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Douglas G. Hendriksen

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THE BATTERED CHILD: FLORIDA'S MANDATORY
REPORTING STATUTE*

Florida Statutes, section 828.041 requires "any physician, including any licensed doctor of medicine, licensed osteopathic physician, intern and resident" to report all instances of nonaccidental physical injury to children to an appropriate juvenile judge. At the present time forty-eight states have similar legislation.¹ Common features in these reporting statutes are the naming of a state agency or agencies to which reports are to be directed, the requirement of specific contents of the report, the abolishment of the physician-patient privilege with regard to these contents, and the granting of immunity from both civil and criminal liability to those who file reports under the statute if the reporter acts in good faith. Some statutes are mandatory, as is Florida's; others are permissive. Beyond these features there is variation in the statutes.

The purpose of these reporting statutes is to protect children by bringing what would normally be a low-visibility occurrence of parental abuse, one that is not often seen by those outside the family, to the attention of proper state authorities. Through these statutes the state, acting as *parens patriae*, emphasizes the limitations of parental authority. The statutes announce that parental conduct that produces physical injury — exposes the family to state intervention.

Historically there has been a reluctance by the state to interfere with the integrity of the family. In the United States, particularly, the family has been considered a preferred method for rearing children. There is also the feeling that the family unit should be preserved. Yet society realizes that certain intra-family conduct may be detrimental not only to family members, but to the community as a whole. Normally, only extreme conduct or total disregard for parental functions triggers state intervention into the family unit, and then only when it is publicly visible.² Battered child reporting statutes provide the opportunity for better visibility when none or very little existed.

*This comment grew out of discussions in the seminar, "The Child and the Law," at the University of Florida College of Law during the spring 1965 trimester. I am indebted to Professor Sanford N. Katz for his assistance.

1. According to the latest information from the Children's Bureau of the U.S. Dep't of Health, Education, and Welfare only the District of Columbia, Hawaii, Mississippi, and Virginia have not enacted a reporting statute.

2. See *Jones v. United States*, 308 F.2d 307 (D.C. Cir. 1962) in which two severely neglected children were accidentally discovered in the basement of a home by gas meter readers who made a report to the police. The children, covered with insects, were subsequently removed from the home by the police and taken to a hospital where one of the children died of malnutrition.

Why are instances of nonaccidental physical injury to children singled out as sufficiently crucial to warrant aggressive state action? The answer lies in the fact that the discovery of a battered child might also lead to finding a dysfunctioning family. If a goal of society is to preserve the family as well as to protect children then the state has a vital interest in requiring the investigation of these injuries.

THE HISTORY OF BATTERED CHILDREN

"Battered children" are not recent phenomena that can be attributed solely to the increasing pressures on parents and the difficulties in coping with their roles. Cases of a "battered child" nature are noted in legal reports as early as 1840.³ Many of these cases are perceived as questions regarding the limitations of a parent's right to punish his child; only those cases that threatened the child's life or put him in danger of extreme bodily harm were deemed to exceed these limitations.⁴

One of the earliest cases on record involved a prosecution in Tennessee of parents for criminal assault due to alleged excessive punishment.⁵ One parent had held the child while the other struck the child with her fists and pushed the child's head against a wall. The court said the "right of parents to chastise . . . disobedient children is so necessary to the government of families . . . that no moralist or lawgiver has ever thought of interfering with its existence" The court further noted that although "the law has created and preserved this right, in its regard for the safety of the child it has prescribed bounds beyond which it [chastisement] shall not be carried."

Early textbooks on domestic relations recognized parental immunity with regard to punishment.⁶ Tort concepts, such as causal factors, mental attitudes (intentional or unintentional), sufficient impact, and so on were used as guides for determining the presence of excessive punishment. Parental conduct considered so extreme as to subject parents to state intervention was defined as punishment "unreasonably severe, or in manner inhuman and shocking to the senses."⁷

Today, however, research in child development has brought out more sophisticated views of punishment; these views are particularly

3. *Johnson v. State*, 21 Tenn. 291 (1840).

4. SCHOULER, *DOMESTIC RELATIONS* 239 (1905).

5. *Johnson v. State*, 21 Tenn. 291 (1840).

