William Mitchell Law Review

Volume 20 | Issue 3 Article 5

1994

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PRIVATE CHIPS PETITIONS IN MINNESOTA: THE HISTORICAL AND CONTEMPORARY TREATMENT OF CHILDREN IN NEED OF PROTECTION OR SERVICES

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I. INTRODUCTION

In 1988, the Minnesota Legislature revised the laws controlling dependent and neglected children. This enactment expressly designated all dependent and neglected children as "Children in Need of Protection or Services," otherwise known as "CHIPS children."[1] The change in name was accompanied by substantive changes in the statutes designed to reduce the public stigma of dependent and neglected children who are the subject of child protection proceedings.[2] A "CHIPS petition" is a proceeding commenced in juvenile court to address the needs of children and their parents who are in a variety of forms of distress. Although most commonly commenced by the county attorney, a petition can also be commenced by any interested person, as this Article will discuss in detail. The CHIPS statute expanded the group of persons who may initiate CHIPS proceedings to include both private individuals and county attorneys.[3]

This Article discusses the current status of Minnesota law regarding CHIPS children and child protection proceedings. The Article proposes specific policy changes and advocates for more widespread acceptance of the so-called "private CHIPS petition" to address the increasing incidence and scope of family and childhood problems facing society today. Part II analyzes private CHIPS petitions through examination of the historical treatment of the family and childhood, and the evolution of methods to address the needs of abused, neglected, and dependent children. Part III explores the history of Minnesota dependency

1. Act of Apr. 26, 1988, ch. 673, 1988 MINN. LAWS 1031 (codified at MINN. STAT. § 260.015 (1992 & Supp. 1993).
2. *See infra* part III; *see also* Act of Apr. 26, 1988, ch. 673, 1988 MINN. LAWS 1031.
3. Act of Apr. 26, 1988, ch. 673, 1988 MINN. LAWS 1031.

and neglect statutes. Part IV discusses CHIPS procedures under the new statutes and examines shortcomings and problems associated with the current statute and procedures. Finally, Part V concludes with an analysis of the nature and role of private CHIPS petitions in a juvenile court system that increasingly is called upon to address some of the most pervasive and serious problems facing our society today.

II. The Historical Treatment of Dependent and Neglected Children

To fully appreciate our current approach to dependent and neglected children and to avoid many of the mistakes made in the past, the historical treatment of such children and their families must be considered. Not only does history support increased use of private CHIPS petitions, it also makes clear that we continue to struggle with many of the same issues our forebears grappled with in treating abused, dependent, and neglected children. Today, however, we have the means to more effectively address the needs of these children.

A. Medieval and Early Modern Europe

French historian Philippe Ariès, in his chronicles of the concepts of family and childhood from the Middle Ages through the twentieth century, discusses significant trends in Europe that would later seep into American society and affect the ways that children were treated in the American court system.[4] According to Ariès, family and childhood as we know them today did not exist in the Middle Ages.[5] During the Middle Ages and for a long time thereafter, nothing in a child's dress or activities distinguished the child from the adult.[6] Further, once children reached the ages of five to seven, they joined adults in their household chores, field and shop work, and other adult activities.[7] Childhood lasted for a significantly shorter period of time than it lasts today.[8] One may assume, therefore, that very few

4. Philippe Ariès, Centuries of Childhood: A Social History of Family Life 9-11 (Robert Baldick trans., 1962).

5. *Id.* at 128.

6. *Id.* at 50.

7. *Id.* at 329.

8. *Id.* at 50, 329.

special programs existed to assist troubled children and that abused or neglected children most likely fended for themselves.

In the late 1600s, as Christianity focused more on living a moral and godly life while on earth, supplanting the focus during the Middle Ages on life in the hereafter, the concept of the family and childhood dramatically changed.[9] Underlying this transformation was the notion that morality and proper behavior had to be taught to young and impressionable children away from the "corrupt world of adults."[10] As a result of these changes, many middle class children received more formal and extended schooling.[11] This new focus on educating children was accompanied by a heightened interest in their well-being.[12] Parents generally desired to watch over their children more closely, keep them healthy, stay nearer to them, and avoid relinquishing them, even temporarily, to the care of another family.[13] By the seventeenth century, the middle class began to center itself on the child.[14] Most significant to this shift in focus was the creation of more schools in order to bring the schools closer to the children and their middle class parents' homes.[15]

As would later be seen in early America,[16] the nuclear family eventually replaced the extended family as the fundamental unit of organized society in eighteenth century Europe, enhancing the private life between parents and their children.[17] As a result, parents, and society in general, spent more time focusing on their children's needs and futures.[18] The energy of the emerging nuclear family became increasingly focused on helping the child to grow up and to develop into a contributing individual in the world of adulthood.[19] This new preoccupation with the physical and moral aspects of an ever-expanding period of childhood was unknown to the medieval world.[20]

9. ARIÈS, *supra* note 4, at 412.
10. *Id.* at 369.
11. *Id.* at 369-71.
12. *Id.* at 370.
13. *Id.* at 369.
14. ARIÈS, *supra* note 4, at 369.
15. *Id.* at 370.
16. *See infra* notes 22-24 and accompanying text.
17. ARIÈS, *supra* note 4, at 398-400.
18. *Id.* at 403.
19. *See id.* at 398-404.
20. *See id.* at 365-404 for a comparison of the medieval family with the modern family which was largely developed in the eighteenth century.

B. *Colonial America*

The same trends that affected children and families in early post-Medieval Europe were also seen in early American families. Early American colonial society consisted primarily of small towns and rural lifestyles.[21] Most families were intimately tied to these small communities, and family structure was quite patriarchal.[22] The birth of children and subsequent marriage of offspring were driven more by economic and social conditions than emotional factors.[23] Order and hierarchy within the closely knit individual families and tightly structured communities predominated in American family life throughout the seventeenth century.[24]

Against this backdrop of closely knit families and communities and the patriarchal hierarchy of colonial America, at least one historian has documented a cyclical interest in child abuse and neglect throughout American history that began during the colonial era.[25] The first American response to child abuse and neglect occurred in the mid-seventeenth century when the Puritans of colonial Massachusetts enacted the first laws anywhere in the world to address what they called "unnatural severity" to children.[26] This reflects the family's primary role as a unit of social

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21. PHILIP J. GREVEN, JR., FOUR GENERATIONS: POPULATION, LAND, AND FAMILY IN COLONIAL ANDOVER, MASSACHUSETTS 72-78 (1970).

22. *Id.* The primary characteristic of the patriarchal structure was the father's control over important family decisions. *Id.*

23. *Id.* A marriage could not occur unless the father negotiated a marriage settlement or approved of the marriage by consenting and by donating land. *Id.*

24. *See id.* at 72-99 for a discussion of the patriarchal family and its effect on the creation of the next generation of families.

25. ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 4 (1987). For a thorough discussion of child abuse from a historical perspective in a variety of historical societies and cultures, see SANDER J. BREINER, M.D., SLAUGHTER OF THE INNOCENTS: CHILD ABUSE THROUGH THE AGES AND TODAY (1990).

26. PLECK, *supra* note 25, at 17. According to Pleck, the Puritans viewed the family as "vital to their endeavor; it conveyed religious values and prepared the young for a pious life. It was also the foundation upon which a religious commonwealth was built." *Id.* Therefore, cruelty and violence were to be prevented because they "threatened the individual's and the community's standing before God." *Id.* Pleck observed that "with this view of the family, combined with advanced humanitarian ideas on the rights of women and children brought with them from England, the Puritans developed the concept of family violence as a public concern." *Id.*

According to Pleck, "the Puritans attacked family violence with the combined forces of community, church, and state. In Puritan society, meddling was a positive virtue." *Id.* at 18. Despite this, it must be remembered that the Puritans only intervened in problem families

control in the colonial period.[27] Local officials stood ready to intervene whenever the welfare of children seemed imperiled by the conduct of their parents.[28]

The American Colonies' approach to the needs of neglected or abused children and troubled families was heavily influenced by the Elizabethan Poor Law of 1601 which was premised on the notion that poverty was a sin of the parents that also affected the children.[29] To protect the innocent children and, more important in colonial society, to punish the parents, children were separated from their parents by apprenticeship or by placement in an institution.[30] These children were often mixed indiscriminately with adult homeless persons, the mentally ill, and mentally retarded persons.[31] Apprenticeships were not only inexpensive to the community, but they provided an inexpensive source of much needed labor in a frontier society and provided

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to correct the most severe abuses rather than to protect the rights of individuals. . . . Puritans regarded outside intervention as disruptive, justifiable only to the extent that it restored family order. Faced with the choice between preserving the family unit and permitting a victim of family violence to be removed from an abusive household, they invariably chose to preserve the male-dominated family.

Id. at 18.

In discussing the Puritans' approach to reconciling the state's role in protecting children with the state's role in preserving individual rights, Pleck makes the following observation:

> In all their laws and punishments, the Puritans demonstrated their belief in the state's responsibility to enforce morality and instill respect for legitimate authority. Thus, Puritan laws against family violence conformed to their views about the importance of proper, but not excessive, authority in all relationships, including those in the family. Nonetheless, many Puritan laws against family violence were rarely enforced. . . .
>
> The absence of complaints about child abuse extended beyond the boundaries of colonial Plymouth. . . .
>
> The [widespread] hesitancy to charge a natural father or mother with child assault or to remove abused children from their parents can be attributed to the Puritans' reverence for the two-parent, father-dominated household and the belief in the bond between a child and his or her natural parents. The courts removed or 'put out' a few children to live with relatives or neighbors because of parental neglect of the child's Christian education or parental criminality, but not on grounds of abuse.

Id. at 27-29.

27. *See id.* at 17-33.

28. *See* JOHN DEMOS, PAST, PRESENT, AND PERSONAL: THE FAMILY AND THE LIFE COURSE IN AMERICAN HISTORY 24-40 (1986).

29. Mason P. Thomas, Jr., *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. REV. 293, 299 (1972).

30. *Id.*

31. *Id.* at 301.

a means of teaching the children skills to become productive members of society.[32]

This stage of historical development is relevant to the current status of CHIPS law in Minnesota. When courts intervened in family matters to address problems of dependency, neglect, or abuse in colonial society, the court action generally was the result of intervention by private individuals with personal knowledge of the particular circumstances.[33] These private individuals usually were friends, relatives, neighbors, or ministers.[34] Little value was attached to personal and domestic privacy in early New England. For example, elected officials had the same power to oversee family life that they had to oversee other aspects of life.[35] Neighbors accepted informal oversight and responsibility for one another as part of their "Christian duty."[36] While this situation would change dramatically during the eighteenth and nineteenth centuries, it supports by example the concept of private individuals invoking state resources to address the needs of abused or neglected children.

C. *Eighteenth Century America*

At the close of the seventeenth century, the colonial notions of societal morality began to crumble,[37] a phenomenon resulting from the westward expansion of the colonies[38] and the increasingly diverse ethnic and religious backgrounds of the new immigrants arriving in the colonies.[39] As governments became increasingly more secular, religious practices more diverse, and society more heterogenous, the church played an increasingly smaller role in punishing moral offenders.[40] At the same time, secularization of the states and the emergence of individual

32. *Id.*
33. DEMOS, *supra* note 28, at 81.
34. *Id.*
35. *Id.* at 82.
36. *Id.*
37. PLECK, *supra* note 25, at 31.
38. *Id.*
39. *Id.*
40. *Id.* at 31. At one time, church courts actively investigated spousal abuse and child abuse and neglect, as well as other crimes. After the investigation, a hearing would be held before the entire congregation to "wring" a confession from the accused to save his soul. "[B]y the end of the eighteenth century many churches had abolished their courts," which was another sign of the development of increasingly separate and more private family life. *Id.* at 20, 31-33.

rights during this Age of the Enlightenment undermined the state's authority to intervene in family or private matters.[41]

Changes in the church and state involvement in eighteenth-century family life were accompanied by dramatic changes in the view of children and childhood, following the trends that Ariès had observed in other Western nations.[42] The theology of John Calvin, which had heavily influenced the early settlers of the New England colonies, viewed children as generally sinful creatures and childhood as something not to be prolonged, but rather dispensed with as soon as possible.[43] As had previously happened in Europe, the philosophy of the Enlightenment gradually replaced the philosophy of Calvin in the United States.[44] The phi-

41. *Id.*

42. SUSAN TIFFIN, IN WHOSE BEST INTERESTS? CHILD WELFARE REFORM IN THE PROGRESSIVE ERA 15-16 (1982). *See also,* PLECK, *supra* note 25, at 34-48. Here, Pleck specifically discusses changing views of childhood in the colonies and then in the young American nation in the eighteenth century. In particular, she describes the strong impact of Scottish philosopher John Locke in his 1693 treatise, SOME THOUGHTS CONCERNING THE EDUCATION OF CHILDREN. Pleck explains that Locke

> gave corporal punishment a secure but nonetheless circumscribed place. He advocated an entire system of childrearing rules based on the concept of reward and punishment. . . . He believed that children should be treated as 'rational creatures' and rewarded with esteem and praise; parents to withhold approval until the child obeyed completely. . . . Locke had moved one step away from the Calvinist belief in the innate sinfulness of the [child].

