

Child Protection at the Crossroads: Child Abuse, Child Protection, and Recommendations for Reform

BY SUSAN ORR, PH.D.

Executive Summary

Today, with few variations, state laws surrounding child abuse and neglect look remarkably similar. All share similar definitions regarding abuse and neglect; all require professionals to report suspicions under threat of prosecution; all provide confidentiality to anyone involved in an investigation—from the person making the allegation to the children and family members involved. These similarities are not accidental, but were accomplished with relative ease a quarter-century ago. They are the intended consequences of a federal law first passed in 1974 known as the Child Abuse Prevention and Treatment Act (CAPTA).

Although much public attention has focused on the cost of public assistance (the former AFDC program), child welfare is the more expensive governmental activity and the more complicated. In 1995, the federal government spent about \$11,698 per child in foster care, whereas it spent only \$1,012 for each person receiving welfare benefits. When factoring in state costs, the average cost increases even further to \$21,092 per child in foster care versus \$2,499 for each person receiving a welfare check.

The United States has had federally mandated child-protection laws for over a quarter of a century. Since these mandates have been in effect, child maltreatment rates have increased tremendously and child-protection agencies' ability to handle the increase has declined:

- When CAPTA was enacted in 1973, child-protection agencies handled about 60,000 reports of abuse and neglect; today they handle 3 million.
- Substantiation rates have plummeted from a high of 61 percent in 1976 to a current low of 31 percent.
- Early estimates on confirmed abuse and neglect, while far from exact, ranged from 6,500 in 1967 to 360,000 in 1974.

- In 1997, child-protection agencies confirmed that 963,870 children were abused or neglected by their parents.
- Around the same time, more than 130,500 children entered foster care bringing the total number of children being taken care of by the state to 520,000.
- Less than 20 percent of all substantiated cases of child maltreatment go to criminal or civil court.
- Most children can remain home safely, even after a substantiated incident. Fewer than 20 percent of the three million children investigated are in sufficient danger that they have to be removed from their family.

Although spoken of in terms of social services, the child-protection function of child welfare is essentially a police action. The state conducts an investigation of a family based on an allegation and can use police power to enter a home and take a child or children into protective custody. The key difference is that for child-protection agencies (CPS), unlike the police, the focus is not on the perpetrator, i.e., the parent, but on the victim, i.e., the child. Hence it is the child who is removed, not the parent, when the situation is dangerous. This concentration on the child instead of on the one who causes harm is part of the problem. It is the result of treating child maltreatment, with rare exceptions, outside of the bounds of criminal prosecution, for behavior that if perpetrated against anyone other than a relative would result in assault charges.

The pervading problem in child welfare is one of perverse incentives that undermine personal responsibility. The child-protection system is built upon the notion that child maltreatment is remediable with the right therapeutic treatment. Child abuse is not regarded primarily as a violation of justice, but as either a symptom of illness or the result of economic deprivation. Parents are not at fault. Because abuse is not seen as a moral problem, it must be susceptible to professional help. It is therefore not surprising to find reluctance to ever pronounce any given parent irredeemable.

Child-protective services are the most-intrusive arm of social services, because child-protection workers have the power to determine whether or not a child should be removed from his family, sometimes permanently. Services always come with the understood threat of taking children away, whether that threat is real or only perceived.

Most families will never come into contact with the child-welfare system, because most families do not abuse or neglect their children. Most who do come in contact with this system live in poverty and are headed by a single mother. Families in crisis will always defy easy solutions. No policy proscription can prevent some parents from assaulting their children. Yet, some solutions can be teased out that would lower the numbers of children harmed by the very people who are meant to protect them—and do so without excessive public interference into the private lives of families.

The primary recommendations for reform are as follows:

1. *Narrow the scope of child abuse and neglect definitions.* Scholars and child-welfare experts from across the political spectrum agree that narrowing the scope of child abuse and neglect would allow CPS to focus on the most drastic cases. Much that is now defined as child abuse and neglect does not merit governmental interference.
2. *Place the investigatory powers with the police.* Police are trained in matters of investigation. It is the nature of child protection to be accusatory. Cloaking the investigation under social services and anonymity does nothing to hide that essential fact. The behavior that we are discussing is criminal in

nature; therefore police should gather the evidence. Once the scope of what constitutes child abuse is appropriately narrow, local police would be the best government agency to conduct investigations. If the investigation suggests a crime was committed, the case would then proceed to court for adjudication.

3. *Re-criminalize child abuse and neglect.* Having already narrowed the scope of child abuse and neglect to serious cases, what remain are cases of assault and serious neglect. That means that the standard would be the same if someone harmed a stranger's child or her own. Now child abusers are only guaranteed punishment if they harm someone not related to themselves. Most importantly, criminal cases require public records and due process.
4. *Repeal mandatory reporting laws that are in effect in all the states.* Mandatory reporting laws, designed to encourage those who work with children to report incidents of maltreatment, have had two negative effects. First, they encourage unnecessary reporting because professionals must report all of their suspicions under threat of prosecution. While such prosecutions are rare, one shouldn't have to report suspicions. Reporting should be restricted to more concrete evidence of a crime. Second, mandatory reporting discourages fellow citizens from taking positive neighborhood action with families in trouble. Citizens tend to consider that their responsibilities have been met when they call an anonymous hotline, because that is what the law tells them to do. Knocking on the door and offering help to a family, which is troubled, but not engaged in criminal behavior, may be the more appropriate alternative.
5. *Make child and family services voluntary.* Having separated criminal behavior from deficient parenting, we could enable caseworkers to do what they were trained to do and what they do best, i.e., social work. Without the threat of child removal hanging over their heads, parents might more willingly accept services—such as help with parenting skills. Knowing that an agency only provides services, parents might be more receptive to receiving such help. Moreover, these services should be privatized, as private agencies with performance-based contracts tend to work more effectively than state bureaucracies.

Part 1

Introduction

Despite a slight decline in recent years, the number of children who are abused and neglected by their parents remains at staggering heights, even after a quarter-century of federally mandated child-protection laws. The United States has gone from around 60,000 reports of abuse and neglect in 1973, when the Child Abuse Prevention and Treatment Act (CAPTA) was enacted, to 3 million in 1997.¹ The ability of child-protection agencies to substantiate or prove maltreatment has never been very high, so some of the reports might be credibly dismissed as mistaken allegations, especially since the average citizen's awareness of child abuse and his duty to report his suspicions has also risen since the 1970s. Substantiation rates have plummeted from a high of 61 percent in 1976 to the current low of 31 percent.² But mistaken allegations and increased awareness taken together cannot account for the precipitous rise in the number of substantiated cases of child abuse. Prior to federalizing the issue, national estimates on confirmed abuse or neglect, while far from exact, ranged from 6,500 in 1967 to 360,000 in 1974.³ More recently, the number of substantiated cases is significantly higher. In 1997, 963,870 children were abused or neglected by their parents, according to the U.S. Department of Health and Human Services.⁴ Around the same time, more than 130,500 children entered foster care bringing the total number of children being taken care of by the state to 520,000.⁵

Not all abuse and neglect cases that are substantiated involve serious or life-threatening incidents. In fact, only a small fraction of the caseload represents serious traumas or fatalities. So the question becomes, what

¹ Richard D. Krugman, "Child Protection Policy," in Mary Edna Helfer, Ruth S. Kempe, and Richard D. Krugman, editors, *The Battered Child*, fifth edition (Chicago: University of Chicago Press, 1997), pp. 627-8.

² M.A. McCurdy and D. Daro, *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1992 Annual Fifty State Survey* (Chicago: National Committee for the Prevention of Child Abuse, 1993). Over-reporting is the thesis of child-abuse scholar, Douglas J. Besharov, the first director of the National Center of Child Abuse and Neglect, currently at the American Enterprise Institute. See, for example, Besharov, D. J., "Overreporting and Underreporting Are Twin Problems," in Gelles, R. J. and Loseke, D. R., editors, *Current Controversies on Family Violence* (Newbury Park, California: Sage Publications, 1993), pp. 257-72.

³ Because no one was systematically gathering national statistics in the 1960s and 1970s, data on substantiation rates are limited. The 1967 figure is based on an incident study conducted by Brandeis University and the 1974 figure is based on one conducted by the Mershon Center at Ohio State University. Vincent De Francis, *Protecting the Abused Child: A Coordinated Approach* (Denver: American Humane Association, Children's Division, 1972), p. 6 and Saad Z. Nagi, "Child Abuse and Neglect Programs: A National Overview," *Children Today*, vol. 4, no. 1 (May-June 1975), pp. 13-17.

