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TERMINATION OF PARENTAL RIGHTS—AN ANALYSIS OF VIRGINIA'S STATUTE

I. INTRODUCTION

The act of terminating parental rights—the total and permanent severance of the parent-child relationship—is an example of extreme intervention by the state in an individual's private interests. It involves the complex interrelations of a trilogy: the parents' natural rights, the child's personal interests, and the state's interest in the welfare of its citizens.

Historically, the child was the absolute property of his father. Child abuse in its most extreme forms (infanticide and abandonment) was a common and accepted occurrence.¹ By the early 1700's, this patriarchal model was altered with the introduction of the doctrine of *parens patriae*.² Under this doctrine, the state, as protector and guardian of the child's best interest, justified and today continues to justify its intervention into a parent's control over his child. Nonetheless, under early English common law, the custody right of the father continued to be absolute in most instances.³ When transported to this country, the English common law was transformed from an absolute custody right in the father to a custody right "interrelated with his duty to provide support";⁴ and, while the father's custody right was superior to the mother's, custody passed to her at his death.

While early common law of the United States tempered parental rights with parental responsibilities, the courts and public authorities did not begin to intervene in family life to protect children from parental neglect

1. For an excellent discussion of the historic maltreatment of children, see Thomas, *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C.L. Rev. 293 (1972).

2. *Parens patriae*, literally "parent of the country," had its origin in the eighteenth century English Court of Chancery which recognized that the King had a duty to protect every subject who was incapable of self-protection. Mental incompetents and infants were included in this category. See *Eyre v. Shaftsbury*, 24 Eng. Rep. 659 (Ch. 1722).

The doctrine's early application was limited to protecting the child's interest in real property from misappropriation by a testamentary guardian or father. *E.g.*, *Wellesley v. Beaufort*, 38 Eng. Rep. 236 (1827). See also Note, *Termination of Parental Rights and the Lesser Restrictive Alternative Doctrine*, 12 TULSA L.J. 528, 529-30 n.10 (1977)[hereinafter cited as *Termination*].

3. "Despite the extension of the *parens patriae* doctrine in the Court of Chancery, courts of law in England continued to recognize the parent's right absolute to the child" for some time. See *De Manneville v. De Manneville*, 32 Eng. Rep. 762 (Ch. 1804). *Termination*, *supra* note 2, at 530 n.10.

4. Thomas, *supra* note 1, at 299.

and abuse until the nineteenth century.⁵ These early efforts were directed toward preventing the neglected or abused child from a future life of crime, thereby reflecting a possibly greater concern for protection of society than for protection of the child.

By the twentieth century, this "preventive" philosophy had given way to concern for "the best interests of the child"⁶ interlaced with a presumption that such interest lay with custody in the natural parent. In balancing the rights of parents, child, and state, the courts found this presumptive parental right could be forfeited through voluntary agreement, abandonment or parental unfitness.⁷ The parents no longer had a property or absolute right to custody of their child.⁸

Today, although a few courts have discounted biological parenthood and have looked instead to the psychological parent in determining custody or termination matters,⁹ the prevailing view continues to center on a rebuttable presumption that the best interests of the child are served by custody with the natural parents.¹⁰ Also the common law vestiture of parental rights in the father is currently giving way to equal rights of both

5. *Id.* at 306.

6. Under the "best interest of the child" concept, "the court should ideally give primary attention to the child's individual needs." Note, *Termination of Parental Rights - Suggested Reforms and Responses*, 16 J. FAM. L. 239, 243 (1977-78). However, in practice, the child's interests are often subordinated to parental rights. See generally J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 4, 54 (1973).

See also *Finlay v. Finlay*, 240 N.Y. 429, 148 N.E. 624 (1925), an early case recognizing "the best interests of the child" doctrine.

7. A great deal of ambiguity exists in the term "unfitness." The meaning has ranged from moral delinquency (e.g., *Rogers v. Commonwealth*, 176 Va. 355, 11 S.E.2d 584 (1940)) to lack of ability (e.g., *In re McDonald*, 201 N.W.2d 447 (Iowa 1972)) to unwillingness or indifference (e.g., *In re Jones*, 59 Misc. 2d 69, 297 N.Y.S.2d 675 (1969)). See also Leavell, *Custody Disputes and the Proposed Model Act*, 2 GA. L. REV. 162, 176-78 (1968).

8. Cf. *Prince v. Massachusetts*, 321 U.S. 158 (1944) (while recognizing the private realm of family life, the Court also stated that the rights of parenthood may be limited).

9. A psychological parent has been defined as "one who, on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's psychological needs for a parent, as well as the child's physical needs." J. GOLDSTEIN, *supra* note 6, at 98. See also *Hoy v. Willis*, 165 N.J. Super. 265, 398 A.2d 109 (1978) (although there was no finding of parental unfitness or abandonment, the court awarded custody to the foster mother who had become the child's psychological parent). This case was a custody rather than a termination decision. A finding of severe harm to the child's development or parental unfitness would be required in a termination decision.

10. E.g., *In re Atwood*, 2 Kan. App. 2d 680, 587 P.2d 1 (1978); *Rocka v. Roanoke County Dep't of Pub. Welfare*, 215 Va. 515, 211 S.E.2d 76 (1975); *Judd v. Van Horn*, 195 Va. 988, 81 S.E.2d 432 (1954) (although a custody matter rather than termination of parental rights, the court noted the presumption that the child's best interests are served in custody of its natural parents).

parents.¹¹

The broad and ambiguous concept of "best interests of the child," with its presumptive preference for natural parents' custody rights, was critically examined during the last two decades. The use of x-ray technology exposed many incidents of child abuse and heightened public awareness of the extent of the problem. In response to public pressure, state legislatures undertook major reforms of their child neglect and abuse statutes. These reforms included statutory authorization, often for the first time, of the termination of parental rights. By 1977, nearly every state had a statute under which parental rights may be terminated.¹²

This article will trace the development of the trilogy of parent, child, and state interests in Virginia case law,¹³ which set the stage for Virginia's first statutory termination of parental rights in 1960.¹⁴ An analysis of Virginia's current statute¹⁵ will be undertaken by comparing two model termination of parental rights statutes and by drawing upon recent cases challenging the constitutionality of such statutes. This article addresses the termination of parental rights only for reasons of neglect, abuse and abandonment, and does not consider terminations arising from divorce or from adoption proceedings, for which other statutes are provided.

