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A COMPARISON OF CHILD ADVOCACY LAWS IN ABUSE AND NEGLECT CASES IN ENGLAND AND THE UNITED STATES

PAMELA NEWELL WILLIAMS*

HISTORY OF CHILD PROTECTION ASSOCIATIONS IN ENGLAND

In 1881, Rev. George Staite asked a poignant question: “[W]hilst we have a Society for the Prevention of Cruelty to Animals, can we not do something to prevent cruelty to children?”¹ The National Society for the Prevention of Cruelty to Children (NSPCC) was thus founded in 1884 to protect children from cruelty and to support vulnerable families.² In the 1880s, under the reign of Queen Victoria, Parliament was reluctant to pass legislation to protect children because members believed that cruelty to children was too much a domestic matter that was “beyond the reach of legislation.”³ Thomas Agnew, a banker from Liverpool, set up the Liverpool Society for the Prevention of Cruelty to Children in 1883, patterning it after a similar charity in New York.⁴ Rev. Benjamin Waugh founded the London Society of Prevention of Cruelty to Children in 1884.⁵ The London Society grew to thirty-two branches by 1889.⁶ Also in 1889, the London Society changed its name to the National Society for the Prevention of Cruelty to Children (NSPCC) and received the backing of Queen Victoria.⁷

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1. NAT'L SOC'Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, A POCKET HISTORY OF THE NSPCC 4 (2004), available at http://www.nspcc.org.uk/whatwedo/aboutthenspcc/historyofnspcc/historyofnspcc_booklet_wdf33717.pdf.

2. *Id.* at 2.

3. *Id.* at 4.

4. *Id.*

5. *Id.* at 7.

6. *Id.*

7. *Id.*

LEGISLATION TO PROTECT CHILDREN IN ENGLAND

Parliament passed its first legislation to protect children from cruelty in 1889: the Children's Charter.⁸ The Act allowed the British government to intervene between children and their parents or anyone endangering a child.⁹ The Act instituted criminal punishments for cruelty to a child.¹⁰ In 1904, the Prevention of Cruelty Act allowed the NSPCC to employ several inspectors to find and remove children from abusive or neglectful homes.¹¹

When World War I began, many of the male inspectors went to war and women became inspectors.¹² In 1920, the NSPCC began offering medical treatment to abused and neglected children to combat malnutrition.¹³

In 1932, Parliament passed the Children and Young Persons Act, which encompassed all previous legislation to protect children.¹⁴ By 1939, five million children had been aided in some way by the Society.¹⁵ In 1948, The Children Act gave local governments the authority to help vulnerable families and employ local officers.¹⁶ The Children Act also broadened protection of children to those in foster homes.¹⁷ In 1948, after workloads exploded and parents and caretakers called the NSPCC for help, the Society established the Women Visitors' Scheme where women, employed by the NSPCC, made house calls and offered social worker-type help to parents and families.¹⁸

In 1963, the Children and Young Persons Act mandated that local NSPCC groups provide support to families on an in-home basis to try to keep the families integrated and to avoid placing children into state custody.¹⁹ Local groups thus began offering therapy for children and families.²⁰ By 1970, the NSPCC had developed a research committee, training courses, on-call centers and a central registry.²¹

8. *Id.* at 8.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at 11.

13. *Id.*

14. *Id.* at 12.

15. *Id.*

16. *Id.* at 15.

17. *Id.*

18. *Id.*

19. *Id.* at 16.

20. *Id.*

21. *Id.* at 19-20. See generally CHRISTOPHER J. HOBBS, HELGA G. I. HANKS & JANE M. WYNNE, CHILD ABUSE AND NEGLECT: A CLINICIAN'S HANDBOOK 13-20 (2nd ed. 1999) (history of child abuse and neglect).

The Children Act was last amended in 1989.²² It was organized into twelve subsections which encompassed all aspects of child welfare.²³ Part I: "Introductory", concerns definitions, parental responsibility for children and appointments of guardians.²⁴ Part II: "Orders With Respect to Children in Family Proceedings," regards court orders on parental responsibility, financial relief and family assistance.²⁵ Part III: "Local Authority Support for Children and Families," deals with the provision of services for children and their families, accommodations for children and cooperation between authorities.²⁶ Part IV: "Care and Supervision," provides for parental visitation and representation of children through guardians ad litem.²⁷ Part V: "Protection of Children," concerns the investigation of abuse or neglect, emergency orders and abducted children.²⁸ Part VI: "Community Homes," regards the provision for and operation of community homes.²⁹ Part VII: "Voluntary Homes and Voluntary Organisations," deals with the registration and duties of homes and organizations that accommodate children.³⁰ Part VIII: "Registered Children's Homes," concerns the regulation of these homes.³¹ Part IX: "Private Arrangements for Fostering Children," regards the overseeing of the welfare of children in private home foster care.³² Part X: "Child Minding and Day Care for Young Children," concerns the requirements and registration of day cares.³³ Part XI: "Secretary of State's Supervisory Functions and Responsibilities," concerns the inspection of children's homes, financial support and the maintenance of child welfare research.³⁴ Part XII: "Miscellaneous and General," regards adoption, paternity testing, criminal proceedings court jurisdiction and search warrants.³⁵

The Children Act does not require mandatory reporting of suspected child abuse and neglect matters.³⁶

22. Children Act, 1989, c. 41 (Eng.).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. Children Act, 1989, c. 41 (Eng.).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Children Act, 1989, c. 41 (Eng.).

35. *Id.*

36. ISLA WALLACE & LISA BUNTING, AN EXAMINATION OF LOCAL, NATIONAL AND INTERNATIONAL ARRANGEMENTS FOR THE MANDATORY REPORTING OF CHILD ABUSE: THE IMPLICATIONS FOR NORTHERN IRELAND 4 (NSPCC Publications 2007).

