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Abstract

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KEYWORDS: child, abuse, neglect

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I. Introduction

Child abuse and neglect are among the most critical problems social service and law enforcement agencies face in Florida. Abuse and neglect take many different forms and arise from a wide range of causes. The problem is one of the most complex issues faced by law enforcement agencies because conflicting medical, social and legal considerations make it very difficult to formulate any set policy in determining what is necessary to protect the child and the public. For example, the development of the facts in child abuse cases requires a comprehensive child protection team effort. The Florida Legislature has made some significant advances in this area, but it is imperative that well-funded child protection teams composed of well trained counselors, investigators and medical experts be available on a twenty-four hour basis to respond to this critical community problem.

It is just as important to have the proper resources to treat children who are victims of abuse and neglect. Convenient psychiatric, psychological and medical assistance should be immediately available to all children. Long term care and treatment should be provided when needed to deal with the horrible scars left by abuse and neglect. Long term follow-up should take place to make sure the child is protected against future abuse and neglect. Too often a child does not receive adequate follow-up treatment for abuse and neglect because he cannot afford it. Florida must take steps to see that this care and treatment is available for every child who is the victim of abuse and neglect. The state must also provide programs to correct the behavior of those guilty of abuse or neglect. Many offenders and their families need assistance to correct behavior that has caused the abuse. We must provide famiy support programs throughout the state to provide the medical, psychological and social support and treatment necessary to rebuild the family

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unit where appropriate.

This article concentrates on the legal aspects of abuse and neglect from a prosecutor's viewpoint. It discusses such topics as the problems involved in the detection and reporting of child abuse and neglect; the crucial need for thorough investigation of these cases; the emergency protective powers available; juvenile dependency proceedings; and the various powers of disposition available. The article suggests various reforms that are urgently needed and calls for the provision of financial resources to investigate and treat problems of abuse and neglect in children. But all the laws in the world will mean nothing unless we provide the financial resources to investigate and treat abuse and neglect.

II. Conflicting Types and Sources of Child Abuse and Neglect

The following hypothetical fact patterns demonstrate the conflicting forms and sources of child abuse and neglect. They demonstrate the need for flexibility and sensitivity in determining the appropriate disposition of each case.

A. Physical Abuse

A father is a stern taskmaster who loves his daughter. He paddles her for poor marks in school and becomes obsessed with her making "straight A's." As a consequence he beats the child and inflicts serious physical injury requiring medical treatment.

A stepmother, frustrated at her husband's obvious preference for his own children over her own, tortures her stepchildren by burning them with lighted cigarettes and beating them with a belt when they do the slightest thing wrong.

A father physically abuses his entire family when he drinks. When he is not drinking, he is a gentle, loving father.

A mother's live-in boyfriend has a long criminal record of violent crime and domestic violence. He beats, kicks, and strikes her children, whose bruises are reported by a teacher.

A young, single mother lives with her three children in poverty. She has few employable skills. She is without family in the area. Her boyfriend has left her. The six year-old has a fever; the three year-old is throwing up; the one year-old will not stop screaming. She

slaps the baby in the head as hard as she can in frustrated despair and anger. He falls unconscious and is taken to the emergency room suffering serious injury.

Each case is an example of child abuse, but each case must be looked at individually, based on the people involved, to determine what combination of treatment and punishment will work to protect the child and to make sure the offender never does this again to anyone.

B. Neglect

A mother of four whose husband makes enough to support the family totally neglects her children. She watches television all day and lets the children fend for themselves. The baby lies in her crib in her own waste. Neighbors complain and counselors respond to find the baby dying and all the children suffering from malnutrition. The mother is determined to be of average intelligence and mentally competent.

A young, single mother works and goes to school at night in order to obtain a better job. The children are left by themselves. Sometimes she remembers to leave food. One child is found wandering in the neighborhood with a high fever. All the children are found to be ill with a virus they have had for two weeks. They have not been treated, nor have they seen a doctor.

The wealthy parents supply their child's every material need and make sure he has "round the clock supervision." Yet the parents spend little time with the child; they show him no affection, and are uninterested in his activities. The child becomes withdrawn and morose. He does poorly in school. His peers tease him as being different.

Each case is an example of neglect but different sanctions and treatment would be appropriate in each case and the last case could never be proven in a court of law. This case raises the question as to when or at what point government should intervene.

C. Sexual Abuse

A father is a successful mid-management professional. Business pressures and subsequent financial reverses cause him to start drinking to excess. During these drinking episodes, he has sexual relations with his six year-old daughter. She tells her mother who consults the

family physician. The child loves her father. The mother does not want the family destroyed. She wants treatment for the father and for her daughter in order to help her cope with what has happened to her.

A sixty year-old activities director at a camp fondles a nine year old girl who is a student at the camp and inserts his finger into her vagina. The child's family is outraged and demands the maximum prison sentence. The offender has no prior record and is considered an excellent counselor by teachers and parents. Every psychologist and psychiatrist who examines him says he is a mentally disordered sex offender who would benefit from extended outpatient treatment.

A boyfriend beats and rapes the twelve year old daughter of the woman he lives with.

Each of these cases is an example of sexual abuse against a child, where different sanctions and treatment would be appropriate. All of these hypothetical situations demonstrate the need to look at each case on its own merits. One case may require vigorous criminal prosecution of the offender and a request for a lengthy prison sentence. Another case may require sensitive treatment of an entire family by a juvenile judge in a dependency proceeding. Other cases will require both remedies. Every case of child abuse and neglect requires a sensitive, thoughtful analysis by all concerned of what is best for the child and what will protect others from such conduct in the future. The answer may often be based more on the intuition of those skilled in the handling of child abuse cases than on any doctrinaire legal position or philosophy. Yet, the law will inevitably play a role, especially in attempting to ensure due process for those suspected of child abuse. The key to each case of child abuse is to learn the facts about the abuse, its causes and the family's social and medical history. Problems of proof may prevent a criminal prosecution otherwise warranted. Lack of a full social history may cause the court to award custody to an inappropriate family member. The full development of the facts is as important as the legal issues involved.

