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THE JUVENILE COURT AND EMOTIONAL NEGLECT OF CHILDREN

> [T]he juvenile division of the probate court shall have . . . jurisdiction in proceedings concerning any child under 17 years of age found within the county . . . *who is deprived of emotional well-being. . .*[1]

A primary function of the Juvenile Court is to assist in the protection of children from abuse and neglect. Juvenile court acts,[2] child abuse reporting statutes,[3] and child protective services legislation[4] have incorporated provisions dealing with physical abuse and physical neglect of children. Such legislation enables state intervention into family life for the protection of children exposed to harmful environments. Statutory definitions of abuse and neglect provide a basis on which the community, frequently through the juvenile court, may pass judgment on the existence of child neglect and offer services or coerce family members to accept them.[5] A few states, including Michigan,[6] have expanded juvenile

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[1] MICH. COMP. LAWS § 712 A.2(b)(1) (Supp. 1974) (emphasis added).

[2] *E.g.*, MICH. COMP. LAWS § 712 A.2(b) (Supp. 1974).

[3] *E.g.*, MICH. COMP. LAWS § 722.571 *et seq.* (Supp. 1974).

[4] *E.g.*, MICH. COMP. LAWS § 400.14(1) (1967).

[5] There is an extensive legal, medical, and social literature dealing with *physical* aspects of child abuse and neglect. *See, e.g.*, V. DEFRANCIS & C. LUCHT, CHILD ABUSE LEGISLATION IN THE 1970's (rev. ed. 1974); C. KEMPE & R. HELFER, HELPING THE BATTERED CHILD AND HIS FAMILY (1972); L. YOUNG, WEDNESDAY'S CHILDREN: A STUDY OF CHILD NEGLECT AND ABUSE (1964).

See also Brown, Fox & Hubbard, *Medical and Legal Aspects of the Battered Child Syndrome,* 50 CHI. -KENT L. REV. 45 (1973); Daly, *Willful Child Abuse and State Reporting Statutes*, 23 U. MIAMI L. REV. 283 (1969); Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation,* 67 COLUM. L. REV. 1 (1966); Thomas, *Child Abuse and Neglect, Historical Overview, Legal Matrix, and Social Perspectives,* 50 N.C.L. REV. 293 (1972).

[6] *See* MICH. COMP. LAWS § 712A.2(b)(1) (Supp. 1974). The legislative history of the Michigan emotional neglect statute consists almost entirely of supporting correspondence on file with the Michigan House of Representatives, Committee on the Judiciary. The initial proposal grew out of efforts by Oakland County Probate Judge Norman Barnard and the Oakland County Youth Assistance Advisory Council. The resulting bills, S.B. 462 (1971) and H.B. 4753 (1971), included emotional neglect among the existing kinds of neglect cognizable under MICH. COMP. LAWS 712A.2(b).

There is no reported committee or floor discussion on the merits of statutory recognition of emotional neglect. Committee minutes reveal no expression of specific legislative concerns, and the respective journals of the houses report only official action taken with respect to a bill. Thus, the legislative intent of the Michigan provision is not readily ascertainable from collateral sources; legal implications must be construed from the wording of the statute itself.

court jurisdiction beyond the traditional notions of physical neglect to encompass what has come to be known as "emotional neglect," a concept beginning to appear more frequently in child abuse reporting laws as well.[7] As will be suggested herein, standards for state intervention into situations of emotional neglect can and should be established to enable such intervention to be at least as effective as it is in cases of physical neglect.

I. THE NEED FOR JUDICIAL COGNIZANCE OF EMOTIONAL NEGLECT OF JUVENILES

The rationale for judicial cognizance of emotional neglect of juveniles assumes that the consequences to a child who has been psychologically and emotionally abused may be at least as serious as those brought about by more physical mistreatment.[8] The need for court jurisdiction arises because, while administrative and private agencies may share in the task of protecting children from abuse and neglect,[9] responsibility must ultimately rest with the

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[7] *See* DEL. CODE ANN. tit. 16, § 1002 (1973); KAN. STAT. ANN §38-171 (1973); KY. REV. STAT. ANN. § 199.335(2) (Supp. 1974); LA. REV. STAT. ANN § 14.403 (1974); S. D. COMP. LAWS ANN. § 26-10-10 (1973); TENN. CODE ANN. § 37-1203 (Supp. 1974); TEX. FAM. CODE ANN. § 34.01 (1973).

Such legislation is to be distinguished from statutes conferring juvenile courts jurisdiction over a class of minors. It embodies an "action-forcing" scheme directed at doctors, nurses, social workers, and others, mandating these people to report to proper authorities instances of abuse or neglect of which they obtain knowledge.

[8] As used herein, "emotional neglect" may include consequences for a child which are physical in nature. For convenience, however, physical and emotional neglect are distinguished; not all emotional neglect has direct or immediate physical consequences. Where physical abuse is manifest, it is presumed that conventional abuse statutes can take cognizance of it.

For extensive discussion and documentation of the widespread incidence of physical child abuse and neglect together with proposed solutions, see generally *Hearings on S. 1191 Before the Subcomm. on Children and Youth of the Senate Comm. on Labor and Public Welfare*, 93rd Cong., 1st Sess. (1973). The resulting legislation, the Child Abuse Prevention and Treatment Act, 42 U.S.C.A. §§ 5101 *et seq.* (1974) establishes a "National Center on Child Abuse and Neglect" and provides money for demonstration programs for the identification and treatment of child abuse and neglect. The primary focus of the hearings was the "battered child," but there is frequent reference to the issue of emotional neglect. The act defines child abuse and neglect to include "mental injury." 42 U.S.C.A. § 5102 (1974).

For a thoughtful survey of the process of state intervention into the parent-child relationship with heavy emphasis on child neglect, see S. KATZ, WHEN PARENTS FAIL, THE LAW'S RESPONSE TO FAMILY BREAKDOWN (1971).

With respect to a child's emotional and psychological needs in child placement efforts, with considerations equally relevant in the neglect context, see generally, J. GOLDSTEIN, A. FREUD, & A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD (1973) (hereinafter cited as J. GOLDSTEIN.) *See also* L. COSTIN, CHILD WELFARE: POLICIES AND PRACTICE, 264-65 (1972); M. WALD, PROTECTIVE SERVICES AND EMOTIONAL NEGLECT (1961).

[9] Mulford, *Emotional Neglect of Children*, 37 CHILD WELFARE 19 (1958).

courts, where removal of the child from the family, termination of parental rights, or coerced treatment are contemplated.[10] Child protection is, of course, primarily a parental duty.[11] Where parents fail to meet the obligations of parenthood the responsibility shifts by necessity to the institutions of the state.

Criteria for court intervention are manifested in the minimally acceptable standards of parental conduct set forth in juvenile court jurisdictional provisions.[12] Such provisions provide norms for acceptable child-rearing practices. Their basic goal is the prevention of social, physical, and psychological deterioration of children[13] Most statutory neglect provisions focus on "physical harm, moral deprivation, and deficiencies in environmental conditions,"[14] rather than the total constellation of interfamilial conduct and attitudes — the stuff of psychological well-being.[15] The law has long

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[10] *See, e.g.*, MICH. COMP. LAWS ANN. § 712A 19(A) (Supp. 1974); *cf.* In re LaFlure, 48 Mich. App. 377, 210 N.W.2d 482 (1973) (circumstances sufficient to justify temporary placement of a child out of the home under the custody of the juvenile court do not necessarily justify termination of parental rights).