PLECK, *supra* note 25, at 35. Locke gained adherents during the Revolutionary period among colonial rebels who opposed tyranny in the home or the state. Thus, one begins to see the emergence of "republican" notions of the family and childrearing in late colonial and early American society. *Id.* at 37.

43. Rather than filled with playful and carefree childhood activities, Calvinists believed childhood should be filled with discipline, labor, and religious training. ROBERT H. BREMNER, CHILDREN AND YOUTH IN AMERICA, 1600-1865, 35 (1970). In his work, Bremner stated:

> Parents should govern their children well, restrain, reprove, correct them, as there is occasion. A Christian householder should rule well his own house . . . Children should not be left to themselves, to a loose end, to do as they please; . . . You should restrain your children from sin as much as possible . . . Divine precepts plainly show that, as there is occasion, you should chasten and correct your children; you dishonor God and hurt them if you neglect it.

Id. (emphasis omitted) (quoting BENJAMIN WADSWORTH, THE WELL-ORDERED FAMILY 44-58 (1719)).

44. WALTER I. TRATTNER, FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA 110 (3d ed. 1984).

> In his text, J.M. Kelly describes the Enlightenment as:
>
> [A] shared mood or temper, or attitude to the world, in which the dominant note was one of profound skepticism toward traditional systems of authority or orthodoxy (especially those of religion), and a strong faith in the power of the human reason and intelligence to make unlimited advances in sciences and techniques conducive to human welfare.

J.M. KELLY, A SHORT HISTORY OF WESTERN LEGAL THEORY 249-50 (1992).

losophy of the Enlightenment, as epitomized in the works of John Locke, came to view children as pliant, delicate creatures with empty minds that needed nurturing through reasoning.[45]

By the end of the eighteenth century, at least within the confines of the highly influential middle and upper class white families, the Enlightenment view of childhood was embraced as the view that would best serve the needs of a free and emerging new nation.[46] For the poor and isolated of society, the treatment of abused, neglected, and dependent children remained more old-fashioned and similar to what had occurred in the colonial era.[47] Changes among these populations would not occur until well into the nineteenth century.

D. Nineteenth Century America

As discussed above, the modern American family—with its emphasis on privacy, nurturing of children, and prolonged status of childhood—first emerged "in the years between the American Revolution and about 1830."[48] The family became ever smaller in size, and more and more of the family's attention and resources came to be focused on child rearing.[49] Picking up on the philosophies of John Locke, the notion of "Christian nurture" became increasingly popular.[50] According to this view, the role of the family was to surround the child with love and examples of proper behavior and values.[51] Nurture, rather than hard work and labor, came to be the hallmark of middle class childhood and the sought after model family.[52]

The nineteenth century also gave rise to the so-called "republican family."[53] Among the traits of the new republican family were an economic shift from production to consumption, a decline of generational influences, decreasing family size, marriages that were increasingly voluntary and based on love rather than economics, the elevation of childhood and motherhood to

45. TRATTNER, *supra* note 44, at 110.

46. PLECK, *supra* note 25, at 47.

47. *See id.*; *supra* notes 21-36 and accompanying text.

48. CARL N. DEGLER, AT ODDS: WOMEN AND THE FAMILY IN AMERICA FROM THE REVOLUTION TO THE PRESENT 8 (1980).

49. *Id.* at 9.

50. TRATTNER, *supra* note 44, at 110.

51. *Id.* at 110-11.

52. *Id.*; *see* TIFFIN, *supra* note 42, at 17-19.

53. MICHAEL GROSSBERG, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA 4-9 (1985).

a favored status in the home, and a more defined use of private property as a major source of domestic autonomy.[54] The emergence of the republican family reflected the transition of the family from a public to a private institution.[55] As it became more private and removed from society, the family, ironically, came to be seen as even more important to the nation's well-being.[56]

The republican family remained an elusive ideal for most poor families and their children—especially for abused, neglected, and orphaned children. "The poor-law system of child care," with its almshouses, outdoor relief, and apprenticeships, was established to address the needs of those children.[57] During the first half of the nineteenth century, a significant number of poor and orphaned children found themselves in almshouses.[58] Such facilities frequently held homeless and mentally ill adults and persons suffering from venereal disease together with dependent, abused, neglected, or delinquent children.[59] Though many early nineteenth century reformers criticized the intermingling of children and adults in these institutions, the numbers of children in almshouses increased from year to year.[60]

The growing number of children in almshouses does not mean, however, that most abused or neglected children were removed or protected from their harmful environments. In fact, for the majority of Americans, the concern for family privacy outweighed the willingness to allow state intervention to protect or rescue children from their families.[61] For example, parental criminality and drunkenness, deemed to be public matters, were considered grounds for removing children from their parents' care and control, while physical cruelty to the child, deemed to

54. *Id.*

55. *Id.*

56. *Id.* The founders of the nation believed that an educated populace and children raised with democratic ideals were critical to a participatory democracy. With the increasing duration of childhood and dependence, the home and family was critical to this inculcation of democratic values.

57. *See* Thomas, *supra* note 29, at 300-01. All 16 of the states at that time had almshouses, outdoor relief, and apprenticeships. *Id.* at 302.

58. *Id.* "The census of 1880 showed that 7,770 children between the ages of two and sixteen were in almshouses in the United States—fifteen per every 100,000 persons in the general population. By 1890 this figure was reduced to 4,987, or eight per every 100,000." *Id.* (citing H. FOLKS, THE CARE OF DESTITUTE, NEGLECTED, AND DEPENDENT CHILDREN 80 (1970)).

59. *Id.*

60. *Id.*

61. PLECK, *supra* note 25, at 75.

be a private matter, was not.[62] It was only after the Civil War that the public began to accept state intervention in family situations for the more "private" matters of abuse and neglect.[63]

There were, however, reform efforts in the first half of the nineteenth century. By 1830, a growing number of public and private orphanages—facilities that housed only children—emerged in significant numbers to replace the mixed population almshouses.[64] Because the government contributed public funds for many children receiving care, large institutionalized orphanages emerged where children remained for long periods of time, discouraging foster family placements.[65] In contrast to our modern foster care system, orphanages were viewed as mere holding facilities for the parentless child rather than as part of any state-sponsored program to more broadly protect neglected and abused children.[66]

In the 1820s, living standards were on the rise, as were the sheer numbers of poor people, especially in the cities and among immigrants.[67] At the same time, society began to distrust the ability of poor people and immigrants to raise their children.[68] Parental neglect was considered the prime cause of delinquency.[69]

The first significant child-saving efforts in the nineteenth century were institutional and were part of the so-called "Refuge" movement.[70] Houses of Refuge became the first juvenile reformatories in the U.S. The laws authorized the courts to commit not only child offenders, but also neglected, destitute, aban-

62. *Id.* at 75-76. Generally, the father had the right to custody of his child, but it was not an absolute right. The law was most interested in the "benefit of the infant." The court "look[s] into all the circumstances, and ascertain[s] whether it will be for the real, permanent interests of the infant. . . . It is an entire mistake to suppose the court is at all events bound to deliver over the infant to his father, or that the latter has an absolute vested right in the custody." BREMNER, *supra* note 43, at 372 (citing U.S. v. Green, 26 F. Cas. 30, 31-32 (C.C.D.R.I. 1824) (No. 15,256)). *See Ex parte* Miller, 42 P. 428 (Cal. 1895); Harding v. Harding, 54 N.E. 587 (Ill. 1899).

63. PLECK, *supra* note 25, at 70.

64. Thomas, *supra* note 29, at 303.

65. *Id.*

66. *Id.*

67. ROBERT MENNEL, THORNS AND THISTLES: JUVENILE DELINQUENTS IN THE UNITED STATES, 1825-1940, 16 (1974).

68. *Id.*

69. *Id.*

70. *Id.* at 3-31; Thomas, *supra* note 29, at 306. New York, Boston, and Philadelphia led the movement with the creation of Houses of Refuge in the 1820s. MENNEL, *supra* note 67, at 3.

doned, and vagrant children to the Houses of Refuge.[71] Through inflexible routines built around workshops and very rudimentary schoolrooms, the Houses of Refuge sought to inculcate the middle class values of neatness, diligence, punctuality, and thrift.[72]

By the 1850s, dissatisfaction with the charitable methods of the Houses of Refuge led to the proliferation of other municipal and state institutions.[73] Yet some people opposed institutions altogether. The Reverend Charles Loring Brace, a well-known New York minister, advocated an anti-institutional approach to addressing the needs of troubled, abused, or delinquent children.[74] He rejected the institutional formats of almshouses, Houses of Refuge, and separate orphan asylums, and instead "organized a child-placement program that stressed free foster placements in the country to prevent these street children from growing up into a life of crime in the city."[75]

Brace organized the New York Children's Aid Society, which was soon copied in other cites, to send boys and girls to the West for "moral disinfection."[76] There they were placed in free foster homes provided by farmers.[77] Despite the program's lofty goals, high pressure tactics to round up such children frequently resulted in many poor children being unjustifiably and cruelly separated from their families for long-term, sometimes permanent, and frequently unhappy placements.[78]

At the same time that the above-discussed reforms were going forward, apprenticeship continued in widespread usage until at least the last quarter of the nineteenth century to address the

71. MENNEL, *supra* note 67, at 13. These institutions were part of the same trend that established publicly funded and larger orphanages. PLECK, *supra* note 25, at 78. This trend marked a switch from the family-centered discipline which had predominated in the colonial era and much of the eighteenth century to the nineteenth century system of institutional treatment administered by society on a charitable basis. *Id.*

72. MENNEL, *supra* note 67, at 26-27.

73. Thomas, *supra* note 29, at 306-07.

74. *Id.*

75. *Id.* at 307.

76. *Id.*

77. *Id.*

78. Thomas, *supra* note 29, at 306-07 (citing A. KADUSHIN, CHILD WELFARE SERVICES 30-36 (1967)). Reverend Brace "urged his workers to use persuasion and high-pressure salesmanship so that children could be deported from the city to the country." *Id.* at 307.

needs of both poor and orphaned children.[79] Many children were removed from almshouses and orphanages when they were physically able to work as apprentices to farmers, tradesmen, sea captains, or housewives.[80] Such apprenticeships were often in remote areas where the children experienced loneliness, neglect, and low self-esteem.[81] Apprenticed children generally received little protection or attention from public authorities.[82] These forced apprenticeships came under increasing attack in the last quarter of the nineteenth century.[83]

Notions of childhood continued to evolve throughout the nineteenth century. By the last decades of the nineteenth century, children were required to complete additional schooling if they were to advance economically, and declining birthrates created a kind of family in which self-conscious nurture became vital to an industrial society that needed a more skilled work force.[84] As a result, conscious efforts were made to enforce the obedience and dependency of children for even longer periods of time.[85]

Also emerging between the 1870s and the turn of the century was the notion of what historian Viviana Zelizer has called the "economically 'worthless' but emotionally 'priceless' child."[86] While children in the eighteenth century were valued as "future laborer[s] and as security for parents later in life,"[87] by the second half of the nineteenth century, changing notions of childhood and family, the industrialization of society, child labor laws, and compulsory education laws all led to the sentimentalization and expansion of the duration of childhood.[88] This would have a dramatic impact on the rise of new notions and institutions to address the needs of children, especially abused, neglected, and delinquent children.

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79. *Id.* at 302-303.

80. *Id.* at 303.

81. *Id.*

82. *Id.*

83. Thomas, *supra* note 29, at 303.

84. *See generally* TRATTNER, *supra* note 44.

85. *Id.*

86. VIVIANA A. ZELIZER, PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN 3 (1985).

87. *Id.* at 5.

88. *Id.* at 3-9.