CREATION OF CHILD PROTECTION ASSOCIATIONS
IN THE UNITED STATES

Similar to the beginning of English child welfare laws, in the United States, the case of eight year-old Mary Ellen Wilson spurred the American response to child abuse and neglect.³⁷ Mary lived in New York and was abused by her family.³⁸ She was rescued by the Society for the Prevention of Cruelty to Animals; because at that time, there was no agency to protect abused children.³⁹ The Society for the Prevention of Cruelty to Children was founded in 1875.⁴⁰ In 1920, the Child Welfare League of America was established.⁴¹

LEGISLATION TO PROTECT CHILDREN IN THE UNITED STATES

Although states had laws to protect children, the first federal legislation directed at protecting children from abuse and neglect in the United States was passed in 1974, when Congress enacted the Child Abuse and Neglect Prevention and Treatment Act (CAPTA).⁴²

CAPTA established the Office on Child Abuse and Neglect, which is under the Secretary of Health and Human Services Department.⁴³ CAPTA mandates that the Secretary of Health and Human Services establish a clearinghouse to obtain and maintain information on state programs concerning the prevention of child abuse and neglect.⁴⁴ Necessary information and procedural requirements to be followed here include: (a) best interest practices; (b) incidence of child abuse cases nationally; (c) whether child abuse or neglect is connected to alcohol or drug abuse; (d) identification of methods to assess, investigate and prosecute child physical abuse cases; (e) identification of ways to mitigate the child's psychological trauma; and (f) dissemination of information regarding training and available resources.⁴⁵ The Secretary must also provide information so that states can hire personnel to prevent, identify and treat abused and neglected children, including law enforcement, mental and physical health therapists and judicial of-

37. Exhibit, *Our Forgotten Children: Resources on Child Abuse and Neglect* (2007), available at <http://www.lib.udel.edu/ud/spec/exhibits/abuse.htm>.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. WHY TNI FREDERICK & DEBORAH SAMS, A CHILD'S RIGHT TO COUNSEL: FIRST STAR'S NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR CHILDREN 5 (First Star, Inc. 2007).

43. 42 U.S.C. § 5101(a) (2007).

44. 42 U.S.C. § 5104(b) (2007).

45. *Id.*

ficers.⁴⁶ The Secretary publishes the national data collected pursuant to section 5104.⁴⁷

Under CAPTA, a specific research program identifies the nature and scope of child neglect and abuse cases.⁴⁸ Intervention services are identified and the Board focuses on unsubstantiated versus substantiated reports of neglect or abuse and whether states respond effectively to such reports.⁴⁹

CAPTA authorizes the Department of Health and Human Services (DHHS) to provide “technical assistance” to state and local programs to help them in “planning, improving, developing, and carrying out programs and activities, including replicating successful program models, relating to the prevention, assessment, identification, and treatment of child abuse and neglect.”⁵⁰ CAPTA also authorizes DHHS to award grant monies to state and private organizations devoted to promoting safe family visits, to identifying prevention and treatment services, and for having specialized training.⁵¹ To receive federal funds through CAPTA, states had to offer a guardian ad litem to a child for recommendations to the court regarding the child’s best interests.⁵²

Many parents who have neglected their children need reunification services to prevent further neglect. CAPTA authorizes payments to state and local programs to provide services such as (1) financial assistance; (2) parenting classes; (3) respite care for families with disabled children; and (4) referrals to health and development organizations.⁵³ In November 1997, Congress passed the Adoption and Safe Families Act (ASFA).⁵⁴ ASFA, like CAPTA, is primarily a funding statute.⁵⁵ ASFA provides federal funds to state and local programs that aid children and families, but only if the programs implement the ASFA regulations.⁵⁶ The general objectives in the Act are very similar to CAPTA. However, the resources funded are more specific.

ASFA expanded funding for the Family Preservation and Support Services Program, which maintains court improvement programs and provides technical assistance. ASFA clarified that “the safety of the

46. *Id.*

47. 42 U.S.C. § 5104(c) (2007).

48. 42 U.S.C. § 5105(a)(1) (2007).

49. *Id.*

50. 42 U.S.C. § 5105(b) (2007).

51. 42 U.S.C. § 5105(c) (2007). *See also* 42 U.S.C. § 5106(a), (c) (2007).

52. 42 U.S.C. § 5106(c) (2007).

53. 42 U.S.C. § 5116(b) (2007).

54. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115.

55. DEBRA RATTERMAN BAKER, MAKING SENSE OF THE ASFA REGULATIONS: A ROADMAP FOR EFFECTIVE IMPLEMENTATION 173-178 (Diane Boyd Rauber ed., 2001).

56. *Id.* at 178.

children to be served will be of paramount concern.”⁵⁷ AFSA also funds counseling programs for mental health, substance abuse and domestic violence. ASFA focuses more on adoption than CAPTA and allows federal adoption subsidies and adoption incentive payments to states.⁵⁸

ASFA clarified substantive laws regarding child protection, down-playing case review and making the best interests of the child’s right to permanence paramount.⁵⁹ State or local agencies must make reasonable efforts to prevent the child’s removal from the family home.⁶⁰ If the child is removed, the agency must make reasonable efforts to reunify the family, as long as that remains in the best interests of the child.⁶¹ Because the welfare and safety of the child is paramount, agencies must work toward a permanent plan for the child if reunification is not possible.⁶² Permanent plans include custody with a relative or non-relative, guardianship and termination of parental rights to pursue adoption.⁶³ The court and agency must work quickly to put the permanent plan in place because ASFA mandates certain timelines to facilitate an expedited and safe permanent placement for the child.

Because children do not need to be in foster care indefinitely, ASFA requires a termination of parental rights if the child has been in foster care for fifteen out of the most recent twenty-two months preceding the permanency planning hearing.⁶⁴ ASFA requires that the agency serve notice of all review hearings on parents and the court must give them an opportunity to be heard.⁶⁵

Note that the requirements of ASFA and CAPTA are not generally mandatory. They are only mandatory if state and local programs wish to receive federal funding. Thus, there is no national policy for the representation of the child’s best interests in abuse and neglect proceedings, even though there are many children in care. Approximately six million children in the United States are the subject of abuse and neglect reports.⁶⁶ Some fifty thousand children are adopted out of foster care and sixty-five thousand have their legal ties to their parents severed.⁶⁷

57. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115.

58. 42 U.S.C. § 673(b) (2007).

59. BAKER, *supra* note 55, at 4.

60. 42 U.S.C. § 671(a)(15) (2007).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. FREDERICK, *supra* note 42, at 4.

67. *Id.*

All states have some provision for mandatory reporting of child abuse or neglect.⁶⁸ Some states put the onus on all citizens to report suspected abuse or neglect.⁶⁹ Other states only require certain professionals such as doctors and teachers to report.⁷⁰ Reports included sexual abuse and emotional maltreatment.⁷¹

INTERNATIONAL RESPONSE

The most basic tenet of children's protection is that children are people, and as people, they deserve certain rights. In 1989, the United Nations adopted the Convention on the Rights of the Child.⁷² This Convention "defines minimum standards for civil, economic, social, cultural, humanitarian, and political rights for children throughout the world."⁷³ The importance of this document is that it was the first international human rights document to state that:

A child's viewpoint should be heard and taken into consideration in all judicial and administrative proceedings affecting his or her future (Article 12)

.....

Considerations of the child's ethnic, religious and linguistic heritage should be taken into account when providing alternative family care for the child. (Article 20)

.....