II. THE CASE LAW IN VIRGINIA - A PRECURSOR OF THE STATUTORY STANDARDS FOR TERMINATION OF PARENTAL RIGHTS

In dealing with the triadic interests of parent, child, and state, much of Virginia's case law applies to contested custody rights between natural parents and third parties and does not consider the termination of parents' rights. The cases are nevertheless relevant because the courts, in assessing the relative interests of the affected parties, treat the two situations similarly.¹⁶ These court developed custody concepts were explicitly incorporated within Virginia's first termination statute.¹⁷

11. 59 AM. JUR. 2d *Parent and Child* § 11 (1971).

12. See *Termination*, *supra* note 2, at 528 n.3 for a list of state statutes on termination of parental rights.

13. The Virginia cases discussed *infra* are primarily custody and not termination situations. The custody situations chosen are those between parents and nonparents. Nonetheless, in balancing the interests of the child and parent or parents, the court has utilized the same standard for both situations, *i.e.* the best interest of the child conditioned by the biological parent preference.

14. 1960 Va. Acts, c.331 at 392-94 (repealed 1977 Va. Acts, c.559).

15. VA. CODE ANN. § 16.1-283 (Cum. Supp. 1980).

16. Compare *Williams v. Williams*, 192 Va. 787, 66 S.E.2d 500 (1951) with *Berrien v. Greene County Dep't of Pub. Welfare*, 216 Va. 241, 217 S.E.2d 854 (1975).

17. *E.g.*, 1960 Va. Acts, c.331 at 393 permitted termination "[i]f proper studies indicate

As early as 1886, the Virginia Supreme Court in *Merritt v. Swimley*¹⁸ established the rule that "the best interests of the child" is the chief consideration in custody disputes between natural parents and third parties.¹⁹ However, a strong presumption continued that the best interests of the child rested in his custody with a natural parent.²⁰ The state, as *parens patriae*, would interfere with parental rights to custody only upon "strong and convincing proof"²¹ of voluntary surrender, abuse or parental unfitness.²² Additionally, the court stated unequivocally that the parents held no property right in their children.²³ The parents' right to custody was deemed to be a legally cognizable though limited right based "upon natural justice and wisdom, and being essential to the peace, order, virtue and happiness of society."²⁴ Another rule specified that the wishes of the child, while not conclusive, were entitled to consideration.²⁵ These rules continue to be followed by the Virginia courts today. They are also reflected in the following provisions of the termination statute: "clear and convincing" proof is required;²⁶ the "best interest of the child" is considered;²⁷ parental actions which may constitute prima facie evidence of unfitness are specified;²⁸ the wishes of the child are taken into account.²⁹

The first Virginia statute authorizing termination of parental rights was enacted in 1960. It stated in part: "If proper studies indicate that it is for the child's best interest and that of the State that such child be separated permanently from its parent . . . the order of commitment shall so state. . . ."³⁰ Although the 1960 statute spoke only of "the best interest

that it is for the child's best interest. . . ."

18. 82 Va. 433 (1886).

19. *Id.* at 440.

20. *Id.* at 436. *Accord*, *Rocka v. Roanoke County Dep't of Pub. Welfare*, 215 Va. 515, 211 S.E.2d 76 (1975); *Berrien v. Greene County Dep't of Pub. Welfare*, 216 Va. 241, 217 S.E.2d 854 (1975).

21. *Rocka v. Roanoke County Dep't of Pub. Welfare*, 215 Va. 515, 211 S.E.2d 76 (1975); *Williams v. Williams*, 192 Va. 787, 66 S.E.2d 500 (1951); *Sutton v. Menges*, 186 Va. 805, 44 S.E.2d 414 (1947) (the evidence of unfitness must be "cogent and convincing").

22. *Merritt v. Swimley*, 82 Va. 433, 436 (1886).

23. *Id.* at 440.

24. *Walker v. Brooks*, 203 Va. 417, 421, 124 S.E.2d 195, 198 (1962). *See also* *Lawson v. Lawson*, 198 Va. 403, 94 S.E.2d 215 (1956); *Judd v. Van Horn*, 195 Va. 988, 81 S.E.2d 432 (1954); *Merritt v. Swimley*, 82 Va. 433 (1886).

25. *Williams v. Williams*, 192 Va. 787, 66 S.E.2d 500 (1951); *Sutton v. Menges*, 186 Va. 805, 44 S.E.2d 414 (1947); *Merritt v. Swimley*, 82 Va. 433 (1886).

26. VA. CODE ANN. § 16.1-283(B) and (C)(Cum. Supp. 1980).

27. *Id.*

28. *Id.* § 16.1-283(B)(2)(a)-(c) and (C)(2)(a)-(b).

29. *Id.* § 16.1-283(E).

30. 1960 Va. Acts, c.331 at 393 (repealed 1977 Va. Acts, c.559).

of the child," the Virginia Supreme Court in *Rocka v. Roanoke County Department of Public Welfare*³¹ and in *Berrien v. Greene County Department of Public Welfare*³² reemphasized the presumptive parental right by holding that the natural parent is entitled to custody of the child unless the non-parent proves by clear and convincing evidence that the parent is unfit and that the best interests of the child require termination.

The 1960 statute was repealed and superseded by the present law in 1977 (as amended in 1978, 1979, and 1980)³³ after a study of the Juvenile Code in Virginia recommended the adoption of more specific guidelines for the termination of parental rights.³⁴ The one case decided under the current statute, *Weaver v. Roanoke Department of Human Resources*,³⁵ reversed the lower court's order terminating parental rights and stressed the court's respect for "[t]he preservation of the family and in particular the parent-child relationship."³⁶ Thus, up to now, the Virginia courts, with or without a statute, have considered the best interests of the child, but that interest is conditioned by a strong predilection for parental right to custody.