E. The Progressive Era

Public interest in child abuse and neglect increased during the last three decades of the nineteenth century, culminating in the period of American history known as the Progressive Era.[89] The Progressive Era witnessed the emergence of a wealthy urban elite who were "fearful of social disorder and dismayed by the poverty, disease, and lawlessness of urban life."[90] Blaming the immigrants and the poor, they hoped to rescue the children from all of this disorder.[91] During the last quarter of the nineteenth century, when public interest in child abuse and neglect was high, the Progressives established many innovative institutions to address the needs of dependent and neglected children.[92]

One of the most significant innovations of the late nineteenth century emerged just before the start of the Progressive Era. The New York Society for the Prevention of Cruelty to Children, created by a lawyer named Elbridge T. Gerry, responded to the fact that few if any of the agencies and institutions serving previously identified dependent and orphaned children specifically sought to locate and rescue neglected or abused children.[93] As a result of Mr. Gerry's diligent efforts, the Society eventually acquired significant police powers enabling it to forcibly remove children from the control of their parents.[94]

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89. TIFFIN, *supra* note 42, at 6. Indeed, this increased interest in child abuse and neglect had started with the Civil War after which the public generally exhibited a greater acceptance of governmental intervention to regulate economic conditions and other aspects of life. PLECK, *supra* note 25, at 70. This same trend would later culminate in the 1930s and in the 1960s. *Id.*

90. PLECK, *supra* note 25, at 70.

91. *Id.*

92. Thomas, *supra* note 29, at 307.

93. *Id.* at 310. Mr. Gerry observed that the law enforcement agencies and the courts were too busy or were simply not sufficiently interested to devote the necessary time and attention to resolve cases involving inappropriate care or discipline by parents over their children. *Id.*

94. *Id.* The creation of the New York Society for the Prevention of Cruelty to Children and other similar prevention agencies was largely given impetus by the notorious case of Mary Ellen, a little girl in New York City who had been passed from home to home. PLECK, *supra* note 25, at 70. The local charity group responsible for supervising her lost track of her and she ended up in the care and control of a couple who kept her locked up in an apartment by day and allowed her to roam the streets by night. *Id.* A neighbor who heard screams coming from the apartment did some investigation and found the child severely malnourished, inappropriately dressed, and physically abused. *Id.* at 71. Not knowing where else to turn, this neighbor appealed to the American Society for the Prevention of Cruelty to Animals. *Id.* More investigations followed as

Initially organized in 1874 as a private group, the New York Society for the Prevention of Cruelty to Children later was given the power to "file complaints for the violation of any laws affecting children" and "to require law enforcement and court officials to aid agents of the societies in the enforcement of these laws."[95] Agents of the Society investigated and advised magistrates regarding the disposition and placement of children in cases involving poor, neglected, or delinquent children.[96] Eventually, these agents were authorized to arrest parents or other persons causing harm to children, and anyone who interfered with or obstructed the work of the Society could be charged with a misdemeanor.[97] Other cities created similar cruelty prevention societies between 1875 and 1900.[98]

From the beginning, a conflict existed in the methods of these cruelty societies.[99] It was a conflict that continues to this day and is seen in the ongoing struggle to balance the powers of the state, the family, and the child in addressing the needs of abused and neglected children. Under the law-enforcement approach favored by the early cruelty societies, agents received broad police powers from legislative entities, including the power to separate children from their parents and the power to prosecute parents who could be subsequently sentenced to prison.[100]

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did a court proceeding. *Id.* The case became a media frenzy, igniting widespread interest in the plight of neglected and abused children. Several months after the child's "mother" was convicted of felonious assault and Mary Ellen was placed in an orphanage, the New York Society for Prevention of Cruelty to Children was created in December of 1874. *Id.* at 72.

95. Thomas, *supra* note 29, at 310. For statutory authority see 1881 N.Y. LAWS 72, ch. 676, § 293, *reprinted in* 2 CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY, 1866-1932 at 195 (R. Bremner ed. 1971).

96. Thomas, *supra* note 29, at 310.

97. *Id.* at 311.

98. *Id.* Most cruelty societies stressed the need for strong law enforcement and they placed the goal of protecting children ahead of the goal of preserving the family. PLECK, *supra* note 25, at 70. Parents were rarely prosecuted for cruelty to their children which led to a discrepency between the stated goal of the society and their actual work. *Id.* Many people, however, viewed these entities as "trampling on the privacy of the family." *Id.* at 76. In response to critics of their methods, the cruelty societies successfully stressed the need to protect society from future criminals rising from the ranks of abused and neglected children. *Id.* The Civil War and its aftermath aided the spread of cruelty societies as people then responded more favorably to government intervention to protect what many thought was a general state of crisis for the American families. *Id.* at 79. Great faith came to be placed in the State as the savior of the American family and morality. *Id.*

99. Thomas, *supra* note 29, at 312.

100. *Id.*

Other reformers and agencies, on the other hand, voiced concerns about this punitive approach and instead advocated "preventive, remedial, and economic efforts to improve the home" so that a child could remain with his or her family.[101] This latter philosophy paved the way for the social work approach to child protection that is relied upon today.[102]

Changes within the institutions of family and childhood accelerated during the Progressive Era.[103] Many Progressives, concerned over the quality and stability of American life, "saw an America under siege from increasing crime, poverty, and spreading urban slums.[104] Progressives thought that "[b]y providing the child with a healthy, moral, and secure home environment, adequate schooling, and humane working conditions, . . . a future American society largely untroubled by vice, crime, . . . poverty, [c]lass antagonisms, ethnic divisions and racial tensions . . ." would emerge.[105] This world view led to the extension of compulsory education laws and to the creation of new schools and vocational institutions, restructured curricula, restrictions on child labor, the first juvenile courts, and the federal Children's Bureau.[106]

The creation of the first juvenile court in Chicago in 1899 was a seminal development in the treatment of neglected, abused, and dependent children.[107] While the primary focus of the juvenile courts was on delinquency, most of the legislation creating these courts extended the jurisdiction of the juvenile courts to those children who were alleged to be neglected.[108]

Many neglect statutes subsequently enacted and enforced by the new juvenile courts permitted neglected children to be committed to institutions "under summary procedures before minor

101. *Id.*

102. *Id.*

103. TIFFIN, *supra* note 42, at 8.

104. *Id.* at 7.

105. *Id.* at 7-8.

106. *Id.* at 8.

107. Thomas, *supra* note 29, at 323. By the end of the 1920s, almost every state had created a juvenile court system. *Id.* at 327.

108. *Id.* at 313-14. Although neglect generally came under juvenile court jurisdiction, most neglect statutes antedated the creation of the first juvenile court. *Id.* at 314. Several states had enacted neglect statutes as early as 1825 as a part of the previously discussed social reform movement that sought to separate children from adult offenders and paupers and to remove children from prisons, jails, and almshouses. *Id.*

judicial officials."[109] The fact that both neglected children and child offenders were subject to commitment in the same institutions raised significant questions, as did the general lack of procedural due process of law.[110] Most laws were upheld based partly upon the compelling justification that different systems and practices were needed to keep children in institutions separate from adults.[111] The courts often used the ancient doctrine of *parens patriae* to justify their decisions.[112] Ultimately, these legal challenges involved struggles to balance the parents' rights to raise their children as they saw fit and the state's need to occasionally intervene in individual family matters in order to safeguard children from parental neglect and other social evils.[113]

Although they espoused a more kind and loving treatment of children, the new and separate juvenile courts ultimately served to expand the nineteenth-century philosophy of preventive penology.[114] That philosophy had first emerged with the house of refuge movement and reached its zenith with the spread of the cruelty societies.[115] The early juvenile courts built on the ideas of preventive penology that associated poverty and neglect with crime, disregarded notions of procedural due process, and vigor-

109. *Id.* at 315. Commitment often occurred without any hearing or notice to the parents. *Id.* The constitutionality of these nineteenth-century laws was occasionally challenged on the basis of unduly broad or vague definitions of the children who were subject to commitment or of the acts leading to the commitment. *Id. See, e.g.*, County of McLean v. Humphreys, 104 Ill. 378, 382 (1882); *In re* Ferrier, 103 Ill. 367, 370 (1882); People *ex rel.* O'Connell v. Turner, 55 Ill. 280, 282 (1870); Farnham v. Piere, 141 Mass. 203, 204 (1886); State *ex rel.* Olson v. Brown, 50 Minn. 353, 357, 52 N.W. 935, 935-36 (1892); State *ex rel.* Cunningham v. Ray, 63 N.H. 406, 407 (1885); *In re* Crouse, 4 Whart. 9, 10 (Pa. 1839); Milwaukee Indus. Sch. v. Supervisors of Milwaukee County, 40 Wis. 328, 330 (1876).

110. Thomas, *supra* note 29, at 315.

111. *Id.*

112. *Id.* Local authorities had long had the power to remove children from the care and control of their parents. "This right derived from the medieval English doctrine of *parens patriae* ('parent of the nation') which permitted the crown, through Chancery court proceedings, to intervene on behalf of a child whose welfare was threatened." PLECK, *supra* note 25, at 75. This doctrine had previously been used to "preserve the estates or further the education of wealthy children, or protect adolescents from improper marriages." *Id.* In nineteenth century America, the doctrine was broadened to sanction removal of children from homes of abusive or neglectful parents. The state came to possess not only this common law authority but also statutory authority. This power became more broadly stated as the nineteenth century wore on. *Id.*; *see also* ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 123-36 (2d ed. 1977).

113. Thomas, *supra* note 29, at 315.

114. *Id.* at 323.

115. *Id.*

ously employed the *parens patriae* philosophy to justify state intervention in private families.[116] As the juvenile courts used their sweeping new powers, little thought was given to the individual rights of parents and children.[117]

F. Twentieth Century Developments

Eventually, the spirit of reform that had characterized the Progressive Era declined in the early decades of the twentieth century, and the cycle of interest in child abuse and neglect came to a close.[118] The problems associated with dependent and neglected children did not, however, go away. In fact, heated debates among professionals who interacted with dependent and neglected children continued unabated during the first half of the twentieth century.[119] The preventive penology or law-enforcement approach favored by the creators of the cruelty societies and some Progressive reformers gradually was replaced by a social work methodology. This methodology, known as "protective services," was intended to strengthen the child's own home rather than punish or institutionalize members of the family.[120]

Increasingly, "[c]hild protection became the legal responsibility of public agencies under federal and state legislation."[121] While the increasing governmental involvement coincided with the rise of the welfare state in the 1930s and 1940s, these ideas were rooted in the Progressive Era.[122]

Critical to this change in philosophy was the first White House Conference on Children held in 1909.[123] Many participants in the conference "promoted the idea that a child should not be removed from his [or her] own home due to poverty alone and that service and economic programs should be designed to pro-

116. *Id.*

117. *Id.*

118. PLECK, *supra* note 25, at 86-87, 125-26.

119. Thomas, *supra* note 29, at 312. The debates centered around whether to take prosecutory or preventative and remedial measures with child abuse offenders. *Id.*

120. *Id.* This development was first seen with the juvenile and family courts that had emerged during the Progressive Era. "The basic goal of these courts was to preserve the family, act in the best interests of the child, and offer a *curative* rather than punitive approach to family problems." PLECK, *supra* note 25, at 126 (emphasis added).

121. Thomas, *supra* note 29, at 312; *see also* AMERICAN HUMANE ASS'N, HUMANE DIRECTORY, (1942) (listing SPCC agencies).

122. *See generally* PLECK, *supra* note 25, at 126; Thomas, *supra* note 29, at 312-13 (describing the growth and decline of SPCC groups).

123. Thomas, *supra* note 29, at 312.

tect that home rather than to prosecute the parents and remove the child."[124] Many members of the emerging professions of child psychology and social work supported this new philosophy.[125]

Accompanying this change in philosophy was the gradual decline in numbers of private institutions that took in abused and neglected children.[126] By the 1930s and 1940s, many child-protection services had been assumed by public agencies.[127] Examples of new public programs included the Mother's Aid movement and the Aid to Dependent Children program under the Social Security Act of 1935.[128] The Social Security Act offered federal funds to the states on a matching basis to support children whose parents were "disabled, absent, dead, or in prison."[129] The Act also encouraged the states to develop protective programs for dependent, neglected, and delinquent children.[130]

Later, the Golden Anniversary White House Conference on Children and Youth recommended "that the states enact legislation requiring that social agencies receive complaints of child neglect and provide services to parents and children."[131] That recommendation was later enacted as part of the 1962 amendments to the Social Security Act.[132]

Consequently, because of the extensions and expansions of child welfare services, "the need to remove children from their homes by institutional commitments for protective reasons" has declined, and state and county welfare agencies provided necessary services in the homes of the recipient families.[133] During the earlier part of the twentieth century, many of the neglect petitions were not initiated by individuals, but rather by institutional petitioners such as welfare agencies, probation officers,

124. *Id.*

125. *Id.* at 312-13.

126. *Id.* at 313.

127. *Id.*

128. Thomas, *supra* note 29, at 313.

129. *Id.* (citing 42 U.S.C. §§ 601-26 (1970)).

130. *Id.*

131. *Id.*

132. *Id.* The 1962 amendments "required each state to develop a plan to extend child welfare services, including protective services, to every political subdivision. *Id.* (citing 42 U.S.C. § 625).