See also V. DEFRANCIS, TERMINATION OF PARENTAL RIGHTS—BALANCING THE EQUITIES (1971); Becker, *Due Process and Child Protective Proceedings State Intervention in Family Relations on Behalf of Neglected Children*, 2 CUMBERLAND-SAMFORD L. REV. 247 (1971).

[11] *See, e.g.*, THE AMERICAN HUMANE ASSOCIATION, CHILDREN'S DIVISION, A NATIONAL SYMPOSIUM ON CHILD ABUSE (1972); H. SIMMONS, PROTECTIVE SERVICES FOR CHILDREN, CHILD ABUSE, AND NEGLECT (1968).

[12] *See, e.g.*, MICH. COMP. LAWS § 712A.2(b)(1), (2) (Supp. 1974).

[13] *See generally* Cheney, *Safeguarding Legal Rights in Providing Protective Services*, 13 CHILDREN 86 (1966).

The need for explicit jurisdiction over matters of emotional neglect was well stated by Judge Norman Barnard of the Oakland County Juvenile Court in a letter to the Michigan Legislature urging passage of the Michigan provision, now MICH. COMP. LAWS § 712A.2(b)(1) (Supp. 1974):

> My experience as a Probate Judge in Oakland County has brought to my personal attention the damage that is so often perpetrated on children where parents are unable to provide loving, affection, and secure relationships. Many children who are seen in our Court are not battered or beaten in a physical sense, but their very existence has been permanently affected by an unwholesome environment. Parents who display an inability to alter the negative relationships with their children are guilty of producing many, if not most, of the young people in our society who will be a detriment to the society.

Letter to the Michigan Legislature, June 15, 1971 (on file with the *University of Michigan Journal of Law Reform*).

[14] S. KATZ, *supra* note 8, at 61.

[15] *Cf. Alternatives to "Parental Right" in Child Custody Disputes involving Third Parties*, 73 YALE L. J. 151, 157-63 (and footnotes regarding "psychological well-being" contained therein) (1963).

sought to promote the child's best interest by protecting his physical integrity, without parallel consideration of his emotional development and mental health.[16] And it may be that the physical-emotional dichotomy is illusory in the child development context.[17]

Central to the case for the judicial recognition of emotional neglect is the hope that detrimental family emotional dynamics can be identified and ameliorated before a child is permanently affected.[18] Statutes which allow courts to consider these factors endeavor to broaden the definition of neglect to take into account the psychological health of the child or parent. They do this by requiring (or at least allowing) the judge to consider the relative strengths and weaknesses of a family—indeed, to examine the quality of the parent-child relationship. These provisions "recognize not merely the child's physical condition, but rather the totality of its well-being."[19]

Given that emotional neglect can detrimentally affect a child's development as substantially as physical abuse and neglect, some other factors must be considered. Emotional deprivation may be more devastating in long term impact than occasional physical abuse.[20] While traditionally recognized abuse and neglect can certainly be detrimental to a child's development, they may be more easily mitigated than emotional neglect in many cases. But traditional neglect syndromes are more visible; furthermore, there is a greater consensus as to what forms of physical neglect transgress

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[16] For discussion of the range of parental conduct relevant to the consideration of neglect, *see* N. POLANSKY, CHILD NEGLECT—UNDERSTANDING AND REACHING THE PARENT (1972):

> It is presumed that physical, emotional and intellectual growth and welfare are being jeopardized when for example, the child is: 1) malnourished, ill-clad, dirty, without proper shelter or sleeping arrangements; 2) without supervision, unattended; 3) ill and lacking essential medical care; 4) denied normal experiences that produce feelings of being loved, wanted, secure and worthy; 5) failing to attend school regularly; 6) exploited, overworked; 7) physically abused; 8) emotionally disturbed, due to continous friction in home, marital discord, mentally ill parents; 9) exposed to unwholesome and demoralizing circumstances.

Note that 4) and 9) are components of emotional neglect.

[17] J. GOLDSTEIN, *supra* note 8, at 4; L. COSTIN, *supra* note 8, at 264; Gill, *The Legal Nature of Neglect*, 6 CRIME AND DELINQUENCY 1, 10-13 (1960).

[18] *E.g.*, V. DEFRANCIS, ACCENT ON PREVENTION (1971).

[19] S. KATZ, *supra* note 8, at 62.

[20] *See, e.g.*, M. WALD, *supra* note 8, at 1.

community and legislative standards. Therefore, traditional neglect is more likely than emotional neglect to be reported to appropriate authorities, who are, for the same reasons, more willing to act on the reports they receive.[21]

Nonetheless an emotionally damaged child is likely to suffer adult psychopathologies[22] and so may become a burden upon the state. Judicial recognition of mental health considerations, however, may enable earlier intervention in mitigation of this tendency. A court's intervention may also prevent future neglect.[23] Unloved

[21] Juvenile court adjudication of neglect or dependency on the basis of nonphysical, intangible harm is not, however, a completely unknown phenomenon. There are numerous cases dealing with parental mental disturbances, discussed *infra*, notes 83-84. The following cases terminated or abridged parental rights for the reasons indicated: Altamirano v. Director of the Travis County Welfare Unit, 465 S.W.2d 393 (Tex. Civ. App. 1971) (mother's failure to continue treatment and medication necessary to control her emotional disorder; children found to be without "proper parental control"); *In re* McDonald, 201 N.W.2d 447 (Iowa 1972) (parents' low I.Q., though the children were normal in all respects, mentally and physically); *In re* H Children, 65 Misc. 2d 187, 317 N.Y.S. 2d 535 (1970) (adultery by children's mother); Kennedy v. State, 277 Ala. 5, 166 So. 2d 736 (1964) (Evidence established that spastic parents lacked emotional and physical capacity to adequately care for their children.); State v. Bacon, 249 Iowa 1233, 91 N.W.2d 395 (1958) (Despite adequate physical care and affection, the best interests of the child required termination of custodial rights to better afford the child emotional security, "freedom from constant shifting about," and other uncertainties.); In the Matter of Anonymous, 37 Misc. 2d 411, 238 N.Y.S. 2d 422 (Family Ct. 1962) (immoral and improper conduct of mother sufficient to deny custody); Coulter v. Sypert, 78 Ark. 193, 95 S.W. 457 (1906) (father's indifference and lack of affection for child and deficient moral character); *In re* Watson, 95 N.Y.S.2d. 798 (Dom. Rel. Ct. 1950) (mother's emotional condition and her religious fanaticism); *See also In re* Sampson, 65 Misc.2d 658, 317 N.Y.S.2d 641 (1970), where the Family Court ordered medical and surgical care for a child over the parent's religious objection. The court gave great weight to the developmental and psychological impact on the child from the parent's refusal to correct a gross physical deformity. *See also* People v. Phipps, 97 N.Y.S.2d 845 (Dom. Rel. Ct. 1950) (persistent questioning by father of three-year-old child as to identity of mother's paramour, supported finding of neglect).

As observed in *In re* Roe, 59 Misc. 535, 92 N.Y.S.2d 882, 884 (Dom. Rel. Ct. 1949):

> [T]o subject a child to a sense of insecurity, either by way of rejection or ill treatment . . . which will result in the development in children of aggressive tendencies and delinquent conduct, is neglect . . . of a very serious nature. Children are entitled to not only food, clothing, and shelter, but are entitled to guidance, advice, counsel and affection, understanding, and sympathy, and when these are not accorded them . . . because of inability to love or understand and sympathize . . . that would constitute serious and severe neglect.