6. COOLEY, *ILLUSTRATIVE CASES ON PERSONS AND DOMESTIC RELATIONS* 180-82 (1913); EWELL & LAMURE, *DOMESTIC RELATIONS* 59 (2d ed. 1897); LONG, *DOMESTIC RELATIONS*, 324 (1905); SCHOULER, *DOMESTIC RELATIONS* 238-39 (1905).

7. EWELL & LAMURE, *DOMESTIC RELATIONS* 59 (2d ed. 1897).

helpful in providing guides for state intervention. Young distinguishes punishment that may require societal involvement as that which is "without regard for its cause or its purpose."⁸ Katz makes the point that some parental actions can be considered "deliberate, calculated, consistent and tortuous, in other words cold blooded," and thus go beyond the bounds of parental authority, rather than normal parental reactions to some stimulus, which he regards as "spontaneous, indirect, impulsive and loving."⁹

Battered children are the result of abnormal or perhaps irrational behavior on the part of their parents or of those in whose custody they are placed. The result of this behavior may take the form of bone fractures in the child, in various stages of healing. Other manifestations of a parent's deliberate injury to a child might take the form of subdural hematoma, skin bruising, and so on.

It was not until the early 1960's that the medical profession, particularly pediatricians, became aware of certain peculiar unexplained injuries to children. The term "battered child syndrome" was coined to characterize a clinical condition in young children who had received serious physical abuse, generally difficult to explain in and of itself.¹⁰ In other words, the clinical history as given by the parents did not justify the extent of injury.

Not only are there medical aspects to battered child cases, but psychiatric ones as well. Sufficient data are now available to provide accurate descriptions of parents who abuse their children and the behavior patterns of these children. This information is important for purposes of understanding reasons for parents' behavior and its effects, both present and future, on the child's physical and emotional health. Data on the parents are particularly relevant in deciding questions of child custody, for example, whether a child should be temporarily or permanently removed from his home.

Parents who batter children may suffer from feelings of inadequacies, immaturity, and an inability to cope with everyday problems. These parents often overreact to their own unmet needs.¹¹ It is likely that when these unmet needs conflict with the needs of their children or the children are misperceived as being the cause of the parents' own need frustration that the children may suffer.

A study by the Massachusetts Society for the Prevention of Cruelty

8. YOUNG, *WEDNESDAY'S CHILDREN* 45 (1964).

9. Katz, Book Review, 1965 *DUKE L.J.* 208, 212.

10. See Elmer, *Identification of Abused Children*, 10 *CHILDREN* 180 (1963); Kempe, *The Battered-Child Syndrome*, 181 *A.M.A.J.* 17 (1962); Shaw, *The Surgeon and the Battered Child*, 119 *SURGERY, GYNECOLOGY AND OBSTETRICS* 355 (1964).

11. DEFRANCIS, *CHILD ABUSE—PREVIEW OF A NATIONWIDE SURVEY*, 2-3 (*Children's Division, American Humane Ass'n No. 23*, 1963). See generally YOUNG, *WEDNESDAY'S CHILDREN* (1964).

to Children provides helpful insights into the personality characteristics of parents who abuse their children.¹² These characteristics fell into one minor and three major groupings:

(1) Characteristics of hostility and aggressiveness. A continual anger rules these parents' lives, its source seemingly derived from present conflicts or early childhood experiences in a home where emotional rejection and deprivation were severe.

(2) Characteristics of rigidity, compulsiveness and lack of warmth, reasonableness and pliability in thinking and beliefs. Primary concern with their own pleasures as well as inability to feel love and protectiveness toward their children were also exhibited. Excessive cleanliness and strict discipline ruled these parents in their attitudes toward sex, dirt, and bodily processes generally; and, children who violated these standards were unhesitatingly punished. In many cases there existed no rational relationship between the nature of the child's infraction and the severity of the punishment meted out.

(3) Characteristics of passivity and dependence. These parents competed with their children for the love and attention of their spouses and seemed continually sad, moody, unresponsive, and unhappy.