⁴ U.S. Department of Health and Human Services, "HHS Reports New Child Abuse and Neglect Statistics," press release of April 1, 1999. This number reflects substantiated reports, i.e., those that child-protection agencies considered to be actual cases of maltreatment. Each year, the U.S. Department of Health and Human Services releases a report on child maltreatment based on state child-welfare agency data. *Child Maltreatment 1997* has yet to be released in its entirety, although the department has released three statistics from the National Child Abuse and Neglect Data System. There is a slight decrease (one percent) from 1996 in which there were 968,748 maltreated children.

⁵ Children's Bureau, U.S. Department of Health and Human Services, *AFCARS Report: Current Estimates as of January 1999*, <http://www.acf.dhhs.gov/programs/cb/stats/afcars/rpt0199/ar0199.html>. The reporting period for this data is October 1, 1997 through March 31, 1998.

does a normal case look like? And if it is not a serious incident the first time a family is investigated, is there a likelihood that it will grow worse over time? Finding answers to these questions is important because public policy surrounding child abuse and neglect is usually driven by serious and fatal incidents of abuse and neglect. Politicians are often faced with the hard choice of supporting more funding for social services without a proven track-record or being accused of failing to protect children from harm. Understanding what most cases look like and what the research suggests regarding the treatment of child abusers will enable legislators to make more informed decisions.

Many child-protection critics across the political spectrum have suggested that child-protective service (CPS) agencies are unnecessarily involved with many families just because they are poor.⁶ The inability of parents to clothe and feed their children adequately because of financial need, they argue, should not count as willfully malicious behavior. Because neglect makes up the majority of cases, there seems to be a degree of truth to this assertion. Nonetheless, some research suggests that it is precisely neglect cases that eventually turn deadly. In 1996, an average of 45 percent of child-abuse deaths involved neglect.⁷ Other studies also suggest that the incidence of children seriously harmed by abuse and neglect has risen dramatically over the past decade.⁸ But before we can tease out the answer to these more complicated questions, other more basic ones have to be addressed.

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To begin, just how pervasive is the problem of child abuse and neglect? How many parents abuse their children? Is it a problem of family formation? Does corporal punishment inflate the incidence rates? How many times are a family's privacy rights invaded unnecessarily? Those are the systemic questions. Next, there are the structural ones. Have child-protection service agencies always existed? How are they organized? Can anyone predict who will abuse? Can we treat those who harm their children so that they do not repeat the abuse later?

Any serious consideration of child-abuse policy should discuss these critical questions dispassionately. When the subject is child abuse, however, it is often hard to take the emotion out of the debate. Too often,

⁶ This has long been a complaint from many child-welfare experts. Critics as diverse as Leroy Pelton, dean of the University of Nevada at Las Vegas, and Douglas Besharov, at the American Enterprise Institute, have criticized CPS agencies for conflating abuse with poverty. See Leroy H. Pelton, "Child Abuse and Neglect: The Myth of Classlessness," in Pelton, ed., *The Social Context of Child Abuse and Neglect* (New York: Human Sciences Press, 1981); Duncan Lindsey, *The Welfare of Children* (New York: Oxford University Press, 1994) and Douglas J. Besharov with Lisa Laumann, "Don't Call it Child Abuse if it's Really Poverty," *Journal of Children and Poverty*, vol. 3, no. 1 (Winter-Spring 1997), pp. 5-35.

⁷ Jane Waldfogel, *The Future of Child Protection: How to Break the Cycle of Abuse and Neglect* (Cambridge, Massachusetts: Harvard University Press, 1998), p. 237. Diana J. English further confirms this problem, "A survey of 26 states that could report the type of maltreatment that caused fatalities between 1993 and 1995 revealed that 37 percent of the children died from neglect, 48 percent died from abuse, and 15 percent died as a result of both types of maltreatment." See English, "The Extent and Consequences of Child Maltreatment," in *The Future of Children: Protecting Children from Abuse and Neglect*, vol. 8, no. 1 (Spring 1998), p. 48. Keep in mind that the high percentage of children who died from neglect must be put into the context of the low number of child deaths.

⁸ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *The Third National Incidence Study on Child Abuse and Neglect* (Washington, D.C.: U.S. Government Printing Office, 1996). This study will be discussed more fully in the section on child-abuse data.

reaction to a tragedy and the understandable desire “never to let it happen again” drives public policy. But a dispassionate look at child-abuse policy is critical if we are to avoid past mistakes. Insufficient objectivity regarding child abuse and neglect can imperil lives.

Yet the options are complicated. In the trenches of child welfare, “the front end of the system” is so-named because child protection is the gateway to a variety of government-supplied social services for children and families outside of the monetary assistance provided through welfare. Child-welfare agencies serve families in crisis, families at the point of breaking apart, often violently. These front-end services, however, are intrusive by their very nature: CPS agencies usually help families only after investigating them. The primary power of CPS is the authority to intervene in family life once an agency receives a report that a parent or guardian has maltreated a child. Because the intervention is carried out under the auspices of social services, the entire process of investigating the family and interviewing the children involved is done without a warrant and without due-process guarantees.

The challenge is complicated by the growing recognition that past CPS-intervention policies do not appear to have diminished abuse or neglect.

Once investigated for child abuse or neglect, a family is never the same. In the most extreme scenario, children are removed from their home and placed in foster care, sometimes for years. In that case, the child-welfare system may remain involved in that family’s life forever. Even if the children were not removed, the family can be affected in numerous other ways. In the case of a false allegation, parents must account for how they have raised their children to a state authority. They must disprove a negative, a difficult proposition in any circumstance, but especially unnerving if it involves one’s children. The ensuing fear that governmental authorities could decide to tear their family apart never goes away, inhibiting how parents comport themselves in public and causing them to wonder who thought they were harming their children. Trust in their neighbors and other associates erodes.

If an allegation is substantiated, there are more tangible results, even if the children are allowed to remain home: a parent’s name on a central registry that permanently bars his or her ability to get certain jobs; requirements that parents get certain services; and, periodic check-ups by social workers to see how the family is faring until the case is closed.⁹ The policy challenge is how to ensure that those who harm their children are held accountable for those actions while, at the same time, limiting interventions to those situations where clear evidence of abuse exists. The challenge is complicated by the growing recognition that past CPS-intervention policies do not appear to have diminished abuse or neglect.

Few who work at the front end of the child-welfare system think that it is in a healthy state, no matter whether one looks at the systemic questions or structural ones. Disarray abounds at the agency level, from heavy caseloads resulting in reports that go uninvestigated to high rates of caseworker burnout, a result of looking after the gruesome details of parental abuse and neglect. But child-welfare agencies are used to

⁹ Being placed on a child-abuse registry can permanently bar one from working in any field that involves children, such as childcare or teaching; it also prohibits one from doing volunteer work, for example, being a den mother for a Cub Scout troop.

operating in a crisis mode, having done so since the emphasis shifted in the 1960s from family assistance to what the scholar, Duncan Lindsey, has termed the “soft policing” of child abuse and neglect.¹⁰

Those who work in the field of child protection have developed a bit of trench humor to describe public policy as it relates to child welfare. They are fond of saying that policy is set by the pendulum, which swings from crisis to crisis. A child death translates into a policy of removing children too easily from their homes and keeping them in foster care too long. An overzealous removal rate then triggers the opposite reaction, dictating that too many children stay in dangerous settings as the agency tries to be more “family friendly.” This policy remains in effect until another child dies under the agency’s watch.¹¹ Letting pendulums set policy is not a rational course of action nor is it the only alternative available.

This study takes a critical look at child protection and child abuse to determine how to achieve the proper balance between government intrusion into routine family life and government intervention when citizens, in this case children, are being harmed. Having laid out the theoretical and practical problems of the current structure of child welfare in which child protection operates, the study will suggest several reforms tailored to encourage both responsible parenting and responsible policing. Before proceeding, however, let us look at two actual cases that illustrate the difficulties inherent in child protection.¹²

¹⁰ Lindsey, *The Welfare of Children*, p. 125.

¹¹ For an excellent example of this phenomenon, see the first chapter in Lela B. Costin, Howard J. Karger, and David Stoesz, *The Politics of Child Abuse in America* (New York: Oxford University Press, 1996) and their discussion of San Diego County in the late 1980s.

¹² Because of confidentiality laws that protect all information regarding cases, I have used two cases that received a good deal of media coverage.