III. Detection and Reporting of Child Abuse and Neglect

An effective detection and reporting system must be developed in order to adequately address the problem of child abuse. The one year-old who is beaten by a parent cannot report it and cannot dispute the

parent's claim that he fell out of the crib. Florida has taken significant steps to develop an effective reporting mechanism which must be publicized and perfected. Florida's child abuse reporting mechanism is spelled out in its statutes.[1] Anyone having knowledge or a reasonable suspicion that a child is abused or neglected in Florida must report such knowledge or suspicion to the Florida Department of Health and Rehabilitative Services (HRS).[2] Knowing and willful failure by anyone required to report known or suspected child abuse or neglect or the knowing and willful prevention of another from making such a report is a second degree misdemeanor.[3] The report is made to the statewide Child Abuse Registry on a toll free telephone or to the local office of HRS. Immunity from liability is provided for anyone making a report in good faith, and the reporter's confidentiality is respected.[4] Relatives are usually the first to detect abuse and neglect. These relatives often have conflicting motivations because while wanting to protect the child they may want to see the offender helped rather than punished and are afraid the state will only take punitive action. Moreover, they may be fearful of retribution if they report the abuse. One goal of any system

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1. FLA. STAT. § § 415.501-.514 (1983).
2. *Id.* § 415.504.
3. *Id.* § 415.513.
4. *Id.* § 415.511. In addition to immunity, the statutory scheme contains many other provisions designed to encourage reporting and facilitate the enforcement process. For example, the name of any person reporting child abuse or neglect may not be released except to certain authorized persons, absent the written consent of the reporter. *Id.* § 415.51(5). A reporter, however, may be called as a witness by HRS or the State Attorney, in a proceeding involving the child who is the subject of a report. The fact that such person made the report may not be disclosed. *Id.* § 415.51(5). Anyone releasing the name of a reporter, except as authorized, is guilty of a second degree misdemeanor. *Id.* § 415.513(3).

No communications except communication between an attorney and his client shall be privileged in any case of child abuse or neglect and no privilege except the attorney/client privilege shall constitute grounds for failure to report abuse and neglect, failure to cooperate with the investigation or failure to give evidence in a judicial proceeding relating to abuse or neglect. *Id.* § 415.512.

The statute presents a problem which must be sensitively handled by prosecutors and police. If a reporter expects confidentiality, he will be upset if he is subpoenaed and made to testify. Thus, on first contact with a reporter, the investigator should stress the fact that the witness was the reporter will not be revealed. However, the reporter should be made to understand that in cases in which it is imperative for the State to proceed in order to protect the child or the public, he may be called as a witness. Clear communication at the outset of cases can avoid many problems with a witness in subsequent proceedings.

must be to develop public confidence that, when reported, the case will be handled sensitively and fairly and the reporter will be shielded from retribution and harassment. As confidence is developed, the public must also be advised through public service announcements, neighborhood and Parent-Teacher Association meetings, churches and schools, of the need to report abuse and neglect.

After family members, teachers and doctors are the second most likely group to detect child abuse and neglect. However, teachers are often fearful they will be sued or called on the carpet by an angry parent in the principal's office. Each school system should make sure all personnel are advised of the critical need for reporting and the immunity provided by the reporting statute. Emergency room doctors and pediatricians are also key observers. Specialists can often tell that the seemingly innocent broken leg of a three year-old, reported as suffered in a fall, was in fact caused by a severe blow. It is important that the medical profession train physicians to identify child abuse and that all child protection teams are staffed with doctors specially trained in such detection. The diagnosis of a sexually transmitted disease in children is a significant indicator of possible sexual abuse. Early detection followed by immediate investigation is often the key to successful disposition of the case.

IV. The Need for Thorough Investigation

Successful efforts against child abuse will succeed only if there is a thorough investigation by competent law enforcement agencies along with skilled counselors and physicians functioning, whenever possible, as a team. Law enforcement officers and counselors should be trained to develop legally sufficient proof of the abuse or neglect. Counselors should develop a thorough and fair social history of the child, the offender and the family to determine the appropriate disposition of the case. If initial investigation indicates child abuse or neglect, the investigators should be able to consult with prosecutors skilled in dependency matters and criminal prosecution to obtain advice on any legal problems which may arise during the investigation.

Investigators should have access to experts skilled in pediatric trauma and rape treatment. Laboratory tests revealing a sexually transmitted disease in a child is important, although not conclusive, evidence of sexual abuse. Child abuse is one of the worst ills of any community and sufficient medical and laboratory resources should be committed to assure a full investigation. When a child is the suspected

victim of child abuse or neglect, the child abuse investigator with HRS may have the child medically examined for diagnosis, without parental permission, if there is a need for such an examination. Further, a licensed physician who suspects that a child is the victim of abuse may authorize a radiological examination without parental consent.[5]

Too often, the abused or neglected child is subjected to repeated interviews in which he has to relive the nightmare. They are questioned first by investigators from the child protection team, then the police, then by doctors and then by prosecutors. Any investigator or prosecutor assigned to child abuse cases must be sensitive and should be trained in interviewing and dealing with children. Such persons can often persuade a child to tell the full story while others who are not skilled in eliciting a child's response cannot get the child to say anything. It is imperative that the investigative effort is unified and that the child is required to appear and talk to as few people as possible as the case is investigated. The office or scene in which the child is interviewed should be one especially set aside for children and should be as pleasant and as non-threatening as possible. The trauma of reliving the past experience can be very damaging to the child and every effort should be made to minimize the child's involvement and make the experience as tolerable as possible. Recently, it has been the practice of police and prosecutors, especially in cases of sexual abuse or sexual battery involving children, to attempt to create a situation where a child victim is not compelled to repeatedly explain what took place. This can often be done by conducting an interview where one trained person questions the child and others observe unobtrusively, such as through one way mirrors or closed circuit television. The courts should limit discovery so that depositions take place in the least oppressive atmosphere possible. However, because of current law and the constitutional right of confrontation, when a child victim is deposed or testifies at trial, the accused has a right to be present.

V. Appropriate Legal Remedies for Child Abuse

After all the facts are gathered police, prosecutors, counselors and doctors should reach a joint decision on the legal remedy to be pursued. Medical, social, evidentiary and legal criteria are all involved in the ultimate decision. Prosecutors can proceed either civilly through depen-

5. The county bears the medical costs but the ultimate costs are borne by the parents or legal custodian or guardian of the child. FLA. STAT. § 415.507(3) (1983).

dency proceedings or through criminal prosecutions. Florida Statutes Chapter 827 categorizes criminal child abuse as Aggravated Child Abuse, Child Abuse and Negligent Treatment of Children.[6] Of course, criminal statutes defining homicide, kidnapping, sexual battery and incest apply as well.