A minor, but significant, grouping were the families in which the mother was the breadwinner while the formerly active father, who became incapable of supporting his family because of some physical disability, remained home acting as the mother figure.

Other studies have highlighted additional characteristics of the abusing parent.¹³ Many abusing parents have been found to be of low intelligence; frequently they were involved in minor criminal activities; alcoholism, sexual promiscuity, and unstable marriages evidenced themselves in many cases. Much of the brutality occurred in slum families in which economic deprivations and hardships created situations that were unbearable. This is not to say that parents in middle and upper class families have not battered their children. It is in the latter area that the cases are generally more difficult to discover and the least amount of information is available.

Typically, the battered child is under three years of age. His behavior patterns and emotional makeup are generally different from children reared in a functioning family. During childhood such noticeable characteristics as the following arise: a tendency to overreact to hostility, depressed and generally passive personality, destructiveness, and fear of parents.

12. MERRILL, PROTECTING THE BATTERED CHILD 4-5 (Children's Division, American Humane Ass'n No. 21, 1962).

13. YOUNG, WEDNESDAY'S CHILDREN 85 (1964); Kempe, *supra* note 10, at 18.

It has been suggested that battered children have difficulty maturing emotionally unaffected by the abuse. During the period of abuse, the child's inner psychic life may be suspended. In adulthood, reactions to this abuse may be manifested in such feelings as hostility toward adults and the community in general and a propensity toward battering their own children.¹⁴

THE PHYSICIAN AND THE BATTERED CHILD

Physicians have always occupied a unique position in regard to physically abused children. Quite often they are the only persons outside of the family to witness closely the results of child battering and question the parent concerning the cause. As a consequence, physicians have reported a large number of battered child cases to state authorities.¹⁵ The number reported, however, probably has never approached the total number of battered child cases that physicians necessarily treat. There are many reasons for this disparity.

Battered child cases are extremely difficult to diagnose as intentionally inflicted harm. Parents rarely state that the injuries were caused by punishment, and even more infrequent are the cases in which the parents say that they inexplicably inflicted the injuries.¹⁶ The cover-up explanations, on the other hand, may sound quite truthful and be compatible with the nature of the injuries especially in cases in which no outward manifestation is shown and parents are extremely cooperative.¹⁷ Questionable explanations, such as crib falls, accidental droppings, and peer or sibling encounters may create doubt in the physician's mind, but there may be little else to support his feelings. Infants are usually too young to articulate the cause of their injuries or are afraid to tell what happened.¹⁸ Further, difficulty in obtaining any type of history is often encountered. As a result of these problems, recognition of a battered child usually depends on the physical examination, X-ray findings, and a high index of suspicion on the part of the physician.¹⁹

Once a physician accurately diagnoses an injury as part of the battered child syndrome, a further question remains in his mind:

14. MERRILL, *op. cit. supra* note 12, at 6; Morris, Gould & Matthews, *Toward Prevention of Child Abuse*, 11 CHILDREN 59 (1964); Gladston, *Observations on Children Who Have Been Physically Abused and Their Parents*, 122 AMERICAN J. PSYCHIATRY 440 (1965).

15. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, THE ABUSED CHILD 5-6 (1963).

16. Kempe, *supra* note 10, at 19.

17. Fontana, *The Neglect and Abuse of Children*, 64 N.Y.S.J. OF MEDICINE 215 (1964).

18. Morris, Gould & Matthews, *supra* note 14.

19. Fontana, *supra* note 17.

what, other than medical treatment, should be undertaken? Before the passage of reporting statutes, many physicians undoubtedly felt no compulsion to report a battered child to a state authority. They saw their functions merely in terms of making decisions about the medical aspects of the case rather than in deciding to invoke the criminal process or make referrals to state welfare agencies. Fear of defamation suits as well as notions of the confidentiality of the physician-patient relationship probably influenced many physicians.²⁰ Other considerations may have been influential: time loss due to involvement with state agencies²¹ and appearance in court, decline in practice due to parents' fear of being reported, and a less than full commitment to the over-all well-being of the child patient. It is also possible that, prior to the reporting statutes, many physicians were reluctant to bring state intervention into the family sphere of authority. In any event, the passage of reporting statutes, especially mandatory ones, has had the twin purpose of alleviating the fears and emphasizing the responsibilities of physicians in battered child cases. Secondarily the acts may also serve to sensitize the diagnosis of physicians who are faced with a battered child case.