Part 2

The Two Extremes of the Pendulum

Discussions surrounding child protection are usually infused with emotion. For those who do not follow the inner workings of the child-welfare system, the subject of child protection usually arises after a case makes headlines. Unfortunately, cases only make headlines when something dreadful happens: either a child dies or an agency's interference turns the life of a normally functioning family upside down. Neither scenario reflects positively upon the agencies charged with protecting children from abusive parents. Neither scenario engenders dispassionate thought. The usual public reaction to child-protection agencies is anger: either the government is doing too much or too little, depending upon which story is making headlines. Meanwhile, child-protection workers have the seemingly impossible task of deciding whether or not to remove a child from a home, knowing that they will get the blame if something goes wrong.¹³

The number of children murdered by their parents yearly hovers around 1,000 (less than one percent of all substantiated cases of abuse and neglect).¹⁴ Yet, these cases understandably focus public attention, rousing cries of bureaucratic ineptitude and sometimes malfeasance. Front-page stories with screaming headlines recount the all-too-short history of a child who was never given the protection needed to survive to adulthood. In almost half the cases, these families are already known to the agency responsible for child protection, which only aggravates the public's sense of outrage.¹⁵ Nia Scott, who was killed by her mother's boyfriend on September 8, 1997, is a sad case in point.¹⁶

Born weighing only four pounds, seven ounces to a crack-addicted twenty-six year old, Nia Scott of Sarasota, Florida required intensive neonatal care during the first weeks of life. Although the hospital did its

¹³ See Martha Shirk, *Covering Child Abuse* (Adelphi, Maryland: Casey Journalism Center, 1997) for a report on the conference, "Rethinking the Blame Game: New Approaches to Covering Child Abuse and Protection," sponsored by the Casey Journalism Center for Children and Families, for an analysis of how the press typically covers and shapes public attitudes about child-protection agencies.

¹⁴ U.S. Department of Health and Human Services, Children's Bureau, *Child Maltreatment 1996* (Washington, D.C.: U.S. Government Printing Office, 1998), p. 2.13. This count represents only those deaths known to be caused by the caretaker. Child advocates have long maintained that the number could be twice as high as medical examiners often miss cases of abuse attributing "sudden infant death syndrome" to cases that were actually a result of violent shaking or suffocation. See U.S. Advisory Board on Child Abuse and Neglect, *A Nation's Shame: Fatal Child Abuse and Neglect in the United States* (Washington, D.C.: U.S. Government Printing Office, 1995).

¹⁵ Jane Waldfogel, *The Future of Child Protection* (Cambridge: Harvard University Press, 1998), p. 103.

¹⁶ This account is compiled from news stories at the time of her death. See, for example, Laura Higgins, "The Deaths of Five Children during a Single Week Last Month Raise New Questions about Who Will Protect Florida's Children at Risk; State Divides Child Care," *Sarasota Ledger*, October 12, 1997, p. A1 and Alan Judd, "Ax Is Poised to Fall on State Agency; A Proposed Law Would All But Eliminate the Department of Children and Families," *Sarasota Herald-Tribune*, March 23, 1998, p. 1A.

job of restoring her to health, Nia didn't make it to her third birthday. Nia's older brother, born crack-addicted, was already in foster care. The Scotts had been involved with child protection since 1992, when their mother, Chrisandra Scott, habitually took her newborn son to crack houses. By the time of Nia's death, five years later, the Scotts' file was already six inches thick.

While her mother spent eighteen months in drug treatment (where she became pregnant with her third child), Nia thrived under the care of a loving foster mother. She was placed back with her mother when Chrisandra completed treatment. Although Chrisandra Scott soon returned to abusing drugs, abandoning her child with her boyfriend for days at a time, the child-protection agency did not intervene. Hearing of Chrisandra's behavior, Nia's former foster-mother phoned the child-protection hotline repeatedly. Child protection did not perform the required follow-up monitoring visits. This failure was made more likely because the Scott family moved across county lines and jurisdictions. Nia was beaten to death by her mother's new boyfriend in what was described as a "potty training" incident; her mother had disappeared the night before saying she was going to the store and failed to return until she heard that Nia was dead. Upon discovering the circumstances surrounding her death, the public was understandably outraged.

The usual public reaction to child-protection agencies is anger: either the government is doing too much or too little, depending upon which story is making headlines.

To make matters worse, 61 other Florida children died the same year, tying a state record that no one was proud of. These deaths occurred at the same time that Florida experienced an unprecedented rise in reports. In 1997, the Department of Child and Family Services (DCFS) received 128,000 reports of abuse and neglect; of those reports, the department confirmed 68,500 incidents, a much higher rate of substantiation than the national average.¹⁷ All told, Florida had a 52 percent jump in caseload that year.¹⁸ In the aftermath of the 62 deaths—with five occurring in one week where the agency admitted making mistakes in each case—the Florida legislature radically restructured DCFS, passing a law requiring the complete privatization of all child-welfare services by 2003, going even farther than the state of Kansas by requiring the privatization of child protection.¹⁹

That was not the first time that Florida—or other jurisdictions across the country—had responded to such devastating news with a call for reorganization. In fact, Florida's DCFS had already been reorganized twice within the last six years. The legislature also allocated \$15 million in additional funding for a nationally popular prevention program called "Healthy Families" in 1998.²⁰ While it is too soon to tell whether the

¹⁷ Florida's substantiation rate was 53.5 percent, compared to 34.4 percent nationwide. I have included both substantiated and indicated cases (which require a lower standard of proof) in this figure because Florida uses both categories. Substantiation rates are discussed in the section on data. U.S. Department of Health and Human Services, Children's Bureau, *Child Maltreatment 1996* (Washington, D.C.: U.S. Government Printing Office, 1998), pp. 2.3 and 3.18.

¹⁸ Floyd Dunkelberger, "Child Abuse Deaths Called Unacceptable; Over the Last Decade, an Average of 50 Children Die Each Year from Abuse," *Tallahassee Ledger*, March 22, 1998, p. A1.

¹⁹ In Florida, privatizing child protection does not require that a private company or nonprofit organization be hired; an agency may opt to transfer this authority to the sheriff's office, as has happened in a pilot program in Manatee County. For more information on child-welfare privatization, see Conna Craig, Ted Kulek, Tim James, and Shamin Nielson, *Blueprint for Child Welfare Privatization*, Policy Study No. 248 (Los Angeles: Reason Public Policy Institute, November 1998).

²⁰ "Healthy Families" is a home-visiting program for at-risk mothers that is used in most states; it is sponsored by Prevent Child Abuse America (formerly known as the National Committee to Prevent Child Abuse) headquartered in Chicago.

privatization of child protection will result in a lower incidence of maltreatment, prevention programs like “Healthy Families” already have a track record that is not very promising.²¹

Every state has stories similar to Nia’s. Too many have equally gruesome details. But there is another side to child protection. The other story reported about child protection is equally important and equally troubling. It is the one of social workers who disrupt family life when they should not.

Public attention would probably only be focused on child deaths were it not for the journalists who have covered the prosecutions of ritual sexual abuse that have made headlines in recent years. One has only to name a few of the communities involved—Manhattan Beach, California; Dade County, Florida; and Wenatchee, Washington—to conjure up a vivid reminder of prosecutorial abuse.

The most recent case surfaced in the small town of Wenatchee in 1994 after a local police detective, Robert Perez, began investigating the molestation allegations of his 11-year old foster daughter.²² Initially the child named only her parents, but as she was rewarded with attention and applause every time she named someone else, the numbers of those accused quickly grew and the allegations became more convoluted. Detective Perez’s investigation and the manner in which he proceeded eventually pitted everyone in the town against each other.

The girl and her siblings were initially removed from their homes because of physical, not sexual, abuse. She had lived with the detective and his family for six months before she made any allegations of incest. Only later did anyone notice that her initial and later embellishments occurred whenever she wanted to deflect attention from her own misbehavior. During one of the trials, Detective Perez admitted that her accusations began after he had threatened to send her to a mental institution. With the enthusiastic support of the child-protection agency, a year-long investigation ensued. Many more children were taken from their families, interviewed, and after repeated questioning, spun elaborate, but similar, tales of satanic worship and sexual abuse eventually involving a minister, his wife, and their entire Pentecostal church. The children—sometimes members of the same family—who refused to corroborate the stories were diagnosed with post-traumatic stress disorder and placed in therapy, sometimes in out-of-state institutions. Anytime a member of the community (including the pastor) protested that the charges were fabricated, they found themselves charged in the conspiracy and had their children removed as well.²³

Many of the children later recanted. But not before 43 adults—most of whom were desperately poor, unable to read, write, or afford good attorneys—were charged with 30,000 counts of rape involving 60 children. Not

²¹ For an article noting the problems with several prevention programs, see Susan Orr, “Professionalized Parenthood,” *The Freeman*, June 1999; for a detailed analysis of how “Healthy Families” home-visitation programs failed to meet expectations in Arizona, see Robert Franciosi, *Get ‘Em While They’re Young: The Second Childcare Revolution and the Expansion of the Nanny State*, Arizona Issue Analysis 154 (Phoenix, Arizona: Goldwater Institute, November 1998); for a comprehensive analysis of home visitation, see Dianna Lightfoot and Stanley Watson, *The Parent Trainers: A Nationwide Study of Home Visitation Programs* (Birmingham, Alabama: Physician’s Resource Council of the Alabama Family Alliance, May 1999).