133. Thomas, *supra* note 29, at 327.

and schools.[134] Further, most of the children involved were young, and many of their families had experienced governmental involvement in their lives because of poverty, lack of skills, and lack of significant formal education.[135]

G. *The 1950s and Thereafter*

A third and final reform epoch regarding dependent and neglected children occurred in the 1950s and 1960s.[136] Not only was this a watershed era for the juvenile court system, which experienced a due process revolution with respect to juvenile court procedures,[137] but this era also saw a renewed interest in addressing the needs of dependent and neglected children.[138] As with earlier eras of reform, the fear of violent crime in the 1950s stimulated a rediscovery of family violence and a search for more effective means to address the problems of violence, dependency, and neglect.[139]

Social workers in the 1950s and 1960s began to reject traditional case work methods. Instead, the social workers started visiting clients at home, at school, and at community centers and also started offering concrete services as well as psychiatric counseling.[140] This so-called "aggressive casework" recognized that the social welfare agencies could intervene in family matters and indeed, had a right to intervene, even if uninvited.[141] Those who worked with abused and neglected children suggested that the child welfare department in each state should first investigate neglect, abuse, and abandonment and then either offer social services or notify the police.[142]

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134. *Id.* at 328.
135. *Id.*
136. PLECK, *supra* note 25, at 4.
137. *See* Fare v. Michael C., 442 U.S. 707, 727 (1979) (holding that juveniles may voluntarily and knowingly waive their Constitutional right to an attorney); Breed v. Jones, 421 U.S. 519, 541 (1975) (holding that the Double Jeopardy Clause of the Fifth Amendment applies to juvenile courts); *In re* Winship, 397 U.S. 358, 368 (1970) (holding that due process requires proof beyond a reasonable doubt when juveniles are charged with adult crimes); *In re* Gault, 387 U.S. 1, 12 (1967) (holding that the Constitutional guarantee of due process applies to juvenile delinquency proceedings). *See also* Gary A. Debele, *The Due Process Revolution and the Juvenile Court: The Matter of Race in the Historical Evolution of a Doctrine*, 5 LAW & INEQ. J. 513, 514-15 (1987).
138. PLECK, *supra* note 25, at 164.
139. *Id.*
140. *Id.*
141. *Id.*
142. *Id.* at 166 (referring to a report of the United States Children's Bureau).

Small groups of reformers, including lawyers, social workers, physicians, and government workers, raised child abuse and neglect as national issues and expanded the resources available to provide investigative and social services.[143] Because many of these reformers believed that criminal sanctions against parents only worsened domestic difficulties, few reformers invoked the existing cruelty statutes.[144] The nonpunitive reporting mandates enacted in most states from 1963 to 1967 raised the issue of child abuse and encouraged a response.[145]

Indeed, the 1960s marked the first time in a century that the complex problems related to protecting children from physical maltreatment by their own parents attracted widespread public interest.[146] But this renewed interest was accompanied by a previously unknown emphasis on analyzing the source of the problem and offering more than simply punishment.[147]

At the turn of the century, juvenile delinquency and institutional reform had been the primary concerns, and programs were designed to protect children from poverty and the perceived evils of the values held by the newly industrialized society.[148] By the 1950s and 1960s, after unsuccessful attempts to reactivate the earlier law-enforcement approach with its swift and sure punishment of abusive parents,[149] most of the active reformers embraced the social workers' approach from earlier in the century[150] and emphasized a cause and effect analysis and treatment rather than punishment.[151] The result was the enact-

143. PLECK, *supra* note 25, at 164. Perhaps no group of reformers was more instrumental in addressing the needs of dependent and neglected children in the 1950s and 1960s than the members of the medical profession. *Id.* at 166-75; Thomas, *supra* note 29, at 329. In 1962, several physicians published an article about the battered child syndrome in the *Journal of the American Medical Association.* C. Henry Kempe et al., *The Battered Child Syndrome,* 181 JAMA 105 (1962). The battered child syndrome is "a clinical condition in young children who have received serious physical abuse" and is a frequent cause of permanent injury or death. *Id.* The article was a critical part of the movement toward enacting mandatory child abuse reporting laws that would require various professionals to report evidence of child abuse and neglect. PLECK, *supra* note 25, at 167-70. The x-ray machine was enlisted to assist in the detection of symptoms of abuse not visible to the naked eye. *Id.* at 166-67.

144. PLECK, *supra* note 25, at 173.

145. *Id.*

146. *Id.*

147. *Id.* at 173-74; Thomas, *supra* note 29, at 328.

148. PLECK, *supra* note 25, at 173-74.

149. *See supra* note 98 and accompanying text.

150. *See supra* note 120 and accompanying text.

151. PLECK, *supra* note 25, at 173-74.

ment of child abuse reporting laws and support for the idea that protective services offered to a family in its own home was usually a sufficient way to protect the child.[152]

The last era of interest and reform regarding the treatment of dependent and neglected children ultimately resulted from the re-emergence of the tension inherent in this area of social policy. Choices had to made between treatment and punishment, between intervention and abstention, and between ensuring parental liberties and protecting children.[153] Greater state intervention, part of a trend begun at least as far back as the Civil War,[154] was here to stay. The states increased the services and protection available to dependent, abused, and neglected children.[155] Also, the years following the 1950s and the civil rights movement saw an increase in awareness and protection of individual rights, raising greater apprehension of state interference.[156] Reformers were ultimately forced to recognize that state intervention produced negative as well as positive results, and often a little of both.[157]

Minnesota's experience and current CHIPS statute reflect this long history of development and change in the concepts of the family and children and in the role of the state in addressing the needs of dependent and neglected children.

III. Minnesota's Statutory History

In much the same manner that other states across the country reflected the social movements occurring on a national level, Minnesota also began early in the twentieth century to specifically address the needs of dependent and neglected children.

A. *Early Minnesota Legislative and Program Developments*

Minnesota's original neglect statute, enacted in 1905, reflects the broad and sweeping powers found in other states at the turn of the century.[158] A child could be removed for undefined rea-

152. *Id.*; Thomas, *supra* note 29, at 332.
153. Pleck, *supra* note 25, at 181.
154. *See supra* note 89 and accompanying text.
155. Pleck, *supra* note 25, at 181.
156. *Id.*
157. *Id.*
158. *See supra* notes 108-17 and accompanying text.

sons of parental unfitness, including poverty in a variety of forms.[159]

Even these early statutes reflect the debate over whether it was the responsibility of the state or the family to protect or punish dependent and neglected children.[160] While recognizing the authority and control of the state through its courts, the 1905 statutes specifically allowed *any reputable person* to file a petition alleging that a child was neglected or dependent as long as that person resided in the county and knew of the child who appeared to be neglected or dependent.[161] The statute clearly drew from the long history, extending back to the colonial era and continuing into the nineteenth century, of permitting any interested person in the community to alert authorities to problems involving children and to initiate the process for addressing the problems.[162]

Although they provided few procedural protections for children, these early statutes nevertheless recognized the interrelationship between the authority and discretion of the court system and the general responsibility of families to police their own members and bring appropriate matters to the attention of the court system for proper resolution. When compared with the other provisions of the 1905 statutes, the provision permitting any reputable person to bring a matter before the court highlights the controversy over whether the responsibility to address the needs of dependent and neglected children should rest on the family or on society through its government and courts.

Similar to the statutes enacted in other states at the turn of the century,[163] the early dependency and neglect statutes in Minnesota reveal a struggle to define exactly what a "dependent" or "neglected" child was, or should be, and to define the circumstances under which non-delinquent behavior by children should be brought before the court.[164]

159. Act of Apr. 19, 1905, ch. 285, § 7, 1905 MINN. GEN. LAWS 418, 421.

160. *See supra* note 113 and accompanying text.

161. Act of Apr. 19, 1905, ch. 285, § 4, 1905 MINN. GEN. LAWS 418, 419-20.

162. *See supra* part II.

163. *See supra* note 108.

164. The 1905 statute defined "dependent child" and "neglected child" as follows:

> [A]ny child who for any reason is destitute or homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill fame or with any vicious or disreputable persons, or whose

The early definition of "dependent" and "neglected" children continued through the 1909 amendments to the statute.[165] In 1913 the term "habitually truant" appeared for the first time in the juvenile court statutes, but only in the definition of delinquent child and not in the definition of "neglected" and "dependent" child.[166]

Significant legislative changes occurred during the 1917 legislative session. Writing for the first issue of the *Minnesota Law Review*, Judge Edward F. Waite of the Hennepin County Juvenile Court stated: "We live in what has been aptly termed 'the century of the child.' Never before have the obligations of society to its more helpless members been so generally recognized; and of all forms of helplessness that of childhood makes the strongest and most universal appeal."[167] Before describing the new legislative changes, Judge Waite listed the impressive accomplishments that the state of Minnesota had achieved in addressing the needs of dependent and neglected children: creation of a reform school for youthful offenders, schools for the deaf and blind, the juvenile courts in 1905, a state hospital for crippled children in 1907, and "mothers' pensions" in 1913.[168] These programs largely reflect the developments occurring in other states during the progressive era, as previously discussed.[169]

In 1912, a group called the Minnesota Child Welfare Commission was appointed by Governor Burnquist to recommend revisions to state laws affecting children.[170] Among the proposals

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> home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such a child; and any child under the age of ten (10) years who is found begging, peddling or selling any articles or singing or playing any musical instrument upon the street, or giving any public entertainment, or who accompanies or is used in aid of any person so doing.

Act of Apr. 19, 1905, ch. 285, § 1, 1905 MINN. GEN. LAWS 418, 418 ("an act to regulate the treatment and control of dependent, neglected and delinquent children").

165. *See* Act of Apr. 17, 1909, ch. 232, § 1, 1909 MINN. GEN. LAWS 269, 269. ("An act for the appointment of guardians for dependent, neglected and delinquent children and for the proceeding against persons at fault for such dependency, neglect or delinquency").

166. Act of Apr. 11, 1913, ch. 260, § 2, 1913 MINN. GEN. LAWS 356, 357 (amending Chapter 232 of the General Laws of Minnesota for the year 1909). The term "habitually truant" remained in the delinquency statute until the statutes of 1988, some 75 years later. *See* Act of Apr. 26, 1988, ch. 673, § 3, 1988 MINN. LAWS 1031, 1033-34.

167. Edward F. Waite, *New Laws for Minnesota Children*, 1 MINN. L. REV. 48, 48 (1917).

168. *Id.* at 48-49.

169. *See supra* part II.E.

170. Waite, *supra* note 167, at 51.

were laws to regulate midwives, improvements in the educational scheme, review of the child labor laws, provisions for the specific guardianship by the state over illegitimate children, and laws to assist in establishing paternity and holding fathers accountable for their children.[171] Some modification to the delinquency laws was also proposed.[172]

With regard to dependent and neglected children, Judge Waite offered proposals that strongly favored a modern social work approach over the institutional approach which had dominated the treatment of dependent and neglected children throughout much of the nineteenth century.[173] Judge Waite wrote,

> So also as to children born in wedlock but orphaned, abandoned or neglected; the state has no higher obligation than to discover and supply their need. This means, of course, delegation by law of duty and authority to persons through whom alone the functions of government can be exercised. . . .
>
> . . . .
>
> . . . Obviously there should be supplied a link between the sovereign state and the needy child. To this end it is proposed to provide for public guardians whose duty it shall be to safeguard the interests of children who are proper subjects of the state's protecting care. They may serve as legal guardians, appointed by the courts, in appropriate cases; but their peculiar function will be to take the initiative in all that should be done for the welfare of dependent, neglected and defective children, many of whom now suffer because their welfare is 'nobody's business.'[174]

So began the Minnesota Legislature's efforts to modernize the state's treatment of neglected, dependent, and abused children. Minnesota, as one of the Progressive states, was certainly in the vanguard of reform trends in the early 1900s.[175]

171. *Id.* at 53-56.
172. *Id.*
173. *See id.* at 57-59. *See also supra* part II.D.,E.
174. Waite, *supra* note 167, at 57-59.
175. *See supra* part II.E.

B. *Distinguishing "Dependent" and "Neglected" Children in the Progressive Era*

For the first time, in 1917, the Legislature attempted to distinguish between "dependent children" and "neglected children."[176] The Legislature applied the terms "neglected" and "dependent" to children under the age of eighteen rather than under the age of seventeen, thereby expanding the court's jurisdiction to address the needs of these children.[177] In addition, the statute distinguished these terms and defined a dependent child as:

> [A] child who is illegitimate; or whose parents, for good cause, desire to be relieved of his care and custody; or who is without a parent or lawful guardian able to adequately provide for his support, training and education, and is unable to maintain himself by lawful employment, except such children as are herein defined as "neglected" or "delinquent".[178]

The statute separately defined a "neglected child" as:

> [A] child who is abandoned by both parents, or, if one parent is dead, by the survivor, or by his guardian; or who is found living with vicious or disreputable persons, or whose home, by reason of improvidence, neglect, cruelty, or depravity on the part of the parents, guardian or other person in whose care he may be, is an unfit place for such child; or whose parents or guardian neglect and refuse, when able to do so, to provide medical, surgical or other remedial care necessary for his health or wellbeing; or, when such child is so defective in mind as to require the custodial care and training of the state school for the feeble-minded, neglect and refuse to make application for his admission to said institution; or who, being under the age of twelve years, is found begging, peddling or selling any articles or singing or playing any musical instrument upon the street, or giving any public entertainment, or who accompanies or is used in aid of any person so doing.[179]

Thus, under the 1917 legislation, the distinction between "dependent" and "neglected" children was made for the first time in

176. Act of Apr. 20, 1917, ch. 397, § 1, 1917 MINN. GEN. LAWS 561, 561-62 ("An act to consolidate, codify and amend the laws providing for juvenile courts, defining their jurisdiction and powers over dependent, neglected and delinquent children under the age of eighteen years and over persons contributing to such neglect or delinquency. . .").