Dependency proceedings are governed primarily by Florida Statutes Chapter 39, "Proceedings Relating to Juveniles," Parts I and III. If a child is adjudicated dependent, the court may place him under protective supervision or commit him to the temporary or permanent custody of others.[7] A child who is found by the court to be abused or neglected is designated a dependent child.[8] If a parent who is capable of providing support fails to provide that support and either makes no effort or a marginal effort to communicate with the child for six months, the child is "abandoned."[9] A child is "abused" by "any willful act that results in a physical, mental, or sexual injury that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired."[10] A parent "neglects" a child by depriving or allowing the child to be deprived of any basic necessity, or by permitting the child to live in an environment where his health, physical or otherwise, is in danger of significant harm.[11] The definitions used in the

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6. FLA. STAT. §§ 827.03-.05 (1983); *See* Mahaun v. State, 377 So. 2d 1158 (Fla. 1979); Faust v. State, 354 So. 2d 866 (Fla. 1978); Jordan v. State, 334 So. 2d 589 (Fla. 1976) upholding constitutionality of FLA. STAT. § 828.04 (1969) (which was later renumbered § 827.93 and amended by 1974 Fla. Laws 383). *See* Comment, *Constitutional Law: The Element of Scienter Saves the Florida Simple Child Abuse Statute from Being Unconstitutionally Vague: State v. Joyce, State v. Hutcheson*, 3 NOVA L.J. 313 (1979).

7. *See infra*, notes 46 through 84 and accompanying text.

8. FLA. STAT. § 39.01(9) (1983).

9. *Id.* § 39.01(1)

> "Abandoned" means a situation in which a parent who, while being able, makes no provision for the child's support and makes no effort to communicate with a child for a period of six months or longer. If a parent's effort to support and communicate with a child during such a six month period are, in the opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned.

Id.

10. *Id.* § 39.01(2).

11. *Id.* § 39.01(26).

> "Neglect" occurs when a parent or other legal custodian, though financially able, deprives a child of, or allows a child to be deprived of, necessary food, clothing, shelter, or medical treatment or permits a child to

juvenile statutes are fairly straightforward except for the confusion generated by the term "financially able" in the definition of "neglect."[12] The financial ability requirement was added by the Florida legislature in 1978 to prevent a child from being taken from his parents simply because they are poor.[13] This requirement may, however, preclude the protection of a child whose parent is poor but who has some condition other than poverty that prevents him or her from being a proper parent.

The Florida Third District Court of Appeal addressed this issue in *State v. M.T.S.*[14] The state petitioned the court to declare dependent a two week-old baby displaying symptoms of drug withdrawal and brain damage.[15] The mother was hospitalized for a mental condition, had cut her wrists, suffered from a hereditary mental illness, had another child in foster care, and her sole means of support was $220.00 per month from social security.[16] The court found the child was not abandoned for a period of six months or longer as required by statute[17] It held the child was not neglected because the mother was not financially able to care for the child and affirmed the trial court's order denying the petition for dependency.[18] The appellate court rejected the contention that the trial court had inherent jurisdiction to protect the child and held that "Chapter 39, *supra*, constitutes the sole and exclusive means by which the circuit court can declare a child to be dependent."[19] According to the court, the legislature had supplanted and limited the old common law doctrine of *parens patriae* and any remedy for parental maltreatment of children was strictly determined by statutory definition.[20] Calling it a "tragic oversight," the court said "[o]bviously, there is a hiatus in Chapter 39, whereby, a child of a parent who is impover-

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> live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired.

Id.

12. *Id.*
13. *See* Wright v. State, 409 So. 2d 1183 (Fla. 4th Dist. Ct. App. 1982).
14. 408 So. 2d 662 (Fla. 3d Dist. Ct. App. 1981), *petition for review denied*, 419 So. 2d 1200 (Fla. 1982).
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* at 662-63.
19. *Id.* at 663.
20. *Id.*

ished and suffering from mental illness, drug abuse or alcoholism will not be protected for six months after the onset of the parent's illness."[21] Following the Third District Court of Appeal's rationale, children whose parents are poor cannot be declared "neglected" because their parents are financially unable to provide for them. An abandonment theory gives no protection for a period of six months.[22] It appears, by statutory definition, that the children of poor parents are not entitled to the same quality of protection as children of more affluent parents. The Florida Fourth District Court of Appeal in *Wright v. State* avoided this problem by considering "neglect" as composed of two different categories: 1) deprivational neglect and 2) environmental neglect.[23] The court held that the term "financially able" applied only to the parent who deprived the child of necessary food, clothing, etc., under the first prong of the "neglect" definition and not to the parent who permitted a child to live in an environment which impaired his health under the second prong.[24] The court then stated:

> That is not to say, however, that poverty could never constitute a defense to a charge of neglect bottomed upon an allegation of harm resulting from an unhealthy environment. We hold only that the burden is on the parent or other legal custodian to come forward with evidence that the condition was unavoidable because of poverty, under such circumstances.[25]

The Fourth District Court of Appeal has indicated financial inability may not even be a bar to a finding of dependency in a case of deprivational neglect. In the case *In Interest of J.L.P.*,[26] that court rejected the mother's contention that since she had never had custody of the child she could not legally neglect him. The court held that both neglect and abuse could be established prospectively by evidence, based on the mother's current condition, that neglect and abuse would occur if the child were placed in her care.[27] The court did not directly address

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21. *Id.*
22. FLA. STAT. § 39.01(1) (1983); *See M.T.S.*, 408 So. 2d at 622-23.
23. 409 So. 2d 1183 (Fla. 4th Dist. Ct. App. 1982).
24. *Id.* at 1184-85.
25. *Id.* at 1186.
26. 416 So. 2d 1250 (Fla. 4th Dist. Ct. App. 1982).
27. *Id.* at 1252. The court further stated: "Under the statutes, we hold that in order to sustain a final order of permanent commitment because of neglect or abuse, there must be clear and convincing evidence that the child has been or *will be* neglected or abused." *Id.* (emphasis added, footnotes omitted).

the financial ability issue but simply quoted *Wright*, saying:

> We are not insensitive to appellant's plight, which is woeful, and her circumstances are a stark reminder that life can be wretched in this country at this time for the poverty stricken. Furthermore, as this court said in *Wright v. State*, 409 So. 2d 1183, 1184 (Fla. 4th DCA 1982),
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> > The purpose of the phrase "financially able" in subsection (27) is to ensure that financially disadvantaged parents may not be divested of their children simply because they are poor. It does not, however, constitute a license for child abuse for either rich or poor. We need not draw that fine line which the circumstances of some future case will require of a court confronted with a deprivation of necessary food, clothing, shelter or medical treatment. The term "financially able" rather clearly applies in that situation and poverty, under appropriate circumstances, may be found to constitute a bar to a finding of dependency.[28]

The court in *J.L.P.* could have based its decision on a finding of abuse alone, thus making financial ability irrelevant. Nonetheless, these cases indicate the Fourth District, in attempting to protect the child, will limit the impact of the financial ability requirement as much as possible.[29]

An epilogue to the *M.T.S.* case is that during the period in which the state appealed the trial court decision, the child's mother died. After the Third District Court of Appeal ruled, the state filed a dependency petition alleging neglect on the part of the child's father who was unknown even to the child's mother. Based upon the neglect allegation against the father and following a diligent search for him, the child was adjudicated dependent and placed in the temporary custody of the state.