²² This account is compiled from news sources. See John Gillie, Doreen Marchionni, and Hector Castro, “Divided By Doubt; Who Was Abused: The Accusers ... Or The Accused? Despite Multiple Convictions in a Notorious Child-Sex Case, Critics of the Investigation Say Innocent Men and Women Are Victims of a Witch Hunt in Wenatchee,” *The News Tribune*, Tacoma Washington, November 5, 1995, A1; Kim Murphy, “Wenatchee: Sex Probe Tests Truth and Trust; The Washington Town Has Been Torn Apart by Claims That 43 Adults Abused Children,” *Los Angeles Times*, June 14, 1998 p. A1, and Ros Davidson, “The Town that Went Mad,” *Scotland on Sunday*, April 4, 1999, p. 19.

²³ See Mike Barber, “Woman Who Fought Wenatchee Case Dies; Juana Vasquez Blew Whistle on Handling of Child Sex Inquiry,” *Seattle Post-Intelligencer*, April 30, 1999, p. B1.

understanding what they were doing, some even signed confessions, fearing that unless they cooperated, they would never see their children again. Over a two-year period, ten were convicted, while 18 pled to lesser felony charges.

While 11 still remain in jail, the Innocence Project Northwest, a group of law professors and students at the University of Washington, has worked successfully to overturn many of their convictions, largely on evidentiary grounds.²⁴ The damage inflicted, however, is irreparable. Not only were many imprisoned and their reputations destroyed, some of the accused have lost their children forever, as the state terminated their parental rights and the children were adopted by other families. Other children still remained in foster care by summer 1999, even though their parents' cases had been dismissed or overturned.

Thus, with rare exceptions, most cases of child abuse and neglect never leave the social-service agency for independent review.

The children themselves are also scarred, both those who cooperated with the prosecution and those who did not. Research has consistently demonstrated that memory, particularly a child's, is incredibly malleable, especially if a trusted adult, such as an authority figure, plants suggestions through leading questions.²⁵ An unreliable memory, a young person's inability to distinguish between fact and fiction, and a child's desire to please adults can lead to disaster in incompetent hands. Imagined events, moreover, seem no less real to a child.²⁶ Those children, who became convinced that they had been sexually tortured in their church, remain convinced today. Those that were not convinced but cooperated with authorities later admitted they did so because they were told they had to admit to the abuse before they could go home. Now they have to live with the guilt of breaking up their families.

Unlike Florida, Washington state has not reacted with legislative calls to reorganize the department. But the public eventually demanded an official accounting, particularly after investigative reporters began covering the story across the state and nationally.²⁷ An official review, conducted by the ombudsman for the Washington Office of Family and Children, was released on December 23, 1998. The ombudsman, Vickie Wallen, noted many improprieties about the investigation, not the least of which was allowing a foster parent to be the lead investigator on a case involving his foster daughter. However, the state still has not backed down on its claim that children were molested. As Wallen noted in the report,

²⁴ Roland Hjorth, "Working for Justice, One Case at a Time," *Seattle Post-Intelligencer*, May 1, 1999, p. A13.

²⁵ The ability of children to invent stories even of horrific events, and to believe in them, is now well-documented. The research of Elizabeth Loftus, now at the University of Washington, and others on childhood memories is revealing. The experiments that made investigators more cautious about the ability of children to discern fact from fiction involved the following. Researchers asked children about an invented attempt at abduction supposed to have occurred earlier in their childhood. After repeated questions, children eventually gave the researchers details, down to the clothing worn by the kidnapper. See E. Loftus, J.E. Pickrell, "The Formation of False Memories," *Psychiatric Annals*, vol. 25, no. 12 (December 1995), pp. 720-725.

²⁶ See, for example, S.J. Ceci, E. Loftus, M.D. Leichtman, and M. Bruck, "The Possible Role of Source Misattribution in the Creation of False Beliefs Among Preschoolers," *International Journal of Clinical and Experimental Hypnosis*, vol. 42, no 4 (October 1994), pp. 304-320.

²⁷ For an account of how the press shaped public opinion surrounding the case, see Jim Kershner, "A Witch Hunt in Wenatchee?" *American Journalism Review* (June 1996), p. 32.

*It is difficult to determine how the department could meaningfully assess the Wenatchee cases without knowing more about what occurred in the child interviews CPS' investigative process was not documented well enough to allow our staff to ascertain whether investigative mistakes occurred that led to errors in the accuracy of how the investigators were understanding what the children were actually saying We cannot hold the system accountable without knowing more about what happened.*²⁸

Thus, the state has only admitted error in the process but not the outcome. The state acknowledges that the child interviews were not taped and caseworker notes were incomplete or even destroyed; however, the department refuses to connect the process with the outcome of putting innocent people in jail.

Not every state official cooperated in Wenatchee. One social worker, Juana Vazquez, was fired when she protested the manner in which the investigation, particularly the interrogation of the children, was conducted. She was later awarded \$1.57 million in damages in a civil suit against the Washington Department of Social and Health Services for wrongful termination.²⁹ Another state employee was arrested for interfering in a police inquiry; his civil suit is supposed to go to trial sometime in 1999. The state legislature is currently considering a bill that would clarify how such investigations and interviews of child witnesses are conducted plus require training for caseworkers in interviewing techniques.³⁰

The pervading problem in child welfare is one of perverse incentives that undermine personal responsibility.

Cases like Wenatchee hold public attention precisely because they were prosecuted in criminal court and people went to jail. Criminal cases require public records and due process. But that is not the norm in child-protection cases. Less than 20 percent of all substantiated cases of child maltreatment go to court, either criminal or civil.³¹ Thus, with rare exceptions, most cases of child abuse and neglect never leave the social-service agency for independent review.³² That makes less sensational cases of social workers' overreach hard to find and even harder to document, because agency records are sealed, even to those involved. Outside of knowing what the finding is, parents who are investigated cannot even access the files themselves.³³ Those who complain publicly of mistreatment at the hands of social workers are easy targets for insinuation by agency staff hiding behind confidentiality.

Caught between the two extremes of undue interference and failure to protect children in harm's way, child-protection agencies always look bad to the general public. Putting ourselves in the caseworker's shoes yields

²⁸ Andrew Schneider and Mike Barber, "Changes in Probes of Child Abuse Urged to Prevent Wenatchee Repeats," *Washington Times*, December 25, 1998, p. A10.

²⁹ "Juana Vazquez Gave Lessons in Justice," *Seattle Post-Intelligencer*, May 1, 1999, p. A13.

³⁰ "Wenatchee Child-Abuse Case Reflected in New Legislation," *Seattle Post-Intelligencer*, April 21, 1999, p. B2.

³¹ Waldfogel, *The Future of Child Protection*, p. 68. Waldfogel also notes that court involvement has stayed fairly constant, citing Douglas J. Besharov's 1985 research that "less than 5 percent of substantiated cases are brought to criminal court and 15 percent to civil court," p. 249.

³² In 1996, Congress required states to set up citizen review boards in the reauthorization of the Child Abuse Prevention and Treatment Act, but even that reform does not come with due-process protections.

³³ For examples of parents who claim to have been abused by the child-protection system, see Richard Wexler, *Wounded Innocents* (Amherst, New York: Prometheus Books, 1990) and Dana Mack, *The Assault on Parenthood* (New York: Simon and Schuster, 1997), pp. 54-83.

another perspective. Although the possibility always looms before them, caseworkers do not handle cases composed of these kinds of sensational incidents regularly. Still, every day, caseworkers are required to enter strangers' homes in order to assess whether or not children can remain there safely. The neighborhoods where caseworkers must spend most of their time are not safe and sometimes openly hostile.³⁴ The possibility of a case like Nia Scott is very real to them. Compound these circumstances with the fact that the numbers of children who are seriously abused and neglected at the hands of their parents has increased significantly over the past decade and one can understand how a social worker might err on the side of removing a child or being heavy-handed.³⁵

Still, one must ask the question, how is it that child protection agencies are failing to balance child-protection needs against family privacy? Agencies often complain that the reasons are financial, i.e., that there is never enough money to hire and pay adequately the kind of staff necessary to handle the caseload, much less to provide needed services to clients. But is there something in the structure of child-protective services that makes such contradictory results possible? Is there something fundamental to the system that no amount of money could change? Examining the structure and history of child protection agencies and the scope of the problem may help answer these questions.