III. VIRGINIA'S STATUTE AND THE ABA AND JUVENILE COURT JUDGES MODEL STATUTES - A COMPARATIVE ANALYSIS

Virginia's present statute for the termination of parental rights reflects in part the rules promulgated by the court in prior case law. The statute

31. 215 Va. 515, 211 S.E.2d 76 (1975). *Accord*, *Shank v. Dep't of Social Serv.*, 217 Va. 506, 230 S.E.2d 454 (1976)(upholding the court's authority to terminate parental rights).

32. 216 Va. 241, 217 S.E.2d 854 (1975).

33. VA. CODE ANN. § 16.1-283 (Cum. Supp. 1980).

34. VIRGINIA ADVISORY LEGISLATIVE COUNCIL, SERVICES TO YOUTHFUL OFFENDERS: REVISION OF THE JUVENILE CODE, S. DOC. NO. 19 at 14-15 & App. at 51-53 (1976). *See also*, VIRGINIA ADVISORY LEGISLATIVE COUNCIL, NEEDS OF YOUNG CHILDREN, H. DOC. NO. 24 at 20-21 (1976) and proposed legislation, *id.*, App. at 44-46.

35. ____ Va. ____, 265 S.E.2d 692 (1980).

36. *Id.* at ____, 265 S.E.2d at 695. The court's decision in this case dealt with the new standards specified in § 16.1-283(C)(2). After examining the record, the court held that while the evidence showed that Mr. Weaver had failed to remedy the conditions leading to placement of his children, there should be no termination since the record did not indicate the statutorily required assistance of rehabilitation agencies in such remediation. Likewise, in reversing the termination of Mrs. Weaver's parental rights, the court concluded that even if the mother's financial condition could be considered a factor in the children's placement, the record indicated no offering of assistance to her in order to remedy such condition. The court seemed to be requiring a strict and full compliance with the agency assistance provision of the statute since proof that the human resource department worked with Mr. Weaver in setting goals for himself was not deemed a sufficient effort.

is clothed in terms of "best interest of the child" and parental conduct. However, as discussed below, significant changes signal an increased awareness of the child's needs. This section will analyze the Virginia statute and then evaluate it viz-a-viz two model statutes for termination of parental rights: those of the National Council of Juvenile Court Judges³⁷ and the American Bar Association.³⁸

The general purpose and intent clause governing Virginia's Juvenile Code, and the termination provisions therein, reflect the legislative concern for and support of the integrity of the family. It states in part: "[T]he welfare of the child *and* the family is the paramount concern of the State. . . . This law shall be interpreted and construed so as to effectuate the following purpose[s]: To separate a child from such child's parents . . . *only* when the child's welfare is endangered. . . ."³⁹ The termination statute itself begins with a subsection granting the courts the power to terminate residual parental rights.⁴⁰ Such action must be in a separate proceeding; it may not be part of a proceeding for neglect or abuse.⁴¹ Furthermore, "the filing of a foster care plan, pursuant to section

37. NATIONAL COUNCIL OF JUVENILE COURT JUDGES, MODEL STATUTE FOR TERMINATION OF PARENTAL RIGHTS, reprinted in [1978 Reference File] FAM. L. REP. (BNA) 0069 (June 14, 1977) [hereinafter cited as JUV. CT. JUDGES MODEL]. See also Lincoln, *Model Statute for Termination of Parental Rights*, 27 JUV. JUST. 3 (No. 4) (1976).

38. IJA-ABA JUVENILE JUSTICE STANDARDS PROJECT, STANDARDS RELATING TO ABUSE AND NEGLECT 9-33, 148-63 (Tentative Draft 1977).

While the American Bar Association adopted seventeen "standards" volumes from the Juvenile Justice Standard Project, no action has yet been taken on the standards relating to abuse and neglect. ABA, SUMMARY OF ACTION OF THE HOUSE OF DELEGATES 6-7 (February 1979).

See also JUVENILE JUSTICE STANDARDS OF THE IJA-ABA, *Abuse and Neglect*, reprinted in [1978] FAM. L. REP. (BNA) 3105, 3111-12 [hereinafter cited as ABA MODEL].

Although not discussed in this article, a third model act is of interest for reference purposes: N. KATZ, *Model Act to Free Children for Permanent Placement with Commentary*, reprinted in [Reference File] FAM. L. REP. (BNA) 201:0077.

39. VA. CODE ANN. § 16.1-227 (Cum. Supp. 1980) (emphasis added).

40. VA. CODE ANN. § 16.1-283(A) (Cum. Supp. 1980). Residual parental rights are defined as "all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support." *Id.* § 16.1-228(S).

41. VA. CODE ANN. § 16.1-283(A) (Cum. Supp. 1980). The requirement of a separate proceeding is the result of the 1980 amendment to the termination statute which became effective July 1, 1980. 1980 Va. Acts, ch. 295 at 325. It represents a significant change from the old law which permitted a termination action in a separate proceeding or in a neglect or abuse proceeding. 1979 Va. Acts, ch. 281. The separate proceeding provision appears to be in conflict with the section providing for disposition upon the finding of neglect or abuse. One disposition option is termination. VA. CODE ANN. § 16.1-279(A)(5)(Cum. Supp. 1980).

16.1-281, which documents termination of residual parental rights as being in the best interests of the child,"⁴² is a prerequisite to the filing of a termination petition. Provision is also made for notice of the termination proceeding to be served upon the parents and certain foster parents.⁴³

In subsection B, the statute provides standards permitting, but not mandating, termination of parental rights "of a parent or parents of a child found by the court to be neglected or abused *and* placed in foster care as a result of (i) court commitment, (ii) an entrustment agreement . . . or (iii) other voluntary relinquishment by the parent or parents."⁴⁴ These standards invoke three criteria: first, "the best interests of the child"; second, neglect and abuse which present "a *serious and substantial* threat to [the child's] life, health or development"; and third, that "the conditions which resulted in such neglect or abuse" are not reasonably likely to change.⁴⁵ The focus on serious harm to the child represents a significant departure from the terminology of the 1960 statute, referring solely to "best interests of the child," and also from decisions of the courts concerning "best interests of the child" and "unfitness" of the parents. Although the term is not used, parental fitness seemingly remains a factor in today's statutory standards.⁴⁶ However, the child is

However, any real discrepancy may be illusory as the section provides for termination pursuant to section 16.1-283 of the Code. Apparently, as a result of the new mandate for a separate proceeding for termination petitions, the 1980 amendments eliminated the six month interlocutory period previously provided in section 16.1-283(B). 1980 Va. Acts, ch. 295 at 326.

