from members of the family who eventually will own the home. Volunteers also donate money and building supplies. The new homeowner receives a no-interest loan and pays a small monthly mortgage.²²⁰

²¹² See 24 C.F.R. § 982.2 (1999).

²¹³ See 42 U.S.C.A. § 1437a(a)(1)(A) (Supp. 1999); 24 C.F.R. § 982.1(a)(4) (1999). See also *Section 8 Rental Certificate Programs* <<http://www.hud.gov:80/progdesc/certif8.html>> (copy on file with author) (indicating that a parent may be obligated to pay only 10% of her gross income or the portion of her welfare assistance that is designated for housing).

²¹⁴ See *Section 8 Rental Voucher Programs* <<http://www.hud.gov:80/progdesc/voucher.html>> (copy on file with author).

²¹⁵ See *id.* (making other payment arrangements to include 10% of her gross income, or the portion of her welfare assistance that is designated for housing).

²¹⁶ See John F. Harris, *Clinton Will Request Expansion of Rental Subsidies*, WASHINGTON POST, Dec. 29, 1999, at A5.

²¹⁷ See *supra* note 24.

²¹⁸ See Harris, *supra* note 216, at A5.

²¹⁹ See Lewit et al., *supra* note 116, at 12-13 (advocating for more housing subsidies).

²²⁰ See Habitat for Humanity International, *Habitat for Humanity Fact Sheet* <<http://www.habitat.org/how/factsheet.html>> (copy on file with author).

After a parent locates a place to live, she may need support in maintaining habitability of her home. Thus, agencies should be prepared to assist indigent parents in identifying public and private sources so that parents can maintain their homes in a manner that would be suitable for rearing children. For example, parents should be notified about the availability of emergency funds and how they may obtain those funds to pay household utility expenses. Private companies, like gas companies, for instance, provide assistance by reducing or budgeting the cost of heating homes.²²¹ Also, measures should be taken to secure homes for protection of small children. Home safety instruction should be provided;²²² and safety features like window guard-rails could be installed.²²³

Social workers should visit families that are in need of assistance. During visits, the social worker should ascertain whether the home is safe for its inhabitants, especially children, and whether it is in disrepair. When such conditions do exist, the social worker should offer suggestions or information regarding how the parent may obtain assistance to correct the problems.²²⁴

iv. Nutrition Programs

Some children fail to thrive because their parents are too poor to provide nutritional food and formula.²²⁵ When it passed the Food Stamp Act,²²⁶ Congress authorized a program that would “alleviate [] hunger and malnutrition” and permit members of low-income households “to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.”²²⁷ Later, to reemphasize the necessity of providing proper nourishment for children in particular, the Children’s Nutrition Assistance Act of 1992²²⁸ was promulgated to “safeguard the health and well-being of the Nation’s children . . . [i]n recognition of the demonstrated relationship between food and good nutrition and the capacity of children to develop and learn.”²²⁹ Parents should be aware that on a monthly basis, they could receive food stamps or vouchers to purchase food for their families.²³⁰ According to the most

²²¹ See, e.g., Washington Gas <<http://www.washgas.com>> (offering assistance with the cost of heating homes).

²²² See McLoyd, *supra* note 88, at 291.

²²³ See PELTON, SOCIAL CONTEXT, *supra* note 11, at 36, 322 (concluding that these services may reduce parental stresses and “have a rapid and positive impact on the parents’ behavior”). See *id.* at 106 (advocating improvement of housing so that neglectful behavior would cease).

²²⁴ See McLoyd, *supra* note 88, at 289.

²²⁵ See HARALAMBIE, *supra* note 12, at 174.

²²⁶ 7 U.S.C. §§ 2011-32 (Supp. 1999).

²²⁷ *Id.* § 2011. See HARALAMBIE, *supra* note 12, at 174 (referring families to government programs for assistance).

²²⁸ 42 U.S.C. § 1771-91 (Supp. 1999).

²²⁹ *Id.* § 1771.

²³⁰ See *Baugh v. Merritt*, 489 S.E.2d 775, 782 (W. Va. 1997) (Maynard, J., dissenting).

recent Census report, 5.3 million mothers in the United States receive food stamps to feed their 13.7 million children.²³¹

Unfortunately, food stamps will not end hunger for poor families. The small amount that is allotted to families often gets depleted before the next installment arrives. Thus, even with food stamps, many children still are hungry and malnourished.²³² Moreover, in 1996, \$23 billion was cut from the food stamp program.²³³ Reductions in the program will affect approximately two-thirds of families with children who depend upon programs for sustenance.²³⁴

In many cities and municipalities, food banks stock food that is distributed to needy families.²³⁵ Indigent people may go to designated food banks to acquire food at no charge. Social workers should be aware of the locations of those food banks and pass that information on to families who need sustenance.

Another program that supplements the federal government's food stamp program by providing food for mothers and their young offspring is the Supplemental Nutrition Program for Women, Infants, and Children (WIC). WIC provides dietary supplements for women and children who are under five years old. It also educates parents about selection of nutritious foods for family consumption.²³⁶

Parents and their children need proper nourishment to survive. Private and public programs exist for feeding them. Neither children nor their parents should be hungry in America, but federal programs are insufficient to meet the needs of so many families.

v. Child Care

Quality child care is an integral part of a poor family's upward mobility plan. Poor parents need quality state-subsidized child care to help them to increase their opportunities to become better providers. They need to feel secure that their children are safe and well-cared for while they are working or searching for

²³¹ See United States Department of Commerce Economics and Statistics Administration, *Mothers Who Receive Food Stamps, Fertility and Socioeconomic Characteristics* <<http://www.census.gov/socdemo/www/sb95-22/sb95-22.html>> (reporting that three out of four of those mothers also received other types of benefits). See also NEWMAN, *supra* note 64, at 275. Compare Fair Start, *supra* note 39 (indicating that 11.8 million children receive food stamps).

²³² See Lewit et al., *supra* note 116, at 12 (finding credible evidence that even children who are food stamp recipients are nourished inadequately).

²³³ See NICE & TRUBEK, *supra* note 1, at 620 (discussing welfare reform legislation).

²³⁴ See Center on Budget and Policy Priorities, *Depth of the Food Stamp Cuts in the Welfare Bills*, Reference No. 96-071 (Oct. 16, 1996).

²³⁵ See America's Second Harvest (visited March 7, 2000) <<http://www.secondharvest.org/foodbanks.html>> (listing food banks in each state). See also John Bohn, *Va's Food Chain Has Weak Link; Problems Clog Efforts to Feed the Hungry*, WASHINGTON POST, Oct. 13, 1988, at V01 (noting that there are approximately 200 food banks that are independent and nonprofit).

²³⁶ See Women, Infants, and Children (WIC) (visited Mar. 7, 2000) <<http://www.oz.net/vr/charity/wic/wic.htm>>.

employment.²³⁷ In addition, the subsidy is significant because quality child care will deplete a substantial portion of a working parent's earnings.²³⁸

On occasion, the availability of child care may help to prevent neglect. Child care services will be helpful to poor parents who are stressed. Child care could be provided, for instance, while a parent engages in social activities to relieve tension.²³⁹

A key service for keeping families with young children intact is safe quality child care. Because single women are the heads of most poor households, there often will not be another adult to share parenting responsibilities. The Act and PRWORA require parents to become self-sufficient in a few months. A parent's inability to secure child care will further thwart her efforts to become self-reliant.

vi. Health Care

Parents have a "high duty to recognize symptoms of illness and to seek and follow medical advice."²⁴⁰ However, chronic health (physical and mental) problems of poor children often go untreated.²⁴¹ In 1995, 3.1 million poor children were uninsured. That figure represented 21.4% of all children who were poor and one third (32%) of all children who were uninsured. By 1998, the number of uninsured poor children had risen to 11 million.²⁴² In the same year, in excess of one-third of working poor parents were uninsured.²⁴³

Because numerous United States citizens are uninsured, many needy families receive medical care through the Medicaid program. Medicaid is a federal-state program that provides funding for health services.²⁴⁴ Low-income families with dependent children who do not have sufficient financial resources to pay the costs of "necessary medical services" qualify for Medicaid.²⁴⁵ The Medicaid system covers a range of physical and mental medical services that any family members would need.²⁴⁶

²³⁷ See NICE & TRUBEK, *supra* note 1, at 213; Parris N. Glendening, *Welfare Reform's Next Step: Moving People out of Poverty*, WASHINGTON POST, Dec. 5, 1999, at C9 (promising to expand child care assistance for the State of Maryland).

²³⁸ See *Does Work Pay?*, *supra* note 63, at 18, 20.

²³⁹ See McLoyd, *supra* note 88, at 289.

²⁴⁰ Parham v. J.R., 442 U.S. 584, 602 (1979). See, e.g., Matter of Michael B., 604 N.E.2d 122, 128 (N.Y. 1992).

²⁴¹ See Weinger, *supra* note 115.

²⁴² See U.S. Census Bureau, *Current Population Survey, Health Insurance Statistics, Children's Health Insurance* (Mar. 1998). See also Presidential Proclamation No. 7033, 62 Fed. Reg. 52473 (1997) (announcing more coverage for uninsured children).

²⁴³ See *Windows of Opportunity*, *supra* note 78, at 19.

²⁴⁴ See NEWMAN, *supra* note 64, at 276.

²⁴⁵ See Grants to States for Medical Assistance Programs, 42 U.S.C. § 1396 (1994). *But see* Lewit et al., *supra* note 116, at 12 (opining that some older children will not be covered until 2002).

²⁴⁶ See 42 U.S.C. § 1396d (1994).