An attempt was made in the 1983 Florida legislative session to amend the neglect definition but the legislature did not act on the proposal. One other aspect of the definition of abuse and neglect deserves mention. A parent legitimately practicing his religious beliefs, who as a result of those beliefs fails to provide needed medical treatment for his child, shall not be considered abusive or neglectful for that reason

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28. *Id.*
29. In the Interest of Ivey, 319 So. 2d 53 (Fla. 1st Dist. Ct. App. 1975).

alone.[30] However, the court may order that the child receive medical services if his physical condition requires it.[31]

In cases of child abuse and neglect, prosecutors have the following options: 1) prosecute criminally for child abuse and seek sanctions against and treatment of the offender; 2) file a petition for dependency seeking treatment, supervision and protection of the child; or 3) do both. In making a decision about how to proceed the following considerations are important:

A. Burden of proof

In criminal prosecutions the state must prove its case beyond and to the exclusion of every reasonable doubt. In dependency proceedings, the state has a much lesser burden of proof since it is required to establish a state of dependency by a preponderance of the evidence.[32] In many cases, the child may be too young to testify and there may be no independent witnesses, no confessions and insufficient evidence to make a circumstantial case against the parent criminally. The dependency route may be the only alternative.

B. Effect of prosecution on the child

In some cases the experience of reliving the abuse or neglect as he testifies in the formal setting of a courtroom before a judge and jury may be too traumatic for the child. Florida law allows the videotaping of victims under the age of twelve in sexual battery and criminal child abuse cases.[33] This provision, while still requiring that a judge preside, helps to alleviate the formal setting of a normal court proceeding. After balancing the interests, however, all involved may conclude that the dependency route is preferable in order to minimize the emotional strain on the child. In dependency proceedings, the child will appear before a judge of the juvenile division of the circuit court in a more informal, less threatening setting.

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30. FLA. STAT. § 39.01(26) (1983); FLA. STAT. § 827.07(2) (1983).
31. *See Ivey*, 319 So. 2d at 59.
32. FLA. STAT. § 39.408(1)(b) (1983).
33. *Id.* § 918.17 (1983). *See also* articles by Haas and Hoffenberg in this issue.

C. Culpability of the offender

Oftentimes the parent is a well-meaning, loving parent who went too far or did not know how to cope. In such cases, criminal prosecution would not be appropriate.

D. Punishment of the offender and the need for leverage for treatment

Although removal of a child may be a severe punishment to a parent, in other cases it will be inadequate. The only means of securing punishment for malicious offenders is through criminal prosecution. Punishment, including probation if appropriate, may also provide an effective leverage for treatment of an offender who needs to be pushed to treatment.

E. Deterrence

A prosecutor must constantly consider a sentence which deters others from committing such offenses in the future. Child abuse and neglect is a serious community problem and criminal prosecution is the only route to full exposure and deterrence of the defendant's actions.[34]

VI. Emergency Protective Powers

A child may be taken into custody by a law enforcement officer or representative of HRS prior to the initiation of court proceedings if

the officer or agent has reasonable grounds to believe that the child

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34. The following statutory goals should govern the decision as to how to proceed in all cases of child abuse and neglect:

1. "To assure. . .(the child). . .the care, guidance and control, preferably in (his) own home, which will best serve the moral, emotional, mental and physical welfare of the child and the best interests of the state." FLA. STAT. § 39.001(2)(b) (1983).
2. "To preserve and strengthen the child's family ties whenever possible. . ." *Id.* § 39.001(2)(e).
3. To deter the offender and others from committing similar acts in the future. *Id.*
4. To make sure the applicable laws "are executed and enforced as will assure the parties fair hearings at which their rights as citizens are recognized and protected." *Id.* § 39.001(2)(d).

> has been abandoned, abused, or neglected, is suffering from illness or injury, or is in immediate danger from his surroundings and that his removal is necessary to protect the child.[35]

Once taken into custody, the child should be released to a parent, guardian, a responsible adult relative, or responsible adult approved by HRS who can properly care for the child.[36] The child should not be placed in a shelter prior to a court hearing unless shelter is required to protect the child, or he has no parent, legal custodian, or responsible adult relative to provide supervision and care for him.[37] A "shelter" is the statutory term for a residential facility designed to provide temporary custodial care for dependency children.[38] In abuse cases, when counselors and medical experts agree that the home is otherwise approrpriate and safe, efforts should be made to keep the child in the home with a responsible adult and to remove the offender from the home.

The Florida Rules of Juvenile Procedure require that a detention hearing be held within twenty-four hours after a child has been taken into custody, excluding Sundays and legal holidays.[39] At the detention hearing the court must determine whether the placement of the child in a shelter is necessary to protect him, or is necessary because there is no one to whom the child can be released; whether placement in a shelter is in the best interest of the child; and whether probable cause exists to believe that a child is dependent.[40] In determining probable cause at a detention hearing, the court must use the standard of proof necessary for an arrest warrant and may base its findings upon a sworn statement or sworn testimony.[41] The detention hearing is not adversarial in nature, and hearsay evidence is permissible.[42]

No child shall be held in a shelter longer than fourteen days with-

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35. *Id.* § 39.401(1)(b) (1983).
36. *Id.*
37. *Id.* § § 39.402(1)(a)-(b) (1983).
38. *Id.* § 39.01(31) (1983).
39. FLA. STAT. § 39.402(6)(a) (1983); FLA. R. JUV. P. 8.040.
40. FLA. STAT. § 39.402(6)(a) (1983).
41. FLA. R. JUV. P. 8.040.
42. *Id. See* Moss v. Weaver, 525 F. 2d 1258, 1260 (5th Cir. 1976). State v. I.B., 366 So. 2d 186 (Fla. 1st Dist. Ct. App. 1979). *See* Moss v. Weaver, 525 F. 2d 1258, 1261 (5th Cir. 1976); *Moss* and *I.B.* are delinquency cases, but the sections of the Florida Rules of Juvenile Procedure which govern detention apply to both dependency and delinquency.

out an adjudication of dependency nor longer than thirty days following an adjudication without the entry of an order of disposition.[43] The statute provides for the extension of the twenty-four hour and fourteen day time periods described above, but the language providing for such extensions is confusing and needs to be revised by the legislature.[44] Greater time is often needed to prepare for trial. Allowing a pre-adjudication shelter period of twenty-one days, which is the period for delinquency detentions, is preferable. The statutory standard for extending the shelter periods should be the same as the delinquency standard which is "good cause."