EVALUATION OF FLORIDA'S MANDATORY ACT

The Florida statute is mandatory, a feature found in a majority of the other acts.²² For at least three reasons, the mandatory feature is desirable. First, if the protection and aid of the state is truly directed to the battered child, then all battered children should have an equal right to "claim" this protection. The decision to withhold or to provide this protection should be made by a state officer rather than by a physician who is largely unaware of the protective steps that would be taken. Nonmandatory statutes actually treat the physician as the person being primarily protected with the interests of the battered child contingent on his decision. Second, more complete records of the battered child cases can be kept under a mandatory reporting system. Even if state action is not taken in every reported case at least the battered child's injuries are noted so that recurrences may reveal a pattern of child abuse. Third, the absence of discretion on the part of the physician should undoubtedly insulate him from community criticism in the unpopular case and may also minimize the extent and effect of parental pressure to withhold a report.

20. Curphey, *The Battered Child Syndrome-Responsibilities of the Pathologist*, 102 CAL. MEDICINE 103 (1965).

21. *Ibid.*

22. *E.g.*, N.J. REV. STAT. §9:6-8.3 (Supp. 1964); OHIO REV. CODE §2151.421

Despite the mandatory feature of the statute, which makes willful violations a misdemeanor, noncompliance still exists. Ignorance and misconceptions of the statute are largely responsible for the remaining gap between cases seen by physicians and those reported. Accurate disbursement of information, which impresses upon physicians the great need for immediate reporting of suspected cases and reveals the effective handling of these cases when reported, is needed.

Another feature on which state statutes vary concerns the agency to which reports are to be directed.²³ The Florida statute requires that the reports be made to "the appropriate juvenile judge." This provision is subject to criticism. It is doubtful whether the juvenile courts have enough properly trained personnel to handle effectively the battered child caseload. Florida's juvenile courts were encountering serious personnel shortages prior to the enactment of the statute. These conditions would lead one to believe that the courts deal with the serious cases and let others remain unattended until they finally reach a degree whereby they themselves demand immediate attention. This procedure is dangerous because child abuse tends to be repetitive with its degree becoming more severe.²⁴

The juvenile court may call upon the Child Welfare Unit of the State Welfare Agency to investigate reported battered child cases. This agency investigates such cases whenever requested to do so by the court or institutions that encounter them. There are many problems in this arrangement. There is no mandatory requirement that the welfare unit make the investigation or, for that matter, that an investigation be made at all. The recommendations of the welfare unit need not be followed by the juvenile judge; he may handle the case as he sees fit. In many instances, follow-up studies are not made.

Many states utilize a department of welfare as the agency to which reports are directed.²⁵ A recent Illinois act, for example, uses that state's Department of Children and Family Services.²⁶ The necessity for employing a social service agency is apparent. Since child abuse

(Anderson Supp. 1964); Okla. Sess. Laws 1965, ch. 43, §2; TENN. CODE ANN. §37-1202 (Supp. 1965).

23. Law Enforcement: *e.g.*, OHIO REV. CODE §2151.421 (Anderson Supp. 1964); UTAH CODE ANN. §55-16-1 (Supp. 1965); Wash. Sess. Laws 1965, ch. 13, §3(1). Welfare Agency: *e.g.*, N.D. CENT. CODE §50-25-01 (Supp. 1965); R.I. GEN. LAWS ANN. §40-13.1-3 (Supp. 1964); Okla. Sess. Laws 1965, ch. 43, §2.

24. CHILDREN'S BUREAU, *op. cit. supra* note 15.

25. *E.g.*, IDAHO CODE ANN. §16-1641 (Supp. 1965); ILL. ANN. STAT. ch. 23, §2043 (Smith-Hurd Supp. May 1965); ME. REV. STAT. ANN. tit. 22, §3852 (Supp. 1965); MASS. GEN. LAWS ANN. ch. 119, §39A (1965); N.D. CENT. CODE §50-25-01 (Supp. 1965); R.I. GEN. LAWS ANN. §40-13.1-3 (Supp. 1964); Okla. Sess. Laws 1965, ch. 43, §2.