Eligibility for Medicaid may continue for some families when they no longer qualify for public assistance,²⁴⁷ but like other federal programs, Medicaid has its deficiencies. First of all, a family must qualify for the program. All parents do not qualify for Medicaid because there is an income restriction.²⁴⁸ Sometimes, even when families qualify, the Medicaid facilities are inconveniently located so that a willing parent is unable to access the care that her child needs. In addition, at some facilities, there is a long waiting period for obtaining routine medical assistance and inadequate preventive care is offered.²⁴⁹ A government-funded health care system that focuses on prevention as well as curing patients would be helpful to these parents.²⁵⁰ "If it is sociopolitical policy for the government to fund the providing of needed medical attention to children whose parents cannot afford that care, it can and should be done without forfeiting the parent's parental rights . . . merely because of the indigency of the parent."²⁵¹

To provide coverage for children whose parents earned too much for qualification for the Medicaid program, Congress enacted the Children's Health Insurance Program (CHIPS) in 1997.²⁵² This program provides funding for states to increase health coverage for children. Like Medicaid, millions of children from low-income families qualify for the CHIPS program.²⁵³ A problem associated with both the Medicaid and the CHIPS program, however, is that mothers are not enrolling themselves or their children in the programs. Researchers speculate that they do not enroll because they either do not know that they and their children are eligible or they view enrollment procedures as "too much trouble."²⁵⁴

Social workers must help mothers and their children by informing them that even when they are working, the mothers may be eligible for these benefits and by assisting them in completing forms to qualify for the benefits. Brochures explaining who is eligible and how a parent should proceed to obtain the benefits should be distributed. Maintenance of the mother's health and her children's health will help to strengthen the family. The mother needs to be healthy to work and care for her children. The children need to be healthy so that they can develop properly.

vii. Counseling

Individual and group therapy may be required for the family's successful

²⁴⁷ See *id.* § 1396r-6.

²⁴⁸ See *id.* § 1396p; NEWMAN, *supra* note 64, at 276.

²⁴⁹ See Hill, *supra* note 35 (describing Medicaid care as "piecemeal, discontinuous, uncoordinated, inefficient, and therefore inadequate").

²⁵⁰ See *id.*; see also FONTANA & BESHAROV, *supra* note 14, at 76.

²⁵¹ *In re T.S.*, 464 So. 2d 677, 684 (Fla. 1985) (finding that the mother was financially unable to provide proper medical care).

²⁵² Children's Health Insurance Program, 42 U.S.C. § 1397aa (1994).

²⁵³ See Robert J. Samuelson, *Myths of the Uninsured*, NEWSWEEK, Nov. 8, 1999, at 73.

²⁵⁴ See *id.*; *Does Work Pay?*, *supra* note 63, at 21 (recognizing that some parents do not know that they are eligible).

escape from the long-lasting and detrimental grips of poverty.²⁵⁵ In that regard, the parent may need social skills training, a prescription for medication, or behavioral therapy. She may need assistance in enhancing her coping skills so that she learns to control her anger and to communicate appropriately with her children. Also, family-centered therapy may be required for teaching the whole family intervention techniques. Finally, group therapy for dealing with issues such as alcohol and drug abuse may be advised.²⁵⁶ Growing up poor has lasting effects on the parents and on their children. Therapy may help them to cope more easily with the difficulties that they face.

4. Temporary Kinship Care Placements

A temporary placement outside the home may be necessary while the poor parent is receiving treatment or making efforts to comply with other conditions of a case plan. Although foster care placement with an unrelated third party is the most frequent disposition for neglected children,²⁵⁷ kinship care is a viable alternative.²⁵⁸ Kinship care involves temporary or permanent placement of a child with a relative or family friend.²⁵⁹ Often the relative is one of the child's grandparents.²⁶⁰

There are several benefits to kinship care placements. Instead of placing children in foster care, they could be placed with extended family members so that they could remain in the same community and be safe while a parent receives appropriate support.²⁶¹ Weekly parental visitation, when appropriate, would help to

²⁵⁵ See Lister, *supra* note 163, at 36. See also N. J. STAT. ANN. § 9:6-8.51(a) (West 1999) (concluding with an order for therapeutic services).

²⁵⁶ See Lister, *supra* note 163, at 36.

²⁵⁷ See ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE & ADOPTION CASES 51 (1993 & Cum. Supp. 1996) [hereinafter HARALAMBIE, HANDLING CHILD CUSTODY].

²⁵⁸ See D.C. CODE ANN. § 16-2320(a)(3)(C) (1999); Jessica S., 723 A.2d 356 (Conn. 1999) (awarding temporary custody to grandfather); Eric H., Jr., 1999 WL 68667 at 1 (Conn. 1999) (granting legal guardianship to the maternal grandmother); Daniels v. Dep't of Human Serv., 953 P.2d 1, 7 (Nev. 1998) (attempting to place children with relatives); Reed v. Crim, 202 A.2d 1018 (N.Y. 1994) (granting permanent custody to a cousin); Sauer v. Franklin County Dep't of Soc. Serv., 446 S.E.2d 640, 641 (Va. 1994) (investigating reasonable options for placement with relatives); Klein, *supra* note 1, at 25 (preferring placement with a closely related relative); Sari Horwitz, *Opening up Homes and Hearts; Kinship Care Is on the Rise for Children in Foster Care*, WASHINGTON POST, Feb. 28, 1999, at C1 (taking care of grandnieces on a permanent basis); cf. *In re A.M.N.*, 506 S.E.2d 693, 697 (Ga. Ct. App. 1998) (finding initial placement with children's uncle to be an endangerment); Davidson, *supra* note 11, at 27 (advising that agencies should proceed with caution and screen relatives' homes for safety and suitability and provide appropriate support for these caretakers).

²⁵⁹ See Mark Hardin, *Placing Abused and Neglected Children with Kin: Deciding What to Do*, 13 ABA JUV. & CH. WELF. L. RPTR. 91 (1994); IRENE ENDICOTT, GRANDPARENTING: IT'S NOT WHAT IT USED TO BE 216-17 (1997).

²⁶⁰ See JOAN M. KRAUKOPF ET AL., ELDERLAW: ADVOCACY FOR THE AGING § 25.34 (1999) (stating that one million grandparents are kinship caregivers).

²⁶¹ See Hardin, *supra* note 259, at 91; see also HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 38 (categorizing kinship care as an "excellent alternative" to termination). *But see generally* Randi Mandelbaum, *Trying to Fit Square Pegs into Round Holes: The Need for a New Funding Scheme for Kinship*

maintain the bond between the parent and the child during the parent's improvement period.²⁶² Meanwhile, the child may live in familiar surroundings with people whom she knows. "The extended family remains intact, minimizing the sense of alienation and disorientation children often experience in agency foster homes. There is less disruption and stigma involved in relative placements for both the parent and the child."²⁶³

The Act expressly states that one of its purposes is to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives."²⁶⁴ This means that Congress favors kinship care placements as an option when children cannot live with their parents. Accordingly, some statutes require agencies to search for suitable family members to care for neglected children.²⁶⁵

5. Timeliness of Services Provided

In one county, parents typically were wait listed for a few months before they received services from a Parent Aide Program.²⁶⁶ The timeliness of the services offered should be considered when a child may be separated from her family.²⁶⁷ This is essential because when neglected children are out of the home for a designated period, the state may commence permanency proceedings within just a few months.²⁶⁸ In West Virginia, for example, parents may request a pre-adjudicatory improvement period that does not exceed three months. After a finding of neglect is made, they are entitled to an improvement period that does not exceed six months.²⁶⁹ The time for filing a petition for termination could commence to run from the date of the neglect adjudication or within days of the child's removal from the home.²⁷⁰

Thus, poor families need immediate assistance in identifying and accessing services. Parents need prompt, efficient assistance so they can provide for their children as soon as possible. Now, time is of the essence because the Act and state

Caregivers, 22 FORDHAM URB. L.J. 907 (1995) (opining that kinship caregivers do not receive enough support for rearing the relative's children).

²⁶² See *In re Danuael D.*, 724 A.2d 546, 551 (Conn. 1999) (ordering weekly visitation).

²⁶³ HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 38.

²⁶⁴ 42 U.S.C. § 601(a)(1) (1994).

²⁶⁵ See, e.g., CONN. GEN. STAT. ANN. § 15-11-90(a)(1) (West 1999).

²⁶⁶ See, e.g., *id.* § 17a-112(d)(1); *In re Jessica B.*, 718 A.2d 997, 1005 n.15 (Conn. App. Ct. 1998).

²⁶⁷ See, e.g., MD. CODE ANN., FAM. LAW § 5-313(c) (1999) (considering the timeliness of the services offered).

²⁶⁸ See, e.g., COLO. REV. STAT. ANN. § 19-3-502(3)(b) (West 1999); D.C. CODE ANN. § 16-2354(b) (1999) (forbidding a motion for termination within six months of the neglect adjudication).

²⁶⁹ See W. VA. CODE § 49-6-12(a)—(b) (1999).

²⁷⁰ See D.C. CODE ANN. § 16-2354(b) (1999); W. VA. CODE § 49-6-5b(a)(1) (1999); *In re Dom. L.S.*, 722 A.2d 343, 343-44 (D.C. 1998).

statutes give parents such a short time to remedy their circumstances.