Child abuse is not regarded primarily as a violation of justice, but as either a symptom of illness or the result of economic deprivation.

Before despairing, critics should remember that, while child abuse has always occurred, such high rates of abuse have not. While no amount of government intervention can stop all abuse, even its most hideous forms, from occurring even if funds were unlimited, it should be possible to lower the numbers of children harmed by the very people who are meant to protect them—and to do so without excessive public interference into the private lives of families. Part of the problem with the current approach lies in the structure and purpose of child-protection agencies, which, if altered could lead to better outcomes.

The pervading problem in child welfare is one of perverse incentives that undermine personal responsibility. The child-protection system is built upon the notion that child maltreatment is remediable with the right therapeutic treatment. Child abuse is not regarded primarily as a violation of justice, but as either a symptom of illness or the result of economic deprivation, depending upon which theoretical model of abuse the social worker follows: the medical or the ecological model.³⁶ Parents, according to either theory, are not at fault. Because abuse is not seen as a moral problem, it must be susceptible to professional help. It is therefore not surprising to find reluctance to ever pronounce any given parent irredeemable.

³⁴ Nick Scoppetta, appointed by Mayor Giuliani to head up child protection for New York City, was given much credit by his staff when he got funding to give caseworkers cell phones, so that they could call for help if they were in danger.

³⁵ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *The Third National Incidence Study on Child Abuse and Neglect* (Washington, D.C.: U.S. Government Printing Office, 1996), p. xvii, and *Child Maltreatment 1996*. A discussion on the numbers follows on the section on data.

³⁶ The medical model attributes abusive behavior to psychological abnormality; the ecological looks outward, placing the problem with the individual's surroundings and the stress caused by poverty. See the chapter on etiology in National Research Council, *Understanding Child Abuse and Neglect* (Washington, D.C.: National Academy Press, 1993), pp. 106-60.

Deciding to intervene in cases of abuse and neglect is not a problem in and of itself; rather, it is the manner in which such intervention is carried out. Child-welfare advocates were long ago successful in removing all but the most severe cases of child abuse and neglect from the criminal-justice system. At the same time, what constituted child maltreatment grew to encompass evermore-expansive concepts such as emotional abuse and educational neglect. By forsaking the courts of criminal law, in which determinations of justice and injustice are made and punishments meted out, child-welfare agencies took on the much larger task of attempting to heal family members who have gone wrong. The therapeutic regimen is carried out by providing various services from things as simple as housekeeping to as complicated as long-term therapy for pedophiles, depending upon the presenting problem.

This model of treatment creates two perverse and contradictory courses of action: barely veiled force, on the one hand, and unjust behavior on the other. Case workers always hold the well-understood threat of taking away one's children if one fails to comply with agency dictates. Conversely, the parent is given multitudinous chances to improve to the risk and detriment of the child, because abuse, unless severe, is not seen as a criminal problem.

Part 3

Child-Protective Services: How the System is Structured

Child-welfare services run the gamut from child protection to adoption. That includes the screening and investigation of reports of abuse and neglect, the removal of children from homes deemed unsafe, placing children from foster care into adoptive homes, and everything in between. Those “in between” services can vary from parenting classes and home-visiting services to providing substance-abuse treatment for a single mother that would allow her to bring her children to be housed with her while she undergoes institutionalized treatment. Child-protection agencies are a part of the child-welfare system and are often referred to as “the front end of the system” because they are the beginning of serious social-service involvement with a family. Involvement with public child-protective services is seldom a matter of choice.³⁷

Most families will never come into contact with the child-welfare system, because most families do not abuse or neglect their children. Most who do come in contact with this system live in poverty and are headed by a single mother.³⁸ Child-protective services only cover caretaker abuse; they do not cover abuse by a stranger or someone not related to the child. Stranger abuse or assault is the purview of law enforcement. Still, child-protective services are the most-intrusive arm of social services, because child-protection workers have the power to determine whether or not a child should be removed from his family, sometimes permanently. Services always come with the understood threat of taking children away, whether that threat is real or only perceived.

Although spoken of in terms of social services, the child-protection function of child welfare is essentially a police action. The state conducts an investigation of a family based on an allegation and can use police power to enter a home and take a child or children into protective custody. The key difference is that for CPS, unlike the police, the focus is not on the perpetrator, i.e., the parent, but on the victim, i.e., the child. Hence it is the child who is removed, not the parent, when the situation is dangerous. This concentration on the child instead of on the one who causes harm is part of the problem. It is the result of treating child maltreatment, with rare exceptions, outside of the bounds of criminal prosecution, for behavior that if perpetrated against anyone other than a relative would result in assault charges.

³⁷ Child abusers rarely turn themselves in, although other family members sometimes do. See the chart on substantiation rates for reporters in the section on data for details.

³⁸ All three *National Incidence Studies* conducted by the U.S. Department of Health and Human Services have consistently found this to be true when controlling for other variables, for example, race and geographic location. For more details, see the section on data.

A. Defining the Problem

What exactly do agencies mean by abuse and neglect? Definitions of maltreatment are codified in state statute, although very much influenced by federal legislation.³⁹ These laws can be further refined by departmental regulation. The regulatory impetus is for precision, but that means that much governance is done through policy issuance of which the general public is often unaware. This ignorance makes it difficult to complain about enforcement actions until one finds oneself at the wrong end of a child-protection investigation and discovers one has violated policy. For example, how many parents know that it is considered neglect in Fairfax County, Virginia to let one's seven-year-old child play unattended in the backyard?⁴⁰ This standard was set by child-protection staff attempting to define the vagaries surrounding neglect. Once substantiated, however, one is placed on the state's central registry of known child-abusers.

While state definitions vary, all states tend to follow these broad definitions:

Abuse: Physical Abuse: physical harm that is not accidental or physical punishment that is developmentally inappropriate.

Emotional or Mental Abuse: acts or omissions by caretakers that have caused or could cause serious behavioral, cognitive, or emotional harm.

Sexual Abuse: the use, persuasion, or coercion of a child to engage in any sexually explicit conduct for the purpose of pornography, rape, molestation, prostitution, or incest.

Neglect: The failure to provide adequate food, clothing, shelter, or medical care.⁴¹

For purposes of abuse and neglect, a child is anyone under 18. Sometimes states use the qualifier "serious" to modify the child's risk of maltreatment; this qualifier allows the caseworker some leeway regarding removal to foster care.⁴² Narrowing the definitional scope is a recent development as state legislatures have responded to the increased demands on the child-welfare system stemming from cases that were more serious.⁴³ Indiana, for instance, uses the qualifier "serious" to modify endangerment for both abuse and neglect.

Whatever one thinks about the appropriateness of corporal punishment, it is not necessarily child abuse *per se*.⁴⁴ Note that punishment must be developmentally appropriate. Spanking or shaking an infant can cause

³⁹ For information on a particular state's laws on child abuse and neglect, go to the National Clearinghouse on Child Abuse and Neglect Information, funded by the U.S. Department of Health and Human Services, which provides maltreatment information to the general public. Each year, the clearinghouse gathers all state statutes regarding child maltreatment into a reference compendium. The *State Statute Series* is available by calling 800-FYI-3366 or by accessing the web site at <http://www.calib.com/nccanch/index.html>.

⁴⁰ Fairfax County, Virginia, *Child Supervision Guidelines*.

⁴¹ National Center on Child Abuse and Neglect, *Basic State Grant Manual for State Liaison Officers* (Washington, D.C.: U.S. Department of Health and Human Services, May 1994), p. 16.

⁴² In fact, California took the federal government to court over this issue when the National Center on Child Abuse and Neglect attempted to deny the state funding over the use of "serious" as a qualifier. California won the suit.

⁴³ Not all states are moving in the same direction. Kansas changed its law to require removal upon "imminent risk of harm," which resulted in an increase of 2,000 more foster-care cases in one year. See, Susan Orr, "Privatization: The Experiment in Kansas," in *The Adoption Factbook*, edited by Connaught Marshner (Washington, D.C.: National Council for Adoption, forthcoming, 1999).