Judicial recognition of nonphysical aspects of neglect is also suggested by *In re* Morrison, 295 Iowa 301, 313-14, 144 N.W.2d 97, 104 (1966) where the Iowa Supreme Court stated:

> [Children may have] not only [adequate physical care, but also] love, affection, and security, freedom from unwholesome influences, morally and mentally, as they grow up to adulthood.

[22] H. SIMMONS, *supra* note 11, at 48.

[23] *Cf.* J. GOLDSTEIN, *supra* note 8, at 7.

children become unloving parents, perpetuating the cycle of neglect.[24] The emotional climate of the home is thus an important and legitimate object of the law's concern. Emotional neglect may be the precursor of serious physical abuse; full protective services may necessitate intervention on that basis.[25]

Another basis for intervention could be the child's right to a reasonable opportunity to develop into a well-adjusted adult.[26] The law has traditionally been solicitous of parental rights to raise and control children. Though this attitude is basically sound, it should not be used to disguise the rights of a child.

Another justification for court intervention is the correlation between emotional neglect and delinquency:[27]

> Impressive professional validation is on hand to establish that intensively acting-out delinquents, the so-called hard core of the delinquency problem, come from emotionally impoverished homes and unhappily grow up to perpetuate in their own adulthood the same destructive parental care.[28]

The value of jurisdiction over emotional neglect in this context is that it allows the courts to focus on the problem, rather than merely on the result.

Despite a dearth of emotional neglect statutes and reported case law, juvenile court judges have been entertaining cases involving variants of emotional neglect. Jurisdiction in such cases has typically been grounded upon either "mental care" provisions or a

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[24] "Most of the abusing parents have suffered extreme emotional deprivation in early childhood. . . ."THE AMERICAN HUMANE ASSOCIATION, *supra* note 11, at 48.

[25] *Hearings, supra* note 8, at 13, 153. *See also* AMERICAN HUMANE ASSOCIATION, *supra* note 11, at 18.

[26] *Cf.* Foster and Freed, *A Bill of Rights for Children*, 6 FAMILY L.Q. 343, 347 (1972), arguing that

> a child has a moral right and should have a legal right . . . to receive parental love and affection, discipline and guidance, and to grow to maturity in a home environment which enables him to develop into a mature and responsible adult . . . .

See also Rosenbert, *The Right to a Sound Mind,* 10 TRIAL 36, 37 (1974); THE WHITE HOUSE CONFERENCE ON CHILDREN, 1970 REPORT TO THE PRESIDENT, recommending a "Bill of Rights" for children which included a right to be "wanted" and to "grow up nurtured by affectionate parents;" L. COSTIN, *supra* note 8, at 6.

[27] PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME, 197, 199 (1967); H. SIMMONS, *supra* note 11, at 49; AMERICAN HUMANE ASSOCIATION, *supra* note 11, at 48.

[28] Gill, *supra* note 17, at 10.

familiar rubric found in many neglect provisions: "other care necessary for his well-being."[29] A more direct method, of course, would be for legislatures to explicitly recognize emotional neglect as a ground for judicial intervention and provide some standards for application in that context:

> [I]f the court's protective service to the community is to be reasonably geared to the community's needs, the law should recognize emotional neglect and provide, as it can, proper safeguards against the dangers implicit in the field.[30]

II. THE CONTENT OF EMOTIONAL WELL-BEING

The state's concern for a child's well-being would be reflected in a grant of jurisdiction to the juvenile courts over cases of emotional neglect. Such concern must recognize the variety of ways in which a child's emotional health can be endangered in the family context. Existing statutory provisions in some states identify a range of nonphysical neglect. In the abstract, they refer to the mental health of the parent, parental failure to respond to a child's existing mental health problem, and the inadequacy of the parent-child relationship.[31] This final category emphasizes the impact on the child more than the status or conduct of the parent and is the key to the emerging concept of emotional neglect.[32]

The problem most frequently noted is the relationship marked by deprivation of parental love and affection. Though it is generally accepted that the potential for resulting emotional damage is enormous in the absence of "love and affection,"[33] there is considerable difficulty in the application of the concept.[34] Perhaps because this variant of emotional neglect speaks fundamentally to many of the imponderable attributes of successful parenthood, legislatures have been reluctant to use it as an explicit criterion of

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[29] *Id.* at 11. *See also* Todd v. Superior Ct., 68 Wash. 2d 587, 414 P.2d 605 (1966); notes 21 *supra* and 83-84 *infra*.

Cf. In re Viske, 147 Mont. 417, 413 P.2d 876 (1966), where the court, under a "proper care" provision, took judicial notice of emotional needs of an infant requiring satisfaction equally as demanding and developmentally significant as physical needs.

[30] Gill, *supra* note 17, at 11.

[31] *See* text accompanying notes 87-101 *infra*.

[32] *See, e.g.*, M. WALD, *supra* note 8; Muford, *supra* note 9.

[33] *See, e.g.*, E. ERIKSON, CHILDHOOD AND SOCIETY (1963); S. FRAIBURG, A COMMENTARY REPORT, THE ORIGINS OF HUMAN BONDS (1967); A. FREUD, NORMALITY AND PATHOLOGY IN CHILDHOOD (1965); J. GOLDSTEIN, *supra* note 8, at 9-21; P. MUSSEN, J. CONGER & J. KOZEN, CHILD DEVELOPMENT AND PERSONALITY at 153-83 (1963). Gill, *supra* note 17, at 10-12; Comment, *Emotional Neglect in Connecticut*, 5 CONN. L. J. 100 (1972).

[34] *See* C. FOOTE, R. LEVY & F. SANDER, CASES AND MATERIALS ON FAMILY LAW, 413-16 (1966).

intervention. Without a clearer understanding of the nature of this aspect of emotional neglect, misapplication is likely where neglect is statutorily recognized.[35]

The establishment of a mutually gratifying, continuous relationship with a mothering figure who cares for and stimulates the child from infancy is crucial to the development of the child's ability to relate to others and become self-reliant.[36] This mutual interaction, where marked by love, affection, reciprocal emotional exchange, and confidence, fulfills basic needs of the infant essential to his psychological development and is of continuing importance to young children and adolescents.[37] Neglect might derive from parental conduct of any kind which "denies a child the love and affection he supposedly needs to become a healthy, emotionally stable, productive member of society."[38] The absence of continuing affection and stimulating relationships with adults may threaten successful maturation by severely retarding a child's physical,

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[35] For two statutes explicitly mentioning "affection" see IDAHO CODE 16-1625 (Supp. 1974) and REV. STAT. OF ONTARIO ch. 64, 20(1)(b)(xi) (1970).

[36] Note, *Alternatives to "Parental Right" in Child Custody Disputes Involving Third Parties*, 73 YALE L. J. 151 (1963), contains a concise discussion of the attributes and importance of a child's psychological well-being. *See In re* Adoption by P., 114 N.J. Super. 584, 277 A.2d 566 (1971).

[37] *Id.* According to one expert, a child's present and future emotional stability is highly dependent upon fulfilling a child's need to

> experience a warm, intimate, and continuous relationship with his mother (or permanent mother-substitute—one who steadily "mothers" him) in which both must find satisfaction and enjoyment.