177. *Id.*

178. *Id.*

179. *Id.*

such a way as to reflect the view that a "dependent" child needed the state's assistance, help and care. A "neglected" child, on the other hand, needed help as a result of abusive actions or neglect inflicted upon the child by his or her parents. These definitions, particularly the definition of "dependent" child, illustrate the increasing role of the social worker's approach to addressing the needs of dependent and neglected children, rather than a punitive law and order approach.[180] Much of the language and distinctions between the categories of dependent and neglected children continued up to the 1988 legislation establishing the "Child in Need of Protection or Services" categories.

Consistent with the nineteenth century methods of addressing the needs of dependent and neglected children,[181] the 1917 modifications to the Minnesota statutes provided little procedural protection for children or their parents. These modifications, however, did not disturb the ability of any reputable resident to bring a matter involving a dependent or neglected child before the court on a petition and affidavit that would incur the broad dispositional authority of the juvenile court.[182] No county attorney or other governmental agency was required to bring these matters before the court.[183] This trend followed the long history of permitting the state to enforce and report child abuse and neglect, while, at the same time, permitting other members of the community, from the clergy, to neighbors, to friends and relatives, to intervene.[184]

These early statutes drew from the recommendations of the 1909 White House Conference on Children, indicating that laws addressing the needs of children should be liberally construed to effectuate their purpose.[185] As discussed previously, this conference also favored keeping children in their homes and encouraged the protection of the home rather than the prosecution of the parents.[186] As stated in the 1913 statute, the intent of the statute was that "the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can properly be

180. *See supra* note 120 and accompanying text.
181. *See supra* part II.D. and accompanying text.
182. Act. of Apr. 20, 1917, ch. 397, § 7, 1917 MINN. GEN. LAWS 561, 564.
183. *Id.* § 1, at 564.
184. *See* BREMNER, *supra* note 43, at 351-52.
185. *See* MINN. STAT. § 8686-4 (1927); MINN. STAT. § 7175 (1913).
186. *See* Thomas, *supra* note 29, at 312.

done, the child [is] to be placed in an approved family home and become a member of the family by legal adoption or otherwise."[187] This philosophical statement that children should remain in their home or in a reasonable facsimile of their home has continued through and beyond the significant 1988 legislative modifications.[188]

Minnesota's 1917 legislative session marked a watershed period in addressing the needs of dependent and neglected children. Progressive notions for addressing these needs were enacted into law and would have a dramatic impact on the state of the law in Minnesota. The 1923 statute continued these trends and provided that each child was entitled to "the protection and correction which he needs under the circumstances disclosed in the case; and that whenever it is necessary to provide for him elsewhere than with his parents his care, custody and discipline shall approximate as nearly as may be that which ought to be given by his parents."[189]

The purposes and procedures of these early dependency and neglect statutes remained consistent for decades.[190] Even by 1980, almost fifty years later, the philosophical direction and intent of the law remained the same.[191] This was true in spite of the fact that the intent and purpose of the juvenile code was then to treat delinquent children differently from "neglected" and "dependent" children.

C. *Recent Developments in Minnesota*

Minnesota law currently states that the purpose of the laws affecting dependent and neglected children is as follows:

> [To] secure for each child . . . the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; . . . to preserve and strengthen the child's family ties whenever possible . . . removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary . . . to secure for the child cus-

187. MINN. STAT. § 7175 (1913).

188. *See infra* note 210 and accompanying text.

189. MINN. STAT. § 8667 (1923).

190. For laws stating analogous purpose and procedures, see Act of Apr. 24, 1959, ch. 685, 1959 MINN. LAWS 1275; Act of Apr. 14, 1927, ch. 192, 1927 MINN. LAWS 288.

191. *See* Act of Apr. 15, 1980, ch. 580, 1980 MINN. LAWS 962.

> tody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.[192]

Although this statute perpetuates the philosophical view that children should remain in their own home or receive treatment in their own home, the statute also perpetuates the conflict between the best interests of the child and the best interests of the state. This has historically been a constant tension in the treatment of dependent and neglected children, and that tension continues to this day.[193] The statute neither defines the interests of the child and the state, nor indicates the tremendous power available to the court when addressing the needs of "dependent" and "neglected" children, nor discusses the wide array of resources available for families and children through the juvenile court. Yet, this statute makes it clear that the philosophical conflicts and philosophical views from the early 1900s remain in the statutes today.[194] Indeed, the history of childhood and the family has been one of tension between the family and the state, and between individual family members.[195] Ultimately, the practice of allowing private individuals to initiate CHIPS proceedings, thereby invoking the resources and powers of the state without the approval of county attorneys or welfare agencies, raises this age-old tension in our world today.

While it may have been unintentional, the Legislature in 1985 highlighted this long-standing tension when it amended the purpose section of the CHIPS statutes.[196] The amendment stated that the purposes of the statutes affecting "dependent" and "neglected" children were to serve the best interests of the state and "to provide judicial procedures which protect the welfare of the child."[197]

In 1988, the Legislature eliminated the terms "dependent" and "neglected" and created the phrase: "Child in Need of Protection or Services."[198] As a result, these children are referred to as "CHIPS" children.[199] However, in amending the statute, the

192. MINN. STAT. § 260.011, subd. 2 (1992).

193. *See generally* Thomas, *supra* note 29.

194. *See* Act of Apr. 15, 1980, ch. 580, § 3, 1980 MINN. LAWS 962, 966; *see also supra* notes 160-62 and accompanying text.

195. *See generally* GROSSBERG, *supra* note 53.

196. *See* Act of May 31, 1985, ch. 286, 1985 MINN. LAWS 1299.

197. *Id.* § 1.

198. *See* Act of Apr. 26, 1988, ch. 673, § 2, 1988 MINN. LAWS 1031, 1032-33.

199. *Id.*

Legislature did not make any substantive changes to the "title, intent and construction" provision in the purpose section of the juvenile code. Rather, the definitional section of the CHIPS statute was merely amended to replace the terms "dependent child" and "neglected child" with the term "Child in Need of Protection or Services."[200] No other changes were made in the purpose section,[201] and because changes in terminology alone could not resolve the conflict between the state's interests and the best interests of the child, the conflict remains.

In defining "Child in Need of Protection or Services," after restating the purpose of those statutes as being exactly the same as the purpose of the "dependency" and "neglect" statutes which preceded it,[202] the Legislature essentially rewrote the jurisdictional elements of the old "dependency" and "neglect" statutes. The new language is not only more specific, but also includes within the statutory definition of CHIPS certain categories, such as petty matter violations and delinquency violations committed by a child under age of ten, that previously were contained within the delinquency statutes.[203]

As stated more clearly in *Juvenile Law and Practice*:

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200. *Id.*

201. *Id.* The 1988 CHIPS law provided that:

> Subd. 2. The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated in need of protection or services and under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will serve the spiritual, emotional, mental, and physical welfare of the child and the best interests of the state; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child's family ties whenever possible, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.

Id.

202. *See* Act of Apr. 26, 1988, ch. 673, 1988 MINN. LAWS 1031.

203. *Id.* § 3. This section amended MINN. STAT. § 260.015 (1986) as follows:

> Subd. 2a. CHILD IN NEED OF PROTECTION OR SERVICES. "Child in need of protection or services" means a child who is in need of protection or services because the child:
>
> (1) is abandoned or without parent, guardian, or custodian;
>
> (2) has been a victim of physical or sexual abuse or resides with a victim of domestic child abuse as defined in subdivision 24;
>
> (3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
>
> (4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;

A careful comparison of the repealed Dependency category (M.S.A. § 260.015, subd. 6) and the repealed Neglect category (M.S.A. § 260.015 subd. 10) with the CHIPS legislation (M.S.A. § 260.015, subd. 2a) is necessary because the language in the CHIPS legislation is not the same and all the definitions have not been retained. For example, one jurisdictional category that was not retained from the repealed Neglect legislation was the provision that stated that a child was neglected when a delinquent act committed by the child was in whole or in part a result of parental neglect.

A new jurisdictional category in the CHIPS legislation provides that a child is in need of protection or services if the child has been a victim of physical or sexual abuse or resides with a victim of domestic child abuse as defined by Minn. Stat. Ann. § 260.015, subd. 24.[204]

Today, the jurisdictional bases for a finding that a child is a CHIPS child have been expanded to include even more bases

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(5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:
  (i) the infant is chronically and irreversibly comatose;
  (ii) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or
  (iii) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane;
(6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody;
(7) has been placed for adoption or care in violation of law;
(8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;
(9) is one whose occupation, behavior, condition, environment, or associations are such as to be injurious or dangerous to the child or others;
(10) has committed a delinquent act before becoming ten years old;
(11) is a runaway; or
(12) is an habitual truant.

Id.

204. 13 JOHN O. SONSTENG & ROBERT SCOTT, MINNESOTA PRACTICE, JUVENILE LAW AND PRACTICE, Rule 37.01 author's cmt., at 4, 5 (Supp. 1993).

than provided by the 1988 legislation.[205] The newest definition adds as bases for a petition those situations where a child is a victim of emotional abuse or where the parent or custodian exposes the child to criminal activity in the home.[206] The basis for the petition can include: abandonment of a child by a parent or

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205. MINN. STAT. § 260.015, subd. 2a (Supp. 1993) now defines a Child in Need of Protection or Services as follows:

(1) is abandoned or without parent, guardian, or custodian;
(2) (i) has been a victim of physical or sexual abuse, or (ii) resides with or has resided with a victim of domestic child abuse as defined in subdivision 24, (iii) resides with or would reside with a perpetrator of domestic child abuse or child abuse as defined in subdivision 28, or (iv) is a victim of emotional maltreatment as defined in subdivision 5a;
(3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
(4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
(5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:
    (i) the infant is chronically and irreversibly comatose;
    (ii) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or
    (iii) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane;
(6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody;
(7) has been placed for adoption or care in violation of law;
(8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;
(9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home;
(10) has committed a delinquent act before becoming ten years old;
(11) is a runaway;
(12) is an habitual truant; or
(13) is one whose custodial parent's parental rights to another child have been involuntarily terminated within the past five years.

Id.

206. *Id.*

guardian; physical or sexual abuse or emotional maltreatment of a child; denial of appropriate food, clothing, shelter, education, or medical care; a parent's desire for "good cause," to be relieved of parental care and responsibility; the placement of a child for adoption in violation of the law; the lack of proper care for the child because of the parent's emotional, medical, or physical disability or inability to prevent an injurious or dangerous environment; the commission of a delinquent act by child who is under age ten or is a runaway or habitual truant; or the involuntary termination of the parent's parental rights to another child within the past four years.[207] Physical and sexual abuse are also defined more expansively.[208]

While the bases for filing a CHIPS petition have been expanded, the historical shift away from the punitive approach to the social worker's approach to the needs of dependent and neglected children has continued into the most recent statutory amendments. While indicating that the paramount consideration in these proceedings is the best interests of the child, without defining specifically what "best interests of the child" means, the statute goes on to reiterate the necessity of securing for each child the care and guidance as will best serve the spiritual, emotional, mental, and physical welfare of the child.[209] This care is to be provided in the child's own home, or if it is not possible for the child to remain in his or her home, in a setting that resembles as closely as possible that which would exist in his or her own home.[210]

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207. *Id.*

208. *Id.*

209. *See* MINN. STAT. § 260.011, subd. 2 (1992).

210. MINN. STAT. § 260.011, subd. 2(a) (1992) provides:

> The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the best interests of the child. In proceedings involving an American Indian child, as defined in section 257.351, subdivision 6, the best interests of the child must be determined consistent with sections 257.35 to 257.3579 and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923. The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated in need of protection or services and under the jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safe-guarded without removal; and, when removal from the child's own family is necessary and in the child's best interests, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.