Child victims of abuse, neglect, exploitation and torture need and should receive physical and psychological rehabilitation and social reintegration.⁷⁴

It is also important to note that Article 9 states that the child has a right to stay with his parents unless that is not compatible with the child's best interests.⁷⁵ Countries must provide information when a child's separation from his parents is due to state action.⁷⁶ Article 19 gives countries the responsibility to protect children from abuse and neglect by parents and to implement programs in this regard.⁷⁷

Of the 192 countries in the United Nations, only two have failed to ratify the Convention on the Rights of the Child: the United States

68. WALLACE, *supra* note 36, at 9.

69. *Id.*

70. *Id.*

71. *Id.* at 13.

72. NANCY E. WALKER ET AL., CHILDREN'S RIGHTS IN THE UNITED STATES: IN SEARCH OF A NATIONAL POLICY 28 (SagePublications, Inc. 1999).

73. *Id.* at 28.

74. *Id.* at 29.

75. *Id.* at 31.

76. *Id.* at 31.

77. *Id.* at 32.

and Somalia.⁷⁸ Some explanations as to why the United States has not ratified the Convention include: (1) The U.S. usually does not ratify human rights treaties; (2) signing the Convention would interfere with the individual states' right to codify their own laws regarding children; (3) some rights in the document are not recognized as rights in the United States; and (4) some United States laws conflict with the Convention.⁷⁹

The International Society for Prevention of Child Abuse and Neglect (ISPCAN) was founded in 1977.⁸⁰ Its mission is “[t]o support individuals and organizations working to protect children from abuse and neglect worldwide.”⁸¹ ISPCAN “is the only multidisciplinary international organization that brings together a worldwide cross-section of committed professionals to work towards the prevention and treatment of child abuse, neglect and exploitation globally.”⁸² ISPCAN offers in-depth training in a plethora of countries on a great many topics on child abuse and neglect including: (a) amnestic abuse; (b) press publicity of child victims; (c) safe houses; (d) false allegations of child sexual abuse; (e) culturally competent research; (f) resilience and vulnerability; (g) therapeutic software; and (h) juvenile sex offenders.⁸³ ISPCAN recognizes national partners, which include the American Professional Society on the Abuse of Children (APSAC) and the British Association for the Study and Prevention of Child Abuse and Neglect (BASPCAN).⁸⁴

ISPCAN adopted its own constitution in 1992.⁸⁵ Some of the highlights of the document include the following:

ARTICLE 1

PURPOSES

SECTION 1. Specific Goals. To prevent cruelty to children in every nation, whether cruelty is in the form of abuse, neglect or exploitation, so as to enable the children of the world to develop physically, mentally and socially in a healthy and normal manner.

78. *Id.* at 35. See also U.N. High Comm’r for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties* (2004), available at <http://www.unhcr.ch/pdf/report.pdf> (further explaining what countries are parties to and have ratified the treaty through the use of an in-depth chart).

79. WALKER, *supra* note 72, at 36.

80. *About ISPCAN*, <http://www.ispcan.org/aboutISPCAN.htm> (last visited Sept. 28, 2008).

81. The Link: The Official Newsletter of the International Society for Prevention of Child Abuse and Neglect, Vol. 11, Number 2, 8 (Deborah Daro, Ed.) (2002).

82. *About ISPCAN*, <http://www.ispcan.org/aboutISPCAN.htm>, (last visited Sept. 28, 2008).

83. See The Link, Vol. 13, Number 3, 3-6 (Jenny Gray, ed.) (2005). See generally Daro, *supra* note 81, at 7.

84. Daro, *supra* note 81, at 6.

85. See *Constitution of the International Society for the Prevention of Child Abuse and Neglect*, <http://www.ispcan.org/IPSCANConstitution.htm>, (last visited Sept. 28, 2008).

SECTION 2. Representative Membership. To ensure that The Society is truly international in nature, no less than three countries shall be represented in the Executive Council and membership of The Society with full rights of individual and collective participation in voting and all other matters, except that committees of more narrow membership may be established by the Executive Council for the accomplishment of defined and narrow goals of The Society.

SECTION 3. Interdisciplinary Representation. It is the belief of the Executive Council and the Members of The Society that efforts to protect children must be interdisciplinary in nature. Therefore, at least three distinct intellectual disciplines shall be represented in the directorship and membership of The Society at all times.

. . . .

ARTICLE 4

MEMBERSHIP

Membership is invited from any and all professional or lay persons or organizations concerned with the welfare of children who subscribe to the purposes of The Society. All persons shall be eligible to become a Member and upon payment of the appropriate dues shall be enrolled as a Member for the year to which their payment relates. No person shall be denied membership because of race, creed, colour, religion, gender, national origin, economic status or political views.⁸⁶

A study by the World Health Organization found that violence is a global *health* issue.⁸⁷ The health issue, in turn, is interconnected with many factors including biological, social, economic, psychological, cultural and political.⁸⁸ ISPCAN also works extensively with the United Nations Children's Fund (UNICEF).⁸⁹

Additionally, children's groups are advocating for mandatory reporting legislation for suspected child abuse or neglect.⁹⁰ Currently, the United States, Canada, Australia, Argentina, Sweden, Denmark, Finland, Israel, Kyrgyzstan, Korea, Rwanda, Spain and Sri Lanka are the only countries with mandatory reporting.⁹¹ Mandatory reporting increases the number of child protection cases and, possibly, unsubstantiated reports.⁹² Nonetheless, research indicates that mandatory reporting does not decrease the number of child deaths, particularly in the United States.⁹³

86. *Id.*

87. Gray, *supra* note 83, at 1.

88. *Id.*

89. *Id.* at 2.

90. See generally WALLACE, *supra* note 36, at 4.

91. WALLACE, *supra* note 36, at 4.

92. See *id.* at 5.

93. WALLACE, *supra* note 36, at 5.

CHILDREN'S REPRESENTATION IN COURT

Interestingly, in addition to not ratifying the Convention, the United States does not allow a child to direct his own legal viewpoint. Persons are appointed to represent the child's best interest. In the United States, as stated above, a child may be represented by a guardian ad litem, an attorney, or both.⁹⁴ Guardian ad litem use began in 1977 in the United States when a judge from Seattle, Washington began using volunteers to obtain further evidence on child protection cases.⁹⁵ In 1984, the National Court Appointed Special Advocates Association was founded to support and provide training to volunteers.⁹⁶

Many states have established state-run offices that manage guardian ad litem cases.⁹⁷ In North Carolina, the guardian ad litem program is a division under the judicial branch.⁹⁸ In South Carolina, the guardian ad litem program is a division under the governor's office.⁹⁹

Generally, guardians ad litem in the United States are volunteers and non-lawyers.¹⁰⁰ Guardians ad litem as representatives for children date back to Roman and medieval times, when children were believed to be incompetent to file or respond to lawsuits.¹⁰¹ Parents could represent their own children; however, in child protection matters, the interests of the child are presumed to conflict with those of the parent.¹⁰²

CAPTA requires guardians ad litem be appointed for every child in a child protection matter.¹⁰³ The guardian ad litem's duty is to obtain firsthand knowledge of the child's circumstances and make recommendations to the court regarding the child's best interests.¹⁰⁴ However, more specific duties were not delineated in CAPTA. Consequently, different states interpret this requirement differently.¹⁰⁵ CAPTA also requires training for anyone who represents a child.¹⁰⁶

Although all states appoint a representative to represent the child, states have interpreted the provision of appointment differently.¹⁰⁷

94. FREDERICK, *supra* note 42, at 10.

95. *Effectiveness of Volunteer Guardians ad Litem: What the Research Says*, (Children's Law Office, Columbia, S.C.), Feb.-Mar. 2000, at 2.