J. BOWLBY, CHILD CARE AND THE GROWTH OF LOVE 13 (1965).

[38] C. FOOTE, R. LEVY & F. SANDER, *supra* note 34, at 413. Foster and Freed, *supra* note 26, state at 347 that

> The need of a child for parental love and affection is so thoroughly documented by clinical and common experience and the literature of behavior science that it may be considered accepted as an established fact.

See also Watson, *The Children of Armageddon: Problems of Custody Following Divorce*, 21 SYRACUSE L. REV. 55 (1969).

Where a child is consistently made to feel inferior or where other children are overtly favored, emotional damage may result. Gross inconsistency of, or the lack of, controls over a child may have an adverse impact on his or her psychological growth as well. Severe marital discord, open hostility, repeated acrimonious verbal confrontations and the absence of a positive emotional climate also suggest family dynamics conducive to emotional neglect to the extent that they demonstrate a lack of sensitivity to their impact on a child's psychological health. Adjudication of an emotional neglect petition might entail the examination of the attitudes of both parents toward their children and the child's attitude toward his parents.

emotional, and intellectual development.[39] This potential cost to the child suggests socially acceptable parameters of parental conduct which, if properly applied, might serve as the basis for judicial cognizance of emotional neglect.

Robert Mulford, an early advocate of juvenile court response to emotional neglect, has defined emotional neglect as

> the deprivation suffered by children when their parents do not provide opportunities for the normal experiences producing feelings of being loved, wanted, secure, and worthy which result in the ability to form healthy object relationships. . . . The parent's lack of love and proper direction, and his inability to accept a child with his potentialities as well as his limitations, may constitute emotional neglect.[40]

Clarence Cole of the Juvenile Court of Oakland County, Michigan, has suggested emotional neglect, so understood, is more easily detected than the language of the literature implies:

> Friends and relatives often notice parents treating one child differently than [*sic*] the others. Maybe the child has to eat meals alone in another room or in the basement. Perhaps he isn't allowed to do certain things. Teachers often notice the

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[39] *See, e.g.*, L. COSTIN, *supra* note 18, at 264; H. SIMMONS, *supra* note 11, at 52. The impact of emotional deprivation and, more particularly, "maternal deprivation" has been well documented in the context of institutionalized infants. Despite adequate physical care the lack of emotional stimulation has a demonstrable impact on psychological development. Goldstein has compiled the following relevant research sources:

> The deficits in the psychological development of institutionalized infants (some of whom received excellent physical care) have been documented by many studies. See Margaret A. Ribble, The Rights of Infants (New York: Columbia University Press, 1943); W. Goldfarb, "Effects of Psychological Deprivation in Infancy and Subsequent Stimulation" (American Journal of Psychiatry, 102:13-33, 1945) and "Psychological Privation in Infancy and Subsequent Adjustment" (American Journal of Orthopsychiatry, 15:247-255, 1945); Rene A. Spitz, "Hospitalism" (The Psychoanalytic Study of the Child, 1:53-74; New York: International Universities Press, 1945) and "Hospitalism: A Follow-up Report" (*Ibid.*, 2:113-117, 1946); Rene A. Spitz and K.M. Wolf, "Anaclitic Depression" (*Ibid.*, 2:313-342, 1946); John Bowlby, Maternal Care and Mental Health (Geneva: World Health Organization Monograph No. 2, 1951); H. L. Rheingold, The Modification of Social Responsiveness in Institutionalized Babies (Monographs of the Society for Research in Child Development, Vol. XXI, Serial No. 63, No. 2, 1956); M.A. Ainsworth et al., Deprivation of Maternal Care: A Reassessment of Its Effects (Geneva: World Health Organization, Public Health Papers 14, 1962) . . . .

[40] Mulford, *supra* note 9, at 21.

On the importance of being wanted, *see* J. GOLDSTEIN, *supra* note 8, at 20.

Cf. IDAHO CODE § 16-1625 (Supp. 1973), which incorporated the language used by Mulford for its definition of "emotional maladjustment." *See* text accompanying note 98 *infra*.

> symptoms in a bright child who cannot achieve. Sometimes a doctor or social agency in contact with the family notices that one child is unwanted.[41]

The literature on emotional neglect suggests additional symptoms which might be relevant in adjudication.[42] It is suggested that the nature and quality of the affection relationship between parent and child, though largely intangible, does have physical correlatives. The most dramatic example is a "failure to thrive" which has no organic cause.[43] Other physical manifestations of emotional neglect include inability to walk and talk, hyperactivity, and withdrawal. In addition, enuresis, nail-biting, fire-setting, excessive nervousness, gross tantrums or passivity, excessive crying, and gross developmental deficiencies have been advanced as consequences of emotional neglect. Such a catalogue is only suggestive and varies greatly with developmental stages.

There remains, however, some difficulty in translating the abstractions of the psycho-social literature regarding the necessary components of healthy emotional growth into an emotional neglect statute with precision sufficient for its rational and fair application by a juvenile court. Since the parent-child relationship is at stake, a court must take particular care not to focus on talismanic attributes

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[41] Unpublished manuscript on file with the *University of Michigan Journal of Law Reform*.

Underlying reasons for these phenomena have been noted:

> The emotional climate within the family is of critical importance . . . . Overburdened parents unable to deal with the multiple responsibilities of parentage, parents trapped in the arena of marital discord, emotionally troubled or psychotic parents, parents with personalities too callow to provide their children with the normal experiences of love and security, commonly fall short of supplying the continuity and predictability of affectionate interest essential for the sound emotional development of the child. Emotional neglect serves the legal and psycho-social field as a label for the resulting situation in which the child manifests symptoms of an abnormal personality structure, which is believed to be due to the lack of a loving parent-child relationship.

Comment, *Emotional Neglect in Connecticut,* 5 CONN. L. REV. 100 (1972).

See also P. DECOURCY & J. DECOURCY, A SILENT TRAGEDY, CHILD ABUSE IN THE COMMUNITY (1973).

[42] *See* Comment, *supra* note 41, at 114-15; L. COSTIN, *supra* note 8; M. WALD, *supra* note 8; Mulford, *supra* note 9.

[43] Failure to thrive is manifested by such symptoms as severe undernourishment, developmental retardation, and abnormal reaction to stimulation. Although such characteristics can result from conventional physical neglect, there is growing recognition that they can result from social and psychological causes as well.

L. COSTIN, *supra* note 8, at 262-63.

of emotional neglect in isolation. The impact on the child is a product of a total relationship, and care must be taken to evaluate the positive aspects of the relationship as well as the negative aspects.[44]

III. STANDARDS FOR STATE INTERVENTION

A. The Need for Standards

Given that parental conduct may adversely affect a child's psychological well-being, controversy continues as to whether court intervention is advisable at all and, if it is, as to what specific parental conduct justifies intervention in a given case. Even where a state has expanded child neglect jurisdiction to explicitly recognize emotional neglect, the appropriate standards for intervention remain elusive. Michigan, for example, has provided for juvenile court jurisdiction over a child "who is deprived of emotional well-being."[45] Such economy of language has been applauded for vesting needed judicial discretion in an area requiring flexibility and judgment;[46] it may just as well be condemned as a license for unwarranted intrusion. The intangibility of the very concept of emotional neglect, the lack of standards for application, constitutional doubts, judicial overreaching, selective enforcement, the vagaries of prediction, and the frequent lack of remedial alternatives all operate to cloud the recognition and implementation of emotional neglect jurisdiction. These intangible attributes of emotional neglect require special concern with respect to possible constitutional defects where "emotional neglect," becomes a statutory ground for intervention by the state. The basic goal of a child neglect law is to prevent social, physical, and psychological de-

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[44] A juvenile court itself may be an unwitting purveyor of emotional neglect of the very children it seeks to protect. At least one case has recognized this possibility where it was sought to return a child to her natural mother who attempted to renege on a voluntary consent to adoption after the child had establsihed a positive psychological relationship with adoptive parents. *In re* Adoption of Child by P., 114 N.J. Super. 584, 277 A.2d 566 (1971).