42. VA. CODE ANN. § 16.1-283(A) (Cum. Supp. 1980). This provision was added in 1980. 1980 Va. Acts, ch. 295.

43. VA. CODE ANN. § 16.1-283(A) (Cum. Supp. 1980).

44. *Id.* § 16.1-283(B) (emphasis added).

The 1980 Amendment added the language appearing after the conjunction, "and." 1980 Va. Acts, ch. 295. This change represents an added requirement of a foster care placement prior to termination upon a finding of neglect or abuse. It reflects the importance which the legislature has continued to place on the preservation of the family.

"Abused or neglected" means any child whose parents or other person responsible for his care:

1. Creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;
2. Neglects or refuses to provide care necessary for his health . . . ;
3. Abandons such child; or
4. Commits or allows to be committed any sexual act upon a child in violation of law

VA. CODE ANN. § 16.1-228(A) (Cum. Supp. 1980).

45. *Id.* § 16.1-283(B)(1)-(2).

46. The statute lists parental conduct which constitutes *prima facie* evidence that the

given new and independent consideration. Evidence of an awareness of the child's needs is present in subsection C which sets forth standards for termination when a child is in foster care. It provides for prompt and final determination following "parental failure, within twelve months, to maintain contact with children or to 'remedy' within a reasonable period the conditions that lead to placement."⁴⁷ The focus here is completely on parental conduct, although implicitly the statute recognizes psychological harm to the child and the child's need for continuity of relationship.⁴⁸ This subsection also requires proof that appropriate and reasonable supportive services have been offered to strengthen the parent-child relationship. Thus, a specific duty is imposed upon the state to make every reasonable effort to preserve the integrity of the family before severing all parental rights.

Subsection D provides for termination of residual parental rights upon the ground of abandonment when, after diligent efforts, the identity of the parents cannot be ascertained and if, within six months of an order placing the child in foster care, no parent, relative, or guardian comes forth to identify such child.⁴⁹ The last subsection, E, prevents termination of parental rights upon the objection of a child fourteen years of age or older or of a younger child in the court's discretion.⁵⁰ This provision is a statutory enactment of a discretionary action long recognized by the Virginia Supreme Court.⁵¹ It should be emphasized that the standard of proof required by the statute is one of "clear and convincing evidence."⁵² In addition, the child's and the parent's rights to counsel for termination proceedings are provided for by statute.⁵³

The Virginia statute may be compared with the model statutes as to standards for termination, phraseology, burden of proof, right to counsel, poverty clauses, and time considerations. The standards set forth in the Juvenile Court Judges Model, although more extensive, parallel the Vir-

conditions related to the neglect or abuse are not reasonably likely to change. *Id.* § 16.283(B)(2)(a)-(c)(Cum. Supp. 1980). See the discussion of unfitness in *Weaver v. Roanoke Dep't of Human Resources*, _____ Va._____, 265 S.E.2d at 696 n.5 (1980).

47. Derdeyn, Rogoff, & Williams, *Alternatives to Absolute Termination of Parental Rights After Long-Term Foster Care*, 31 VAND. L. REV. 1165, 1183 (1978). See also VA. CODE ANN. § 16.1-283(C) (Cum. Supp. 1980).

48. See note 9 *supra* and accompanying text.

49. VA. CODE ANN. § 16.1-283(D) (Cum. Supp. 1980).

50. *Id.* § 16.1-283(E).

51. See *Sutton v. Menges*, 186 Va. 805, 44 S.E.2d 414 (1947); *Merritt v. Swimley*, 82 Va. 433 (1886).

52. VA. CODE ANN. § 16.1-283(B)-(C) (Cum. Supp. 1980).

53. *Id.* § 16.1-266.

ginia approach in setting standards of parental conduct.⁵⁴ Neither statute limits the court's consideration to the standards listed.⁵⁵ In contrast, the ABA Model enumerates standards to consider in termination proceedings solely in terms of endangerment or detriment to the child.⁵⁶ No parental conduct is mentioned. Another significant difference in the ABA Model is that termination, although not required, is limited to the grounds listed in the statute.⁵⁷ Both model statutes eliminate the use of the term "best interests of the child." Virginia's statute continues to use this terminology which is often criticized for the vagaries of its meaning.⁵⁸

Virginia's statute is the most demanding in burden of proof, requiring "clear and convincing evidence."⁵⁹ The ABA Model seems to require a like standard,⁶⁰ while the Juvenile Court Judges Model suggests the less exacting "preponderance of the evidence" standard.⁶¹ As to the child's and parent's rights to representation by counsel, the model statutes and Virginia's statute are in agreement. All provide for separate counsel for the child and the parent or parents involved in a termination proceeding.⁶² An additional consideration is provided in the ABA Model's poverty or cultural differences clause, which alerts "all decisionmakers [to] examine the child's needs in light of the child's cultural [and economic]

54. Compare VA. CODE ANN. § 16.1-283(B)(2)(a)-(c) (Cum. Supp. 1979) with JUV. CT. JUDGES MODEL, *supra* note 37, § 12(1)(a)-(g) and 2(a)-(d). Both state that the court in termination matters should consider proof of parental mental illness or mental deficiency, drug or alcohol abuse or addiction to the extent that there is no reasonable likelihood in the foreseeable future that such parent will have the capacity to care for the child's needs.

55. The JUV. CT. JUDGES MODEL specifically states that the court shall consider but is not limited to the standards listed. On the other hand, the Virginia statute, by the absence of obligatory language, fails to limit the court solely to the standards listed.

56. *State v. Robert H.*, 118 N.H. 713, —, 393 A.2d 1387, 1389 (1978) (in supporting the ABA MODEL's endorsement of state intervention only in terms of specific harm to the child, the court noted that the New Hampshire statute's lack of adequate focus on specific harm to the children carried a substantial risk of intervention to "save" children of poor parents or minority cultures).