96. *Id.*

97. *Id.*

98. N.C. GEN. STAT. § 7B-1200 (2007).

99. Children's Law Office, *supra* note 95, at 2.

100. *Id.* at 1.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. FREDERICK, *supra* note 42, at 7.

107. *Id.*

Eleven states only require a guardian ad litem to represent the children's best interests in an abuse and neglect proceeding.¹⁰⁸ Thirty-six require only guardian ad litem counsel.¹⁰⁹ Two allow either an attorney or a guardian ad litem.¹¹⁰ Two require both a guardian ad litem volunteer and an attorney.¹¹¹ Thirty-six states require court-appointed counsel to represent the best interests of the child.¹¹² However, only seventeen require the child to express his wishes in the courtroom.¹¹³

If an individual is both an attorney and guardian ad litem, conflicts may arise.¹¹⁴ For example, the child has an attorney-client privilege with the lawyer.¹¹⁵ However, many courts expect the guardian ad litem to be available for cross-examination.¹¹⁶ Studies have shown that using an attorney and a separate volunteer is the most effective advocacy for the child's best interests.¹¹⁷

In general, states require guardians ad litem to be classroom-trained for a minimum number of hours.¹¹⁸ The training encompasses the history of the child advocacy movement, factors affecting families and permanency as defined by ASFA.¹¹⁹

Additionally, grants from other organizations provide guardian ad litem volunteer services.¹²⁰ For example, AmericaCorps Volunteers in Service to America (VISTA) recruits volunteers for guardian ad litem programs.¹²¹ VISTA has had more than 170,000 volunteers in the United States since its inception in the 1960s.¹²² Since beginning VISTA in North Carolina, VISTA members recruited 2,421 volunteers in North Carolina.¹²³

108. *Id.* at 5, 10.

109. *Id.*

110. *Id.* at 10.

111. *Id.*

112. *Id.*

113. *Id.* at 5.

114. Children's Law Office, *supra* note 95, at 2.

115. *Id.*

116. *Id.*

117. *Id.* at 6.

118. Virginia Walker, *Abused, Neglected Children Need A Legal Voice*, Archdale-Trinity News, March 4, 2004, available at <http://www.nccourts.org/Citizens/GAL/Documents/archdale-trinity%20news.doc>.

119. *Id.*

120. *VISTA Helps Guardian ad Litem Program*, North Carolina Administrative Office of the Courts News, March 21, 2002, available at <http://www.nccourts.org/News/NewsDetail.asp?id=1128&type=1&archive=False>.

121. *Id.*

122. *VISTA's Working With the Guardian Ad Litem Program*, VISTA News (Guardian ad Litem For Children), 2nd Quarter, 2006, available at http://www.nccourts.org/Citizens/Gal/Documents/VISTA/vistanews_2ndqtr2006.pdf.

123. *VISTA's Working With the Guardian Ad Litem Program*, VISTA News (Guardian ad Litem For Children) 4th Quarter, 2006, available at http://www.nccourts.org/Citizens/Gal/Documents/VISTA/vistanews_4thqtr2006.pdf.

By contrast, in England, a guardian ad litem is appointed only when the court believes one is needed to safeguard the child's best interests. Thus, the appointment of a guardian ad litem is not mandatory. In addition, the court may appoint a guardian ad litem if there is no attorney to represent the child, the child understands the proceedings and wishes to instruct his own attorney or if the court decides that the aid of an attorney would be in the best interests of the child.¹²⁴ Consequently, the child is never represented by both an attorney and a guardian ad litem.

Children's interests have always been underrepresented in the legal system. Certain jurisdictions have permitted state intervention for the child's protection against inadequate parenting.¹²⁵ Some critics of the court system have argued that children are more likely to be harmed than helped by state action in neglect cases.¹²⁶ Such activists argue that families should have autonomy to raise their children and that society has "devot[ed] too much concern to the physical well-being of children while failing to tend to their psychological well-being."¹²⁷ Joseph Goldstein argues that children should be removed from the home only when:

1. the child has suffered or is about to suffer physical harm causing or about to cause disfigurement, impairing of bodily functioning or similar serious physical injury, and the harm is inflicted non-accidentally by a parent;
2. the child has suffered or is about to suffer physical harm of the kind described above as a result of the conditions created by a parent or because of inadequate parental supervision;
3. the child is presently suffering serious emotional harm, evidenced by severe anxiety, depression, withdrawal or willful aggressive behavior toward himself or others, and the parents are unwilling to seek treatment;
4. the child has been sexually abused by a parent or other member of the household (an alternative would require that the child be seriously harmed physically or emotionally by such act);
5. the child is in need of medical treatment for a condition that threatens loss of life, disfigurement or impairment of bodily functions, and the parents are unwilling to seek or consent to such treatment; or
6. the child is engaging in delinquent behavior fostered or encouraged by a parent.¹²⁸

124. Children Act, 1989, c.41, § 1, 3, 4.

125. SAMUEL M. DAVIS & MORTIMER D. SCHWARTZ, CHILDREN'S RIGHTS AND THE LAW 163 (1987).

126. *Id.* at 164.

127. *Id.* (citing JOSEPH GOLDSTEIN ET AL., BEYOND THE BEST INTERESTS OF THE CHILD (1973)).

128. DAVIS, *supra* note 125, at 164-65.

However, state courts generally interfere before these extremes occur. Under the Children Act from England, children may be removed from their homes only when: (a) the child is suffering or likely to suffer significant harm; or (b) there is an emergency regarding harm to the child and immediate protection is needed.¹²⁹

Many children's rights organizations advocate for children directing their attorneys when the court determines the best interests of the child. The National Association of Counsel for Children advocates a child's strong voice in legal proceedings.¹³⁰

Children must . . . [be] active participants from the first point of contact to permanence. It is not sufficient to have children represented by an advocate. Children must be given every opportunity to be involved in their own cases. . . . Children know these decisions are being made about them and are understandably frustrated, anxious and angry that their own voice is not being heard. Children know when important hearings or meetings are taking place because the adults around them are busily preparing. Of course, the children will be anxious, but unlike the adults they have little or no ability to even be heard or to voice their thoughts and absolutely no control over the process.