[45] MICH. COMP. LAWS § 712 A.2(b)(1) (Supp. 1974).

[46] As Katz has suggested:

> Because we have not yet acquired sufficient knowledge about normal and abnormal child development, it is not suggested that an elaborate or detailed definition of "emotional neglect" be frozen into a statute. . . . The recognition of mental health as a relevant factor, however, will open up an avenue of judicial inquiry that takes cognizance of the complexity of individuals and the unreliability of depending exclusively on "conduct-based" or "event-based" classifications.

S. KATZ, *supra* note 8, at 68.

terioration of children. Accomplishment of that goal may entail substantial interference with family life, including termination of parental rights. The United States Supreme Court has consistently held unconstitutional those statutes, civil and penal, which fail to explicitly define activity being regulated or which fail to provide legally fixed standards upon which a trier of fact may properly decide whether the statute's requirements have been met. For example, in *Baggett v. Bullitt*[47] the Court stated:

> [A] law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess as its meaning and differ as to its application violates due process of law.[48]

It is the language of the statute, and not the factual setting which produces the constitutional challenge, that governs whether a statute is to be judged void for vagueness.[49] The command of statutory precision requires specificity sufficient to provide notice and warning of proscribed or required conduct.[50] The intangibility of emotional neglect as a concept thus raises issues of notice, warning, and standards. These issues are intensified because there is less agreement on the manner of conduct adversely affecting a child's psychological well-being and the greater difficulty in measuring or even immediately perceiving that adverse impact.

Several recent lower federal court cases stand for the proposition that broad *delinquency* jurisdictional provisions are impermissibly vague. Representative of these matters are *Gesicki v. Oswald*[51] and *Mailliard v. Gonzalez*.[52] *Gesicki* found New York's Wayward Minor statute[53] impermissibly vague and dismissed the argument that jurisdiction over such subject matter is nonpenal and therefore subject to civil standards only. Similarly, *Mailliard* applied due process notions of statutory definiteness to invalidate a

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[47] 377 U.S. 360 (1964).

[48] *Id.* at 367.

[49] Coates v. Cincinnati, 402 U.S. 611 (1971). *But see* Parker v. Levy, 42 U.S.L.W. 4979 (June 19, 1974).

[50] 402 U.S. at 616.

[51] 336 F. Supp. 371 (S.D.N.Y. 1971), *aff'd without opinion*, 406 U.S. 913 (1972).

[52] *See* 42 U.S.L.W. 3016 (Jul. 10, 1973), *vacated and remanded on other grounds*, 416 U.S. 918 (1974).

[53] N.Y. CODE CRIM. PRO. § 913-a(5) (McKinney 1958).

California jurisdictional provision covering any juvenile "in danger of leading an idle, dissolute, lewd or immoral life."[54]

Yet the common law doctrine of *parens patriae* asserts the state's duty to establish the minimum standards of child protection and to enforce those standards where they are transgressed.[55] At least one case has held that the state's legitimate interest as *parens patriae* may justify the broad scope and ambiguity of neglect provision:

> What might be unconstitutional if only the parents' rights were involved, is constitutional if the statute adopts legitimate and necessary means to protect the child's interest.[56]

A separate constitutional question arises from the fundamental interest of parents in rearing their children without unjustified state intrusion.[57] It seems constitutionally mandated that the standards for intervention established by the state be reasonable and rationally related to a legitimate state purpose. Indeed, because intervention intrudes upon the privacy of family life, perhaps those standards must reflect a compelling state interest.[58] A broadly stated intervention imports a fear of judicial overreaching. In fact, courts have been traditionally reticent to intervene absent a highly visible

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[54] CAL. WELF. & INST'NS CODE § 601 (West 1972).

On the "vagueness" doctrine in general, *see* Amsterdam, *The Void-for-Vagueness Doctrine in the Supreme Court,* 109 U. PA. L. REV. 67 (1960). Cases dismissing the argument in the neglect context include *In re* Morrison, 259 Iowa 301, 144 N.W.2d 97 (1966); *In re* Cager, 251 Md. 473, 248 A.2d 384 (1968); State v. MacMaster, 259 Ore. 291, 486 P.2d 567 (1971); *In re* Black, 3 Utah 2d 315, 283 P.2d 887 (1955).

For discussions of statutory vagueness in the juvenile delinquency and "status offense" context *see* Comment, *Juvenile Delinquency Laws: Juvenile Women and the Double Standard of Morality,* 19 U.C.L.A.L. REV. 313 (1971); Comment, *Parens Patriae and Statutory Vagueness in the Juvenile Court,* 82 YALE L.J. 745 (1973).

[55] Gill, *supra* note 17, at 5; *see generally* Comment, *Parens Patriae and Statutory Vagueness in the Juvenile Court, supra* note 54.

[56] State v. MacMaster, 259 Ore. 291, 296, 486 P.2d 567, 569 (1971).

[57] *Cf.* Wisconsin v. Yoder, 406 U.S. 205, 232 (1972), referring to a

> [S]trong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents . . . is now established beyond debate as an enduring American tradition.

[58] The constitutionally protected parent-child relationship is exemplified by Pierce v. Society Sisters, 268 U.S. 510, 535 (1925) and Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Such cases have taken on expanded significance suggesting the need for state deference to parental childrearing practices. *See* Burt, *Forcing Protection on Children & Their Parents: The Impact of F. Wyman v. James,* 69 MICH. L. REV. 1259, 1276-77 (1971). *Meyer* and *Pierce,* in turn, have been cited in the privacy context recently in Roe v. Wade, 410 U.S. 113, 152 (1973).

degree of neglect. Jurisdiction based on emotional neglect may operate to expand the area of relevant judicial inquiry, but it does not of itself portend the demise of judicial conservativism in neglect adjudication.

These legal considerations aside, there are transactional costs attached to vague definition of standards for intervention. Early court intervention into a destructive family environment may provide a greater opportunity for amelioration of adverse effects than does late intervention, but it exacerbates potentially oppressive or officious state intervention. On the other hand, waiting for the development of concrete symptoms may counter judicial overreaching while significantly reducing the likelihood of rehabilitation. Explicit standards may encourage a court to intervene in a timely fashion, the court having been given standards specific enough that the facts of neglect may be readily determined.

A specific emotional neglect statute may promote community awareness and understanding of what constitutes emotional neglect and what situations offer legal bases for action. This, in turn, makes people in referral positions more likely to report situations detrimental to a child's welfare. Child protection agencies then know what might constitute legally recognizable neglect; their case preparation in support of a petition is enhanced accordingly. The effectiveness of social workers and other experts as witnesses in adjudication is likewise promoted. Without specific legislative or judicial guidance, some cases may be brought unnecessarily before the court and others denied the attention they warrant. The attorney's role in a contested emotional neglect adjudication is confounded because he, too, is without criteria to evaluate the case, prepare a defense, or assert the child's interest. The judge is impeded in defining his role as he evaluates expert testimony or applies the law to the facts. Finally, the parents may be embittered and frustrated by an inability to comprehend the basis upon which they are alleged to have failed their child.[59]

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[59] As has been noted:

> All parents prefer to think of themselves as good parents. . . . [W]hen a parent is first told that he may have damaged his child emotionally or physiologically by depriving the child of needed love, the parent tries to understand but frequently cannot. Due to the fact that no one can satisfactorily explain what is meant, the parent becomes even more anxious and distrustful, and any prospect for rehabilitation is consequently diminished.