6. Availability of Services

An agency's failure to provide rehabilitation services to strengthen the family unit presents a successful defense against a termination petition.²⁷¹ States are operating under a federal mandate to expand and strengthen existing services and to develop new services.²⁷² The availability of or difficulties in accessing programs is a problem in some parts of the country.²⁷³ This is relevant because many poor people, especially those of ethnic descent, reside in rural areas.²⁷⁴ In some rural areas, where 20% of the poor children live, no services are available.²⁷⁵ In other geographical locations, only limited services are available. For example, in many rural vicinities, mothers do not receive prenatal care because physicians will not accept Medicaid as payment for obstetrical services.²⁷⁶ When services are unavailable in their own community, parents may have to travel long distances to receive services somewhere else.²⁷⁷ In larger metropolitan areas, a different dilemma arises. There are not enough services available for the number of parents who need help.²⁷⁸

In these situations, social workers must work even harder to ensure that parents are aware of services that are available in neighboring areas. Parents may need transportation or money to travel to the sites where the services may be accessed. When services are not available, for whatever reason, poor parents' sincere efforts to keep their families intact will be frustrated. States must ensure that services are available for all parents who request them. Although it is not enough, federal funding does help.

7. Effectiveness of Services

The efficacy of some services that were created to prevent or curtail neglect has been documented. The Prenatal and Early Childhood Nurse Home Visitation Program is one of the exemplary services. Under this state-run program, experienced nurses are trained to help low-income, first-time parents begin their lives with their children on a stable course. Their goal is to prevent health and

²⁷¹ See HARALAMBIE, *HANDLING CHILD CUSTODY*, *supra* note 257, at 19.

²⁷² See 42 U.S.C. § 602 (1994). See also CONN. GEN. STAT. ANN. § 17a-112(d) (West 1999) (considering the availability of services).

²⁷³ See FONTANA & BESHAROV, *supra* note 14, at 73, 109.

²⁷⁴ See Huston, *supra* note 24, at 311.

²⁷⁵ See *Fair Start*, *supra* note 39.

²⁷⁶ See Huston, *supra* note 24, at 313.

²⁷⁷ See PROTOCOL, *supra* note 1, at 31; cf. Mark Hardin, *Ten Years Later: Implementation of Public Law 96-272 by the Courts* at 3 (1990) (failing to find changes in urban areas).

²⁷⁸ See Slevin, *supra* note 23, at C1 (quoting judges who lament that housing and treatment options are not available).

parenting problems.²⁷⁹

In that home visit program, visitation starts while the mother is pregnant and continues until the child is two years old. During weekly or bi-weekly visits, nurses focus on the mother's health, environment, and well-being as well as the quality of care she provides for her child. Detailed documentation of the family's needs, the services provided, and progress is made.²⁸⁰ The program causes young parents to "reflect on how they were parented []; learn about normal child development; and develop the skills needed to . . . parent effectively."²⁸¹ Cities where the program has been implemented have experienced significant reductions in neglect cases and mothers who participate in the program exhibit much better parenting techniques.²⁸²

Similarly, three United States Office of Economic Opportunities Parent Child Development Center programs have achieved success. In those programs, mothers are enrolled in a comprehensive program of study that focuses on child rearing, home management, the child's and the mother's personal development, and utilization of available resources. Support services including "transportation, some meals, family health and social services, peer support groups, and a small daily stipend" are offered. Weekly participation is mandatory. Mothers who participated in those programs also learned how to provide better care for their children.²⁸³

One success story illustrates how a neglectful parent can correct her behavior and improve her predicament with sufficient guidance and time. The story involves an eighteen-year-old mother, Ms. Karloski, and her infant son Paul. Ms. Karloski was a member of a large family — four siblings and six half-siblings. Her father was an alcoholic and her stepfather was physically abusive. Ms. Karloski did not feel that her mother wanted her, so when she was thirteen, she left home to live in foster homes and group homes. Paul's drug-addicted father abandoned Ms. Karloski before Paul was born. Paul was only two and one-half months old and sick when Ms. Karloski left him with a friend for an evening and never returned. On the same day, Ms. Karloski's friend took Paul to the hospital for emergency care because he was dehydrated.²⁸⁴

Although Ms. Karloski's whereabouts were unknown, she was charged with neglect and Paul was placed in foster care. Twice, he was moved from one foster home to another. After Paul had been in foster care for five months, child protective services referred him and Ms. Karloski for in-home family services.²⁸⁵

²⁷⁹ See OLDS ET AL., *supra* note 100, at 1.

²⁸⁰ See *id.* at 2.

²⁸¹ *Id.* at 3.

²⁸² See *id.* at 1, 3 (showing reductions in abuse, too); see also McLoyd, *supra* note 88, at 290.

²⁸³ See McLoyd, *supra* note 88, at 285-86. See also NEWMAN, *supra* note 64, at 293-95 (describing successful community services job programs in Milwaukee, Wisconsin and San Antonio, Texas).

²⁸⁴ See SOLNIT ET AL., *supra* note 25, at 73; cf. *Gonzales v. Dep't of Human Resources*, 933 P.2d 198, 204-05 (Nev. 1997) (concluding that two years after the case plan had been implemented, the mother had failed to adjust).

²⁸⁵ See SOLNIT ET AL., *supra* note 25, at 73; cf. *Gonzales*, 933 P.2d at 204-05 (concluding that two years after the case plan had been implemented, the mother had failed to adjust).

With the staff's assistance, Ms. Karloski, who was untrusting and immature at first, thrived and her parenting skills improved. She obtained employment and welfare benefits. She moved from an unsuitable home to a habitable subsidized apartment. She complied with social services conditions for reunification including attendance at parenting classes. She visited Paul often and she scheduled and kept his medical appointments. After only three months of supervised care, Paul was returned to Ms. Karloski. By the time that Paul was a one-year-old, family services intervention gradually had been phased out altogether.²⁸⁶

It is evident that when meaningful services are provided, they help families to live more independently. Given a chance, with the state's initial support, poor families with personal and social problems could be just as successful as Ms. Karloski in rearing their own children. Many of them will have to overcome serious obstacles in their lives as they focus on being good parents. Ms. Karloski's story further demonstrates, however, that the process takes time, and the Act does not give parents enough time to rehabilitate themselves.

8. Costs of Services

Services are enormously expensive to maintain.²⁸⁷ Still, states must make a concerted effort to provide meaningful and effective services to needy parents. Congress helps states make services available by authorizing federal funding. Although the congressional allotments are insufficient for helping families to the full extent that is needed, states must maximize use of federal funds that are available.²⁸⁸ Furthermore, to subsidize state and federal funds, private sources must be tapped. Some services that are designed to keep families intact can reduce the need for costlier state expenditures. If children are not removed from their homes, for instance, expensive foster care placements will not be necessary.²⁸⁹

In light of evidence that informal support systems are increasingly strained, that growing numbers of young families are in need of support due to structural changes in the economy, and that parent support combined with parent education for poor families can improve parenting, family function, and children's development, increased private and public funding to support high-quality, community-based intervention programs as a central component of an overall prevention strategy seems to be an essential and sound investment in the future.²⁹⁰

²⁸⁶ See SOLNIT ET AL., *supra* note 25, at 73-74.

²⁸⁷ See PROTOCOL, *supra* note 1, at 2.

²⁸⁸ See Karen Czapanskiy, *Welfare on the Cheap*, WASHINGTON POST, Dec. 5, 1999, at B8 (lambasting the State of Maryland for failing to use available federal funds to help poor families with children).

²⁸⁹ See PROTOCOL, *supra* note 1, at 1.

²⁹⁰ McLoyd, *supra* note 88, at 286.

B. *The Parent's Obligations*

Even poor parents have an obligation to take responsibility for accessing services and resources that are available for satisfying their children's needs.²⁹¹ Some statutes require that courts ascertain whether a parent willingly attempted to correct her situation and whether she has made "substantial progress" toward eliminating the condition that led to state intervention.²⁹² For example, section 16.1-283(C)(2) of the Virginia Code provides that termination of parental rights may occur when termination is in the child's best interests and "[t]he parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed twelve months from the date the child was [removed] . . . to remedy substantially the condition which led to . . . placement."²⁹³

Generally, after a finding of neglect, the parent is given a reasonable period of time to rectify or improve her circumstances.²⁹⁴ Accordingly, parents must make good faith efforts to comply with plans and orders for reunification.²⁹⁵ A parent's successful rehabilitation efforts will strongly support a defense against termination of parental rights.²⁹⁶ On the other hand, a parent's willful failure or inability to correct the problem that caused removal of her child from the home may be grounds for termination. Similarly, even if the parent has made efforts to improve her situation, when the child has been out of the home for a certain number of months, her rights may be terminated because she has failed to correct the problem within a reasonable time.²⁹⁷

²⁹¹ See *In re Jamie M.*, 472 N.E.2d 311, 313 (N.Y. 1984).

²⁹² See, e.g., ARIZ. REV. STAT. ANN. § 8-533(B) (West 1999); CONN. GEN. STAT. ANN. § 17a-112(d)(6) (West 1999) (determining whether parents have fulfilled their obligations); see also HARALAMBIE, *supra* note 12, at 45 (recommending that the parent's attorney prepare a plan for reunification and begin to implement it right away).

²⁹³ VA. CODE ANN. § 16.1-283(C)(2) (Lexis 1999).

²⁹⁴ See ARIZ. REV. STAT. ANN. § 8-533(7)(a) (West 1999); COLO. REV. STAT. ANN. § 19-6-304(c)(I) (West 1999); CONN. GEN. STAT. ANN. § 17a-112(b)(2) (West 1999); GA. CODE ANN. §15-11-81(b)(2) (1999); MONT. CODE ANN. § 41-3-609(1)(f) (1999); NEB. REV. STAT. § 43-292(6) (1999); VA. CODE ANN § 16.1-283(C) (Lexis 1999); *In re Danuael D.*, 724 A.2d 546, 551 (Conn. 1999); cf. *Eric H. Jr.*, 1999 WL 68667 at 5 (resisting rehabilitation).