57. ABA MODEL, *supra* note 38, §§ 2.1(A)-(F) and 8.2(B). *Contra*, *State v. Metteer*, 203 Neb. 515, —, 279 N.W.2d 374, 378 (1979) (stating that a precise checklist might be more destructive of family integrity than leaving some discretion with the court).

58. The phrase, "best interests of the child," if unfettered, means the child's needs are to be paramount. However, in practice the child's needs have been intertwined and often subjugated to "parental rights." See generally Gordon, *Terminal Placement of Children and Permanent Termination of Parental Rights*, 46 ST. JOHNS L. REV. 215, 221-25 (1971).

59. VA. CODE ANN. § 16.1-283(B) and (C) (Cum. Supp. 1980).

60. See ABA MODEL, *supra* note 38, § 8.3(A) and (B). These subsections refer to a "clear and convincing" burden of proof when using one of the statutory exceptions to termination. The exceptions are listed in ABA MODEL, *supra* note 38, § 8.4(A)-(D).

61. JUV. CT. JUDGES MODEL, *supra* note 37, § 8.

62. *Id.* § 7; ABA MODEL, *supra* note 38; VA. CODE ANN. § 16.1-266 (Cum. Supp. 1980).

background.⁶³

Finally, while both model statutes require shorter periods of time to elapse for termination on grounds of abandonment than does Virginia's statute,⁶⁴ the most distinctive time period differential appears in the ABA Model. Subsections 8.3(A) and (B) provide:

A. For children who were under three at the time of placement, a court should order termination after the child has been in placement for six months, if the child cannot be returned home at the time . . .

B. For a child over three at the time of placement, the court should order termination after the child has been in placement for one year if the child cannot be returned home at that time. . . .⁶⁵

The Virginia statute makes no age distinctions but requires a blanket twelve-month placement period before permitting termination of parental rights.⁶⁶ In this aspect the ABA Model exhibits a consideration for the child's sense of time that is absent in Virginia's statute.

In summary, substantial similarities exist between the Virginia statute and the two model statutes. All contain:

1. general purpose clauses expressing concern for the welfare of the family and the child, although the Juvenile Court Judges Model speaks exclusively of the latter;
2. enumerated standards for the court's consideration in termination of parental rights;
3. requirements of proof of the provision of supportive service in an attempt to rehabilitate the family prior to termination; and
4. child preference clauses.

Substantial differences between the Virginia statute and the model statutes are also apparent. The following characteristics of the models, were they incorporated into the Virginia statute, would improve the law

63. ABA MODEL, *supra* note 38, § 1.4. See also *In re Atwood*, 2 Kan. App. 2d 680, ____, 587 P.2d 1, 2 (1978) (holding that a child shall not be classed neglected solely because his parents are on welfare) and *State v. Robert H.*, 118 N.H. 713, ____, 393 A.2d 1387, 1390 (1978) (noting this is not an ideal world, the court held that mere inadequate parenting without specific harm to the child was insufficient to terminate parental rights).

64. The ABA Model statute provides a sixty day period of abandonment prior to termination, ABA MODEL, *supra* note 38, § 8.2(B)(1); the Juvenile Court Judges Model requires a three month period, JUV. CT. JUDGES MODEL, *supra* note 37, § 12(4); and the Virginia statute provides for a six month time lapse, VA. CODE ANN. § 16.1-283(D)(2) (Cum. Supp. 1980).

65. ABA MODEL, *supra* note 38, § 8.3(A) & (B).

66. VA. CODE ANN. § 16.1-283(C) (Cum. Supp. 1980).

on termination of parental rights in Virginia.

1. Include a poverty or cultural differences clause. Such inclusion would be of assistance in eliminating class bias from the court's decision-making process.⁶⁷

2. Eliminate such terminology as "best interests of the child," thereby avoiding a needless source of subjectivity and ambiguity.

3. Consider modified standards for termination which de-emphasize parental conduct and focus primarily on damage to the child.⁶⁸ This shift in emphasis toward harm to the child is justified by the lack of sufficient knowledge of "proper parenting" and the inability to predict the impact of parental conduct on children.⁶⁹

4. Provide explicitly for the court's consideration of psychological parenthood in termination proceedings.⁷⁰

Adoption of the last two provisions would signify major policy changes in Virginia's statute on the termination of parental rights. At a minimum, however, they merit serious study by the legislature.

67. Note, *Termination of Parental Rights - Suggested Reforms and Responses*, 16 J. FAM. L. 239, 248 (1977-78). See also *In re Atwood*, 2 Kan. App.2d 680, —, 587 P.2d 1, 2 (1978).

Many interests of the child are better served by more affluent substitute parents, "but that doesn't mean the natural parent is unfit for custody." *Rocka v. Roanoke County Dep't of Pub. Welfare*, 215 Va. 515, 518, 211 S.E.2d 76, 78 (1975).

68. *State v. Robert H.*, 118 N.H. 713, —, 393 A.2d 1387, 1389 (1978) (stating that the grounds for termination in New Hampshire's statute lacked adequate focus on specific harm to the children). See also Note, *Due Process and the Fundamental Right to Family Integrity: A Re-evaluation of South Dakota's Parental Termination Statute*, 24 S.D.L. REV. 447, 463 (1979).

An effective argument is made for eliminating all references to parental conduct in Note, *State Intrusion into Family Affairs: Justifications and Limitations*, 26 STAN. L. REV. 1383 (1974). See also ABA MODEL, *supra* note 38.

69. Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985, 1017 (1975).

70. See JUV. CT. JUDGES MODEL, *supra* note 37, § 12(3) which provides that "the Court shall in proceedings concerning the termination of parental rights . . . consider whether said child has become integrated into the foster family to the extent that his familial identity is with that family."

For a thorough discussion of the psychological parent-child relationship, see J. GOLDSTEIN, *supra* note 6. For suggested statutory time periods for determining a child's entitlement to remain with long time caretakers, see J. GOLDSTEIN, A. FREUD, and A. SOLNIT, *BEFORE THE BEST INTERESTS OF THE CHILD* 46-48 (1979).