⁴⁴ Many child advocates have long advocated making all corporal punishment illegal, but they have never had sufficient public support to enact such laws. See Murray A. Straus, "Should the Use of Corporal Punishment by Parents be Considered Child Abuse? Yes," in *Debating Children's Lives: Current Controversies on Children and Adolescents*, edited by Mary Ann Mason and Eileen Gambrill (Thousand Oaks, CA: Sage Publications, 1994), pp. 197-203.

internal damage, even death, to the child; hence it is a potentially life-threatening form of abuse. CPS agencies spend very little time on cases of corporal punishment; where they most often become involved is when such punishment crosses the line: when, for example, such punishment involves scalding (as in scalding a child as a form of potty-training), the use of implements that can cause internal damage to punish a child, or the burning of a child.

Neglect is the single-biggest subset of maltreatment, constituting almost 60 percent of the caseload.⁴⁵ It is also the hardest to describe because it encompasses a disparate variety of behavior from simple inattention to more complicated behaviors. Neglect includes both failing to foresee possible harm and failing to provide minimal nourishment and attention.⁴⁶ It includes failing to supervise a child that *could*, but did not necessarily, cause accidental harm to a child, as well as more pathological behavior by the parent that results in, for example, starvation or “failure to thrive.” CPS can be involved in both kinds of cases, although the latter are decidedly more serious and usually require removal. A recent U.S. Department of Health and Human Services (HHS) publication on the problem of substance abuse and child abuse notes: “Neglect is especially predominant in child maltreatment reports in which the parent has a substance abuse problem.”⁴⁷ While child welfare does not catch all problems, “Of children prenatally exposed to drugs, most studies find that approximately 10 to 20 percent enter foster care around the time of birth and that about a third do so within a few years.”⁴⁸

It is considered neglect in Fairfax County, Virginia to let one’s seven-year-old child play unattended in the backyard.

Neglect also includes the subset of medical neglect. Medical neglect becomes particularly problematic when the neglect is due to religious belief. Cautious of interfering in the free exercise of religious liberty, the state usually steps in only to remove the child temporarily; the child gets the medically necessary treatment, such as an appendectomy or antibiotic treatment, and then CPS returns the child to the parents without any further intrusions. Only in a few states is religiously motivated medical neglect treated as criminal; prosecution occurs usually as a result of a child’s death.

B. Federalizing the Problem

Today, with few variations, state laws surrounding child abuse and neglect look remarkably similar. All share similar definitions regarding abuse and neglect; all require professionals to report suspicions under threat of prosecution; all provide confidentiality to anyone involved in an investigation—from the person

⁴⁵ U.S. Department of Health and Human Services, *Child Maltreatment 1996: Reports from the States to the National Child Abuse and Neglect Data System* (Washington, D.C.: U.S. Government Printing Office, 1998), p. 2.8.

⁴⁶ Hendrika B. Cantwell, “The Neglect of Child Neglect,” in *The Battered Child*, fifth edition, edited by Mary Edna Helfer, Ruth S. Kempe, and Richard D. Krugman (Chicago: University of Chicago Press, 1997), pp. 347-73 and James M. Gaudin, *Child Neglect: A Guide to Intervention* (Washington, D.C.: U.S. Government Printing Office, 1993).

⁴⁷ U.S. Department of Health and Human Services, *Blending Perspectives and Building Common Ground: A Report to Congress on Substance Abuse and Child Protection* (Washington D.C.: U.S. Government Printing Office, April 1999), p. ix.

⁴⁸ *Ibid.*, p. ix.

making the allegation to the children and family members involved. These similarities are not accidental, but were accomplished with relative ease a quarter-century ago. They are the intended consequences of a federal law first passed in 1974 known as the Child Abuse Prevention and Treatment Act (CAPTA), sponsored by Walter F. Mondale in the Senate and Patricia A. Schroeder in the House.⁴⁹

Before the passage of CAPTA, federal authority regarding child abuse and neglect was limited to suggestions (such as model reporting laws) and some general funding under the Social Security Act. Even suggestions from the federal government, however, shape state policy. In 1963, the Children's Bureau in the U.S. Department of Health and Human Service (HHS) wrote a model law for reporting suspected child abuse and 13 states soon enacted the suggested legislation, prompted largely by an article by C. Henry Kempe and his colleagues in the *Journal of the American Medical Association*.⁵⁰

In the article, Kempe, a Denver physician, presented findings on what he termed “the battered child syndrome.” Kempe had garnered evidence that some children under three were showing up in emergency rooms with broken bones—spiral fractures specifically. Because of the way the bones had broken, which could now be detected on x-ray, they could not be the result of falls. In other words, the damage appeared to be intentionally inflicted and could not have occurred in the manner that the parents claimed. He also noticed that these same children had sustained previous fractures over time.

By the passage of CAPTA, every state already had reporting laws. But the desire to federalize the problem of child abuse and neglect intensified after the compelling testimony from a panel of experts (including Kempe), victims, and perpetrators of child abuse. Expert testimony coupled with the riveting statements from an anonymous parent who told of her abusive behavior provided the impetus for federalizing the problem.⁵¹

The passage of CAPTA in 1973 formalized and cemented a trend already begun in the states of making child welfare primarily a governmental concern. But it began as a private effort. In the late 1800s, voluntary and private associations of citizens who wanted to help poor children such as Societies for the Prevention of Cruelty to Children (SPCC) and Children's Aid Societies, began springing up across the nation. By the 1920s, there were 250 societies spread across the East Coast and in the Midwest affiliated under the American Humane Association.⁵² As Patricia Schene, an expert in child protection at the University of Colorado at Denver, writes, “These private agencies, supported by public and private funds, investigated reports of child abuse and neglect, filed complaints against the perpetrators in court, and aided the courts in prosecution of those complaints. Some SPCCs were given police powers and could take custody of children pending the investigation.”⁵³ These private agencies were not hampered by regulations. The “child rescuers,” as they were often called, were not hesitant about removing children from families they deemed unworthy. The first annual report of the SPCC records its mission as:

⁴⁹ The Child Abuse Prevention and Treatment Act originally passed as P.L. 93-247.

⁵⁰ C.H. Kempe, F.N. Silverman, B.F. Steele, W. Droegemueller, and H.K. Silver, “The Battered Child Syndrome,” *Journal of American Medicine*, vol. 181, no. 1 (1962), pp. 539-43.

⁵¹ Ellen Hoffman, “Policy and Politics: The Child Abuse Prevention and Treatment Act,” *Public Policy*, vol. 26, no. 1 (Winter 1978), pp. 71-86.

⁵² Waldfogel, *The Future of Child Protection*, p. 30.

⁵³ Patricia A. Schene, “Past, Present, and Future Roles of Child Protective Services,” *The Future of Children: Protecting Children from Abuse and Neglect*, vol. 8, no. 1 (Spring 1998), p. 26.

*... to seek out and to rescue from the dens and slums of the city those little unfortunates whose childish lives are rendered miserable by the constant abuse and cruelties practiced on them by the human brutes who happen to possess the custody or control of them.*⁵⁴

This attitude began to fade in the progressive era with the belief that whole communities, not just the children, could be restored and transformed from squalor. But that only replaced the oversight of fellow citizens with that of a government agency. In many ways, the child-welfare system is still coping with the effects of the progressive movement's optimism.

By the 1950s, the District of Columbia and 35 other states already had legislation mandating that child-welfare services be provided by state agencies. In 1956, the states had 5,628 employees dedicated to child welfare; by 1977, just three years after the passage of CAPTA, that number had risen to 30,000.⁵⁵

The child-welfare system is still coping with the effects of the progressive movement's optimism.

CAPTA was an important piece of legislation for many reasons.⁵⁶ It proved an amazingly effective change agent using a relatively small amount of money by federal standards. CAPTA federalized the issue of child abuse and neglect by creating the National Center on Child Abuse and Neglect (NCCAN) with a staff of twenty-five at its peak. NCCAN was originally located at the U.S. Department of Health, Education, and Welfare. Later, it moved to the newly created Department of Health and Human Services (HHS), continuing until 1998 when its status was lowered to the Office of Child Abuse and Neglect (OCAN) and its staff reduced. Although its organizational status is lower, its funding level is not.⁵⁷ The original law also authorized a national commission of experts that convened several times annually and issued reports under federal auspices that shaped policy nationally.⁵⁸

Over the years, NCCAN has funded demonstration and research grants and contracts on various aspects of abuse and neglect. With each reauthorization of CAPTA, discretionary funding shifted to reflect congressional interests on the subject. But its greatest impact was at the state level. CAPTA granted money to states that adopted laws mirroring regulations drawn up by the NCCAN based upon guidelines within CAPTA.⁵⁹ If states adopted these laws, they would be awarded what came to be known as "basic state

⁵⁴ Costin, Karger, and Stoesz, *The Politics of Child Abuse in America*, p. 66.