²⁹⁵ See ME. REV. STAT. ANN. tit. 22 § 4055(B)(2)(b)(iv) (1999).

²⁹⁶ See HARALAMBIE, *HANDLING CHILD CUSTODY*, *supra* note 257, at 19.

²⁹⁷ See ARIZ. REV. STAT. ANN. § 8-533(B) (West 1999); FLA. STAT. ANN. § 39.806 (West 1999) (continuing to abuse, neglect, or abandon the child); IOWA CODE ANN. § 232.116(c)(2) (West 1999); MICH. COMP. LAWS ANN. § 712A.19b(c) (West 1999); MO. ANN. STAT. § 211.447.2(3) (West 1999); NEB. REV. STAT. § 43-292(7) (1999); VA. CODE ANN. § 16.1-283(C) (Lexis 1999); W. VA. CODE § 49-6-5(b) (1999) (explaining how a parent's "inadequate capacity to solve the problems of abuse or neglect" may be demonstrated); see also *In re C.V.*, 719 A.2d 1246, 1248 (D.C. 1998) (failing to request visits with the child or to make personal contact with her and abusing drugs); Joshua J., 196 A.2d 719 (N.Y.1993) (finding that the mother missed agency conferences repeatedly, failed to appear for psychiatric evaluations and did not visit the child); Jamie Nicole H., 517 S.E.2d 41, 45-46 (W. Va. 1999) (finding that the mother did not attend counseling, GED classes and did not have a job or a suitable home); W. Va. Dep't of Health & Human Resources v. Daniel B., 507 S.E.2d 132, 134 (W. Va. 1998) (failing to attend counseling, locate adequate housing, and to comply with restraints on drug usage).

“[P]oor and marginally adequate parents are always under a threat of permanently losing their children. It is very difficult for such parents to avoid . . . [a] finding that they have failed to meet the standards of parenting which the more fortunate of us have grown to respect.”²⁹⁸ Despite these odds, however, many parents tenaciously take advantage of the opportunity to correct their behavior and to regain custody of their children. The mother in *Montgomery v. State Department of Human Resources*,²⁹⁹ was one of those parents. She had a chronic alcohol abuse problem. Her children had been in the state’s care for approximately twenty-two months. During the first eight months, the mother exercised very little effort to comply with the case plan. However, during the remainder of the twenty-two-month period, she made substantial efforts to change her conduct and to establish a healthy environment for her children. She remained sober, secured employment, and established a stable home environment.³⁰⁰

Undeniably, some parents do not behave in a manner that is consistent with demonstrating efforts to improve the circumstances under which they rear their children. Some of them have access to and knowledge about the availability of services but fail to avail themselves of those opportunities. Anecdotally, one mother who, for a short time, made diligent efforts to obtain her General Educational Development Diploma, was expelled from school because she fought with another student and a teacher. The same mother was terminated from three jobs because she threatened violence. She did not make an effort to visit her sons for months.³⁰¹ “[T]here does come a time when society must give up on a parent. A child cannot be kept in suspense indefinitely.”³⁰² If it becomes apparent that the parent cannot or will not “discharge parental responsibilities,” after diligent efforts to reunite a family are made, termination proceedings should be commenced.³⁰³

The *Montgomery* case shows that some parents need more time to realize the seriousness of their situations and to make the commitment to get the help that they need. That is why the fifteen-month termination plan that Congress imposed is bothersome. In some situations, parents who falter at the beginning of a program may start to act more responsibly later. The time is not tolled, however, and they may find it difficult to catch up before the statutory limitations expire. Yet recovering parents need a second chance. They need time to fully prepare to care for their children. The situation that caused them to neglect their children probably did not occur overnight. Their recovery will not happen overnight either.

²⁹⁸ *Champagne v. Welfare Div.*, 691 P.2d 849, 856 n.6 (Nev. 1984).

²⁹⁹ 917 P.2d 949 (Nev. 1996).

³⁰⁰ See *Montgomery v. State Dep’t of Human Resources*, 917 P.2d 949, 956 (Nev. 1996) (detailing “significant progress”).

³⁰¹ See *Recodo v. Dep’t of Human Resources*, 930 P.2d 1128, 1133 (Nev. 1999).

³⁰² *Champagne*, 691 P.2d at 857.

³⁰³ See ARIZ. REV. STAT. ANN. § 8-533(10) (West 1999); COLO. REV. STAT. ANN. § 19-6-304(b)(III)(2)(i) (West 1999) (committing subsequent acts of abuse after agency involvement); MINN. STAT. ANN. § 260.221(5) (1999); 23 PA. CONSOL. STAT. ANN. § 2511(a)(5) (1999).

C. *Community Volunteers*

Individual citizens and community groups can play a vital role in supporting families. Their personal time and financial support are needed to subsidize insufficient state and federal funds.

Community resources are the fuel with which the child protective agencies operate. Every member of society can truly protect and prevent a child from being a victim of [] neglect by providing necessary support to the child protective programs in the community [and organizing programs in communities where they do not exist]. The effectiveness of any child protective agency and the results that it produces runs parallel with the support it receives from concerned members of the community.³⁰⁴

Individual members of the community where poor parents live may contribute to empowering the family. Ways in which a community could be helpful were demonstrated during a recent radio broadcast. A poor mother's children had been removed from her home. Among other things, the utility bills were past due and her home was not habitable. After the broadcast announcer made a plea for assistance from the listening audience, donations exceeding \$9,000 were submitted. With one generous donation, a listener paid the entire \$2,600 balance due on the mother's water bill. In addition, a group of listeners volunteered to perform home repairs so that the mother's house would meet state standards set for reunification purposes.³⁰⁵

More neighbors, community leaders, and philanthropists need to get involved and to donate their time as well as their money to support these families.³⁰⁶ Homemakers who are good nurturers could volunteer assistance in nurturing and organizing a home for just a few hours per week. Fathers who have mastered the patience and art of fatherhood could teach their counterparts how to nurture their children as well as to provide proper shelter for them. Courts could order persons convicted of nonviolent crimes to perform community service that would help poor families. Carpenters and home builders could donate services and supplies to needy families for home renovations. A community working together could help to alleviate some of the heart-rending effects of poverty. This type of social support will help parents to speed up their rehabilitative process.

³⁰⁴ FONTANA & BESHAROV, *supra* note 14, at 77. See also SHAPIRO, *supra* note 157, at 235 (believing that the community should take responsibility for poor families because it knows the family and "something about their lives").

³⁰⁵ *Sunday Morning Gospel Hour with Patrick Ellis* (WHUR Radio, Washington, D.C., Nov. 14, 1999 broadcast).

³⁰⁶ See Victoria Benning, *Where Parents Can Be Involved*, WASHINGTON POST, Nov. 28, 1999, at C1 (setting up a community center to teach good parenting, health, and nutrition).

D. *Lawyers' and Judges' Roles in Helping Poor Parents*

Sometimes, neglectful conditions result in removal of the child from her home or termination of parental rights proceedings.

Social service workers [must] determine when a danger is so serious that the mother and family are unable, despite services provided, to safely care for an infant. When social service agency efforts to remove the risk of harm have not succeeded, it becomes necessary to take formal action in the juvenile or family court.³⁰⁷

The underlying policy for such dependency proceedings is to protect children, to aid parents in eradicating problems that affect their ability to parent their children, and, if appropriate, to reunite families that have been separated.³⁰⁸ Then it becomes the court's responsibility to insure that poor parents and their neglected children are not separated unnecessarily.³⁰⁹

In neglect and termination proceedings, the focus is on whether the child's life or safety is endangered. In this area, judges have a great deal of discretion.³¹⁰ As early as 1982, long before the Safe Adoption and Assistance Act was promulgated, United States Supreme Court justices acknowledged that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups, [so] such proceedings are often vulnerable to judgments based on cultural or class bias."³¹¹ Middle-class caseworkers tend to favor placing a child in the home of a higher-status family rather than returning the child to her single biological parent.³¹² Also, more reports of neglect are filed against parents of color.³¹³ The following paragraphs address ways in which lawyers and judges may protect the interests of parents who may have neglected their children but could correct the problems with agency assistance.

1. Initial Fact-Finding Hearing

When a child is removed from her home without her parent's consent, the parent is entitled to a court hearing. At the initial fact-finding proceeding, the state

³⁰⁷ PROTOCOL, *supra* note 1, at 2.

³⁰⁸ See *In re K.R.*, 880 P.2d 88, *reconsideration denied*, 890 P.2d 464, *rev'd*, 904 P.2d 1132 (Wash. 1994).

³⁰⁹ See Hopper, *supra* note 20, at 32, 33.

³¹⁰ HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 15.

³¹¹ *Santosky v. Kramer*, 455 U.S. 745, 763 (1982). See also *Cooper*, 946 P.2d at 160 (Springer, J., dissenting) (lamenting that Nevada's police "appears to have led to an escalating number of termination cases brought by the State, particularly with respect to parents who are poor or disabled").

³¹² See Cressler, *supra* note 7, at 810 (quoting *Smith v. Org. of Foster Families*, 431 U.S. 816, 834 (1977)).