In any case of child abuse or neglect, it is imperative that immediate steps be taken to provide medical treatment and counseling for the child. Often, the mental and emotional trauma suffered by the child is as great as the physical injury. In cases of sexual abuse there may be no physical injury but the emotional trauma may be severe. Every effort must be made to secure appropriate counseling for the child when it is necessary, particularly in cases in which the parent or custodian cannot afford to pay for such treatment. Generally, the parents and the child must consent to examination and treatment, but Florida law provides for emergency treatment in certain situations.[45]

VII. Juvenile Dependency Proceedings

Dependency proceedings are initiated by a petition for dependency "filed by the State Attorney, authorized agent of the department, or any person who has knowledge of the facts alleged or is informed of them and believes that they are true."[46] The proceeding is governed by the Florida Rules of Juvenile Procedure. The essential parties in a dependency proceeding are the petitioner, the child and any person required by law to be summoned.[47] Parents and legal custodians, actual custodians, and guardians ad litem are among those required to be summoned.[48] Foster parents can have standing in dependency proceedings as the actual, if not legal custodians, of a child; their special status is recognized by Florida law.[49] It appears it is more important to be, or

43. FLA. STAT. § 39.407(7)(8) (1983).
44. *Id.* § 39.402(9)(a); FLA. STAT. § 39.03(7) (1977).
45. FLA. STAT. § 415.507(1) (1983).
46. FLA. STAT. § 39.404(1) (1983).
47. FLA. R. JUV. P. 8.340.
48. FLA. STAT. § 39.405(4) (1983).
49. FLA. STAT. § 409.168(4)(b) (1983). *See* Smith v. Organization of Foster

to have been, an actual custodian of a child than to be a relative in gaining standing in a dependency proceeding.[50] Previously, Chapter 39, Florida Statutes, contained a provision requiring placement of a dependent child with able relatives, if possible, rather than in foster care.[51] Thus a relative had standing to intervene in a dependency proceeding. However, this provision has been repealed. Now, the law only provides for notice and although relatives are to be notified in the case of a permanent commitment where parents are dead or unknown, the court now may exercise discretion as to whether to permit a relative to intervene.[52]

Insolvent parents or custodians have a right under the Rules of Juvenile Procedure to court-appointed counsel in cases involving permanent commitment and where criminal child abuse charges might result.[53] This gives a parent a greater right to appointed counsel than that spelled out recently by the United States Supreme Court in *Lassiter v. Department of Social Services*.[54] In that case, the Supreme Court held that parents had a right to appointed counsel only in those cases involving allegations which could result in criminal prosecution.[55] However, it recognized that the states could provide and require counsel for parents in other cases as well.[56] It is advisable in more complicated cases involving very unsophisticated parents, or in cases involving mentally ill or retarded parents, that counsel be appointed if the parents are indigent.

Any child who is the subject of a judicial proceeding has the statutory right to be represented by a guardian ad litem,[57] but there is no constitutional right to counsel for a child in a dependency proceeding.[58]

Families, 431 U.S. 816 (1977).

50. In the Interest of J.R.T., 427 So. 2d 251 (Fla. 5th Dist. Ct. App. 1983); In the Interest of J.S., 404 So. 2d 1144 (Fla. 5th Dist. Ct. App. 1981); In the Interest of K.S.K., 294 So. 2d 50 (Fla. 1st Dist. Ct. App. 1981).

51. FLA. STAT. § 39.10(6) (1977); In Re R.J.C., 300 So. 2d 54 (Fla. 1st Dist Ct. App. 1974).

52. FLA. STAT. § 39.41(3)(a)4 (1983); In the Interest of J.S., 404 So. 2d 1144, 1146 (Fla. 5th Dist Ct. App. 1981).

53. FLA. R. JUV. P. 8.290(c)(2). This procedural rule is consistent with the Florida Supreme Court's holding in In the Interest of D.B., 385 So. 2d 83 (Fla. 1980).

54. 452 U.S. 18 (1981).

55. *Id.* at 31-2.

56. *Id.* at 33-4.

57. FLA. STAT. § 415.508 (1983). FLA. R. JUV. P. 8.300 reflects the statutory provision and further details the duties of a guardian ad litem.

58. In the Interest of D.B., 385 So. 2d 83, 91 (Fla. 1980).

The appointment of a guardian ad litem to represent a child in dependency proceedings involving abuse or neglect is mandatory by statute.[59] Any responsible adult can be a guardian ad litem.[60] Parents must pay for the services of the guardian ad litem, but if they do not or are unable to pay, HRS is responsible for these fees.[61]

The ninety-day speedy trial rule applies to dependency proceedings.[62] It begins to run from the date the child is taken into custody or the date the dependency petition is filed whichever occurs first.[63] If the adjudicatory hearing has not begun within ninety days, or an extension is granted, the dependency petition is dismissed with prejudice.[64] Thus, in determining whether to take a child into custody or file a petition, investigators must act promptly to protect the child from abuse or neglect while at the same time assuring themselves they have enough evidence to proceed to trial within ninety days. Once the dependency petition has been filed, the court has the authority to order the child to be examined by a physician or psychologist.[65] The court can also order, as part of non-testimonial discovery, that the child provide samples of his blood, hair, or other bodily materials or to submit to a reasonable, physical or mental inspection of his body.[66] There is no statutory provision that the parents, custodians, or guardians of dependent children can be compelled to submit to mental or physical examinations or evaluations.[67]

The Florida Rules of Civil Procedure and Chapter 39 Florida Statutes provide a way to circumvent this problem. Section 39.408(1)(b)[68] provides that rules of evidence in civil cases apply to dependency and adjudicatory hearings. Thus, when the juvenile rules are silent on an issue, civil rules may be referred to for guidance.[69] Rule 1.360(a), Florida Rules of Civil Procedure, allows for physical or

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59. FLA. R. JUV. P. 8.300(b).

60. The duties of guardians ad litem together with a description of the State of Florida Guardian Ad Litem Program are outlined in article by Hoffenberg/Scheibler in this issue.

61. In the Interest of R.W., 409 So. 2d 1069 (Fla. 2d Dist Ct. App. 1981).

62. FLA. R. JUV. P. 8.180.

63. FLA. R. JUV. P. 8.180(a).

64. FLA. R. JUV. P. 8.180(b).

65. FLA. STAT. § 39.407, (1983).

66. FLA. R. JUV. P. 8.070(h)(i).

67. In the Interest of D.A.W., 178 So. 2d 745 (Fla. 2d Dist Ct. App. 1965).

68. FLA. STAT. § 39.408(1)(b) (1983).

69. In the Interest of D.B., 383 So. 2d 278 (Fla. 5th Dist Ct. App. 1980).

mental examination of a person when the physical or mental condition of the person is in controversy and there is good cause shown for the examination. This rule has been held to apply in dependency cases because the juvenile rules are silent on this issue and also because this is a rule for obtaining evidence in civil cases.[70] A mental examination of a parent or custodian of a child may be ordered only when the mental condition of the party is directly involved in some material element of the parent or custodian's abuse or neglect and when the mental condition cannot be adequately evidenced without the assistance of expert medical testimony.[71] Florida should adopt a statute providing for compulsory examination of parents, as well as children, in applicable abuse and neglect cases.