⁵⁵ Lindsey, *The Welfare of Children*, pp. 18-20.

⁵⁶ For an excellent analysis of CAPTA's influence, see *Twenty Years After CAPTA: A Portrait of the Child Protective Services System* (Englewood, CO: American Humane Association, Children's Division, 1994).

⁵⁷ Currently, the Office of Child Abuse and Neglect (OCAN) has \$14 million in discretionary dollars, \$22 million for basic state grants, and \$32.5 for prevention grants. Figures provided to the author by Catherine D. Nolan, director of OCAN, July 27, 1999.

⁵⁸ The U.S. Advisory Board on Child Abuse and Neglect issued five reports: *Child Abuse and Neglect: Critical First Steps in Response to a National Emergency* (August 1990); *Creating Caring Communities: Blueprint for an Effective Federal Policy on Child Abuse and Neglect* (September 1991); *The Continuing Child Protection Emergency: A Challenge to the Nation* (April 1993); *Neighbors Helping Neighbors: A New National Strategy for the Protection of Children* (September 1993); and *A Nation's Shame: Fatal Child Abuse and Neglect in the United States* (April 1995).

⁵⁹ See the *Code of Federal Regulations* (Washington, D.C.: Government Printing Office, 1993) vol. 45, subchapter E—The Administration for Children, Youth and Families, Child Abuse and Neglect Prevention and Treatment Program, Part 1340, pp. 317-330 for precise details.

grants.” States could use that money for a broad array of purposes, as long as it fell under the general guidelines of “developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.”⁶⁰ Two further state grants were added in the 1980s: one addressing child sexual-abuse and one geared toward encouraging states to spend money on prevention efforts.

Until 1996, CAPTA had been reauthorized and refined over the years with little substantive changes. Before then, however, the federal government, through HHS, exercised tight control over state legislation regarding the definition of child abuse and neglect and the manner in which child protection was handled. If a state wanted continued access to funding under the “basic state grant,” its laws had to be reviewed yearly by both a federal program-officer and HHS attorneys. With the reauthorization of CAPTA in 1996, however, the states were given greater leeway and authority to determine what constitutes child abuse and neglect. Under the new act, the required definitions are looser (for example, states can now use the qualifier “serious” to modify abuse).⁶¹ Moreover, states may now certify that they are in compliance, instead of having to submit proof to HHS. Still most states (except Indiana, Maryland, and Pennsylvania) had already complied with the pre-1996 requirements.

The most important requirements were as follows:

1. *Child Abuse and Neglect Laws.* HHS was exacting about state compliance. (See definitions above for general outline.) No limitation, omissions, or qualifications were allowed.
2. *Mandatory Reporting.* While the law left states latitude as to who would be required to report, the state had to mandate reporting, usually, at least for professionals such as teachers and doctors. Some states make all citizens mandatory reporters. Mandated reporting is coupled with the threat of prosecution if one fails to report a suspicion. Note that reporters do not need proof; just a suspicion triggers the reporting requirement.
3. *Comprehensive CPS System.* This requirement obligated states to set up a complete system capable of handling all aspects of child maltreatment from toll-free hotlines all the way through the investigatory process and disposition.
4. *Confidentiality of Records.* States were only allowed to release information to other governmental agencies with a need to know such information. For example, if a family crossed jurisdictions, the state could forward the confidential records. Or if a child died, the records could be given to the child-death review team for investigation. With the 1996 reauthorization, states are allowed even more leeway to release some details to the public in the event of a child’s death.
5. *Anonymous Reporting and Immunity.* States had to take all reports, including anonymous ones. States also had to guarantee anonymity as well as immunity from prosecution if the reporting person made a good-faith report.

Once states verified that they met these and other requirements, they could qualify for the “basic state grant” funding. Most states did comply. The few states that failed to meet all the requirements only failed to meet the strict definition of maltreatment: all states had reporting laws and a complete child-welfare system capable of responding to reports of maltreatment.

⁶⁰ Language in the original Child Abuse Prevention and Treatment Act.

⁶¹ See Section 111 of CAPTA, P.L. 104-235 [42 U.S.C. 5106g].

C. Funding Streams: Who Pays for These Services?

Despite the similar sounding names, child-welfare services are distinct from welfare services (formerly Aid to Families with Dependent Children or AFDC, now known as Temporary Assistance to Needy Families or TANF) and have been for some time. Since welfare reform, TANF services have shifted from being a check-delivery system for single mothers to one aimed at helping mothers attain self-sufficiency by entering the workforce.⁶² In contrast, child-welfare services are governmental services provided to families in distress. That distress may have been exacerbated by poverty, but is not the sole cause of government intervention.

Although much public attention has focused on the cost of public assistance (the former AFDC program), child welfare is the more expensive governmental activity and the more complicated. In 1995, the federal government spent about \$11,698 per child in foster care, whereas it spent only \$1,012 for each person receiving welfare benefits. When factoring in state costs, the average cost increases even further to \$21,092 per child in foster care versus \$2,499 for each person receiving a welfare check.⁶³

Program:	Federal Government	Federal and State Combined
Welfare	\$1,012	\$2,499
Child Welfare	\$11,698	\$21,092

Source: Mark E. Courtney, "The Costs of Child Protection in the Context of Welfare Reform," in *The Future of Children: Protecting Children from Abuse and Neglect*, vol. 8, no. 1 (Spring 1998), pp. 93-94.

Money for child welfare services comes from multiple funding streams at various levels. Local, state, and federal sources are all used, although each stream comes with its own restrictions. While difficult to tabulate, experts estimate the costs for child welfare at more than \$11.2 billion a year.⁶⁴ But this estimate is incomplete. It does not include local funding, expenses from law enforcement, or from health and mental-health services.⁶⁵ To give a sense of how much money is not accounted for in direct federal and state funds, consider the following example. A mother in Kansas recently had her parental rights terminated for her five children due to neglect. The state paid \$4,000 worth of dental expenses as all of the children's teeth had rotted because the children were still bottle-fed, even though the oldest child was over five years old.⁶⁶

Welfare and child welfare are still related via funding because, in order for the states to access federal dollars for foster-care placement, the child must be AFDC eligible.⁶⁷ Since 1961, the federal government has matched foster-care payments if a child's family is eligible for welfare and the child is placed in a licensed home. This funding is not insignificant; it can range anywhere from 50 percent to 78.6 percent of the foster-

⁶² For an analysis of this cultural shift, see Richard P. Nathan and Thomas L. Gais, "Overview Report: Implementation of the Personal Responsibility Act of 1996," *Rockefeller Reports*, Nelson A. Rockefeller Institute of Government, State University of New York, p.15. All reports available at their website: <http://rockinst.org/reports>.

⁶³ Mark E. Courtney, "The Costs of Child Protection in the Context of Welfare Reform," in *The Future of Children: Protecting Children from Abuse and Neglect*, vol. 8, no. 1 (Spring 1998), pp. 93-94.

⁶⁴ *Ibid.*, p. 88. Courtney's estimate is based on 1995 figures.

⁶⁵ *Ibid.*

⁶⁶ Dave Ranney, "Foster-care Numbers Approach All-time High," *Wichita Eagle*, June 29, 1999, p. A1.

⁶⁷ With welfare reform and the dissolution of the AFDC program, the federal government instituted what is called a "look-back point" to determine eligibility. If a child's mother would have qualified for AFDC in 1995, the child is eligible for federal foster-care funding.

care payment.⁶⁸ In addition, states have access to federal dollars that can be used to pay for administrative costs, training, and other services. Table 2 provides a listing of various federal funding-streams that states may use in allocating funds to child protection.⁶⁹

Table 2: Primary Federal Programs that Support Child Protection		
Program	Federal Support	1999 Funding (in millions)
<i>TITLE IV-E (Foster Care)</i>		\$3,551
<ul style="list-style-type: none"> ▪ Foster Care Assistance Payments ▪ Placement Services & Admin. Costs ▪ Training Expenses 	Open-ended fed. Match of Medicaid Rate Open-ended fed. Match of 50% Open-ended fed. match of 75%	
<i>Title IV-E (adoption assistance)</i>		\$772
<ul style="list-style-type: none"> ▪ Adoption Asst. Payments ▪ Nonrecurring Adoption Expense ▪ Placement Services & Admin. Costs ▪ Training 	Open-ended fed. match of Medicaid Rate Open-ended fed. match of 50% Open-ended fed. match of 50% Open-ended fed. match of 75%	
Title IV-E (Independent Living)	100% federal funding with a funding ceiling	\$70
<i>Title IV-B (Child Welfare Services)</i>		
<ul style="list-style-type: none"> ▪ Child Welfare Services ▪ Family Preservation/Family Support 	Fed match of 75%, capped at state allotment Fed match of 75%, w/ ceiling	\$292 \$275
<i>CAPTA</i>	100% federal funding of some programs & variable state or local match for others	\$68
<i>TITLE XX</i>	100% federal funding, w/ a funding ceiling	\$2,500

Source: Mark Courtney, "The Costs of Child Protection in the Context of Welfare Reform," p. 90.