³¹³ See *id.* at 811.

has the burden of proving that the parent has neglected the child—a ground for termination.³¹⁴ The focus will be on whether the parent has provided adequate care for the child.³¹⁵ Based on the evidence presented, the court must decide whether the child is neglected and, upon such a finding, certify that the recommended case plan, if any, is in the child's best interests.³¹⁶ One judge laments that in some neglect cases, grounds for termination become proxies for destitution and poverty:

The parents' destitution and poverty are not, of course, put forth as the grounds for depriving . . . children of their natural parents. The "official" grounds for termination of the parental relationship are "abandonment" and "failure of parental adjustment" . . . the standard rubric for taking poor children away from their parents . . .

. . . .

The pattern is familiar. Hungry children, dirty children, unkempt children, and improperly attended children come to the attention of welfare officials. The children are, . . . "temporarily removed from their homes." The poor parents are forced into submitting to some kind of "plan" devised by welfare officials. Frequently, the poverty-stricken parents are not able to cope with the State's demands; and legal proceedings are instituted to deprive the poor parents of their children permanently, and more importantly, to deprive the poor children of their parents.³¹⁷

In short, poor parents fight a losing battle in neglect proceedings. Therefore, the outcome of the initial hearing is pivotal. Because they are unlikely to be able to comply with conditions of state plans for reunification, they could permanently lose custody of their children.

³¹⁴ Compare W. VA. CODE § 49-6-2(c) (Lexis 1999) (requiring clear and convincing proof of neglect); *In re Dom. L.S.*, 722 A.2d 343, 343-44 (D.C. App. 1998) (establishing a preponderance of the evidence burden of proof). See also *W. Va. Dep't of Human Serv. v. Peggy F.*, 399 S.E.2d 460, 463-64 (W. Va. 1990) (holding that the Department of Human Services has the burden).

³¹⁵ See HARALAMBIE, *HANDLING CHILD CUSTODY*, *supra* note 257, at 48.

³¹⁶ See Katherine Federle, *The Legal Perspective*, printed in *INTERDISCIPLINARY PERSPECTIVES IN CHILD ABUSE AND NEGLECT* 89, 100 (Faye F. Untalan & Crystal S. Mills eds., 1992).

³¹⁷ *Daniels v. Dep't of Human Serv.*, 953 P.2d 1, 10-11 n.2 (Nev. 1998) (declaring that "most of the terminations of parental rights ordered by Nevada courts are based on poverty-by-another-name"). *Accord Recodo v. Dep't of Human Resources*, 930 P.2d 1128, 1136-38 (Nev. 1999) (Springer, J., dissenting). *But see Cooper*, 946 P.2d at 160 (denying that poverty was a factor in any decisions to terminate).

2. Legal Representation for Poor Parents

a. *Appointment of Counsel*

In *Lassiter v. Department of Social Services*,³¹⁸ the United States Supreme Court ruled that indigent parents do not have a constitutional entitlement to court-appointed counsel at any termination proceeding. The Court reasoned that on a case-by-case basis, the trial judge should determine whether counsel is appointed.³¹⁹ It noted, however, that public policy and statutory law wisely hold that poor parents are entitled to representation in neglect proceedings as well as in termination proceedings.³²⁰ Therefore, despite the Supreme Court's ruling, most states recognize the importance of court-appointed counsel for parents at all stages of these proceedings.³²¹

Chief Justice Springer of the Supreme Court of Nevada contends that a per se rule of appointment of counsel should be adopted whenever a child may be removed from a home. He reasons that with proper legal representation, a termination can be averted at this early stage because effective legal counsel may help to circumvent a removal in the first place. This is an important tactical measure because once children are removed, "the [parent's] chances of losing the children permanently is greatly increased."³²²

Parents need experienced counsel to guide them through this process. Their lack of knowledge about legal proceedings could have permanent repercussions. They need counsel to protect themselves and the integrity of the family. The Supreme Court of Nevada has declared that termination of a parent's rights is "a civil death penalty."³²³ The irrevocable outcome of termination

³¹⁸ 452 U.S. 18 (1981).

³¹⁹ *See id.* at 31-32.

³²⁰ *See id.* at 33-34.

³²¹ *See, e.g.*, ALA. CODE § 12-15-63(b) (1999); ARIZ. REV. STAT. ANN. § 8-225B (West 1999); CAL. WELF. & INST. CODE § 317(a)—(b) (West 1999); D.C. CODE ANN. § 16-2304(b)(1) (1999) (appointing counsel at all critical stages); MD. FAM. LAW CODE ANN. § 5-323(a)(1)(iv) (Lexis 1999) (appointing counsel in involuntary termination proceedings); W. VA. CODE § 49-6-2(a) (Lexis 1999) (granting indigent parents the right to be represented by counsel, at the state's expense, at all stages of the proceedings); *Lassiter*, 452 U.S. at 34 (indicating that thirty-three states allowed appointment of counsel); Klein, *supra* note 1, at 25 (appointing counsel when the child is or may be removed from the home); Cressler, *supra* note 7, at 789.

Courts have held that the child is entitled to counsel, too. *See, e.g.*, ALA. CODE § 12-15-63(a) (1999); D.C. CODE ANN. § 16-2304 (1999); HARALAMBIE, *supra* note 12, at 1-23 (describing the types of representation).

³²² *Daniels v. Dep't of Human Serv.*, 953 P.2d 1, 12-13 (Nev. 1998). *See also* Note, *Child Neglect Due Process of the Parent*, 70 COLUM. L. REV. 465, 476 (1970). *But see* *Recodo v. Dep't of Human Resources*, 930 P.2d 1128, 1134 (Nev. 1999) (stating that due process included a right to counsel).

³²³ *Recodo*, 930 P.2d at 1132 (citing *Drury v. Lang*, 776 P.2d 843, 845 (Nev. 1989)). *See also* *Champagne v. Welfare Div.*, 691 P.2d 849, 863 (Nev. 1984) (advising parents to secure counsel because the judge "knew of nothing more serious, short of facing a prison term, where there was greater need for representation by counsel"); Tiffany Marie S., 470 S.E.2d 177, 184 (W. Va. 1996) (urging the court to appoint counsel in neglect cases); Jane Moran, *The Role of the Prosecutor in Abuse/Neglect Proceedings*, W. VA. LAW. 18, 18 (1995) (ensuring protection of parental rights through appointment of counsel).

proceedings that often follows a neglect finding makes representation during the initial phase crucial.

b. Representing Poor Parents

After an attorney is appointed to represent a parent, she should represent her client zealously by advising her about legal options and the consequences of choosing one or more of those options.³²⁴ Initially, the parent's attorney should encourage the parent to cooperate or, in appropriate situations, to compromise.³²⁵ An immediate action item should be rehabilitation. The attorney should refer the parent for services such as counseling and parenting classes to commence efforts to correct familial problems.³²⁶ Also, counsel should determine whether the agency "sabotaged" reunification efforts, for example, by placing the child with a foster family that lives so far away from the parent that the parent is unable to maintain contact with the child.³²⁷ If necessary, the attorney should petition the court to order the state to provide resources and services to the family and to grant an improvement period.³²⁸ In sum, "The attorneys' participation ultimately ensures the fairness of the process. The attorney for the parent also keeps the client informed and permits the parent to participate with the team [of multidisciplinary personnel] with full knowledge of the consequences should the parent fail to comply with service plans."³²⁹

3. Admissible Evidence

Testamentary and documentary evidence are admissible at neglect and termination proceedings. The evidence should be "relevant, material and competent to the issues."³³⁰ The parent's attorney should review the appropriate statute to ascertain the criteria for termination and to ensure that she addresses those criteria during the proceeding.³³¹ This section discusses some of the evidence that would be appropriate in defense of a parent who is endeavoring to retain custody of her child.

³²⁴ See Federle, *supra* note 316, at 99 (encouraging attorneys to be advocates for their clients).

³²⁵ See *id.* at 101. Accord HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 19 (ensuring that the parent follows the treatment plan).

³²⁶ See HARALAMBIE, *supra* note 12, at 19.

³²⁷ See *id.* at 41.

³²⁸ See HARALAMBIE, *supra* note 12, at 173, 175-76, 194-97 (recommending actions for a child's attorney); W. VA. CODE § 49-6-12 (Lexis 1999) (requesting a brief improvement period); Tiffany Marie S., 470 S.E.2d 177, 187 (W. Va. 1996) (granting a request for a 12-month improvement period).

³²⁹ Federle, *supra* note 116, at 101.

³³⁰ *In re C.V.*, 719 A.2d 1246, 1248 (D.C. 1998) (hearing evidence about the child's need for continuity of care and caretakers).

³³¹ See, e.g., D.C. CODE ANN. § 16-2353(b)(1) (1999).

a. *Lay Witnesses*

At the fact-finding hearing, admissible evidence that the parent's attorney should gather includes witnesses who are willing to testify regarding the parent's ability to care for the child.³³² Potential witnesses who may provide valuable information to support the parent's effort to maintain physical custody may include teachers, caseworkers, foster parents, other caretakers, neighbors, relatives, physicians, and police officers.³³³ A child who is old enough may also testify, if testifying will not be detrimental to her interests.³³⁴

Social workers should testify about the progress that the parent and the child have made since the state intervened.³³⁵ They may compare the parent's past ability to care for the child and the family's previous living conditions with current conditions in the home.³³⁶ To support their testimony, social workers may be required to submit their case files to the court.³³⁷

Inter alia, lay witnesses like friends, neighbors, and relatives may testify based on their observations of the parent's conduct and the parent/child relationship. They may inform the court about whether a parent who has been separated from her child has maintained contact through telephone calls, correspondence, cards, gifts, money, and visitation.³³⁸ The child's physician, teachers, court-appointed special advocates, social workers, or foster care parents may provide additional testimony regarding their evaluation of the child's condition before and after state intervention.³³⁹ In general, attorneys who represent poor parents should diligently search for witnesses who may provide positive testimony regarding: 1) how the parent cares for the child, 2) the loving nature of

³³² See *In re Jessica B.*, 718 A.2d 997, 1003-04 (Conn. App. Ct. 1998) (testifying that neither the mentally disabled mother nor her husband could be responsible for the child). See generally JOHN E.B. MYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT CASES (2d ed. 1992).