Foster care can be a dehumanizing experience for youth, and often at best a disempowering experience. Foster youth want the opportunity to attend court and be a part of the planning process for their permanency, education, transition to adulthood and well-being. Allowing foster youths to attend and participate in court hearings and planning meetings accords foster youth the respect they deserve and allows youth to play a role in deciding their own future. . . .

Actively promoting the child's participation in the process may create additional burdens on the system, calendaring problems or simply be an inconvenience. However without the child's participation, the process lacks validity and ultimately fails in its core mission of serving children.¹³¹

Those subscribing to the child client-directing method argue that it is against a lawyer's ethical duties to go against a child client's wishes, even if the lawyer believes that it is in the best interests of the child.¹³²

129. Children Act, 1989, c.43 § 1, c.44 § (1)(a).

130. Gerald Glynn, Jennifer Rodriguez & Leslie Starr Heimov, *Role of Child Client from Intake to Permanence* in NACC's CHILDREN'S LAW MANUAL SERIES, 343, 344 (2005 ed.).

131. *Id.*

132. *Id.* at 345. See also Andrea Khoury, *Seen and Heard: Involving Children in Dependency Court*, 25 Child Law Prac. No. 10 (A.B.A.) Dec. 2006 (states benefits from youth participation as well as tips for integrating child participation in child welfare hearings).

The NSPCC also advocates for children to participate in their own dependency cases.¹³³ In addition, children may be able to provide useful evidence that would not have been uncovered in any other way.¹³⁴

The New York State Division for Youth “described the goal of the children’s rights movement as seeking to extend some adult rights and improve government programs so that children will be assured protection and dignity and the chance to develop their maximum potential.”¹³⁵ Children’s legal claims include “challenges to state and/or parental dominion over the child; challenges to legal classifications based on birth and social class; and demands for procedural fairness and protection from harm.”¹³⁶

LITIGATION FOR CHILDREN’S RIGHTS

United States

In the United States, the children’s rights movement has included constitutional litigation for children’s right of privacy.¹³⁷ In *H.L. v. Matheson*,¹³⁸ the United States Supreme Court upheld a Utah statute requiring a physician to notify the parents of a minor before performing an abortion on the minor.¹³⁹ The minor argued that the notice requirement would inhibit minors from seeking abortions and was an unconstitutional violation of the right to privacy.¹⁴⁰ She also argued that “[t]he only constitutionally permissible prerequisites for performance of an abortion. . . were the desire of the girl and the medical approval of a physician.”¹⁴¹ The court held that the minor lacked standing to challenge the statute as being unconstitutional on its face on ground of overbreadth.¹⁴² It further held that the statute was narrowly drawn to protect only the interests of an unemancipated minor girl living with and dependent upon her parents and did not violate the Constitution.¹⁴³

133. NAT’L SOC’Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, A POCKET HISTORY OF THE NSPCC 35 (2004), available at http://www.nspcc.org.uk/whatwedo/aboutthenspcc/historyofnspcc/historyofnspcc_booklet_wdf33717.pdf.

134. See HEDY CLEAVER, CORINNE WATTAM, PAT CAWSON & ROSEMARY GORDON, TEN PITFALLS AND HOW TO AVOID THEM: WHAT RESEARCH TELLS US 12, 14-15 (1998), available at http://nspcc.org.uk/Inform/publications/Downloads/tenpitfalls_wdf48122.pdf.

135. SUSAN GLUCK MEZEY, CHILDREN IN COURT: PUBLIC POLICYMAKING AND FEDERAL COURT DECISIONS 15 (1996) (internal quotation marks omitted).

136. *Id.* at 16.

137. *Id.* at 19.

138. *H.L. v. Matheson*, 450 U.S. 398 (1981).

139. *Id.* at 413.

140. *Id.* at 405-413.

141. *Id.* at 403-04.

142. *Id.* at 405-06.

143. *Id.* at 413.

In *Hodgson v. Minnesota*,¹⁴⁴ the court faced a similar issue.¹⁴⁵ The question was whether a Minnesota statute requiring notification of *both* parents before a minor got an abortion was constitutional.¹⁴⁶ The statute also required a 48-hour waiting period after the minor's parents are notified before the abortion will proceed.¹⁴⁷ The court upheld the statute because there was a provision in it that allowed for judicial intervention to bypass notification if: (1) the minor had been subjected to parental abuse or neglect; (2) a court orders the abortion to proceed without notice when the minor can prove that she is "mature and capable of giving informed consent;" or (3) an abortion without notice to both parents would be in the minor's best interest.¹⁴⁸ However, the court struck the portion of the statute that required notice to both parents as unconstitutional.¹⁴⁹

In *Tinker v. Des Moines School District*,¹⁵⁰ the issue was children's right to freedom of speech.¹⁵¹ This case surfaced during the Vietnam War.¹⁵² The school board banned black armbands, which students wore to protest war activities, and suspended them if they refused to remove the armbands.¹⁵³ The court held that the rule was an unconstitutional restriction of the freedom of speech.¹⁵⁴ The school board could only restrict the armbands if actual or potential disruptive conduct was present.¹⁵⁵ Specifically, the court held that

it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained.¹⁵⁶

Likewise, in *Hazelwood School District v. Kuhlmeier*,¹⁵⁷ the Supreme Court faced the issue of freedom of speech.¹⁵⁸ In *Hazelwood*, students published articles in the school newspaper regarding divorces

144. *Hodgson v. Minnesota*, 497 U.S. 417 (1990).

145. 497 U.S. 417, 423.

146. *Id.* at 422-23.

147. *Id.* at 422.

148. *Id.* at 423, 427.

149. *Id.* at 423.

150. *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503 (1969).

151. *Id.* at 505-06.

152. *Id.* at 504.

153. *Id.*

154. *Id.* at 514.

155. *Id.*

156. *Id.* at 509 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (1966)).

157. *Hazelwood Sch. Dist. V. Kuhlmeier*, 484 U.S. 260 (1988).