Comment, *supra* note 41, at 113.

B. *The Content of Standards*

Generally, courts must find a causal relationship between parental conduct and its adverse impact upon the child in order to intervene in a case of child neglect.[60] Where emotional neglect is involved, courts must be prepared to look for nonphysical manifestations of it. Since the impact of parental conduct upon the child is determinative, it should be noted that the same parental conduct may have differing effects upon a child depending upon the child's age and stage of development.

Several approaches to the identification of emotional neglect are suggested in the limited legal literature on the subject.[61] Conclusions as to proper standards vary with the degree of trust the proponent has in the judgment of the juvenile court (the ordinarily suggested forum) on one hand and his faith in the predictive tools of the behavioral sciences on the other.

Judge Gill of the Connecticut Juvenile Court Bench, an early advocate of jurisdiction over cases of emotional neglect and a prime mover behind the 1967 Connecticut legislation in this field,[62] suggests a standard of intervention based on reasonable reliance on specialists. He thus endorses nonspecific legislation because

> [e]ach child embodies his own unique combination of physical, psychological and social components; no child has quite the same strengths or weaknesses as another or exactly the same relationship with his family. The parental failure which markedly damages one child might leave another quite untouched. This interaction between the child and his family is the essence of a neglect situation, the imponderable which defies statutory constraint.[63]

Judge Gill suggests that, given the variety of parent-child relationships with potentially adverse effects, statutory precision is likely to be impossible. Attempts to be precise would unduly restrict judges in an area where flexibility is needed. The "reasonable man" test is derived from tort law analogies, as exemplified by

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[60] As Gill notes:

> [N]eglect statutes are concerned with parental behavior not as behavior per se, but only and solely as it adversely affects the child in those areas of the child's life about which the statutes have expressed concern.

Gill, *supra* note 17, at 5.

[61] *See* text accompanying notes 66-77 *infra*.

[62] CONN. GEN. STAT. REV. § 17-53 (Supp. 1973).

[63] Gill, *supra* note 17, at 5.

People ex rel. Wallace v. LaBrenz,[64] in which neglect was defined as the "failure to exercise the care that the circumstances justly demand."[65] Judge Gill would, however, place careful reliance upon experts to enlighten the court as to the existence of emotional harm in a particular case:

> No child should be found to be emotionally neglected without a psychiatric or psychological evaluation of his emotional condition. . . . Such an evaluation is not, of course, conclusive of the court's decision, but without it the petitioner's burden of proof has not been sustained. . . . [A] court without clinical services, no matter how positive the authorization of its governing neglect statute, cannot properly pass upon alleged cases of emotional neglect.[66]

Other writers, expressing concern for judicial overreaching and standards without specific content, stress the need for greater statutory precision and standardized criteria for intervention. Cheny, reflecting on the danger of unwarranted intrusion into family life, the uncertainties of psychiatric knowledge, and the imprecision of prediction based on such knowledge, argues that court intervention in cases of emotional neglect is justified only where the parent's conduct has an objectively demonstrable and severe impact on the child.[67] He asserts that such provisions should:

> [D]esignate the denial of a continious affectionate relationship as a criterion for intervention in family life . . . but should be restricted to cases where the child's intellectual development or the development of his capacities is seriously retarded.[68]

He suggests further that intervention should be based on legislative and judicial standards that focus not upon parental conduct in the abstract, but upon the impact of that conduct on the child's behavior.

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[64] 411 Ill. 618, 104 N.E.2d 769 (1952).

[65] *Id.* at 624, 104 N.E.2d at 773.

[66] Gill, *supra* note 8, at 12. One difficulty with the seemingly necessary reliance upon expert testimony of psychologists or psychiatrists is the lack of access by many to such people. A recent poll of over 1,500 juvenile court judges reveals that 83 percent did not have such access. McCune and Skeler, *Juvenile Court Judges in the United States, Part I, A National Profile*, 11 CRIME & DELINQUENCY 121, 128 (1965).

Cf. In re Farley, 162 Cal. App. 2d 474, 328 P.2d 230 (1958). *See also In re* Denise Lee Meyer, 204 N.W.2d 625 (Iowa 1973), where the Iowa Supreme Court required that psychological reports be made available to counsel prior to trial and that the persons making such reports be presented at the proceeding for cross-examination unless their unavailability could be justified. *See also In re* Delaney, 185 N.W.2d 726 (Iowa 1971).

[67] Cheney, *Safeguarding Legal Rights in Providing Protective Services*, 13 CHILDREN 87 (1966).

[68] *Id.* at 89.

Fear that uncertain standards might promote premature court intervention under joint judicial and professional ignorance has led the Children's Bureau of the United States Department of Health, Education, and Welfare to advise against legislative recognition of emotional neglect.[69] Such a view denies the hope of preventive efforts. In contrast, Cheny's view reflects a greater faith in the "state of the art" of the behavioral sciences.

Sullivan expresses serious doubt about nearly all interventions by the courts in areas involving mental health because standards are vague or nonexistent, detailed findings are scarce, and there is danger that judges will interpret their authority so as to impose their personal notions of child care and morality upon family units.[70] Expressing particular concern for parental rights, Sullivan would require, in mental health cases, the demonstration of a causal relationship between parental behavior and harm to the child in terms of a very high intervention threshold:

> [M]entally disturbing parental action would be harmful enough to justify a finding of neglect if there were a probability that such continued behavior would lead to the child's having a severe mental disturbance, i.e., psychosis or severe and debilitating neurosis.[71]

Sullivan draws a parallel between parental material impoverishment and mentally disturbing conduct and asserts that neither supports a finding of neglect.

Paulsen[72] describes the minimum required parental conduct as that which "falls below the very minimum of acceptable parental behavior."[73] This suggests a lower standard than Judge Gill's "reasonable prudence." But Paulsen also observes that neglect standards vary with such circumstances as the relationship between the child and custodian, the disposition sought in the particular proceeding, and the goal of the intervention.[74]

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[69] *See* C. FOOTE, R. LEVY & SANDERS, *supra* note 34, at 414.

[70] Sullivan, *Child Neglect: The Environmental Aspects*, 29 OHIO STATE L. J. 85 (1968).

[71] *Id.* at 113.

[72] *See* Paulsen, *supra* note 4. Elsewhere Professor Paulsen acknowledged the dilemma of emotional neglect but stated that it was a concept whose time had not yet come. Paulsen, *The Law and the Abused Child*, in THE BATTERED CHILD 186 (R. Helfer and H. Kempe eds. 1968).

[73] Paulsen, *The Delinquency, Neglect, and Dependency Jurisdiction of the Juvenile Court, in* JUSTICE FOR THE CHILD 74 (M. Rosenheim ed. 1962).

Cf. In re Adoption of H, 330 N.Y.S.2d 235 (Fam. Ct. 1972) (Neglect should be based on the minimum level of parental care tolerable in the community.).

[74] Paulsen, *supra* note 73, at 74.