³³³ See HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 50 (testifying about "family functions on a day-to-day basis"). See also *In re T.G.*, 684 A.2d 786, 787 (D.C. 1996) (hearing testimony from neighbors and police officers).

³³⁴ See Cressler, *supra* note 7, at 809 (discussing the downside of receiving the child's testimony especially if she is enamored with the prospect of living in a better home); *Juvenile Officer v. V.F.*, 849 S.W.2d 608, 613 (Mo. 1993) (allowing a child to testify).

³³⁵ See *Daniels v. Dep't of Human Serv.*, 953 P.2d 1, 3-4 (Nev. 1998) (testifying about the social worker's inability to locate the parent and the children's positive progress upon removal from the home); *Matter of Joshua J.*, 601 N.Y.S.2d 913, 914 (1 Dept. 1993) (relying upon the social worker's testimony and agency records).

³³⁶ See *In re Hickman*, 489 So. 2d 601, 602 (Ala. 1986) (testifying that the parents were providing adequate care and shelter for their children).

³³⁷ See National Clearinghouse for Child Abuse and Neglect Information, *The Court System and Child Abuse and Neglect* <<http://www.calib.com/nccanch/pubs/courts/courtsys.html>>.

³³⁸ See *Daniels*, 953 P.2d at 5 (complaining that the mother sent only one letter); *Eric H., Jr.*, 1999 WL 68667 at 2, 4.

³³⁹ See COLO. REV. STAT. ANN. § 19-3-604(c)(I)(B) (West 1999); *In re S.J.*, 849 S.W.2d 608, 610 (Mo. 1993) (negating the doctor/patient privilege).

the care provided, and 3) the parent's ongoing efforts to provide the best care possible for her child. In fact, the attorney should interview all people who have had daily contact with the parent and the child to determine whether these persons may provide supportive testimony on the parent's behalf.³⁴⁰ When appropriate, these witnesses may help to persuade the court that a parent is making progress but she needs more time to develop her parenting skills or to establish a suitable living environment for rearing children.

Party admissions made by parents also are admissible at trial.³⁴¹ Thus, immediately upon contact with the parent, the attorney should advise the parent to use caution in commenting on her relationship with her child. At the hearing, the parent may testify about how she has adjusted, the actions that she has taken to rid herself of the impediment that led to removal of the child, her future plans for caring for the child's needs, and how much her child means to her.³⁴² She may also explain, when necessary, why she needs additional time to prepare for her child's homecoming.

b. *Expert Witnesses*

Expert testimony is an essential part of a parent's defense.³⁴³ Experts in the fields of child development, sociology, neurology, pediatrics, psychiatry, psychology, psychoanalysis, and public health may be needed to correctly evaluate the child and the parent.³⁴⁴ An expert for the parent may evaluate the parent's likelihood of rehabilitation considering progress that the parent has made, identify appropriate services, and determine whether services that were offered were appropriate.³⁴⁵ Furthermore, relevant expert testimony would include information about "past deprivation, the children's present condition, the parents' projected future and the projected impact on the children."³⁴⁶ "Courts are entitled to give great weight to professionals in parental termination cases."³⁴⁷ Because they

³⁴⁰ See HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 50.

³⁴¹ See *In re Jessica B.*, 718 A.2d 997, 1007 (Conn. App. Ct. 1998) (admitting that she had been abused by a man with whom she continued to maintain contact).

³⁴² See A.S.C., 671 A.2d 942, 947-48 (D.C. App. 1996) (testifying about her long relationship with the child's father, receiving drug treatment, the conditions of her home, and her willingness to assume responsibility for the child); *Champagne v. Welfare Div.*, 691 P.2d 849, 862 (Nev. 1984) (testifying that her children meant the world to her); cf. *Juvenile Officer v. V.F.*, 849 S.W.2d 608, 613 (Mo. 1993) (deciding that the mother was unable to testify because she was experiencing psychological and physical problems).

³⁴³ See HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 49.

³⁴⁴ See SOLNIT ET AL., *supra* note 25, at 23; W. VA. CODE § 49-6-5b(b)(3) (Lexis 1999) (admitting testimony from therapists, counselors, psychiatrists, and others who evaluated the children and their parents).

³⁴⁵ See HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 49-50; *In re A.M.N.*, 506 S.E.2d 693, 695-96 (Ga. Ct. App. 1998) (accepting an expert's testimony that mother was "a likely candidate for drug relapse"); *In re Eugene W.*, 105 Cal. Rptr. 736, 746 (Cal. App. 1972) (granting motion to compel a mental examination of the mother).

³⁴⁶ *A.M.N.*, 506 S.E.2d at 695-96; HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 50.

³⁴⁷ *Christine V.*, 660 A.2d 863, 863 (Conn. App. 1995).

recognize the importance of expert witnesses in these cases, some states allow indigent parents to hire experts at state expense.³⁴⁸

An expert's testimony concerning her physical and mental examinations of the parent may be appropriate in some neglect matters. The court may, and in some states shall, order physical, mental, and emotional evaluations of the child and/or the parent. In general, experts should evaluate: 1) whether the child is deprived; 2) whether lack of proper parental care or control is the cause of the deprivation; 3) whether the cause of deprivation is likely to continue or the likelihood that it could be remedied; and 4) whether continued deprivation is likely to cause serious physical, mental, emotional, or moral harm to the child.³⁴⁹ When the parent's physical condition is in controversy, her medical records may be used to demonstrate whether she is mentally capable of providing proper care for her child.³⁵⁰ If a parent's mental condition is in controversy, an expert such as a psychologist, may identify support systems that a parent needs to avoid neglecting her child.³⁵¹ Also, the psychologist may evaluate the relationship between the parent and her child and assist the attorney in developing a treatment plan to improve the parent-child relationship.³⁵² Written evaluative reports of the expert's findings are admissible and the court may review them before making its determination.³⁵³

Although parents are entitled to present evidence at these hearings, poor parents begin at a disadvantage because of the disparity between the resources that they may access and the state's seemingly unending supply of resources. "The state—the party seeking termination—comes armed with an agency and all of its resources, lawyers and court-appointed experts. The parents, even those represented by counsel, may have trouble proving facts necessary to their case or rebutting the state's assertions."³⁵⁴

Again, timing is an issue. Evaluations take time. The expert may need to meet with the parent several times. Poor parents who are about to lose custody of their children do not have a lot of time. The parent's legal representative may not be able to secure an expert before a scheduled hearing. When that situation arises, the attorney should request a continuance. When such a request is made, the judge

³⁴⁸ See, e.g., D.C. CODE ANN. § 16-2326.1(g) (1999); W. VA. CODE § 49-6-12(d) (Lexis 1999) (ordering the "state department to pay expenses associated with the services provided during the improvement period").

³⁴⁹ See *In re S.J.C.*, 507 S.E.2d 226, 228-29 (Ga. 1998) (citing CONN. GEN. STAT. ANN. § 15-11-81(b)(4)(A)). But see *In re K.D.*, 1999 WL 1063177 (Pa. Super. Nov. 27, 1999) (finding that the best interest of the child could be determined without the mother's psychological examination).

³⁵⁰ See *Matter of Chuckie Douglas M.*, 590 N.Y.S.2d 446, 447 (1 Dept. 1992).

³⁵¹ See Choy, *supra* note 44, at 74.

³⁵² See *id.* at 74. See also Carlita B., 408 S.E.2d 365, 378-79 (W. Va. 1991) (finding psychological reports useful in ascertaining whether the parent has the capacity for rearing a child).

³⁵³ See COLO. REV. STAT. ANN. § 19-6-304(c)(III)(3) (West 1998); N.C. GEN. STAT. § 7A-289.30(b) (Michie 1998); HARALAMBIE, HANDLING CHILD CUSTODY, *supra* note 257, at 15.

³⁵⁴ Cressler, *supra* note 7, at 809.

should postpone her final decision until a parent's capacity to effectively parent her child could be ascertained.³⁵⁵ Similarly, in some states, statutes allow courts to extend the rehabilitation period of a parent who has shown some improvement.³⁵⁶ When the facts support an extension, the court should grant the request.

c. *Demonstrative Evidence*

Documentary evidence is admissible at the hearing. The parent's attorney should prepare a chart depicting the type of services offered and when they were offered to the parent. The chart should further demonstrate the parent's compliance with the service plan.³⁵⁷ This evidence would show whether the agency has met its burden to make reasonable efforts to leave the family intact. More important, it will document the parent's cooperation with the state and her interest in acquiring the skills that she needs to care for her child.

4. Dispositional Hearing

After a child has been adjudged neglected, the court must decide what should happen to the child. This determination is made at the dispositional hearing during the second phase of the termination process. Parents should have an opportunity to be heard and to present witnesses at this hearing.³⁵⁸

At the dispositional hearing, if the court decides that state intervention is required, but termination is not warranted, it will consider the case plan that the state proffers for the parent's rehabilitation and order the parent to participate in a program of rehabilitation. Typical court orders directed toward parents who have neglected their children include counseling, parenting skills training, money management, and family therapy.³⁵⁹ On the other hand, typical orders do not address the core problems that plague poor families. "The parents remain poor; their poverty cannot be 'counseled' away; parents, forcefully separated from their

³⁵⁵ See *In re A.M.N.*, 506 S.E.2d 693, 697 (Ga. Ct. App. 1998) (postponing a hearing until an assessment could be made); *Tiffany Marie S.*, 470 S.E.2d 177, 187 (W. Va. 1996) (granting an extension of three months for an improvement period); *Slevin*, *supra* note 23, at C1 (concluding that parents could succeed if they received more time).