26. ILL. ANN. STAT. ch. 23, §2043 (Smith-Hurd Supp. May 1965).

is viewed as a symptom of family dysfunctioning with the twin goals of state intervention being protection of children and the preservation of the family unit, personnel trained in family counseling matters is required. In addition, social workers recognize the importance of continual contacts with clients and thus follow-up studies are ordinarily considered a routine function. A further advantage lies in the centralized files that could be kept on child abuse cases. This arrangement largely negates attempts by parents to conceal hospital aid rendered their children on different occasions. Important, too, is the public image that the department maintains as opposed to that of the juvenile court or police authorities. Less resistance normally is met by social workers of a welfare department than that faced by officers of the courts or police.²⁷

Another feature of the Illinois act is worthy of special notice. While the act requires that a report be made immediately to the nearest office of the Department of Children and Family Services, it provides that "reports may in addition be made to the local law enforcement agency." Presumably, the immunity provisions of the act apply equally to both the mandatory and discretionary reports. In this feature of its act, Illinois seems to have attained the best possible blend of mandatory and discretionary reports — its physicians *must* report all cases to the specialized department that provides children and family services, but *may* report any case directly to the law enforcement authorities without fear of criminal or civil liability.

The Florida statute grants immunity from liability for anyone participating in the making of a report or in a judicial proceeding resulting from a report. This covers both civil and criminal actions and would eliminate possible liability from defamation suits. The individual covered by this section is presumed to have acted in good faith. This is a rebuttable presumption, but the burden of proof is on the initiator to show that the person acted in bad faith or with malicious purpose.

Although Florida does not recognize the physician-patient privilege,²⁸ the act provides that the privilege shall not be grounds for excluding evidence in judicial proceedings resulting from a report. This provision was undoubtedly included as a prophylactic against possible future recognition of the privilege. The physician-patient privilege is not truly applicable to battered child cases, in any event, because the privilege is for the protection of the *patient* and not his parent. It would be an anomaly to allow an abusing parent to gain protection under this privilege, thus excluding the physician's testimony regard-

27. Katz, *supra* note 9, at 213.

28. Florida Power & Light Co. v. Bridgeman, 133 Fla. 195, 182 So. 911 (1938).

ing the cause or extent of a child's injuries in any judicial proceeding resulting from a report under the statute.

CONCLUSION

The needs of the battered child and his family justify state intervention into the family unit. Battered children are children in danger. They sometimes suffer daily physical abuse at the hands of an emotionally unstable parent. Unless the abuse is halted and other remedial steps taken, the result may be lasting physical and emotional impairment or death. Abusing parents may also need psychotherapy if they are to be helped to solve their own problems.

In response to these needs, the Florida Mandatory Reporting Statute was enacted. The statute is designed to remove the obstacles to better visibility in battered child cases. With this basic purpose, the statute aims too low. While the act does much to improve visibility, it does nothing to provide for the very specialized treatment required in these cases. In fact, it may even burden the inadequately equipped juvenile courts to such an extent that the handling of other types of cases may suffer.

The Florida statute should be amended to provide the following:

- (1) that mandatory reports be made directly to the Child Welfare Unit of the State Welfare Agency;
- (2) that physicians may, in addition, file a report directly with an appropriate law enforcement agency;
- (3) that the Child Welfare Unit be granted full power to investigate all reported cases, to take remedial action within its competence, and to petition the appropriate court for any judicial assistance necessary to accomplish the most satisfactory results, such as a change in custody;
- (4) that the Child Welfare Unit shall maintain a central registry of cases reported under the statute.

These amendments would assure that state intervention would be effective in helping to solve the problems revealed by the increased visibility of battered child cases. Their enactment will fulfill the stated purpose of the existing statute by causing "the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, protect and enhance the welfare of these children and preserve family life wherever possible."

DOUGLAS G. HENDRIKSEN