IV. CONSTITUTIONAL CHALLENGES TO TERMINATION STATUTES - WILL VIRGINIA'S STATUTE SURVIVE SUCH ATTACKS?

Recent judicial decisions such as *Davis v. Smith*,⁷¹ *Roe v. Conn*,⁷² and *Alsager v. District Court*⁷³ have overturned termination statutes on constitutional grounds. The two most significant constitutional issues raised by these decisions are substantive due process and the void for vagueness doctrine.⁷⁴ The vulnerability of Virginia's statute to these issues may be examined, although as yet no Virginia cases have dealt with constitutional challenges to Virginia's statute authorizing termination of parental rights.

In order to assess the merits of any substantive due process challenge, it is essential to examine the constitutional nature of the rights at stake. Although three parties are involved in termination actions and each has a right at stake, in constitutional parlance it is the right to family integrity which is at stake. Through a plethora of decisions the United States Supreme Court has established the fundamental right of family relationships. In the seminal case of *Meyer v. Nebraska*,⁷⁵ which invalidated a state statute that prohibited the teaching of any modern foreign language

71. _____ Ark. _____, 583 S.W.2d 37 (1979).

72. 417 F. Supp. 769 (M.D. Ala. 1976).

73. 406 F. Supp. 10 (S.D. Iowa 1975), *aff'd*, 545 F.2d 1137 (8th Cir. 1976).

74. Procedural due process issues have also been raised. They are beyond the scope of this article; however, it is noted briefly that procedural rights in termination proceedings arguably should be concomitant with the procedural due process accorded juvenile delinquency proceedings. These rights include the right to counsel, the burden of proof, adequate notice, and the right of confrontation and cross-examination of witnesses. See *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971); *In re Winship*, 397 U.S. 358 (1970); *In re Gault*, 387 U.S. 1 (1967).

For discussion of burden of proof required in termination, see *Alsager v. District Court*, 406 F. Supp. 10 (S.D. Iowa 1975), *aff'd*, 545 F.2d 1137 (8th Cir. 1976); *In re Angelia M.P.*, 106 Cal. App. 3d 42, 164 Cal. Rptr. 849 (1980) (proof beyond a reasonable doubt); *In re Heidi T.*, 87 Cal. App. 3d 864, 151 Cal. Rptr. 263 (1978); *In re Custody of Minor*, _____ Mass. _____, 389 N.E.2d 68 (1979); *State v. Metteer*, 203 Neb. 515, 279 N.W.2d 374 (1979); *In re GM*, 396 S.W.2d 846 (Tex. 1980) (clear and convincing proof). See also VA. CODE ANN. § 16.1-283 (Cum. Supp. 1980).

In termination proceedings, the right to counsel has been widely recognized. See *In re Otis*, 6 FAM. L. REP. 2068, *cert. granted*, 444 U.S. 924 (1979); *Davis v. Page*, 618 F.2d 374 (5th Cir. 1980) (rehearing en banc granted July 8, 1980); *Roe v. Conn*, 417 F. Supp. 769 (M.D. Ala. 1976); *In re Heidi T.*, 87 Cal. App. 3d 864, 151 Cal. Rptr. 263 (1978); *In re J.Z.*, 190 N.W.2d 27 (N.D. 1971). See also VA. CODE ANN. § 16.1-266 (Cum. Supp. 1980).

The rights to adequate notice and cross-examination have also been recognized. See, e.g., *Alsager v. District Court*, 406 F. Supp. 10, 20 (S.D. Iowa 1975), *aff'd*, 545 F.2d 1137 (8th Cir. 1976).

75. 262 U.S. 390 (1923).

prior to ninth grade, the Supreme Court determined that the "liberty" guaranteed by the fourteenth amendment includes the right of the individual "to marry, establish a home and bring up children."⁷⁶ Similarly, in *Prince v. Massachusetts* the Court stated: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents. . . ."⁷⁷ More recently, in *Quilloin v. Walcott*, the Court stated that it is established that the relationship between parent and child is constitutionally protected.⁷⁸ Additionally, in *Stanley v. Illinois*⁷⁹ the Supreme Court, in declaring Illinois' dependency statute unconstitutional for depriving unmarried fathers of the custody of their natural children upon the death of their mother, acknowledged that "the integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment. . . ."⁸⁰ Certainly, no doubt remains that parents "possess a fundamental 'liberty' and 'privacy' interest in maintaining the integrity of their family unit."⁸¹

Substantive due process prohibits governmental interference with a person's right to life, liberty or property by unreasonable legislation. When the interest impinged upon is a fundamental right, it may not be interfered with in the absence of a compelling state interest and a showing that no less drastic means are available to further the public interest.⁸² These limitations are often referred to as the strict scrutiny test. The burden of proof is placed on the state to show 1) a compelling state interest and 2) no less drastic alternative is available to accomplish its goal.

In *Alsager* five or six children were removed from their home, although the evidence revealed only that the parents allowed them to annoy neighbors and play in traffic, and that the house contained dirty dishes and

76. *Id.* at 399.

77. 321 U.S. 158, 166 (1944) (emphasis added).

78. 434 U.S. 246, 255 (1978).

79. 405 U.S. 645 (1972). See also *Parham v. J.R.*, 442 U.S. 584 (1979). Although a constitutional due process challenge to procedures for voluntary commitment of infants to state mental hospitals, *Parham* recognizes the concept of family integrity with broad parental authority which ought to be easily transferred to some agency or officer of the State. *Id.* at 601-04. See *Roe v. Wade*, 410 U.S. 113 (1973); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Kruse v. Campbell*, 431 F. Supp. 180 (E.D. Va.), *vacated and remanded on other grounds*, 434 U.S. 808 (1977) (Although this case concerned the practice of placing handicapped children in foster care primarily to receive funding for their special education rather than termination, the court did recognize the fundamental right to family integrity).

80. 405 U.S. at 651.

81. *Alsager v. District Court*, 406 F. Supp. 10, 16 (S.D. Iowa 1975), *aff'd*, 545 F.2d 1137 (8th Cir. 1976).