³⁵⁶ See, e.g., W. VA. CODE § 49-6-12(g) (Lexis 1999) (making extensions of improvement periods when the parent "has substantially complied with the terms of the improvement period"); *Klein*, *supra* note 1, at 25 (allowing an additional six months). *But see* *Davidson*, *supra* note 11, at 25-26 (declaring that reunification services should be "limited to little over a year, where appropriate"); *Jamie Nicole H.*, 517 S.E.2d 41, 45-46, 48 (W. Va. 1999) (denying request for extension when mother had not demonstrated an ability to provide "a basic level of care" for her children).

³⁵⁷ See *HARALAMBIE*, *supra* note 12, at 41; *In re Richard W.*, 696 N.Y.S.2d 298, 299 (N.Y. App. Div. 1999) (presenting evidence that the mother had completed courses, attended meetings and maintained a suitable home for her child).

³⁵⁸ See *HARALAMBIE*, *HANDLING CHILD CUSTODY*, *supra* note 257, at 51. See also *In re Travis W.*, 1999 WL 1122493 (W. Va. Dec. 9, 1999) (ordering the trial court to conduct a disposition hearing); *In re Beth Ann B.*, 513 S.E.2d 472, 475-76 (W. Va. 1998) (remanding the matter for a hearing).

³⁵⁹ See *Daniels v. Dep't of Human Serv.*, 953 P.2d 1, 11 (Nev. 1998) (Springer, C.J., dissenting). See also *N.H. STAT. ANN. § 169-C:19II(a)(1)-(5)*, III, IV, and V (1999).

children, become estranged from their children, who are placed in a federally subsidized foster home with 'new parents;' and, finally, the State moves to terminate the parental rights of the poor natural parents."³⁶⁰

To alleviate some of the effects that living in poverty has on innocent children and their parents, judges should be more aggressive in ensuring that the family receives the kind of assistance that will enrich their lives. Thus, in addition to the typical conditions, court orders in neglect cases should include, when appropriate, (a) assistance in locating and maintaining a stable home, (b) securing employment, (c) obtaining counseling in areas where the parent needs support (i.e., stress relief), (d) providing child support (if the child is removed from the home) in an amount that the parent realistically could pay, and (e) securing child care by a safe caregiver.³⁶¹

Throughout the process, it is imperative that the social workers, the related agencies, and the courts have realistic expectations for the parents. Anecdotally, one court ordered a parent who was earning only \$200 per month to pay \$300 in child support.³⁶² Some unemployed and working poor parents cannot realistically be expected to pay child support or to send gifts to their children to avoid a charge of abandonment.³⁶³

With the federal mandate for speedier terminations, fewer poor parents will have enough time to improve their situations so that they will regain custody of their children. It takes time to find habitable homes, to master skills that have never been taught, and to learn to nurture children. Courts may help these parents by extending the time allotted for a reasonable period.

5. Termination Proceedings

After a neglect finding, the court could conclude that the parents' rights should be terminated. Statutes set forth criteria for termination of parental rights.³⁶⁴ Generally, termination would be appropriate when (1) the evidence demonstrates that the parent has not been rehabilitated and (2) considering the child's age and needs, the parent will not assume a responsible position in the child's life within a reasonable time.³⁶⁵ Judges and lawyers for parents may help parents to avoid termination by ensuring that rules and procedures for termination are enforced. This section discusses general requirements for termination.

³⁶⁰ See *Daniels*, 953 P.2d at 11 (Springer, C.J., dissenting).

³⁶¹ See *id.* at 2. See also W. VA. CODE § 49-6D-3(a) (Lexis 1999) (preparing a case plan that sets forth a "realistic method of identifying family problems and the logical steps to be used in resolving or lessening those problems"); Klein, *supra* note 1, at 25 (listing services that may be ordered).

³⁶² See *Daniels*, 953 P.2d at 10 (Springer, C.J., dissenting).

³⁶³ See *id.* See also Lister, *supra* note 163, at 30 (urging case managers to create realistic service plans).

³⁶⁴ See, e.g., D.C. CODE ANN. § 16-2353(b) (1999).

³⁶⁵ See, e.g., CONN. GEN. STAT. § 17a-112(b) (West 1999); *In re Danuael D.*, 724 A.2d 546, 551 (Conn. 1999) (affirming the trial court's determination that the mother had failed to achieve rehabilitation during a seven-year separation from her children).

a. *Standard of Proof*

In most states, the standard of proof for establishing that termination is in the child's best interests is clear and convincing evidence.³⁶⁶ Indeed, the United States Supreme Court ruled that the Due Process Clause of the Fourteenth Amendment³⁶⁷ commands proof by clear and convincing evidence before complete and irrevocable severance of a parent's rights.³⁶⁸ The Court reasoned that

a natural parent's desire and right to "the companionship, care, custody, and management of his or her children" is an interest far more precious than any property right. When the state initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. If the state prevails, it will have worked a unique kind of deprivation A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one³⁶⁹

In the termination proceeding, the state has the burden of proving that it has made reasonable efforts to meet the statutory requirement for reasonable efforts to strengthen the family and that termination is in the child's best interests.³⁷⁰ Courts should not terminate rights when reasonable services have not been offered or provided and reasonable efforts to rehabilitate the family have not been made.³⁷¹ Courts should be diligent about ensuring that agencies meet their burden and to

³⁶⁶ See, e.g., COLO. REV. STAT. ANN. § 19-3-604(1) (West 1999); CONN. GEN. STAT. ANN. § 17a-112(c) (West 1999); GA. CODE § 15-11-81(a) (1999); MD. FAM. LAW CODE ANN. § 5-313(a) (1999); ME. REV. STAT. ANN. tit. 22 § 4055.1B(2) (1999); MICH. COMP. LAWS ANN. § 712A.19(b)(3) (1999); TENN. CODE ANN. § 36-1-113(c)(1) (1999); TEXAS FAM. CODE § 161.001 (Vernon's 1999); VA. CODE § 16.1-283(B) (Lexis 1999); W. VA. CODE § 49-6-2(c) (Lexis 1999). See also *Santosky v. Kramer*, 455 U.S. 745, 748 (1982); *In re C.V.*, 719 A.2d 1246, 1248 (D.C. 1998); *In re Michael B.*, 604 N.E.2d 122, 129 (N.Y. 1992); *In re J.M.C.*, 741 A.2d 418, 425-26 (D.C. App. 1999) (finding clear and convincing evidence of neglect); *In re C.T.*, 724 A.2d 590, 597 (D.C. App. 1999); *Collucci v. Dep't of Health & Rehabilitative Serv.*, 664 So. 2d 1142, 1143 (Fla. 1995); *In re Lilley*, 719 A.2d 327, 329 (Pa. 1998); *Daniels*, 953 P.2d at 8; *Eric H., Jr.*, 1999 WL 68667 at 3; *In re Guardianship of J.C.*, 608 A.2d 1312, 1316 (N.J. 1992); *In re Michael E.*, 659 N.Y.S.2d 578, 580 (3 Dept. 1997); *Montgomery v. State Dep't of Human Resources*, 917 P.2d 949, 955 (Nev. 1996). But see N.C. GEN. STAT. § 7A-289.30(e) (Michie 1999) (announcing a clear and cogent standard); *Cressler*, *supra* note 7, at 787, 812-14 (advocating that a beyond a reasonable doubt standard should be applied).

³⁶⁷ U.S. CONST. amend. XIV.

³⁶⁸ See *Santosky*, 455 U.S. at 747-48; *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981); A.S.C., 671 A.2d 942, 946 (D.C. App. 1996).

³⁶⁹ See *Santosky*, 455 U.S. at 759 (quoting *Lassiter*, 452 U.S. at 27).

³⁷⁰ See MO. STAT. ANN. § 211.183(3) (Vernon's 1999); *In re Richard W.*, 696 N.Y.S.2d 298, 299 (N.Y. App. Div. 1999); A.S.C., 671 A.2d at 946.

³⁷¹ See CAL. WELF. & INST. CODE § 366.26(c)(2) (West 1999); MINN. STAT. ANN. § 260.012(b) (1999). See also *Cain v. Commonwealth*, 402 S.E.2d 682, 683 (Va. 1991) (making the offer of services a prerequisite to termination and finding that the state had not met its burden).

admonish agencies appropriately when they do not fulfill these obligations.

b. Best Interests of the Child

Congress concluded that it was preferable for biological parents to maintain permanent homes for their own children.³⁷² Accordingly, the law assumes that it is in a child's best interest to be reared by her biological parents because there is a presumption that parents will exercise good judgment in making decisions for their children.³⁷³ Therefore, children should be protected "from the unnecessary severance of a relationship with biological or legal parents."³⁷⁴

After the court determines that a parent has neglected her child, the court must proceed to determine whether termination of the parent-child relationship will be in the child's best interest.³⁷⁵ Termination is in a child's best interest when a parent does not meet "the continuing needs of a child for proper physical, mental, and emotional growth and development."³⁷⁶ More specifically, termination will be in the child's best interest when the child's health and development are in danger, the parent is unwilling or unable to keep the child safe from harm, diligent efforts to provide family services have been made, and termination will be beneficial for the child.³⁷⁷ Therefore, courts are urged to "inquire into the child's best interests and not presume, [that] merely because statutory grounds exist to terminate parental rights, the child's interests are served by doing so."³⁷⁸ As proof that termination of a parent's rights would be in a child's best interests, courts will rely upon the same factors and evidence that is admissible during the initial hearing.³⁷⁹

c. Judicial Findings and Orders

Before parental rights are terminated, courts should require strict compliance with statutory termination procedures. "Insistence upon strict

³⁷² See Edwards, *supra* note 153, at 4; accord *Matter of Sanjivini K.*, 391 N.E.2d 1316 (N.Y. 1979).