The court, as a condition of disposition, can order the parents or guardians of a dependent child to receive family or professional counseling to rehabilitate the child.[72] Furthermore, nothing appears to prevent the court from requiring psychological or psychiatric examinations or evaluations of parents or custodians as a condition of a plan or performance agreement.[73] In less serious cases of abuse and neglect where there is a high degree of cooperation on the part of the parents and the likelihood of a successful resolution is great, the parties may agree to a plan of treatment, training or conduct as provided for in Rule 8.130, Florida Rules of Juvenile Procedure. Such a plan places the dependency petition in abeyance and usually requires counseling and supervision for the family of an abused or neglected child who most often remains at home. The speedy trial requirement must be waived so that the petition may be acted on, if the court finds a violation of the plan after the ninety days have expired.[74] The court has the power to accept or reject the plan.[75] The plan is not an admission of the allegations of the dependency petition and successful completion of the plan can result in the ultimate dismissal of the dependency petition.

In the Interest of J.R.M.,[76] the court held that the state attorney is not a party to a plan in a delinquendy case and has no right to veto

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70. Fruh v. State Department of Health and Rehabilitative Services, 430 So. 2d 581 (Fla. 5th Dist. Ct. App. 1983).
71. *Id.* at 584.
72. FLA. STAT. § 39.41(5) (1983).
73. *See generally* FLA. STAT. § 39.41 (1983); FLA. STAT. § 409.168 (1983).
74. FLA. R. JUV. P. 8.130(a)(3)(ii).
75. *Id.* 8.130(a)(3)(iii).
76. 340 So.2d 937 (Fla. 4th Dist. Ct. App. 1976).

it, although he can object to its acceptance.[77] The rule has now been changed, in delinquency cases, to require the state attorney's consent to defer prosecution.[78] However, the court's ruling in *JRM* appears to continue to apply to dependency cases and the state attorney does not have veto power over a plan developed by the parties, HRS, and the court in a dependency action.

The adjudicatory hearing is the trial at which the court initially determines whether a child is dependent. The state attorney represents the state and the hearing is held before a judge without a jury.[79] Rules of evidence are the same as those for civil cases and a preponderance of the evidence is required to establish dependency.[80] The parents or custodians who are charged with abuse and neglect may testify on their own behalf but must be warned of the danger of self-incrimination or the prosecutor must be willing to grant them use immunity. They may be cross-examined like any other witness. The adjudicatory hearing is open to the public except in cases involving unwed mothers, custody, sexual abuse, or permanent placement. However, the court has discretion to close any hearing to the public.[81] The hearing is also open to the electronic media but, again, at the court's discretion.[82]

Dependency proceedings, including the adjudicatory hearing, must be conducted pursuant to statute, and with regard for procedural and substantive due process.[83] Dependency proceedings fall under the Uniform Child Custody Jurisdiction Act and that statute must be given proper regard in a dependency proceeding.[84] If, at the adjudicatory hearing, the court finds the child dependent but finds that only home supervision is required, it may withhold adjudication and place the child's home under the supervision of HRS. However, in most cases, the court conducts a separate dispositional hearing after the initial dependency hearing.

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77. *Id.* at 938-39.

78. FLA. R. JUV. P. 8.130(a)(3)(ii).

79. FLA. STAT. § 39.408(1)(b) (1983); FLA. R. JUV. P. 8.190 (c).

80. FLA. STAT. § 39.408(1)(b) (1983); *See* Davis v. Page, 442 F. Supp. 258, 260 (S.D. Fla. 1977).

81. FLA. STAT. § 39.408(1)(c) (1983); *See also* FLA. STAT. § 918.16 (1983).

82. *See* In re Petition of Post-Newsweek Stations, Florida, 370 So. 2d 764, 779 (Fla. 1979).

83. A.Z. v. State, 383 So. 2d 934 (Fla. 5th Dist. Ct. App. 1980).

84. FLA. STAT. §§ 61.1302-.1348 (1983); In the Interest of T.L., 392 So. 2d 288 (Fla. 5th Dist. Ct. App. 1980).

VIII. The Powers of Disposition

A. The Disposition Hearing

The disposition hearing is the equivalent of the sentencing in criminal cases. At this hearing the court determines what to do with a child who has been found dependent, either after the plea of the parent or an adjudicatory hearing. Although adjudicatory and dispositional hearings may be combined, usually they are separate proceedings. Although the court can proceed without a written report, at a typical hearing it receives a written predisposition report from HRS, any relevant reports such as psychological or psychiatric evaluations, and other relevant evidence. Parents or custodians, the child, and the guardian ad litem are entitled to disclosure of any information in HRS's predispositional report.[85] The only rule of evidence in a dispositional hearing is relevancy and materiality.[86] Written or oral information can be received into evidence for its probative value, even though the information would not be admissible at trial.[87] Procedurally, the burden of proof shifts to the parent at a dispositional hearing.[88]

The courts have broad powers of disposition.[89] Among these is the power to grant HRS or another child caring agency permanent commitment of a child for subsequent adoption.[90] Permanent commitment terminates both the rights of the parents and the jurisdiction of the court over the child.[91] Since it is such a significant action this power is usually not exercised at an initial disposition hearing but usually occurs in subsequent proceedings.[92]

As a less drastic alternative, the court may place a child with a parent, relative, or third person, under the supervision of HRS, with court-ordered conditions. It may commit the child to a childcaring agency, or to the temporary custody of HRS.[93] Additionally, the court may also order that reasonable support be paid by a natural or adoptive parent for a child in the custody of an institution or person other than

85. FLA. STAT. § 39.408(2) (1983); FLA. R. JUV. P. 8.200(b).
86. FLA. R. JUV. P. 8.200(a).
87. FLA. STAT. § 39.408(2) (1983).
88. *See* Davis v. Page, 442 F. Supp. 258, 261 (S.D. Fla. 1977).
89. FLA. STAT. § 39.41 (1983).
90. *Id.* § 39.41(1)(f).
91. *Id.* § 39.41(4).
92. *See infra* text accompanying notes 103 to 126.
93. FLA. STAT. §§ 39.41(1)(a)-(d) (1983).

the natural parent.[94] It may further order that the parents or legal guardian of a dependent child receive counseling.[95] The court may change the supervision or custody status of a child at a subsequent proceeding without a new adjudicatory hearing.[96] However, if the parents or custodians object to this modification, the court must hear all parties before any change may be ordered.[97] As a matter of practice, any contested change in supervision or placement of a dependent child usually results in a full hearing. The court has the power to enforce all of its disposition orders through contempt proceedings.[98]