The Paulsen view perhaps represents a satisfactory compromise in a search for standards for judicial intervention. Given the fear of overreaching by application of unproven hypotheses, perhaps the disposition sought should control the standard applied and the proof required for intervention. For example, if termination of parental rights is the goal of the proceeding, a greater showing of causal relationship between parental conduct and objectively demonstrable adverse impact on the child should be required than in a set of circumstances where the goal of intervention is less disruptive of the family unit. A court should always require a showing of demonstrable adverse impact on the child, but a less obtrusive intervention need not require physical manifestations. Nor, in such a situation, should it be necessary to wait for the development of classical pathologies. Under guidelines of this sort, intervention with an appropriate judicial remedy could be timely and, therefore, preventive.

IV. THE LEGISLATIVE RESPONSE

Legislative recognition of the emotional neglect of juveniles varies according to whether it focuses on a parent's own emotional or mental incapacities, on a parent's failure to meet a child's particular mental or emotional needs or incapacities, or on a general notion of a child's emotional well-being.[75] The statutory schemes share a fundamental premise: despite physical well-being, a child may still be exposed to circumstances likely to promote emotional damage to an extent warranting state intervention through the juvenile court.

A. Emotional or Mental Incapacities of the Parent

Several states define child neglect to include emotional and mental incapacities of a parent on the premise that such incapacity does or may have an adverse impact upon the child.[76] In Ohio a juvenile

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[75] A child's emotional well-being may also be considered relevant in contexts other than neglect. Thus Michigan's Child Custody Act of 1970, MICH. COMP. LAWS § 722.23 (Supp. 1974-75), provides several criteria for determination of custody disputes. In determining the best interest of the child, a court is to consider, *inter alia:*

> (a) [t]he love, affection and other emotional ties existing between the competing parties and the child. (b) [t]he capacity and disposition of competing parties to give the child love, affection and guidance . . . (g) [t]he mental . . . health of the competing parties. . . .

[76] *See* ARIZ. REV. STAT. ANN. § 8-533.2(1974); IOWA CODE ANN. § 232.2(15)(b) (1969); N.Y. FAMILY CT. ACT § 1012 (McKinney Supp. 1974-75).

court may exercise jurisdiction over "any child . . . who lacks proper care or support by reason of the mental . . . condition of his parents, guardian or custodian."[77] Similarly, in Minnesota a child may be found "dependent" because of the "emotional, mental, or physical disability, or state of immaturity of his parent[s]."[78] Nebraska recognizes a temporal dimension to parental incapacity by providing for termination of parental rights when it is in the best interests of the child and

> [T]he parents are unable to discharge parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period.[79]

It is not clear whether these statutes assume a concern that emotional instability of parents will directly affect the child's emotional health or a fear that such instability will increase the likelihood that the child's physical needs will not be adequately met. The latter reading is not similar to the conventional, physically based standard for intervention,[80] and therefore does not address the broader concept of less tangible, emotional neglect.

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[77] OHIO REV. CODE ANN. § 2151.04(B) (Page Supp. 1973). *Cf. In re* Larry and Scott H, 192 N.E.2d 683, at 686 (Ohio Juv. Ct. 1963), where evidence, based upon expert psychiatric testimony, revealed a paranoid schizophrenic parent allegedly incapable of providing proper child care. The court recognized that

> mental illness of a mother could effectively destroy the parent-child relationship and could greatly impair the mother's ability to nurture and rear her children . . ., but 192 N.E.2d at 686 conflicts in the evidence coupled with inadequate proof that the children were adversely affected resulted in denial of the dependency petition.

[78] MINN. STAT. ANN. § 260.015(6)(d) (1971).

[79] NEB. REV. STAT. § 43-209 (5) (1968). *Cf.* MICH. COMP. LAWS § 712A.19(a) (Supp. 1974).

[80] Note that courts have found neglect on the basis of parental mental disturbance without specific enabling legislation referring to it. *See* Belisle v. Belisle, 27 Wis. 317, 134 N.W.2d 491 (1965). (An emotional disturbance of a parent harmful to a minor child's welfare is tantamount to a finding of unfitness.); Todd v. Superior Court, 68 Wash.2d 587, 414 P.2d 605 (1966) (Parents' disturbed condition rendered the home an "unfit place."). A thoughtful dissent concedes that "mental illness of a parent will, of course, affect the attitudes and emotional well-being of a child" but questions whether the legislature meant to empower the court to take charge of a child whenever its parent is not providing it with a perfectly healthy atmosphere. *Id.* at 599, 414 P.2d at 612. *See also* State v. Blum, 1 Ore. App. 409, 463 P.2d 367 (1970), terminating parental rights of a mentally ill mother of an illegitimate child where the mother was unable to provide physical or emotional care for the child and her condition was considered permanent. *Cf. In re* Millar, 40 App. Div. 2d 637, 336 N.Y.S.2d 144 (1972) (a child living alone with a chronic paranoid and severely psychotic, schizophrenic mother held to be "in imminent danger" by becoming mentally or emotionally impaired).

B. Failure of the Parent to Care for the Child's Mental Disability

The most common type of neglect provision touching upon a child's emotional well-being deals with the refusal or neglect by the parent to adequately care for the child's demonstrated mental or emotional condition.[81] Under such legislation, where a child has a highly visible emotional problem or mental disorder, a parent may be required to secure appropriate treatment or be confronted with juvenile court intervention. Mississippi, for example, defines a neglected child as one who " . . . lacks the special care made necessary for him by reason of his mental condition, whether said condition be mentally defective or mentally disordered."[82] Minnesota employs similar language: refusal of a parent to provide necessary mental health care constitutes neglect;[83] inability to provide it warrants an adjudication of dependency.[84] Florida defines as "dependent" a child who is neglected as to "psychiatric, psychological or other care necessary for his well-being."[85]

This notion of neglect does not focus on the adequacy of the interpersonal relationship between parent and child. Advocates of jurisdiction over this broader relationship argue that use of failure to provide special care to trigger jurisdiction prevents courts from intervening in time to adequately serve the interests of the child.[86]

C. Emotional Neglect as a Substantive Jurisdictional Criterion

Emotional neglect has been acknowledged as a substantive jurisdictional criterion in only a handful of states. Some states provide for court intervention in behalf of children deprived of "emotional well-being,"[87] in those terms or in equivalent language.

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[81] *See* Sullivan, *supra* note 70, at 110.

[82] MISS. CODE ANN. § 43-21-5 (1972). This is representative legislative language. *See also* NEB. REV. STAT. § 43-201(3)(d) (1974); OHIO REV. CODE ANN. § 2151.03(D) (Page Supp. 1973).

[83] MINN. STAT. ANN. § 260.015(10)(d) (Supp. 1974).

[84] MINN. STAT. ANN. § 260.015(6)(b) (Supp. 1974).

[85] FLA. STAT. ANN. § 39.09(10)(d) (Supp. 1974). *See also* ARIZ. REV. STAT. § 8-201(2) (1974); WIS. STAT. ANN. § 48.13(1)(e) (1957).

[86] Gill, *supra* note 17, at 5; Katz, *supra* note 8, at 64.

[87] *See, e.g.,* ARIZ. REV. STAT. § 8-201(2) (1974) ("emotional well-being"); CONN. GEN. STAT. REV. § 17-53 (Supp. 1974-75) ("denied proper care. . . emotionally. . ."); GA. CODE ANN. § 24A-401(h)(1) (Supp. 1974) (without "care or control necessary for . . . emotional health . . ."); MICH. COMP. LAWS ANN. § 712A.2(b)(1) (Supp. 1974); ORE. REV. STAT. § 419.476 (1973). *Cf.* UNIFORM JUVENILE COURT ACT § 5(1) (without " . . . care . . . necessary for. . . mental, or emotional health. . . .").