In addition to this emphasis on home-like services and a nonpunitive treatment approach, the statute now directs the court and the personnel of the court to ensure that reasonable efforts are made "to reunite the child with the child's family at the earliest possible time consistent with the best interests, safety, and protection of the child."[211] Reasonable efforts mean:

> the exercise of due diligence by the responsible social service agency to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family; or upon removal, services to eliminate the need for removal and reunite the family.[212]

This statement is so strong that it imposes on the social service agency the burden of demonstrating that it has in fact made all reasonable efforts to reunify the family.[213]

As this review of legislative developments indicates, Minnesota has clearly been following the trends, begun early in American history, in addressing the needs of dependent and neglected children. The state has moved away from the punitive approach that treated dependency and neglect as distinct situations where *parental* behavior was the focus and punishment and removal of children was the remedy. Minnesota is moving more and more toward the social worker approach where dependent, neglected, and abused children receive treatment and therapy under the direction of social workers in a unified CHIPS statutory regime, which emphasizes the best interests of the children, reunification or maintenance of an intact family and home, and broadened bases for filing a CHIPS petition.[214]

Significantly, the conflict continues to exist between the nature of the use of the state's power through its courts, welfare systems, and county attorney's office and the recognition of the ongoing responsibility of communities and families to address the needs of dependent and neglected children.[215] As stated,

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Id.

211. MINN. STAT. § 260.012(a) (1992).

212. *Id.* § 260.012(b) (1992).

213. *Id.*

214. *In re* Gault, 387 U.S. 1 (1966). All of this has occurred in a time of more elaborate procedural mechanisms and in a post-*Gault* era when due process is a consideration in child protection matters. *See id.* at 26. At the same time, the juvenile code has continued to provide the juvenile court with broad dispositional bases and authority over children and families. *See* MINN. STAT. §§ 260.181, 260.191 (1992 & Supp. 1993).

215. *See infra* notes 270-75 and accompanying text.

even after all of the legislative changes discussed in this section, the CHIPS petition process continues to allow *any* reputable person to file a CHIPS petition in the juvenile court on behalf of a child in need of services.[216] This practice of community involvement in protecting the welfare of society's children has its roots in colonial America and nineteenth century developments.[217] Although some counties and courts require that the county attorney "draft" all CHIPS petitions, the statutes perpetuate the trend of historical access to the court by *any* reputable person on behalf of the community or the child.[218] As will be discussed in greater detail below, such broad access to the juvenile court for the filing of a CHIPS petition by any interested person is critical to the usefulness and effectiveness of the CHIPS system which was intended to benefit an increasingly troubled society.

IV. Child in Need of Protection or Services or CHIPS Proceeding

In addition to significant historical developments in the treatment of dependent, neglected, and abused children, the procedures in the juvenile courts, where CHIPS petitions are now filed, have also evolved in numerous ways over the years. The procedural developments are as important as the substantive developments in assessing private CHIPS petitions.

A. The Development of Policies and Procedures for Juveniles

Constitutional principles such as due process and equal protection were not applied to the early juvenile court proceedings, even in the delinquency area. Rather, the juvenile court was, as stated by a referee in the California juvenile court in 1923, "conceived in the spirit of the clinic."[219] Described as child centered, the juvenile courts were specifically designed to operate with great informality.[220] The intent and goal of the juvenile court

216. Minn. Stat. § 260.131, subd. 1 (1992).

217. *See* Bremner, *supra* note 43, at 263-281.

218. Minn. Stat. § 260.131 (1992).

219. Ernest B. Hoag & Edward H. Williams, Crime, Abnormal Minds and the Law, 158 (1923).

220. Monrad G. Paulson & Charles H. Whitebread, National Council of Juvenile & Family Court Judges, Juvenile Law and Procedure 1-4 (1978). Prior to *In re* Gault, 387 U.S. 1 (1966), and other similar developments in the 1960s, neither juries, nor public trials, nor other constitutional guarantees existed, even in the "criminal" cases. *Id.* at 14. Court records, assuming they even existed, were generally sealed and

system was to take a broad humanitarian outlook towards the child.[221] Judges were expected to be not only well versed in the law, but also well versed in psychology, sociology, and child development since it was the judge who ultimately decided what would serve the best interests of both the child and the state.[222] As noted by one early commentator, "the juvenile court is conspicuously a response to the modern spirit of social justice."[223] It was within the context of this spirit and with the view of children as entities to be molded by appropriate middle class values that the "neglected" or "dependent" child was to be viewed and helped.

Author Herbert Lou made this observation about the early functioning of juvenile court:

> It is perhaps the first legal tribunal where law and science, especially the science of medicine and those sciences which deal with human behavior, such as biology, sociology, and psychology, work side by side. It recognizes the fact that the law unaided is incompetent to decide what is adequate treatment of delinquency and crime. It undertakes to define and readjust social situations without the sentiment of prejudice. Its approach to the problem which the child presents is scientific, objective, and dispassionate. The methods which it uses are those of social case work, in which every child is studied and treated as an individual.[224]

Into this milieu of philosophical views entered the concepts of the "dependent" and "neglected" child. The notions of equal protection, due process, and other Constitutional rights, however, directly conflicted with these philosophical views and with the original intention of the framers of the juvenile court movement.[225]

These philosophical views, combined with the significant power and discretion given to juvenile court judges to invade the

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not available to the public or even to the parties, with the stated basis being to safeguard the child's reputation. *Id.* at 24.

221. *See Gault*, 387 U.S. at 15-16.

222. HERBERT H. LOU, JUVENILE COURTS IN THE UNITED STATES 2 (1927).

223. *Id.*

224. *Id.*

225. *See* PAULSON & WHITEBREAD, *supra* note 221, at 10-12. Historically, juvenile offenders were not given the same due process protections as adult offenders. *Id.* at 12. In fact, constitutional issues in juvenile court proceedings were not addressed until 1966, sixty-six years after the first Juvenile Court Act. *Id.* at 12-13.

lives of children and their families,[226] led to several important United States Supreme Court decisions. In these decisions, the Court determined that, in particular circumstances, the due process clause and concepts of fundamental fairness must override the conflicting philosophical views of the juvenile court.[227]

While these United States Supreme Court decisions specifically applied to delinquency procedures in the juvenile court, their ramifications in the application of constitutional principles to all aspects of juvenile court cannot be overstated. More specifically, in Minnesota the decisions resulted in a movement to create procedural rules and rights for all juvenile court proceedings, including child protection matters.[228] In some instances, the creation of rules of procedure not only systematized the procedure used in the court, but also created or clarified substantive rights under the juvenile court statutes and applied significant constitutional principles.[229]

In the late 1960s, the structure of Minnesota's juvenile courts was determined by each individual county.[230] In Hennepin and Ramsey Counties, the two most populous counties in the state, separate juvenile courts existed on a district court level.[231] Each of these courts was effectively run by and controlled by a judge who had been seated as the one and only juvenile court judge for a number of years. To enhance the participant's understanding of the juvenile court process and to provide more protection for juveniles and parents, these judges suggested that procedural rules incorporating due process and equal protection considerations be created.[232]

In the other eighty-five counties of Greater Minnesota, juvenile court judges were special judges who heard specific jurisdic-

226. *Id.* at 12-22.

227. *In Re* Gault, 387 U.S. 1, 30 (1967); Kent v. United States, 383 U.S. 541, 555 (1966). *See supra* note 137.

228. MINN. R.P. FOR JUV. CT. PROCEEDINGS IN PROBATE—JUVENILE COURTS (1970) (codified as adopted at MINN. R. JUV. P. 52 (1982)).

229. *Id.* at 2-1, 2-3. Rule 2-1 states that "[e]ach party to a juvenile court cause shall have the right to be represented by counsel . . ." *Id.* at 2-1. Under Rule 2-3, juveniles have the right to introduce evidence on their behalf, cross-examine witnesses, inspect reports filed with the court, obtain transcripts, appeal decisions, and have subpoenas issued. *Id.* at 2-3.

230. MINN. STAT. § 260.021, subd. 1 (1965).

231. *Id.*, subds. 2, 3.

232. *Id.*

tional cases.[233] The statutes governing the juvenile courts contained no statutory authority empowering the judges to create their own specific rules applicable to juvenile court proceedings. Nevertheless, in 1969, the Minnesota Probate Court Judges Association, which consisted of all of the judges who heard juvenile court cases in the eighty-five counties of Greater Minnesota, passed and approved procedural rules for juvenile court proceedings.[234] They agreed to apply those rules while exercising their jurisdiction as juvenile court judges.[235]

For many reasons, including the high volume of juvenile cases in the metropolitan area, the Hennepin and Ramsey County Judges neither approved these rules nor agreed to abide by them.[236] These judges then created their own set of procedural rules for application within Hennepin and Ramsey counties.[237] Thus, from 1969 to 1983, the procedural rules applicable to the participants in a juvenile court proceeding varied by county. Because there were differences in the procedural rights given to juveniles, and because these procedural rights at times had a significant impact on the underlying substantive rights, the rights of a juvenile or an adult in a dependency or neglect proceeding were determined by the county in which the case was venued.

While each of these two sets of rules purported to be only procedural in nature, the reality is that they did grant substantive rights.[238] In particular, the rules in Greater Minnesota specifically delineated certain rights including the right to counsel,[239] the right to remain silent,[240] and other basic rights.[241] The Hennepin and Ramsey County rules incorporated some specific

233. *Id.*, subd. 4. In most instances, these judges acted simultaneously as probate court judges and juvenile court judges and also had jurisdiction over minor criminal offenses and smaller value civil cases. *Id.*

234. MINN. R.P. FOR JUV. CT. PROCEEDINGS IN PROBATE—JUVENILE COURTS 531-32 (1970) (codified as adopted at MINN. R. JUV. P. 52 (1982)).

235. *Id.*

236. *Id.* at 531.

237. For Hennepin County's version of juvenile court rules of procedure at this time, see HENNEPIN COUNTY JUV. CT. BENCH BOOK, HENNEPIN JUV. CT. R. 49-54 (4th ed. 1977).

238. *See, e.g., id.* at 6.2 (giving juveniles the right to counsel).

239. MINN. R.P. FOR JUV. CT. PROCEEDINGS IN PROBATE—JUVENILE COURTS 2-1 (1970) (codified as adopted at MINN. R. JUV. P. 52 (1982)).

240. *Id.* at 2-2.

241. *Id.* at 2-3.

guarantees within other rules,[242] but they did not contain a separate division for rights of the children. Thus, substantive rights, such as right to counsel and the right to remain silent, were much more explicitly spelled out in the Greater Minnesota probate and juvenile court rules.

At the same time, the Hennepin County rules specifically addressed discovery issues.[243] The procedural rules used by the counties of Greater Minnesota did not address discovery issues and did not interrelate with the procedural rules from other courts.

Regarding the reference of juveniles for prosecution as adults, the metropolitan rules required a finding of probable cause and, if necessary, allowed that determination to be made upon the taking of testimony.[244] The metropolitan rules also specified time periods within which the finding of probable cause had to be made.[245] In contrast, the probate and juvenile court rules for juvenile court proceedings in Greater Minnesota were much more detailed in their description of what kind of reference hearing would be held, what kind of investigation would be done,[246] what kind of notice would be given,[247] what kind of evidence would be admissible,[248] and what kind of order would be issued.[249]

B. The Emergence of Uniform Procedure Throughout the State

In 1982, the Minnesota Legislature authorized the creation of procedural rules that would apply to all juvenile court proceed-

242. *See* HENNEPIN COUNTY JUV. CT. BENCH BOOK, HENNEPIN JUV. CT. R. 2.1, 6.2, 7.1. Rule 2.1 guarantees parental notification; Rule 6.2 guarantees the right to a public defender; and Rule 7.1 guarantees the right to an appeal.

243. *Id.* at 6.61. Rule 6.61 states that "[a]ll dependency and neglect discovery will be governed by Rules 26 through 37 inclusive of the Minnesota Rules of Civil Procedure." *Id.*

244. *Id.* at 4.3. This rule states that when a reference motion is made, the court must determine that "there is probable cause to believe that the child is involved in the offense for which the motion is made." *Id.*

245. *Id.* at 4.1. Rule 4.1 states that "[a] motion for reference . . . must be made before jeopardy attaches to the offense sought to be referred." *Id.*

246. MINN. R.P. FOR JUV. CT. PROCEEDINGS IN PROBATE—JUVENILE COURTS 8-3 (1970) (codified as adopted at MINN. R. JUV. P. 52 (1982)).

247. *Id.* at 8-2.

248. *Id.* at 8-6.

249. *Id.* at 8-7.

ings within the state.[250] Thus, effective May 1, 1983, the first uniform Rules of Juvenile Procedure were created.[251] These rules continue to govern the procedures in juvenile court.[252]

The committee that created these rules divided them into the categories of "delinquency rules"[253] and "juvenile protection rules."[254] The "juvenile protection rules" were intended to govern juvenile protection matters which were defined to include cases of dependency and neglect, children neglected in foster care, termination of parental rights, and review of all out-of-home placements.[255] Thus, some eight decades after the creation of the statutory definitions for "dependent" and "neglected" children,[256] and the coming together of the various philosophical views within the context of a very powerful court system,[257] there was now for the first time a set of specific procedural rules that applied to all juvenile court cases.