B. Foster Care

Florida Statutes, section 409.168, a relatively new statute, mandates that certain steps be taken to ensure that children who are placed in temporary state or private agency custody do not languish in foster care.[99] It specifically states that "[i]t is the intent of the Legislature that permanent placements with their biological or adoptive families be achieved as soon as possible for every child in foster care and that no child remain in foster care longer than one year."[100] It provides for a performance agreement and spells out detailed procedures and time limits for the court to review the parties' performance and determine whether the child should be returned to his natural parents, remain in a foster home, or be permanently committed. It creates a right of judicial review in all cases in which children have been adjudicated dependent and have remained in continuous foster care for six months.[101]

In some cases, the statute may result in the court's returning children to their home or placing them into permanent commitment for adoption prematurely. In those cases where a child's chances of adoption are virtually nonexistent, permanent commitment cuts him off for-

94. FLA. STAT. § 39.401(1)(g) (1983); Saulpaw v. Singer, 423 So. 2d 943 (Fla. 3d Dist. Ct. App. 1983).

95. FLA. STAT. § 39.41(5) (1983).

96. *Id.* § 39.41(1)(e).

97. *Id.*

98. *Id.* § 39.412; FLA. R. JUV. P. 8.270, 8.280; R.M.P. v. Jones, 419 So. 2d 618 (Fla. 1982).

99. FLA. STAT. § 409.168 (1983). Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st Dist Ct. App. 1981). In this case, HRS was enjoined to initiate the required judicial review. *Id.* at 162.

100. FLA. STAT. § 409.168(1) (1983).

101. *Id.* FLA. STAT. § 409.168(3)(g)(2).

ever from his natural family.[102] Great care should be taken to avoid such situations and the legislature should consider amending the statute to permit a child to remain under foster care in extraordinary situations.

C. Permanent Commitment

Permanent commitment is the ultimate and most extreme action which can be taken by the court in dependency cases involving abuse and neglect. Permanent commitment terminates the parent's rights over the child.[103] The permanent loss of custody of a child is a far more severe remedy than any other available in dependency proceedings and, indeed, it is one of the most severe decisions courts can make. Since it is such an extreme remedy, courts will usually first attempt other remedies including treatment, counseling, protective supervision and foster care. They will use performance agreements to attempt to push the parents or custodian into providing a proper setting for the child. When all else fails, and the prospect for abuse and neglect continues, the court must consider permanent commitment proceedings. These will usually occur as a separate proceeding after other alternatives have been tried. There are procedural and evidentiary requirements for permanent commitment which do not exist in the usual dependency proceeding because of the significant impact on parent and child.

The United States Supreme Court has held that an indigent parent in a proceeding involving termination of parental rights is not entitled to appointive counsel as a matter of right because the parent's interest in the custody of his child is not the same as a criminal defendant's interest in keeping his liberty when faced with incarceration.[104] However, Florida has held that an indigent parent is entitled to court-appointed counsel in permanent commitment proceedings.[105] A request for permanent commitment in Florida must be initiated by a formal pleading entitled "Petition For Permanent Commitment" containing the allegations of facts necessary for such commitment.[106] An action to have a child declared dependent and a permanent commit-

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102. *Id.* § 39.41(4).
103. *Id.*
104. Lassiter v. Dept. of Social Services, 452 U.S. 18 (1981).
105. In the Interest of D.B., 385 So. 2d 83 (Fla. 1980); FLA. R. JUV. P. 8.260(a).
106. FLA. R. JUV. P. 8.260(a).

ment action may be combined.[107] A circuit judge on his own motion may initiate permanent commitment proceedings in a dependency proceeding even if HRS does not concur in the need for permanent commitment.[108]

A court must strictly adhere to statutory standards for a permanent commitment and make findings of facts showing why the child should be permanently committed.[109] A court may permanently commit a child if the court finds this to be in the manifest best interest of the child and the parents have abused, abandoned or neglected the child.[110] Courts have held that a child can be permanently committed for prospective abuse or neglect.[111] Care must also be taken in permanent commitment cases not to overlook the due process rights of fathers who have shown an interest in their children, even though the children were conceived out of wedlock.[112] Notice requirements to all parties are spelled out in detail by statute and rule.[113]

The grounds for termination of parental rights or permanent commitment must be proved by "clear and convincing evidence."[114] The Florida Supreme Court first enunciated the standard of clear and convincing proof in an adoption case which resulted from an initial dependency action.[115] However, the language used by the court can be applied to any proceeding involving termination of parental rights. All Florida district courts of appeal have adopted the clear and convincing

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107. *Id.* 8.260(a); Noeling v. State, 87 So. 2d 593 (Fla. 1956).

108. Jenkins v. C.A.J., 434 So. 2d 9 (Fla. 1st Dist. Ct. App. 1983); In the Interest of T.G.T., 433 So. 2d 11 (Fla. 1st Dist. Ct. App. 1983); In the Interest of J.R.T., 427 So. 2d 251 (Fla. 5th Dist. Ct. App. 1983).

109. FLA. R. JUV. P. 8.260(f); Noeling v. State, 87 So. 2d 593 (Fla. 1956); G.S. v. State, 190 So. 2d 603 (Fla. 2d Dist. Ct. App. 1966).

110. FLA. STAT. § 39.41(1)(f)1 (1983). *See* In the Interest of C.M.H., 413 So. 2d 418 (Fla. 1st Dist. Ct. App. 1982); In the Interest of D.A.H., 390 So. 2d 379 (Fla. 5th Dist. Ct. App. 1980); Carlson v. State, 378 So. 2d 868 (Fla. 2d Dist. Ct. App. 1979).

111. In the Interest of J.L.P., 416 So. 2d 1250, 1252 (Fla. 4th Dist. Ct. App. 1982).

112. *See* Stanley v. Illinois, 405 U.S. 645 (1972). However, "inactive" fathers are not necessarily vested with a right of due process in such cases. Quilloin v. Walcott, 434 U.S. 246 (1978). *See* discussion of indigent father's right to counsel, In the Interest of D. B., 385 So. 2d 83, 93 (Fla. 1980).