158. 484 U.S. 260, 262.

and student pregnancy.¹⁵⁹ School officials pulled the articles because they deemed them inappropriate and possibly offensive to other students.¹⁶⁰ At the time, there were only a few pregnant students at the school, but the pregnancy article “was not sufficiently sensitive to the privacy interests of the students’ boyfriends and parents, who were discussed in the article but who were given no opportunity to consent to its publication or to offer a response.”¹⁶¹ The court upheld the censorship because school officials made their decision based on the following reasons:

the students who had written and edited these articles had not sufficiently mastered those portions of the Journalism II curriculum that pertained to the treatment of controversial issues and personal attacks, the need to protect the privacy of individuals whose most intimate concerns are to be revealed in the newspaper, and “the legal, moral, and ethical restrictions imposed upon journalists within [a] school community” that includes adolescent subjects and readers. Finally, we conclude that the principal’s decision to delete two pages of *Spectrum*, rather than to delete only the offending articles or to require that they be modified, was reasonable under the circumstances as he understood them. Accordingly, no violation of First Amendment rights occurred.¹⁶²

The issue was children’s rights to equal protection and due process in *Levy v. Louisiana*.¹⁶³ In this case, illegitimate children filed a wrongful death action against their mother’s doctors and insurance company.¹⁶⁴ The Court of Appeals affirmed the trial court’s dismissal of the wrongful death lawsuit after “holding that ‘child’ in [the relevant statute authorizing wrongful death claims] means ‘legitimate child,’ the denial to illegitimate children of ‘the right to recover’ being ‘based on morals and general welfare because it discourages bringing children into the world out of wedlock.’”¹⁶⁵ The Supreme Court reversed the appellate court and held that a state cannot make classifications that constitute “an invidious discrimination against a particular class.”¹⁶⁶ Specifically, the court held:

Legitimacy or illegitimacy of birth has no relation to the nature of the wrong allegedly inflicted on the mother. These children, though illegitimate, were dependent on her; she cared for them and nurtured them; they were indeed hers in the biological and in the spiritual sense; in her death they suffered wrong in the sense that any dependent would.

159. *Id.* at 263.

160. *Id.*

161. *Id.* at 274.

162. *Id.* at 276.

163. *Levy v. Louisiana*, 391 U.S. 68, 70 (1968).

164. *Id.* at 69-70.

165. *Id.* (quoting *Levy*, 192 So.2d 193, 195 (1967)).

166. *Id.* at 71.

We conclude that it is invidious to discriminate against them when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the mother.¹⁶⁷

A similar question was raised in *Trimble v. Gordon*.¹⁶⁸ The Supreme Court reviewed the Illinois Probate Act, which allowed illegitimate children to only inherit from their mothers by intestate succession.¹⁶⁹ In contrast, legitimate children were allowed to inherit from both their mothers and their fathers by intestate succession.¹⁷⁰ The Court specifically held that the statutory discrimination against illegitimate children was unconstitutional.¹⁷¹

Thus, children are protected by the same constitutional provisions as adults. There is additional protection of children through the mandates of the Children Act of England and the United States' CAPTA and ASFA.

England

In contrast, England has experienced an erosion of children's privacy rights in that the Anti-Social Behaviour Act of 2003 advocates the naming of children subject to anti-social behavior.¹⁷²

In *F.N. v. Minister for Education*,¹⁷³ the English court held that children possessed constitutional rights.¹⁷⁴ It stated that:

a child has a constitutional right to be fed and to live, to be reared and educated and to have the opportunity of working and realising his or her full potential and dignity as a human being and that those rights must be protected and vindicated by the State. In the situation of a child with very special needs which could not be provided by his or her parents or guardian then there is a constitutional obligation on the State under Article 42, Section 5 to make reasonable efforts to cater for those needs in order to vindicate the constitutional rights of the child. Secure accommodation, services and such arrangements as were necessary to meet the requirements of *F.N.* were held to be not so impractical or so prohibitively expensive as to come within any notional limitation of the State's constitutional obligations.¹⁷⁵

167. *Id.* at 72.

168. *Trimble v. Gordon*, 430 U.S. 762 (1977).

169. *Id.* at 763.

170. *Id.*

171. *Id.* at 766.

172. MARY MARSH ET AL., ROOM FOR IMPROVEMENT: A MANIFESTO FOR CHILDREN, 5 (2005).

173. *F.N. v. Minister for Education*, [1995] 1 IR 409 (Ir.).

174. *Id.*

175. *Id.* at 5(A)(ii).

In *T.D. v. Minister for Education*,¹⁷⁶ the English Supreme Court heard a case where several minors sued the Education Department for failure to provide them with appropriate education for their special emotional needs.¹⁷⁷ The Department offered to transfer T.D. to another facility, but T.D. argued that the physical building was unstable.¹⁷⁸

The Department argued that it had no duty to build a stable facility; it only had the duty to offer residence in an existing facility.¹⁷⁹ The trial court disagreed and ordered the Department to provide housing and education for the children, which would have required new buildings to be erected.¹⁸⁰ The Department put plans together for the project but delayed actually building the residences for several years.¹⁸¹ The Supreme Court held that because of

the special position of children[,] [t]hey are dependent in their childhood for the nurture, care and education, which is essential for their physical, intellectual and emotional growth, on their parents. In the great majority of cases, those needs are met by the parents, making use, obviously, in modern conditions of the great range of educational facilities now provided by the State, directly or indirectly. It is clear that the applicants in these and similar cases, because of behavioural problems deriving from various causes, require special treatment in secure units and, in the result, they clearly constitute exceptional cases in which the State is under a duty to ensure that that their right to such treatment is upheld.¹⁸²

In 1997, British media investigated allegations of abuse in orphanages run by nuns.¹⁸³ The media claimed the following of one orphanage: “A home for orphans was turned into a house of horrors by depraved nuns who delighted in making the kids’ lives hell. Youngsters were dragged from their beds and BEATEN, made to clean their teeth with CARBOLIC SOAP and forced to drink MOULDERING milk.”¹⁸⁴ In *M.P.*, a child argued that she was systematically abused, physically and psychologically, when placed in an orphanage.¹⁸⁵ The court considered when an abused child has attained the knowledge to

176. *T.D. v. Minister for Education*, [2001] IESC 101 (17th December, 2001) (S.C.) (Ir.) available at <http://www.bailii.org/ie/cases/IESC/2001/101.html>.

177. *Id.* ¶ 1.

178. *Id.* ¶ 15.

179. *Id.* ¶ 15.

180. *Id.* ¶ 99.

181. *Id.* ¶ 33.

182. *Id.* ¶ 68.

183. *M.P. v. O’Neill*, [2006] ScotCS CSOH 93, available at <http://www.scotcourts.gov.uk/opinions/2006CSOH93.html>.

184. *Id.* ¶ 5 (quoting *A.B. v. Murray*, unreported, 2 June 2005) (emphasis in original).