The framers of the new juvenile court rules created two sets of rules because they wanted to distinguish delinquency cases, where the criminal nature of the delinquent acts invokes procedural and substantive rights,[258] from juvenile protection matters,[259] where other doctrines come into play. In creating these categories, the framers struggled to balance conflicting issues. On the one side of the balance were the constitutional rights to due process, equal protection, and right to counsel.[260] On the other side of the balance were the philosophical concepts based on informality, the need for swift proceedings responding to emergency situations, and the long-held notion of *parens pa-*

250. The rules were then adopted by order of the Minnesota Supreme Court dated December 17, 1982. MINN. R. JUV. P. (Supersedure clause).

251. *Id.* (1984).

252. *Id.*

253. MINN. R. JUV. P. 1.01 (1984). "Rules 1-35 and 65 govern the procedure in the juvenile courts of the State of Minnesota for all delinquency matters defined by Minn. Stat. 260.015, Subd. 5 and all matters defined by Minn. Stat. 260.015, Subds. 19, 20, 21, 22, and 23 which are defined for the purpose of these rules as petty matters." *Id.*

254. *Id.* at 37.01. "Rules 37 through 65 govern the procedure for all juvenile protection matters in the juvenile court of the State of Minnesota. Juvenile protection matters include all dependency, neglect, neglected and in foster care, termination of parental rights and review of out of home placement matters." *Id.*

255. *Id.*

256. *See supra* notes 164-66 and accompanying text.

257. PAULSON & WHITEBREAD, *supra* note 221, at 6.

258. MINN. R. JUV. P. 1-36 (1984).

259. *Id.* at 37.01.

260. *See supra* notes 225-29 and accompanying text.

triae.[261] In struggling to achieve a balance, the framers attempted to develop a system which would reflect all of those things.[262] In doing so, a procedural system unlike any other within the court system of the State of Minnesota was created.

As an example of the sometimes subtle distinction between the rules of civil and criminal procedure and the rules of juvenile court procedure, rather than being a party to an action,[263] a person or entity has a "right to participate."[264] Instead of applying the civil discovery rules[265] or the criminal discovery rules,[266] a different set of rules applying to pretrial discovery was created.[267] At the same time, in an effort to move matters along, time limits were set within all of the rules to recognize that decisions in children's lives need to be made quickly.[268]

C. *Current CHIPS Procedure*

The rules written in 1983 still exist today.[269] While statutory changes have occurred, such as the creation of the new CHIPS category that replaced the categories of dependent and neglected children, the rules themselves have not been amended. The delicate balance that the relevant statutes and procedural rules attempt to strike between the power and authority of the court, the authority of the state to participate in and control CHIPS proceedings, and the ability of any interested person to commence CHIPS proceedings, continue to be issues addressed in all CHIPS proceedings.

The historical trend of broad community involvement in family and child protection matters,[270] the prosecutorial mode of the state as *parens patriae*,[271] the social worker's therapy methodology that became dominant in this century,[272] the due process

261. *See supra* notes 220-24 and accompanying text.
262. MINN. R. JUV. P. 37-65 (1984).
263. *See generally* MINN. R. CRIM. P. (1984).
264. MINN. R. JUV. P. 39 (1984).
265. MINN. R. CIV. P. 26-37 (1984).
266. MINN. R. CRIM. P. 9 (1984).
267. MINN. R. JUV. P. 57 (1984).
268. *See, e.g.*, MINN. R. JUV. P. 52, 59, 61, 62 (1984) (stating respective time limits of "immediate" to be: 72 hours; 120 days; 90 days; and 45 days).
269. MINN. R. JUV. P. (1994).
270. *See supra* part II.
271. *See supra* notes 114-17 and accompanying text.
272. *See supra* notes 120-25, 140-42 and accompanying text.

concerns of *In re Gault*,[273] and the long tradition of "the republican family" in American history[274] all converge in the application of the juvenile court rules to substantive CHIPS proceedings. It is a delicate balance fraught with much tension and the overarching need to protect the "children's best interests."[275] The right to bring a private CHIPS petition is an integral part of this procedure and one clearly contemplated by both the substantive law and procedural rules.

V. Why Private CHIPS Are Needed

No other court system in Minnesota has available to it the dispositional resources[276] or the dispositional alternatives[277] available to the juvenile court in CHIPS proceedings. Neither the family court[278] nor the criminal court[279] provide an opportunity to assist families both financially and dispositionally as does the juvenile court.

More specifically, no other court has the authority to order foster care,[280] drug treatment,[281] residential treatment,[282] individual and family counseling,[283] psychological and physical examinations,[284] protected supervision with in-home monitoring,[285] or other alternatives that can be used to strengthen and assist children and families. In addition, no other court system

273. 387 U.S. 1 (1966).

274. *See supra* notes 53-56 and accompanying text.

275. *See generally* Grossberg, *supra* note 53. The best interests of the child are defined by community consensus.

276. Among the various resources available to the juvenile court system are the county welfare board, foster homes, child placement agencies, physical and mental health treatment programs, and drug awareness programs. *See* Minn. Stat. § 260.191, subd. 1 (1992).

277. Some of the alternatives for children in need of protective services include in-home placement, transfer of custody, independent living, counseling, and monetary fines. *See id.*

278. Family law statutes provide assistance to families through temporary orders, restraining orders, and guardians ad litem. Minn. Stat. §§ 518.131, 518.165 (1992). However, family courts do not have as extensive an assistance program as does the juvenile court. *See* Minn. Stat. § 260.191, subd. 1 (1992).

279. Criminal statutes do not specifically address family assistance, although "rehabilitation" is listed as one purpose of the Criminal Code. Minn. Stat. § 609.01, subd. 1 (1992).

280. *Id.* § 260.191, subd. 1(b)(3)(i) (1992).

281. *Id.*, subd. 1(b)(6).

282. *Id.*, subd. 1(a)(3).

283. *Id.*, subd. 1(b)(1).

284. Minn. Stat. § 260.191, subd. 1(a)(3) (1992).

285. *Id.*, subd. 1(b)(2).

in Minnesota has the authority to order both parents and children to participate in these alternatives.[286]

Finally, the Bureau of Social Services or county welfare departments participate[287] in all CHIPS proceedings and, dispositionally, the court has the authority to order financial assistance in excess of the parents' and childrens' ability to pay for welfare department programs.[288] This combination of court authority and financial resources provides the juvenile courts with options unavailable to any other court in Minnesota.

Despite the historic statutory language discussed above,[289] no county had rules or special court orders specifying the circumstances and the manner in which CHIPS petitions might be brought by family members or other interested persons, rather than by the bureau of social services and the county attorney's office. This absence of any specific court rule or generic court order and directive resulted in different situations for different families in different counties. The ability of a family member or interested person to bring a CHIPS petition depended on the whim of the judge or, in some cases, the clerk of court charged with filing such petitions.

Following the passage of the current CHIPS statute,[290] Hennepin County, the largest county in the state, through its acting chief judge of juvenile court,[291] took an extremely liberal position in providing access to the court by virtually anyone who wished to file a private CHIPS petition.[292]

Beginning in February 1991, however, the Hennepin County court significantly restricted access to the juvenile court through

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286. *Id.*, subd. 1(b)(1).

287. "The county welfare board has the right to participate in the hearings through the county attorney." MINN. R. JUV. P. 39.03 (1994).

288. *See* MINN. STAT. § 260.251 (1992).

289. *See supra* part III.

290. MINN. STAT. § 260.015 (1992 & Supp. 1993).

291. Judge Allan Oleisky was Chief Judge of Hennepin County District Court in 1988.

292. MINN. STAT. § 260.131, subd. 1 (1992) states:

> Any reputable person, including but not limited to any agent of the commissioner of human services, having knowledge of a child in this state or of a child who is a resident of this state, who appears to be delinquent, in need of protection or services, or neglected and in foster care, may petition the juvenile court in the manner provided in this section.

Id.

private CHIPS petitions by order dated February 6, 1991.[293] Also, in an effort to determine under what specific conditions private CHIPS petitions should be allowed, the Hennepin County Juvenile Court called together a committee to discuss the rules to be implemented pursuant to Minnesota Rule 53.01,[294] and to begin a process to provide access to the juvenile court on a more continuous basis despite the rotation of judges.[295]

At that time, Hennepin County restricted access to the juvenile court, excluding all but the narrow pipeline of cases acceptable to the Hennepin County Welfare Department and the Hennepin County Attorney's Office. The "narrow pipeline" occurs because welfare departments and county attorneys are guided by their own internal policies as to what cases they will accept and on what basis they will accept them.[296] Moreover, county attorneys are dependent upon the welfare department, with all of its political and financial restrictions,[297] for investigation of CHIPS cases. Thus, the public's access to the juvenile court can be and has been significantly hampered.[298]

This restriction severely limited the ability of families in need of assistance to obtain help through the juvenile court process.[299] Many families and individuals were left without the ability to provide for the needs of their children, either because of financial constraints, lack of options and opportunities in the treatment setting, lack of in-home and available services, or other restrictions resulting from lack of access to the powerful and resource rich juvenile court.[300] This lack of access contra-

293. Order, *In re* A.V., Hennepin County Juvenile Court File No. 148071-96 (Feb. 6, 1991) (dismissing seven pending private CHIPS petitions).

294. Memorandum from Reid S. Raymond, Law Clerk for Judge Isabel Gomez, to Attorneys in the Private CHIPS Jurisdiction Case (Feb. 25, 1991) (on file with the William Mitchell Law Review).

295. *Id.*

296. Memorandum of Hennepin County Attorney's Office, *In re* A.V., Hennepin County Juvenile Court File No. 148071-96 (Feb. 6, 1991) (regarding a motion to dismiss private CHIPS petitions).

297. *Id.*

298. *See* Order, *In re* A.V., Hennepin County Juvenile Court File No. 148071-96 (Feb. 6, 1991) (dismissing seven *pending* private CHIPS petitions and preventing any filing without specific order or rules of the court).

299. *See generally* SONSTENG & SCOTT, *supra* note 204.

300. *See* Order, *In re* A.V., Hennepin County Juvenile Court File No. 148071-96 (Feb. 6, 1991) (dismissing seven *pending* private CHIPS petitions and preventing any filing without specific order or rules of the court).

dicts the historical availability of the juvenile courts to help children and families who need assistance.

While it can be debated whether or not the resources available through the court are sufficient to meet the needs and demands which are put on it by such petitions, the reality is that the juvenile court stands in a special position to assist families and children in ways and with resources not available through any other means.[301]

Voluntarily working with a welfare department or voluntarily seeking out treatment and help is often unsuccessful either for political reasons or financial reasons. Additionally, in Minnesota, no other court can order treatment, place children in foster care, place children in residential treatment, provide financial assistance and backing for children with significant needs, or otherwise assist families in working together to resolve problems as readily as the juvenile court can.

The Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System has recently raised a significant issue about access to the juvenile court system and its rich and various resources, especially by minority persons.[302] This report indicated that many parents who seek access to the courts and social welfare system to help their children are forced to have their child adjudicated delinquent *before* the much needed services become available to them.[303] One suggestion by the Task Force was to give juvenile judges the authority to convert delinquency cases to CHIPS cases.[304] That approach, however, is backwards in that it emphasizes delinquency issues rather than child protection issues. In reality, child protection issues often precede delinquency issues in the lives of those children who find themselves in trouble with the law.

A more available private CHIPS procedure is an obvious solution, allowing a family member or other interested person to initiate a CHIPS proceeding and gain access to the resources of the juvenile court without requiring that person to either have the child adjudicated delinquent or secure the approval of a county attorney or other county bureaucrat. The private CHIPS peti-

301. See statutes cited *supra* notes 276-86 and accompanying text.

302. *See* MINNESOTA SUPREME COURT ADVISORY TASK FORCE ON THE JUVENILE JUSTICE SYSTEM, FINAL REPORT, *reprinted in* 20 WM. MITCHELL L. REV. 595 (1994).

303. *Id.* at 678.

304. *Id.*

tion would make the juvenile court's services and protections available to *all* members of society, regardless of race, creed, or socioeconomic status.

A failure to recognize the necessity of having an available access point into the juvenile court by families in crisis is a failure to provide for the very basic needs of children and families. This failure further destroys the vision of American society, dating back to the colonial era. During the colonial era, neighbors, friends, relatives, and the broader community involved themselves, albeit reluctantly, in the protection of children.[305] In the late nineteenth century, despite the earlier emergence of the "republican family,"[306] child protection issues became the concern of all of society, and private entities such as the cruelty societies, backed by the state as *parens patriae*, protected children when necessary.[307] The twentieth century view with its emphases on therapy rather than prosecution and punitive actions[308] and keeping children in their homes and communities[309] depends more than ever on individual initiative. In our troubled late-twentieth century society, the resources of the child protection agencies and of the juvenile court are needed now more than ever. The private petition, with its rich historical basis, provides one excellent means to serve this strong contemporary need.