The language of these statutes lacks further explication, guidance, or standards, thus lending themselves to a broad reading.[88] Thus Oregon defines a neglected child as one whose parent or legally responsible guardian has " . . . failed to provide him with the care, guidance, and protection necessary for his . . . mental or emotional well-being."[89]

Some jurisdictions have attempted to express legislative intent more explicitly. Minnesoat, for example, provides for jurisdiction in circumstances of parental incapacity and failure to provide for special emotional needs and then resorts to general language to define a dependent child as one who is ". . . without . . . other care necessary for his . . . mental health . . . because his parent . . . neglects or refuses to provide it."[90]

Idaho has provided additional specificity by granting juvenile court jurisdiction over children evidencing "emotional maladjustment," which refers to:

> [T]he condition of a child who has been denied proper parental love, or adequate affectionate parental association, and who behaves unnaturally and unrealistically in relation to normal situations, objects and other persons.[91]

This provision conveys an operational idea of what is meant by emotional neglect. In addition to explicitly recognizing the dynamics of intra-family relations, the definition provides a court with some interpretive guidance. While its requirement of a demonstrable impact on the child may retard early intervention, it is unique in its identification of inadequate parental love and affection as a component of neglect. The provision transcends the traditional physical touchstones of neglect and, for that reason, could stimulate prevention-oriented intevention.

The Canadian Province of Ontario authorized its family courts to intervene under the 1954 Child Welfare Act on behalf of

[88] It is suggested that this was the intent of the Connecticut and Michigan legislatures in enacting their provisions. *See* Comment, *supra* note 41, at 105 and note 6 *supra*. One Connecticut case, through reversing an emotional neglect adjudication, implies such an intent from prior legislation. Suprenant v. Commission of Welfare, 21 Conn. Supp. 154, 148 A.2d 669 (1958).

[89] ORE. REV. STAT. § 419.476(a) (1973).

[90] MINN. STAT. ANN. 260.015 10(c) (Supp. 1974). Gill criticizes this approach as focusing on the parent rather than on the impact on the child. Gill, *supra* note 17, at 12. Katz finds the statute more susceptible to a child-oriented interpretation encompassing the totality of the child's well-being. S. KATZ, *supra* note 8, at 60-62.

[91] IDAHO CODE ANN. § 16-1625 (Supp. 1974). This is the language employed by Mulford, *supra* note 9, at 4.

> [A] child who is emotionally rejected or deprived of affection by the person in whose charge he is to a degree that on the evidence of a psychiatrist who is on the register of specialists in psychiatry of the Royal College of Physicians and Surgeons of Canada or of the College of Physicians and Surgeons of Ontario is sufficient to endanger his emotional and mental development.[92]

This provision was changed in the 1965 Child Welfare Act, which defined "a child in need of protection" as, *inter alia,*

> [A] child whose emotional or mental development is endangered because of emotional rejection or deprivation of affection by the person in whose charge he is.[93]

The provision is employed with regularity.[94] This provision, in terms similar to Idaho's, recognizes deprivation of affection as a jurisdictional basis for court intervention. The threshold of intervention is arguably lower in Ontario than in Idaho because, in Ontario, rejection or deprivation of affection sufficient to endanger emotional or mental development is sufficient in itself to permit court intervention.

New York's neglect provision represents the most thorough functional definition of emotional neglect as a basis for state intervention.[95] The jurisdictional provisions take emotional health into account in the operational definitions both of an abused child[96] and a neglected child.[97] The provision defines emotional health in terms of specific functional manifestations. "Impairment" of a child's "emotional health" and "impairment of mental or emotional condition" includes:

> [A] state of substantially diminished psychological or intellec-. tual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including incorrigibility, ungovernability or habitual

[92] Child Welfare Act of 1954, REV. STAT. OF ONT., c. 64, 20(1)(b)(xi).

[93] Child Welfare Act of 1970, REV. STAT. OF ONT., c. 64, 20(1)(b)(xi).

[94] Letter from Betty Graham, Director of Child Welfare in Ontario, to Oakland County Juvenile Court, April 28, 1971. In the Province of New Brunswick, similar Family Court jurisdiction has been enacted, though still requiring written psychiatric evidence. Child Welfare Act, S.N.B. 1966 c. 3 § 7(g).

[95] N.Y. FAMILY CT. ACT §1011 *et seq.* (McKinney Supp. 1974-75).

[96] *Id.* § 1012(e) (Supp. 1974-75).

[97] *Id.* § 1012(f) (Supp. 1974-75).

> truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward this child.[98]

The requirement of "substantially diminished psychological or intellectual functioning" sets a high threshold for court intervention, but this is countered somewhat by the language of Section 1012(f)(i), which suggests latitude for prediction of potential harm.[99] The provision does not specifically suggest that deprivation of parental love and affection is necessarily a component of impaired mental or emotional health, except to the extent that "failure to thrive" is premised on that notion.[100] Another unique feature of the statute is the linking of emotional and mental impairment to such phenomena as incorrigibility, ungovernability, and truancy. These phenomena are frequently reserved for delinquency provisions and acted upon under that rubric rather than in the context of child neglect. That such behavior on the part of children should be explicitly recognized as touchstones of emotional neglect is significant.

To invoke court jurisdiction, the New York provision requires a showing that impairment of emotional health is "clearly" the result of parental unwillingness or inability to exercise a minimum degree of care.[101] Like traditional neglect provisions, it looks to parental conduct to determine culpability; like more modern provisions, it requires scrutiny of the impact upon the child for a determination of the effect of such conduct.

V. CONCLUSION

Court jurisdiction over cases of emotional neglect can be an important tool to advance the goals of child protection as well as the concept of a minor's legal right to an emotionally healthy environment. But there are factors that counsel against hasty or ill considered invocation of the court's jurisdiction—particularly where it will result in termination of parental rights. Although many children are subjected to extreme deprivation, both physically and emotionally, they later make appropriate adjustments and

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[98] *Id.* § 1012(h) (Supp. 1974-75).

[99] The statutory language includes " . . . imminent danger of becoming. . . ."

[100] *See* note 43 and accompanying text *supra*.

[101] *Id.* § 1012 (h) (Supp. 1974-75).

not infrequently come out of the experience unscathed. There is an acknowledged lack of predictive capability on the part of the expert disciplines from which dispositive evaluations and recommendations must be drawn. Frequently, the judicial process can offer no better an environment than the one to which the child is already exposed. Court involvement itself may have an undesirable impact upon the child. Removal from even an emotionally neglectful parent may be emotionally detrimental. These considerations undoubtedly import a tension with which juvenile courts must live if the state is to recognize mental health as a legitimate basis for intervention into the life of the family.

There must be a reconciliation of the conflicting goals of early intervention, effective prevention of harm, and premature intrusion in violation of a traditionally respected zone of privacy. The power of the juvenile court is extensive; the neglect context in particular permits wide discretion. But despite the residuum of judicial power, the juvenile court is an institution of limited capacities. The power to intervene may be expansive, but it ought to be employed with a measure of humility, in recognition of the court's own limitations. If the state is required to present an articulated, reasoned, and authoritatively documented case, with full opportunity for interested parties, represented by counsel, to challenge judicial conclusions, then the needs of society and emotionally neglected juveniles may be well met.

—*James B. Stoetzer*