185. *Id.* ¶¶ 2-3.

file a claim.¹⁸⁶ The statute of limitations was three years.¹⁸⁷ The court held that M.P. should have brought her claim earlier, even though she may not have attained majority age.¹⁸⁸ She only needed to have reasonably known that she had been abused and had a viable case against the orphanage.¹⁸⁹ The case was dismissed.¹⁹⁰

In *A (Children), Re*,¹⁹¹ the court considered whether parents of Siamese twins could refuse to have them separated.¹⁹² The court stated that it had to hold in favor of the children's best interest, not in favor of the parents' wishes.¹⁹³ One of the girls, Jodie, was stronger than the other.¹⁹⁴ The court easily held that it was in Jodie's best interests to be separated from her twin, Mary.¹⁹⁵ However, the court found that it was not in Mary's best interest to be separated from her sister.¹⁹⁶ The court concluded that

Mary may have a right to life, but she has little right to be alive. She is alive because and only because, to put it bluntly, but nonetheless accurately, she sucks the lifeblood of Jodie and she sucks the lifeblood out of Jodie. She will survive only so long as Jodie survives. Jodie will not survive long because constitutionally she will not be able to cope. Mary's parasitic living will be the cause of Jodie's ceasing to live. If Jodie could speak, she would surely protest, "Stop it, Mary, you're killing me". Mary would have no answer to that. Into my scales of fairness and justice between the children goes the fact that nobody but the doctors can help Jodie. Mary is beyond help.

Hence I am in no doubt at all that the scales come down heavily in Jodie's favour. The best interests of the twins is to give the chance of life to the child whose actual bodily condition is capable of accepting the chance to her advantage even if that has to be at the cost of the sacrifice of the life which is so unnaturally supported. I am wholly satisfied that the least detrimental choice, balancing the interests of Mary against Jodie and Jodie against Mary, is to permit the operation to be performed.¹⁹⁷

The court also held that the operating doctors would not break any criminal law by performing the operation that would surely result in

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* ¶ 80.

191. *A (Children), Re*, [2000] EWCA (Civ) 254 (Eng.).

192. *Id.* § I.

193. *Id.* § IV.

194. *Id.* § II.

195. *Id.* § IV.

196. *Id.*

197. *Id.* § IV (10).

the death of Mary.¹⁹⁸ The court further held that this conclusion was compatible with the Human Rights Act of 1998.¹⁹⁹

Lastly, in *Re S (A Child)*,²⁰⁰ the child's guardian sought an injunction to prevent the publication of the child's mother's name to protect his identity in a criminal proceeding where his mother was accused of killing his sibling.²⁰¹ Child protection law prohibits revealing the identity of children by name, photograph or address.²⁰² The court held that "[p]arents cannot prohibit press reporting of criminal proceedings in order to protect their children from harm, however much they might like to be able to do so. This is not, therefore, a case in which the child's welfare is the paramount consideration."²⁰³ The court concluded that even though the child was in the care of the court, which had to ordinarily protect his identity, because the allegations against his mother did not involve him, the media could publish her information.²⁰⁴

Thus, it can be surmised that England is slightly behind the United States in protecting the rights of its children, even though England ratified the Convention on the Rights of the Child and the United States did not.

Despite the constitutional protections in the United States and the ratifications of the Convention in England, the statistics of both countries regarding current abused and neglected children are appalling.

CHILD CRUELTY STATISTICS IN ENGLAND

In England, at least fifty thousand children are in foster care at a given time.²⁰⁵ Unfortunately, England is not close to the standards set by the United States in advocating for the best interests of children who have no other legal voice. In reaction to the concerns of child welfare, England passed the Children Act of 1975, which was amended in 1989. The purpose of the Act is to:

reform the law relating to children; to provide for local authority services for children in need and others; to amend the law with respect to children's homes, community homes, voluntary homes and voluntary organizations; to make provision with respect to fostering, child mind-

198. *Id.*

199. *Id.* § V.

200. *Re S (A Child)*, [2003] EWCA (Civ) 963 (10 July 2003).

201. *Id.* ¶¶ 1-2.

202. *Id.* ¶ 7.

203. *Id.* ¶ 22.

204. *Id.* ¶ 39-63.

205. John Warden, *Neglect of Children in Councilcare Exposed in England*, BRIT. MED. J. (July 25, 1998).

ing and day care for young children and adoption; and for connected purposes.²⁰⁶

In 1992, 160,000 child protection reports were made.²⁰⁷ One hundred and forty thousand families were investigated and 24,500 reports were substantiated.²⁰⁸ Neglect is the most commonly reported circumstance in England and comprises 43% of all child protection cases.²⁰⁹ In 1995, approximately 35,000 children were registered as abused and/or neglected.²¹⁰ Of that number, thirty-seven percent suffered from physical abuse.²¹¹ Thirty-two percent suffered from neglect.²¹² Twenty-six percent were subjected to sexual abuse.²¹³ Thirteen percent suffered from emotional abuse.²¹⁴

In England, children who were most likely to be neglected included premature babies, low birth weight infants, disabled children, adolescents, runaways and those living in minority ethnic communities.²¹⁵ There is also a correlation of neglect with poverty.²¹⁶ Research shows that infants, children one year old or younger, have the highest homicide victimization rate of any single age group, including adults.²¹⁷

Statistics show that in England, a child is murdered by a parent every ten days.²¹⁸ Roughly half of all child murders have a parent as the prime suspect.²¹⁹ Two-thirds of child murders are committed when the child is younger than five years old.²²⁰

Many of the factors contributing to child neglect and abuse are not factors included in child protection legislation. For example, one in

206. Children Act, 1989, c. 41 (Eng.).

207. HOBBS, *supra* note 21, at 3.

208. *Id.*

209. NAT'L SOC'Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, CHILD PROTECTION RESEARCH BRIEFING: CHILD NEGLECT 1-4 (2007), available at http://www.nspcc.org.uk/Inform/research/Briefings/childneglectPDF_wdf51503.pdf.

210. HOBBS, *supra* note 21, at 2.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.* at 5.

216. *Id.*

217. Fiona Brookman & Jane Nolan, *The Dark Figure of Infanticide in England and Wales*, 21 J. INTERPERSONAL VIOLENCE, 869-889 (2006). See also NAT'L SOC'Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, CHILD PROTECTION RESEARCH BRIEFING: CHILD NEGLECT, 6; NAT'L STATICS, PROVISION & USE OF SERVICES: HOSPITAL ADMISSION RATES UP BETWEEN 1990 AND 1997 (2004); MARY MARSH ET AL., ROOM FOR IMPROVEMENT: A MANIFESTO FOR CHILDREN (2005), available at http://www.nspcc.org.uk/Inform/publications/Downloads/roomforimprovement_wdf47994.pdf.

218. Nat'l Soc'y for the Prevention of Cruelty to Children, Facts and Figures About Child Abuse, Child Abuse Statistics, http://www.nspcc.org.uk/whatwedo/aboutthenspcc/keyfactsandfigures/keyfacts_wda33645.html (last visited Sept. 13, 2008).