113. FLA. STAT. § § 39.41(3)(a)-(d) (1983); Fla. R. Civ. P. 1.070 (e); FLA. R. JUV. P. 8.260.

114. Santosky v. Kramer, 455 U.S. 745 (1982).

115. Torres v. Van Eepoel, 98 So. 2d 735, 735 (Fla. 1957).

standard of proof.[116] However, the First District Court of Appeal has held that a permanent commitment proceeding is a type of dispositional hearing and that the court can accept as res judicata a prior finding that a child had been abandoned, neglected, or abused and the state need only prove, by clear and convicing evidence, that it is in the best interest of the child to be permanently committed.[117] Requiring a petitioner to prove by clear and convincing evidence only the best interests of the child and not the child's best interest and that the child has been abandoned, neglected or abused is contrary to other Florida cases. These cases plainly hold that both of the two-prong requirements for permanent commitment must be proven by clear and convincing evidence.[118]

In applying the clear and convincing standard the courts will go to great lengths and give parents considerable latitude in correcting the conditions generating abuse and neglect before requiring a child's permanent commitment. In one case, by the time the mother was nineteen, she had almost killed a girl in a fight, had run away from home, lived with the Hell's Angels, and attempted suicide.[119] She tried to give her baby away at a shopping center. She refused mental treatment, vocational rehabilitation and counseling and voluntarily placed the baby in foster care.[120] Warned by HRS that permanent commitment proceedings would be initiated if she did not assume responsibility for the child, she refused rehabilitation and gave birth to another child.[121] When the second baby was left unattended by a babysitter, HRS picked up the baby. The mother broke most appointments to visit the sec-

116. In the Interest of T.C., 417 So. 2d 775 (Fla. 3rd Dist. Ct. App. 1982); In the Interest of J.L.P., 416 So. 2d 1250 (Fla. 4th Dist. Ct. App. 1982); In the Interest of C.M.H., 413 So. 2d 418 (Fla. 1st Dist. Ct. App. 1982); In the Interest of D.A.H., 390 So. 2d 379 (Fla. 5th Dist. Ct. App. 1980); In the Interest of J.F., 384 So. 2d 713 (Fla. 3rd Dist. Ct. App. 1980); Carlson v. State, 378 So. 2d 868 (Fla. 2d Dist. Ct. App. 1979); In the Interest of C.K.G., 365 So. 2d 424 (Fla. 2d Dist. Ct. App. 1978).

117. In the Interest of C.M.H., 413 So. 2d 418, 423-24 (Fla. 1st Dist. Ct. App. 1982).

118. *See* In the Interest of T.C., 417 So. 2d 775 (Fla. 3d Dist. Ct. App. 1982); In the Interest of J.L.P., 416 So. 2d 1250 (Fla. 4th Dist. Ct. App. 1982); In the Interest of D.A.H., 390 So. 2d 379 (Fla. 5th Dist. Ct. App. 1980); In the Interest of J.F., 384 So. 2d 713 (Fla. 3rd Dist. Ct. App. 1980); Carlson v. State, 378 So. 2d 868 (Fla. 2d Dist. Ct. App. 1979).

119. In the Interest of D.A.H., 390 So. 2d 379, 382 (Fla. 5th Dist. Ct. App. 1980) (Cobb, J., dissenting).

120. *Id.* at 382.

121. *Id.*

ond baby despite the fact that an HRS caseworker went to her house to pick her up.[122] Yet, the Fifth District Court of Appeal held that these facts fell short of the required clear and convincing proof.[123]

In another case,[124] the child was permanently committed at the age of three and-a-half years only after a history of abuses by the mother beginning when the child was only four weeks old. On six different occasions the child had been temporarily committed to the state as a result of parental abuse and neglect prior to the time the court permanently committed the child.[125] Even though permanent commitment is a drastic measure, courts should draw the line and permanently commit a child if the evidence of abuse and neglect or prospects for it are clear and convincing, and the parents have been given numerous legitimate opportunities to rehabilitate themselves.[126]

IX. Conclusion

Protection of a child is one of society's most important goals. Everyone seems to agree that the family, in the long run, is the best place to provide that protection. At some point, however, the state must step in if the family fails in its obligation to the child. In Florida, the state attorneys' offices and social service agencies can and do work together to prevent and correct child abuse and neglect. But these efforts are in vain unless the Florida legislature provides adequate resources for diagnosis, treatment, and correction of the often tragic circumstances that generate abuse and neglect. Additionally, more legislation is needed which shows a greater awareness of the magnitude and complexity of the problems which many of Florida's children encounter. The following contains a few suggestions to help improve the current situation:

1) Child protection teams should include among their members a skilled counselor-investigator and police-investigator whose salaries make them competitive with the best in their field. These teams should be responsible for an optimum population at risk. Staff should not be assigned based on some historical caseload figure. These teams should have sufficient personnel to enable them to immediately respond to all

122. *Id.* at 382-83 (Cobb, J., dissenting).
123. *Id.*
124. In the Interest of Contrino, 338 So. 2d 246 (Fla. 3d Dist. Ct. App. 1976).
125. *Id.* at 247.
126. *See* Partin v. State, 396 So. 2d 273 (Fla. 3d Dist. Ct. App. 1981); In the Interest of J.L.P., 416 So. 2d 1250 (Fla. 4th Dist. Ct. App. 1982).

complaints of abuse or neglect around the clock. The staff should be trained to deal sensitively with children and families in crisis and should consider racial, ethnic and cultural differences.

2) Medical schools working with existing specialists in the diagnosis of child abuse should specially train physicians in this area and every child protection team should have immediate access to such physicians and to rape treatment centers trained in identifying sexual abuse of children. These physicians should be trained in courtroom work and should testify in dependency proceedings and prosecutions for child abuse.

3) Emergency medical, psychiatric and psychological care should be immediately available for all abused and neglected children. Follow-up care should be provided as long as the child needs it, regardless of the parent's ability to pay.

4) Counselor-investigators should make regular follow-up visits to make sure that incidents of abuse or neglect are not recurring and that the child is receiving the support and treatment needed.

5) Convenient transportation should be provided for children to go to treatment facilities when their family or foster parent cannot afford to take them. Tragically, treatment has often been discontinued because of failure to follow-up and lack of transportation.

6) Prosecutors trained in working with children should handle abuse and neglect cases and the same prosecutor should handle a case from beginning to end. Every child protection team should have access to a lawyer skilled in dependency proceedings who will work with them.

7) A pleasant and sensitive environment should be created for childrens' interviews and depositions.

8) Adequate counselors and foster care facilities should be provided. Again, these resources should be provided based on the population at risk and not some arbitrary formula unrelated to the children to be served.

9) The salaries of child care workers in all categories should be thoroughly competitive to attract and retain competitive and sensitive counselors.

10) Treatment programs should be provided for all offenders serving

short term prison sentences for abuse or neglect.

11) Appropriate programs for mentally disordered sex offenders should be readily available.

12) Support and professional assistance should be provided for all parents who neglect their children through ignorance or inability to cope.

13) Psychological and psychiatric assistance should be made available in appropriate residential and non-residential settings to identify and correct the causes of child abuse and neglect.

Child abuse and neglect are truly a tragedy for all of us. The victims cannot help themselves. The community, legislators and constituents alike, must all work together to help alleviate this tragic problem.