VI. Bringing Private CHIPS Petition in Juvenile Court

A. *Private CHIPS Petition is Allowed*

Within the context of the statutory and rule scheme in juvenile court, the private CHIPS petition provides one way to access the resources of juvenile court. Juvenile CHIPS proceedings result in a unique melding of the judicial system and the welfare system. Therefore, when accessed and used appropriately, private CHIPS petitions provide for an effective resolution to the troubling issues faced by children and families today.

Despite the changes that have occurred, one critical item has remained consistent throughout the history of the statutes and rules that govern juvenile court proceedings. Specifically, direct

305. *See* Bremner, *supra* note 43, at 351-52.

306. *See* Grossberg, *supra* note 53, at 4-9. *See also supra* notes 53-56 and accompanying text.

307. *See* Pleck, *supra* note 25, at 69; Thomas, *supra* note 29, at 310.

308. *See* Thomas, *supra* note 29, at 329.

309. *Id.* at 312-13.

access to the juvenile court has been provided to family members and interested persons, in addition to state agencies, county attorney's offices, and welfare departments. Cases involving CHIPS are not criminal cases, and there is no constitutional or other prohibition to prevent someone other than an agent of the state[310] from bringing a petition.

A historical review makes it clear that it has always been expected that society in general, and families in particular, would have access to the resources necessary to help them resolve their problems.[311] This was certainly true in colonial society and later on the western frontier.[312] The cruelty societies and the Progressive Era reforms all emphasized access to resources and programs in the community.[313] Furthermore, the current Minnesota statutory framework emphasizes the goal of maintaining children in their homes or returning them as soon as possible.[314]

The statutory provisions allowing family members and interested persons to initiate private CHIPS petitions have been consistent throughout the history of Minnesota law. In fact, as noted earlier in this Article, statutes dating back to the 1900s specifically provided that any reputable person could bring a petition upon sworn affidavit before the court.[315] This provision still appears in the current version of the statute.[316] The current statute, while specifically allowing any reputable person to petition the juvenile court,[317] also indicates that "[u]nless otherwise provided by rule or order of the court, the county attorney shall draft the petition upon the showing of reasonable grounds to support the petition."[318]

The history of Minnesota's rules of juvenile procedure further demonstrates that the rules allow family members and interested persons to access the resources of the juvenile courts. At the time that the "juvenile protection rules"[319] were written, the au-

310. State agents include county and city attorneys.
311. PLECK, *supra* note 25, at 79.
312. *See supra* part II.E.
313. *See* TIFFIN, *supra* note 42, at 40; Thomas, *supra* note 29, at 310. *See also supra* part II.D.
314. *See* MINN. STAT. § 260.011 (1992).
315. Act of Apr. 20, 1917, ch. 397, § 7, 1917 MINN. LAWS 561, 564.
316. MINN. STAT. § 260.131 (1992).
317. *Id.*, subd. 1.
318. *Id.*, subd. 2.
319. *See supra* notes 254-57 and accompanying text.

thors of those rules grappled with the issue of access to the juvenile courts. The drafters of Rule 53.01 stated that "[a]ll petitions shall be drafted and filed under the supervision of the county attorney unless Minnesota Statute [sic] or the court by rule or order permits counsel, other than the county attorney, to draft and file a petition with the court."[320] Recognizing that there may be circumstances under which a court might issue a blanket rule or an order specifically disallowing a petition to be filed by someone other than the county attorney, the drafters of the rules, in interpreting the statute, have made it clear that there are circumstances under which such petitions should be allowed.[321] Another rule specifically recognizes that there may be petitioners other than the county attorney who would have a right to participate in the hearing along with the person who drafted and filed the petition.[322]

In recent years, the question of access to the juvenile court through private CHIPS petition has revolved more around the allocation of resources than around legal availability.[323] This is particularly true as CHIPS cases drain on the resources of the juvenile courts, social service agencies, and treatment centers. These resources may be used to assist a child who would have been approved for assistance under the screening procedures of a county attorney's office or child protection unit.

The issue from a policy standpoint is whether the juvenile courts, with all of their resources and powers,[324] should be accessible by persons other than the narrow scope of persons and families identified in the political climate of child protection and county attorney units. Permitting interested persons to initiate a CHIPS proceeding does encourage widespread use of resources for the child, but these resources are then available to children and families who are in need of the court's assistance.

Despite this debate over the use of resources, the juvenile courts themselves have facilitated the use of the court's re-

320. MINN. R. JUV. P. 53.01, subd. 1 (1994).

321. *See* SONSTENG & SCOTT, *supra* note 204, Rule 53.01 author's cmt. (stating that such petitions may be drafted and filed by private attorneys, legal assistants, or county welfare workers, as long as the county attorney supervises the process).

322. MINN. R. JUV. P. 39.05 (1994).

323. Pleadings, *In re* A.V., Hennepin County Juvenile Court File No. 148071-96; Committee Notes, Ad Hoc Committee on CHIPS Proceedings in Hennepin County (Aug. 13, 1992) (on file with the William Mitchell Law Review).

324. *See, e.g.*, MINN. STAT. §§ 260.181, subd. 2; 260.191 (1992 & Supp. 1993). *See also supra* notes 221-30 and accompanying text.

sources by family members and interested persons acting on behalf of a child in need of protection or services. Directly following the passage of the 1988 CHIPS statute, the Hennepin County district court generally allowed the filing of a private CHIPS petition by anyone, and in fact, provided formats and fill-in-the-blank forms in order to assist the public in accessing the juvenile court.[325]

B. Bringing a Private CHIPS Petition

1. Current Status

During the period that the Hennepin County courts were permitting private CHIPS petitioners to access the resources of the court, the Minnesota Court of Appeals heard a case involving access to the juvenile court under the termination of parental rights statutes.[326]

In the case of *In re S.F.*,[327] an attorney, on behalf of a private petitioner, requested an order from the Hennepin County district court allowing the petitioner to file a termination of parental rights petition.[328] The Minnesota Court of Appeals ruled that the lower court had erred in refusing to issue an order allowing the private termination petition to be filed.[329]

The court specifically found that the proposed petition for termination of parental rights met the content requirements of *Minnesota Rules of Juvenile Procedure* Rule 53.02, and that the allegations contained in the petition, if proven, would support a finding that a statutory ground for termination existed. Consequently, the court of appeals held that the lower court should have allowed the petition to be filed to give the petitioner access to the juvenile court.[330] Thus, the court indicated that when the content requirements of the petition are met, then the lower court must issue an order allowing the termination petition to be filed.[331]

Because the same procedural requirements are used in the filing of a termination of parental rights petition under the juve-

325. Juvenile Law, Part Two: Allen Oleisky, Hamline University School of Law.
326. *In re* S.F., 482 N.W.2d 500 (Minn. Ct. App. 1992).
327. 482 N.W.2d 500 (Minn. Ct. App. 1992).
328. *Id.* at 501.
329. *Id.* at 503-04.
330. *Id.* at 504.
331. *Id.*

nile code[332] and under the juvenile protection rules,[333] the results of that case have direct application to the ability to file a private CHIPS petition. Thus, if a CHIPS petition is presented to the court and if that petition conforms to the contents portion of Rule 53.02[334] and contains sufficient allegations which, if proven, would constitute a finding that a Child in Need of Protection or Services case exists, then the court may allow the filing of that petition through special order.[335]

More specifically, the termination of parental rights cases make it clear that the court is not free to ignore the requirements of the statute[336] or the rule of juvenile procedure.[337] Thus, if the private petition presented to the court contains sufficient allegations to constitute a finding that a child is in need of protection or services pursuant to the statute,[338] the court must at least allow the petition to be filed with supporting evidence. Additionally, the court may hold an initial hearing on the petition to allow supportive testimony.[339]

In approaching the court, the petitioner alleging CHIPS status might allege that the child is abandoned;[340] is a victim of various types of abuse;[341] lacks necessary food, clothing, or shelter;[342] lacks the special care required by a particular physical, mental, or emotional condition;[343] is medically neglected;[344] is one whose parent for good cause desires to be relieved of the care and custody of the child;[345] lacks proper parental care because of the emotional or physical disability of or the immaturity of the parent;[346] or any of the other specific criteria contained within the statute.[347] In essence, the private CHIPS petition intertwines the historical precedent of allowing private access to the re-

332. MINN. STAT. § 260.131 (1992).
333. MINN. R. JUV. P. 53 (1994).
334. MINN. R. JUV. P. 53.03 (1994).
335. *Id.*
336. MINN. STAT. § 260.135, subd. 3 (1992).
337. MINN. R. JUV. P. 53.01 (1994).
338. MINN. STAT. § 260.015, subd. 2a (1992 & Supp. 1993).
339. *In re* S.F., 482 N.W.2d 500, 503-04 (Minn. Ct. App. 1992).
340. MINN. STAT. § 260.015, subd. 2a(1) (1992 & Supp. 1993).
341. *Id.*, subd. 2a(2).
342. *Id.*, subd. 2a(3).
343. *Id.*, subd. 2a(4).
344. *Id.*, subd. 2a(5).
345. MINN. STAT. § 260.015, subd. 2a(6) (1992 & Supp. 1993).
346. *Id.*, subd. 2a(8).
347. *Id.*, subd. 2a.

sources of the juvenile court, the statutory language that has existed in the statutes for many years, and the current rules of juvenile procedure. This intertwining provides flexibility within the court system to make the resources available to the children and families who need them. The private CHIPS petition, therefore, provides an access point to the juvenile court and all of its resources by families and interested reputable persons, without the necessity of obtaining the political approval of the welfare department or the county attorney.

Since the Rules of Juvenile Procedure and Minnesota Statutes require that notice of the CHIPS petition be given to the county,[348] there is no danger that the position of the county attorney and welfare department will not be brought before the court. This leaves no justification at all for a blanket rule preventing the filing of private CHIPS petitions. In fact, these procedures raise the question of whether a specific rule should be promulgated identifying clear criteria as to when a private CHIPS petition will be accepted without a special order of the court.

2. *Suggestions For Improvement*

The resources of the juvenile court should not be available to anyone who walks into the court. Rather, as indicated in *In re S.F.*[349] and also in the rules of juvenile procedure[350] and the Minnesota statutes,[351] a certain level of "probable cause," or showing that the child is in fact a CHIPS child, should be required before a family member or interested person can access all of the resources and powers of the juvenile court.

On the other hand, monitoring requirements at the time of filing seems impractical. Instead, it would be more appropriate to allow for some sort of judicial review of the allegations contained within the petition. A clear analogy can be drawn between the procedures followed on a private CHIPS petition and those followed on a post-decree motion to modify custody under the family court provisions of Minnesota Statute Chapter 518. In a family court case, while a motion may be filed and a first hear-

348. MINN. STAT. § 260.135 (1992); MINN. R. JUV. P. 44.02, subd. 3 (1994).
349. 482 N.W.2d 500 (Minn. Ct. App. 1992).
350. MINN. R. JUV. P. 53 (1994).
351. MINN. STAT. § 260.131 (1992).

ing scheduled,[352] it is at this point that the court reviews the motion and affidavits and considers the matter to determine whether an evidentiary hearing, a custody evaluation, or further proceedings would be appropriate.

In a private CHIPS proceeding, all persons should be permitted to file a petition and to participate in an initial hearing on that petition. This should be made clear by court rule and policy. At that point, the petition, however, should be subject to review and dismissal if it does not reach the requisite level of "probable cause." In this manner, the resources of the juvenile courts can be accessed by the public who, after all, are the clients the court is designed to serve. At the same time, access to the juvenile court would be controlled in a way that ensures that only those cases which are appropriate will move further into the juvenile court system. In this manner, rather than being a closed system available only to those situations deemed politically appropriate by the welfare departments and the county attorney, the juvenile courts will be open to the children and families that they were originally designed to help.

VII. Conclusion

The juvenile courts of the United States and, specifically, Minnesota are in many ways a potpourri or even dumping ground for addressing the needs of those children who do not fit well into other court systems. Whether we call it "dependency," "neglect," or "CHIPS," the reality is that the historical background of these cases make it clear that it was the intent of the drafters of these statutes and the promoters of court involvement in the lives of families and children who are experiencing crisis that the resources and powers available to the juvenile courts would be available to the population in general.

With the development of tighter budgets, political policies, placement committees, county contracts, and otherwise limited resources, there is a natural inclination to attempt to restrict access to the juvenile court. Nevertheless, neither the philosophical history, nor the statutory development and analysis, nor the best interests of the children allow for such a narrow restriction. The juvenile courts, with all of their power and resources, must continue to serve the needs of children and families. Restricting

352. *Id.* § 518.18 (1992); *see also* Nice-Peterson v. Nice-Peterson, 310 N.W.2d 471, 472 (Minn. 1981).

access by the public to such courts can never be seen as furthering this goal. The juvenile courts should, therefore, be accessible to the children and families who need them. Greater use of the private CHIPS petition will ensure that these children and their families will have access to the juvenile courts.