82. *Roe v. Wade*, 410 U.S. 113, 155 (1973).

laundry. The termination petition alleged in statutory terms:

The best interests of the children require . . . [termination] by the Court because said parents have substantially and continuously . . . refused to give their children necessary parental care and protection and because said parents are unfit parents by reason of conduct detrimental to the physical or mental health or morals of their children.⁸³

The contention in *Roe v. Conn* was that a home for a white child in a black neighborhood fitted the statutory term "improper home" and was grounds for termination of parental rights.⁸⁴ In both cases the courts found that their state's termination statute failed to meet the compelling state interest test. It is suggested that the "state's interest . . . would become 'compelling' enough to sever entirely the parent-child relationship only when the child is subjected to real physical or emotional harm."⁸⁵ The *Alsager* decision indicates that, on its own merits "the best interests of the child" fails the due process requirement of a compelling state interest. Rather "[t]he pivotal issue is whether the child is subject to substantial physical or emotional harm that would be more devastating than would termination"⁸⁶

Based upon the above reasoning, subsection B of Virginia's statute⁸⁷ should survive any substantive due process challenge. The statute's standard of "serious and substantial threat to [the child's] life, health or development"⁸⁸ clearly satisfies the compelling state interest as delineated by *Alsager* and *Conn*. However, subsection C⁸⁹ speaks only in terms of best interests of the child and parental conduct. Whether this subsection would satisfy a compelling state interest test is unclear. The best remedy would be to amend subsection C in terms addressing the specific harm to the child. However, the subsection might also be saved by the argument that the unstated purpose behind subsection C, "the avoidance of lasting psychological harm to the child, is the compelling state interest behind prompt severance of the parental relationship."⁹⁰ The least drastic alternative component of the substantive due process test is amply met through the Virginia statutory requirements for supportive services for

83. 406 F. Supp. 10 at 13-14.

84. *Roe v. Conn*, 417 F. Supp. 769 (M.D. Ala. 1976).

85. *Alsager v. District Court*, 406 F. Supp. 10, 23 (S.D. Iowa 1975), *aff'd*, 545 F.2d 1137 (8th Cir. 1976).

86. Note, *Due Process and the Fundamental Right to Family Integrity: A Re-evaluation of South Dakota's Parental Termination Statute*, 24 S.D.L. REV. 447, 453 (1979).

87. VA. CODE ANN. § 16.1-283(B) (Cum. Supp. 1980).

88. *Id.* § 16.1-283(B)(1).

89. *Id.* § 16.1-283(C).

90. *In re David B.*, 91 Cal. App. 3d 184, 196, 154 Cal. Rptr. 63, 71 (1979).

rehabilitation and the necessity to prove that there is no reasonable likelihood the condition which resulted in abuse or neglect and/or foster care can be substantially corrected or eliminated within a reasonable period of time.⁹¹ Thus, with the possible exception of subsection C, it appears Virginia's statute would survive a substantive due process challenge.

Likewise, Virginia's statute should withstand challenges based upon the void for vagueness doctrine. The void for vagueness doctrine establishes "that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards. . . ."⁹² The doctrine has been criticized for its imprecision. In fact, it seems to be less a principle regulating permissible relationships between written law and potential offender than it is a practical instrument mediating between "all the organs of public coercion of a state and . . . the *institution* of federal protection of the individual's private interests."⁹³ One commentator has therefore suggested that there is usually no voiding of a statute for vagueness unless "the individual challenging the statute is indeed one of the entrapped innocent, and that it would have been practical for the legislature to draft more precisely."⁹⁴ The United States Supreme Court has identified three inherent dangers in vague laws: the absence of fair warning, the impermissible delegation of discretion leading to subjective and arbitrary decisions, and the undue inhibitions of the exercise of a constitutional right.⁹⁵

In *Davis v. Smith*, the Arkansas Supreme Court declared void one section of the Arkansas termination statute which read "the parents are . . . unable to provide a proper home for the children."⁹⁶ The court found that the term "a proper home" did not convey sufficient warning when measured by common understanding and "would permit such a wide latitude for interpretation that its meaning would vary widely among judges"⁹⁷ Similar language in the Alabama statute was found unconstitutionally vague for lack of fair warning by the *Conn* court, which stated in part: "When is a home an 'unfit' or 'improper' place for a child? Obvi-

91. VA. CODE ANN. § 16.1-283(B)(2) and (C)(1)-(2)(Cum. Supp. 1980).

92. *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-03 (1966). For an extensive discussion of the void for vagueness doctrine see Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67 (1960) [hereinafter cited as *The Void-for-Vagueness Doctrine*]. See also *Grayned v. City of Rockford*, 408 U.S. 104 (1972).

93. *The Void-for-Vagueness Doctrine*, *supra* note 92, at 81 (emphasis in original).

94. L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 719 (1978).

95. *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

96. _____Ark_____, _____, 583 S.W.2d 37, 39-40 (1979).

97. *Id.* at _____, 583 S.W.2d at 43.

ously, this is a question about which men and women of ordinary intelligence would greatly disagree. Their answers would vary in large measure in relation to their differing social, ethical, and religious views."⁹⁸ On the same note, "the standards of 'necessary parental care and protection,' § 232.41(2)(b), and of '[parental] conduct . . . detrimental to the physical or mental health or morals of the child,' § 232.41(2)(d),"⁹⁹ found in the Iowa termination statute were declared unconstitutionally vague in *Alsager* for want of fair warning, for arbitrariness because the termination decision would turn upon which state officials were involved in the case, and for serving "to inhibit parents in the exercise of their fundamental right to family integrity."¹⁰⁰

On the other hand, Virginia's termination statute does not speak in terms of "proper home," "improper home" or *any* conduct detrimental to the physical or mental health of the child. Rather, Virginia's statute sets up a general, albeit rather vague standard, termination in "the best interests of the child,"¹⁰¹ and then it quite specifically requires that the neglect or abuse suffered must present a *serious* and *substantial* threat to the child's life, health or development.¹⁰² That a decision based solely on the "best interests of the child" would be void for vagueness is a distinct possibility.¹⁰³ However, since the Virginia statute joins "the best interests

98. *Roe v. Conn*, 417 F. Supp. 769, 780 (M.D. Ala. 1976).

99. *Alsager v. District Court*, 406 F. Supp. 10, 18 (S.D. Iowa 1975), *aff'd*, 545 F.2d 1137 (8th Cir. 1976)(brackets in the original).