219. *Id.*

220. *Id.*

three children in England lives below the poverty line.²²¹ Additionally, there is danger in foster care; twenty-nine children have died in custody since 1990.²²²

Studies show that adoption rates in England are decreasing.²²³ In 1971, there were 21,495 adoptions in England.²²⁴ In 2006, 4,764 children were adopted in England.²²⁵ A contributor to this decline is the legalization of abortion in 1967.²²⁶

CHILD CRUELTY STATISTICS IN THE UNITED STATES

In the United States, according to the AFCARS Report (Adoption and Foster Care Analysis and Reporting System Report), there were approximately 533,000 children in the United States in foster care in 2002.²²⁷ In 2005, an estimated 3.6 million children were investigated by a child protection services agency.²²⁸ Of that number, 899,000 were found to be abused and/or neglected.²²⁹ Most of the substantiated or indicated reports were made by professional sources.²³⁰

Over eighty-three percent of the children were abused by a parent acting alone or with another person.²³¹ Forty percent were maltreated by their mothers acting alone.²³² Eighteen percent were maltreated by their fathers acting alone.²³³ Seventeen percent were abused by both parents.²³⁴ Ten percent were abused by non-parents.²³⁵

Children aged birth to three years had the highest rate of victimization (16.5 per 1,000 children of the same age group in the national population).²³⁶ Children aged four to seven years were victimized at a rate of 13.5 per 1,000 children of the same age group in the national

221. See HOBBS, *supra*, note 21, at ii.

222. MARSH, *supra* note 172, at 6.

223. National Statistics Online, Adoptions Continue to Fall (Nov. 8, 2007), <http://www.statistics.gov.uk/CCI/nugget.asp?ID=592>.

224. *Id.*

225. *Id.*

226. *Id.*

227. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, THE AFCARS REPORT FINAL ESTIMATES FOR FY 1998 THROUGH FY 2002, at 12 (2002), available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report12.htm.

228. U.S. DEP'T OF HEALTH AND HUMAN SERVICES, ADMIN. ON CHILDREN, YOUTH AND FAMILIES, CHILD MALTREATMENT 2005, at 25 (2007), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm05/cm05.pdf>.

229. *Id.*

230. *Id.* at xiv.

231. *Id.* at 29.

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.* at 28.

population.²³⁷ A slight majority of the victims were girls.²³⁸ Approximately one-half of all victims were Caucasian; one-quarter were African-American; and seventeen percent were Hispanic.²³⁹ The most common type of maltreatment was neglect at sixty-three percent. Sixteen percent suffered physical abuse.²⁴⁰ Nine percent suffered sexual abuse.²⁴¹ Seven percent suffered from “emotional maltreatment.”²⁴²

In 2005, approximately 1,460 children died from abuse and neglect.²⁴³ Over forty percent of the child fatalities were caused by neglect and physical abuse.²⁴⁴ Three-quarters of that number were younger than four years of age.²⁴⁵ Of infants, boys had a slightly higher incidence of death.²⁴⁶

CONCLUSION

In the future, both countries should implement policies directed at supporting families, providing rehabilitation, working toward a less adversarial court process, and involving more people in permanency planning decisions.²⁴⁷ More states should have courts and judges solely devoted to family or juvenile issues. In addition, the juvenile court must demand the same respect the superior court receives.²⁴⁸ The NSPCC advocates a law requiring parents to have a “positive duty of care” to their children.²⁴⁹ In addition, all jurisdictions in the United States and England should guarantee an expedited appeals process to reduce delay of the child’s permanence.²⁵⁰

In addition, the scope of the meanings of “child abuse” and “child neglect” should be expanded to include sexual abuse, domestic violence and emotional maltreatment.²⁵¹ However, more emphasis

237. *Id.*

238. *Id.* at 27.

239. *Id.* at 27-28.

240. *Id.* at 27.

241. *Id.*

242. *Id.*

243. Letter from Susan Orr (2005), in U.S. DEP’T OF HEALTH AND HUMAN SERVS., ADMIN. ON CHILDREN, YOUTH AND FAMILIES. CHILD MALTREATMENT 2005, at iii (2007), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm05/cm05.pdf>.

244. U.S. DEP’T OF HEALTH AND HUMAN SERVICES, *supra* note 217, at xv.

245. *Id.*

246. *Id.*

247. See Donald Duquette, *Looking Ahead: The Future of Child Welfare Law*, 41 U. MICH. J.L. REFORM 1, 1-8 (Fall 2007).

248. See Gerard Glynn, *Contempt: The Untapped Power of Juvenile Court*, NAT’L ASS’N OF COUNSEL FOR CHILDREN CHILDREN’S LAW MANUAL SERIES 355-62 (2007).

249. NAT’L SOC’Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, *supra* note 217, at 11.

250. See ANN L. KEITH & CAROL R. FLANGO, EXPEDITING DEPENDENCY APPEALS: STRATEGIES TO REDUCE DELAY (2d ed. 2003).

251. WALLACE, *supra* note 36, at 13.

should be placed on the proactive prevention of child maltreatment and familial support.²⁵²

Challenges facing British children include demographic change, with an increased life expectancy, a declining number of working adults and a low birth rate.²⁵³ Child poverty, migration and environment degradation also play a role in child abuse and neglect.²⁵⁴ The European Union has established a Charter of Fundamental Rights, in addition to the United Nations' Convention.²⁵⁵ The rights incorporated in the Charter include: (1) right to integrity of the person; (2) prohibition against torture, inhuman and/or degrading treatment and punishment; (3) prohibition against slavery and forced labor; (4) prohibition against human trafficking; (5) right to respect for private and family life; (6) measures to reconcile professional and family life; (7) right to an education; (8) safeguards for children in the workforce; and (9) anti-discrimination.²⁵⁶ However, the Charter is not yet enforceable by the European Court of Justice.²⁵⁷ When that happens, courts will then have case law to help clarify children's issues.²⁵⁸ Currently, there are limited legal bases in European Union treaties and an invisibility of children's interests.²⁵⁹ In addition, children have criminal responsibility at age ten.²⁶⁰

NSPCC advocates that children have the same legal protection from assault as adults.²⁶¹ The Society also advocates for a minimum income so that families can afford to ensure the health and well-being of their children.²⁶² Additionally, NSPCC contends that countries should give children the support and the right environment to seek help and remain safe from cruelty instead of waiting for an adult to report suspected child abuse or neglect.²⁶³ The United States should also require all of these protections nationwide.

252. *Id.*

253. SANDY RUXTON, WHAT ABOUT US? CHILDREN'S RIGHTS IN THE EUROPEAN UNION 14 (2005).

254. *Id.* at 14-15.

255. *Id.* at 21.

256. *Id.*

257. *Id.* at 22.

258. *Id.*

259. *Id.* at 29.

260. Marsh, *supra* note 217, at 5.

261. *Id.* at 2.

262. *Id.*

263. NAT'L SOC'Y FOR PREVENTION OF CRUELTY TO CHILDREN, IMPACT REPORT: ENDING CRUELTY TO CHILDREN 4-6 (2007).