³⁷³ See *Parham v. J.R.*, 442 U.S. 584, 612 (1979) (declaring that the natural laws of affection lead parents to act in the child's best interests); N.Y. SOC. SERV. § 348-b (i)(a)(ii) (McKinney 1999) (finding that meeting the child's needs in her "natural home" is best).

³⁷⁴ N.C. GEN. STAT. § 7A-289-22 (Michie 1999).

³⁷⁵ See N.Y. FAM. CT. § 614(1) (McKinney 1999); *In re S.J.C.*, 507 S.E.2d 226, 229 (Ga. 1998); *Matter of Celeste*, 579 N.Y.S.2d 94 (1 Dept. 1992); see also *A.S.C.*, 671 A.2d at 946; *Eric H., Jr.*, 1999 WL 68667 at 6; *Danuael*, 1999 WL 69941 at 3; *Cooley v. Div. of Child & Family Servs.*, 946 P.2d 155, 158 (Nev. 1997); *Gonzales v. Dep't of Human Resources*, 933 P.2d 198, 205 (Nev. 1997) (making the child's best interests "the primary consideration"); *Recodo v. Dep't of Human Resources*, 930 P.2d 1128, 1133 (Nev. 1999); *Recodo v. Dep't of Human Resources*, 930 P.2d 1128, 1132-33 (Nev. 1999); *In re Lilley*, 719 A.2d 327, 330 (Pa. 1998) (framing the issues); N.Y. FAM. CODE § 631 (McKinney 1999); HARALAMBIE, *HANDLING CHILD CUSTODY*, *supra* note 257, at 4 (advising attorneys to focus on the best interests issues as much as defending against parental unfitness arguments).

³⁷⁶ NEV. REV. STAT. §128.105(2)(c) (1999).

³⁷⁷ See N.J. STAT. ANN. § 30:4C-15.1(a) (West 1999).

³⁷⁸ *Guggenheim*, *supra* note 25, at 136.

³⁷⁹ *S.J.C.*, 507 S.E.2d at 229 (citing *G.K.J.*, 370 S.E.2d 490 (Ga. 1988)).

compliance with the statutory criteria . . . enhances the child's best interests by promoting autonomous families and by reducing the dangers of arbitrary and biased decisions amounting to state intrusion disguised under the rubric of the child's best interests.³⁸⁰ Thus, specific findings regarding whether the state or county has made reasonable efforts to reunify the family should be made.³⁸¹

To assess whether the state's rehabilitation efforts were reasonable, a judge should make the following inquiries:

1. Has there been adequate intra-agency or interagency coordination to ensure that concrete services have been made available in a timely manner so that the child is not removed as a result of delays in processing approval or beginning delivery of such services?
2. Have all relatives been contacted and their ability to care for the child been examined and assessed?
3. How has the social service agency helped the . . . parent obtain treatment?
4. Have referrals to treatment programs been appropriate?
5. Have referrals been to programs experienced and qualified in treating women with the mother's particular addiction and problems with small children?
6. Were the programs to which the mother was referred physically, financially, psychologically, and culturally accessible?
7. Did the agency provide or help the mother obtain transportation and child care so that she could attend treatment?
8. Has the availability/eligibility of the following service programs been examined:
 - family-centered drug treatment services
 - other family-centered services
 - intensive family preservation services
 - counseling
 - emergency housing
 - in-home caretaker
 - out-of-home respite care
 - teaching and demonstrating homemakers
 - parent skills training
 - transportation
 - emergency cash assistance
 - government aid programs:
 - *Women, Infants, and Children Food

³⁸⁰ *In re Danuael D.*, 724 A.2d 546, 553 (Conn. 1999) (citations omitted).

³⁸¹ See MINN. STAT. § 260.012(c) (Supp. 1999); W. VA. CODE § 49-6-5(a)(6) (Lexis 1999); VA. CODE § 16.1-283(B)(2) (Lexis 1999) (requiring that the court consider rehabilitation efforts prior to initial placement); Jamie Nicole H., 517 S.E.2d 41, 49 n.18 (W. Va. 1999) (failing to include a statement in the order).

Supplement Program (WIC)

*Food Stamps

*Aid to Families with Dependent Children

(AFDC)

*Medicaid

*SSI

*Disability payments

*Head Start or age-appropriate infant/child care program?

*Should the shelter care hearing be continued while additional information is gathered?

*Has a shelter care decision been continued before for reasons of inadequate information?³⁸²

When appropriate reunification efforts have not been made, the agency should be ordered to provide certain services within a specified time. To the extent that a parent has been cooperative and responsive, it should be chronicled in the court order.³⁸³ Moreover, the court order should set forth criteria for determining whether the case plan has been successful so that a determination regarding whether the child can be returned to her parent can be made.³⁸⁴

Martin Guggenheim suggests yet another approach when the court decides that termination would be in a child's best interests. He advocates that termination orders should be conditional and reviewable. He argues that courts should not hesitate to vacate or rescind termination orders when a child has been in the foster care system for years and there is no prospect of adoption.³⁸⁵ In 1991, more than one-hundred unadoptable children were discharged from foster care and reunited with their parents.³⁸⁶

To avoid terminations based on poverty alone, judges must be diligent about ensuring that parents are treated fairly in these proceedings. Namely, they should have received requisite opportunities and services to help them to improve the condition that they have established for their children. They may protect poor parents' interests by guaranteeing that adequate, appropriate, and reasonable services have been offered and that the services provided were effective. More specifically, judges are charged with the awesome responsibility of ensuring that social service agencies make reasonable efforts to avoid removal of the child from the home. Alternatively, the court must determine whether the agency made reasonable efforts to rehabilitate the child's parents and to reunite separated

³⁸² PROTOCOL, *supra* note 1, at 19.

³⁸³ See Hopper, *supra* note 20, at 36 (imploing judges to issue timely orders chronicling case plans and the parent's progress); Daniels v. Dep't of Human Serv., 953 P.2d 1, 3 (Nev. 1998).

³⁸⁴ See Champagne v. Welfare Div., 691 P.2d 849, 859 (Nev. 1984) (citing People v. C.A.K., 628 P.2d 136 (Colo. App. 1980)).

³⁸⁵ See Guggenheim, *supra* note 25, at 136.

³⁸⁶ See *id.* at 137 & n.36.

families.³⁸⁷ The judge's willingness to monitor agency services is so important because in most situations, the trial court judge will be the final arbiter of whether a child remains at substantial risk of harm or whether it is in the child's best interest to remain with her parent.³⁸⁸ These cases are fact-sensitive. For that reason, appellate courts usually give deference to the trial court judge's decision.³⁸⁹

VII. CONCLUSION

Congress has proposed a quick fix for the foster care system—terminate parental rights within a few months. It has not, however, given proper consideration to the socio-economic problems—the root causes of familial breakdown—that lead to neglect and ultimately end in termination of parental rights when the parents are poor. Poor families deserve a chance to improve their circumstances so that they can rear their own children. Most poor families will need an aggressive, multipurpose plan that addresses “health, social, and environmental issues” at the same time.³⁹⁰ They must be given a reasonable time to accomplish the goals of an ambitious plan. To avoid separation of more poor children from their parents and the parents' representatives, agencies must be persistent in their efforts to rehabilitate family members within the short time restraints that are set forth in the Act.

A model for other states, the State of Washington's legislature officially has recognized the importance of nurturing the family unit. It declared that “the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, . . . the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized.”³⁹¹ It is time to re-emphasize the value of all families, including poor families, and the ties that bind those families. Before we rush to terminate parenting responsibilities, we must diligently provide appropriate support services for them:

Children should not be deprived of home life with their parents except for urgent and compelling reasons. Children of parents of worthy character, suffering from temporary misfortune, and children of reasonably efficient and deserving mothers who are without support of their normal breadwinner, should as a rule be kept with their parents, such aid being given as may be necessary to maintain suitable homes for the rearing of the children. Except in unusual circumstances, the home should not be broken up for

³⁸⁷ See 42 U.S.C. § 671(a)(15) (Supp. 1999); ARIZ. REV. STAT. § 8-533(B)(10)(b) (West 1999); W. VA. CODE § 49-6-2(b) (Lexis 1999) (considering the state's efforts); HARALAMBIE, *supra* note 12, at 41 (requiring agencies to prove “sincere efforts to provide services”); Edwards, *supra* note 153, at 3.

³⁸⁸ See PROTOCOL, *supra* note 1, at 17-22 (suggesting inquiries for judges during court proceedings).

³⁸⁹ See Cressler, *supra* note 7, at 809.

³⁹⁰ OLDS ET AL., *supra* note 100, at 4; PELTON, SOCIAL CONTEXT, *supra* note 11, at 319-20.

³⁹¹ WASH. REV. CODE ANN. § 13.84.020 (West 1999).

reasons of poverty, but only for considerations of inefficiency or immorality.³⁹²

³⁹² PELTON, FOR REASONS OF POVERTY, *supra* note 14, at 2 (quoting the 1909 White House Conference on the Care of Dependent Children).