100. *Id.* at 19. *Contra*, *State v. Metteer*, 203 Neb. 515, 279 N.W.2d 374, 377 (1979); *In re Keyes*, 574 P.2d 1026, 1029 (Okla. 1977)(while the majority upheld the statute, a strong dissent called the statute virtually identical to the statute struck down in *Alsager* and suggested that the facts of the case, sexual abuse of a young child, overwhelmed the majority's application of law. *Id.* at 1034).

In *Alsager* the issue of vagueness was not decided by the circuit court. Rather, the court affirmed, overturning the statute, on substantive due process grounds. However, the circuit court did note that the vagueness attack was a serious one but, in the interest of comity, afforded "the Iowa courts an additional opportunity to give the statutory provisions a plainly desirable limiting construction." *Alsager v. District Court*, 545 F.2d 1137, 1138 (8th Cir. 1976).

101. VA. CODE ANN. § 16.1-283(B)(Cum. Supp. 1980).

102. *Id.* § 16.1-283(B)(1).

103. A statute's vagueness may be remedied by sufficiently narrowing judicial construction. In *Rocka and Berrien* there was no constitutional challenge but the Virginia Supreme Court did state that a showing of best interests of the child alone was not enough for termination of parental rights. The standard set was one of best interest of the child *and* parental unfitness. These decisions could be interpreted as giving a plainly desirable limiting construction to the statutory use of "best interests of the child." Such interpretation would nullify any void for vagueness challenge. *See generally The Void-for-Vagueness Doctrine*, *supra* note 92.

The United States Supreme Court recently granted review on the question of void for

of the child" standard conjunctively with "a serious and substantial threat to [the child's] life, health or development,"¹⁰⁴ a void for vagueness challenge would most probably be unsuccessful.

The termination statutes of other states written in terms of *serious* harm to the child have survived void for vagueness attacks.¹⁰⁵ In fact, the majority of courts have upheld termination statutes challenged under the void for vagueness doctrine.¹⁰⁶ The difference in the court decisions can be explained in the specificity of standards required. In *Davis v. Smith*¹⁰⁷ the court suggests three levels of specificity. First, a requirement of strict specificity is imposed upon criminal statutes because, where personal liberty is at stake, the basic policy must not be left to arbitrary and subjective application of police or courts. Secondly, an intermediate level of specificity is proposed for termination statutes "because any parent should have some basic understanding of his obligations to his children, but many cannot be as alert to, and aware of, prevailing practices basic to establishment of standards as those engaging in business would likely be to settled and well understood standards and practices."¹⁰⁸ And finally, a lowest tier of specificity would be required of statutes regulating business.¹⁰⁹ Requiring a middle ground of specificity in statutory language would permit statutes, such as Virginia's, with a standard related to serious and substantial harm to survive void for vagueness challenges, whereas statutes such as those described in *Davis*, *Conn*, and *Alsager* would not survive. On the other hand, if a test of strict specificity in the language is applied, few of the present statutes would survive a constitu-

vagueness in a state statute which permitted termination of parental rights if parents are "unfit." *In re Five Minor Children*, ____ Del. ____, 407 A.2d 198 (1979), *cert. granted sub nom. Doe v. Delaware*, 100 S. Ct. 1336 (1980). The appeal filed with the Court also raises the questions of whether the burden of proof may be less than clear and convincing and whether a compelling state interest showing is necessary for termination of parental rights. [1980] 6 FAM. L. REP. 2344.

104. VA. CODE ANN. § 16.1-283(B)(1) (Cum. Supp. 1980).

105. *In re J.T.*, 40 Cal. App. 3d 633, 115 Cal. Rptr. 553 (1974); *State v. Metteer*, 203 Neb. 515, 279 N.W. 2d 374 (1979); *State v. McMaster*, 259 Or. 291, 486 P.2d 567 (1971); *Sanchez v. Texas Dep't of Human Resources*, 581 S.W.2d 260 (Tex. Civ. App. 1979).

106. See note 105 *supra*. *Accord*, *In re V.A.E.Y.H.D.*, ____ Colo. ____, 605 P.2d 916 (1980); *In re J.Z.*, 190 N.W.2d 27 (N.D. 1971); *In re Keyes*, 574 P.2d 1026 (Okla. 1977); *In re B.E.*, ____ S.D. ____, 287 N.W.2d 91 (1979).

107. ____ Ark. ____, 583 S.W.2d 37 (1979).

108. *Id.* at 41-42. Cf. Day, *Termination of Parental Rights Statutes and the Void for Vagueness Doctrine: A Successful Attack on the Parens Patriae Rationale*, 16 J. FAM. L. 213, 237 (1977-78). Professor Day contends that there is a two-tier test and that *Alsager* and *Conn*, applying the higher level, overturned the statutes, while *McMaster*, employing the lower level, upheld the Oregon statute.

109. *Id.*

tional challenge under the void for vagueness doctrine.

V. CONCLUSION

The central issue in the termination of parental rights continues to be the balance of interests in the affected trilogy: the parents, the children, and the state. Virginia's termination statute, while maintaining the philosophy of limited state intervention, has redefined the relative postures of the parent and child.

Previously, the child's interests were obscured in the term "best interests of the child," which the courts had determined most often lay with the natural parents. While Virginia's new statute does not eliminate this terminology, it does set forth more specific standards, demonstrating an increased awareness of the needs of the child. Prompt and final determinations are sought. Severe harm to the child's life, health or development is a standard for termination. At the same time, parental rights remain respected and protected. Termination is to be considered only after appropriate rehabilitative services have been offered and it is ascertained that there is no reasonable likelihood of reforming the conditions leading to placement.

In establishing more specific guidelines for the termination of parental rights, Virginia's new statute generally follows the pattern of the model statutes and avoids the pitfalls leading to constitutional attack. However, standards with a greater emphasis on harms to the child are desirable. Because the state's role in the termination process is that of guardian and not that of affirmative intervenor or moral censor of parent conduct, the emphasis on such conduct seems misplaced.

Nonetheless, Virginia's new termination statute does provide effective guidelines which should help to assure that state intervention will "truly serve a family or child rather than ill-defined historic concepts or an official's personal notions of proper childrearing."¹¹⁰

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110. Note, *State Intrusion Into Family Affairs: Justifications and Limitations*, 26 STAN. L. REV. 1383, 1409 (1974).