D. The Structure: Who Is Responsible?

CPS agencies, while paid for by a mix of funding and sometimes administered at the state level, are always provided at the local level. The caseworker must be able to get to the family's home in a timely fashion. Thus every community has a CPS agency nearby. The amount of local control varies from state to state; sometimes child protection is state-administered and sometimes county-administered. If it is administered at the county level, the state is often little more than a pass-through for federal funding. Otherwise, CPS agencies are generally managed by a department of the governor's choosing, usually wherever social services are located. Many states, especially after welfare reform, have reorganized their departments of health, removing social services to a separate department. Florida's CPS unit, for example, is within the state's Department of Children and Family Services. The state of Texas, however, runs its child-protection unit through its Department of Regulatory and Protective Services. The bottom line is that there is no

⁶⁸ The formula is based on the same formula as Medicaid and is related to the state's poverty level. See Toby Douglas and Kimura Flores, *Federal and State Funding of Children's Programs*, Occasional Papers, Urban Institute's "Assessing the New Federalism Project" (Washington, D.C.: Urban Institute, 1997), p. 9.

⁶⁹ This table was taken from Courtney, "The Costs of Child Protection in the Context of Welfare Reform," p. 90 and updated by the author to include 1999 funding levels.

required configuration for these services. To receive federal money, however, states do need to comply with federal requirements.

When an agency receives a report of suspected maltreatment, it must follow procedures. Table 3 provides a quick checklist of what an agency goes through in considering a report of abuse and neglect. The procedures are detailed below.

E. Intake and Screening

The first step is called *intake*. Someone makes a call, usually to a toll-free hotline number, alleging that someone—either a parent, guardian, or caretaker—is abusing or neglecting a child or children. This is called a *report*. Persons reporting abuse can choose to remain anonymous or can leave their name and where they can be reached in case the investigator has any follow-up questions. From there, the intake worker determines whether or not the case falls within the state guidelines of maltreatment. The state of Virginia, for example, no longer even considers reports of corporal punishment because Virginia’s caseload is backed up with more urgent cases. Other states no longer count educational neglect (truancy) as a problem for CPS to handle, so the caller might be referred to the state’s department of education.

Although much public attention has focused on the cost of public assistance, child welfare is the more expensive governmental activity and the more complicated.

Who makes the determination regarding the report varies from state to state. Sometimes it is the intake worker (the person at the other end of the phone); at other times, states separate this function off into a unit utilizing more highly trained workers. Arkansas, for instance, has transferred all of its screening and investigations to its state troopers, placing the investigation outside of the social-work world.

Screening a report for investigation is a complicated task. To determine whether a report should be screened in, i.e., accepted for investigation, the screener has to decide whether the report is credible. Key criteria for consideration are:

- Is it a crank call?
- Is it really abuse or neglect, i.e., does it meet the definition? A cluttered and dirty home or unwashed children, for example, would not meet the definition.
- Does the report have sufficient information and details of the event, such as the family’s name, an address where someone can be found, and what occurred?

When a report does not rise to the level of further investigation, it is “screened out.” Some families screened out are eligible for other services and may be referred for them, such as family-support services, so that whatever troubles they are having will not get worse. This is known as a differential response. Missouri employs this method of serving families as a way of addressing family problems without the adversarial nature of an investigation attached.⁷⁰

⁷⁰ For more information on the Missouri method, see Waldfogel, *The Future of Child Protection*, pp. 147-151.

Once a decision is made to investigate, the screener determines how urgent the report is—whether an investigator should be sent immediately or whether it can have a less-heightened response. The timeframe that CPS has to respond to any given complaint can be specified in state statute or departmental regulation. The judgment required to make that determination, however, is based on the kind of abuse alleged, whether there have been previous incidents involving this family, and who is making the report. Physicians, for example, have higher substantiation rates than anonymous reporters. If the physician thinks it is serious, there is an increased likelihood that it is. Next, the report goes to the investigator.

F. Investigation and Risk Assessment

The investigator must first find where the children are, interview them, and all family members in order to determine the accuracy of the report. Children are interviewed without the presence of the parent, i.e., the alleged perpetrator. The investigator’s task is to determine whether a case is substantiated or unsubstantiated. Substantiated means that the preponderance of evidence suggests that the incident occurred; unsubstantiated means that the investigator could not find evidence of abuse or maltreatment. Remember that this is not a police investigation, so the standard of evidence is considerably lower. Some states add a third tier to the system of findings, i.e., *indicated*. Indicated means that there is some, but not sufficient, evidence to think that the allegation occurred. States have added this third possibility out of concern for the numbers of cases that originally were unsubstantiated but later returned with substantiated abuse or neglect.⁷¹

While difficult to tabulate, experts estimate the costs for child welfare at more than \$11.2 billion a year.

If the report is substantiated, the investigator has another set of decisions to make. If a child’s injuries are severe or the report involves a child’s death, the police will become, or may already be, involved. Otherwise, the investigator makes several determinations:

- Is the child in danger?
- Was this a one-time incident or habitual?
- Is there a likelihood of recurrence?

Those are just a few considerations that go into an investigation. Sometimes agencies use a risk-assessment tool to figure out whether the child needs to be removed from the home; but caseworker judgment is always paramount.

⁷¹ See Waldfogel, *The Future of Child Protection*, p. 59 and Mary B. Lerner, Carol S. Stevenson, and Richard E. Behrman, “Protecting Children from Abuse and Neglect: Analysis and Recommendations” in *The Future of Children: Protecting Children from Child Abuse and Neglect*, pp. 10-11: “A review of case records from one California county found that 71 percent of families with unsubstantiated reports had prior or subsequent reports for child maltreatment For instance, one study in Oklahoma found that 57 percent of families assessed as ‘high risk’ had another substantiated incident of abuse or neglect within 18 months, compared with only 15 percent of those assessed as low risk and 4 percent of those rated very low risk.”

At this point, the investigator often decides that future risk to the child is not sufficient to warrant removal but that the family could benefit from services. More often than not, the children can remain home safely, even after a substantiated incident. Fewer than 20 percent of the three million children investigated are in sufficient danger that they have to be removed from their family. To put this number in perspective, consider that there are currently over 520,000 children in foster care.⁷² When children are not removed from their home and the case is substantiated, CPS may need to make follow-up visits to ensure that the family has remained stable. If the child or children must be removed, CPS will have to involve the judicial branch.

Intake and Screening	<ol style="list-style-type: none"> 1. Receive report 2. Is it appropriate? 3. Have there been other reports? 4. Decision on whether or not to investigate 5. Determine the urgency 6. Assign to investigator
Investigation & Risk Assessment	<ol style="list-style-type: none"> 1. Make contact with child and family 2. Assess harm to child or children 3. Determine risk of future harm 4. Provide emergency services 5. Decide on appropriateness of foster care 6. Find placement 7. If warranted, involve law enforcement and the court system
Service Planning & Provision	<ol style="list-style-type: none"> 1. Specify changes needed to assure child's safety 2. If child in foster care, decide permanency goal (return home or adoption) 3. Decide on what services are needed and what outcomes are expected 4. Establish dates for review 5. Establish clear goals for parent 6. Prepare for court (if necessary)
Evaluation	<ol style="list-style-type: none"> 1. Review progress with service providers and the court 2. Continue to assess child safety
Case Closure	<ol style="list-style-type: none"> 1. Evaluate progress with family 2. Assess risks to the child 3. Identify what will occur if case is reopened 4. Notify all people and agencies of status

Source: Adapted from Pat Schene, "Past, Present, & Future Roles of Child Protective Services," in *The Future of Children: Protecting Children from Abuse and Neglect*, vol. 8, no. 1 (Spring 1998).

G. Court Determination

While most child-abuse cases do not result in criminal prosecution, a CPS agency still needs court approval to remove a child from the home. Once in foster care, a child and his or her family will remain involved with the court until the child returns home, is adopted, or ages out of the foster-care system. To attain court approval, the CPS agency first files a petition with the court for emergency removal and temporary custody; this must be filed no later than three days after the removal. The child is usually put into temporary shelter until a suitable foster home is found. Federal regulations require that if a child is removed, the child be

⁷² This estimate is based upon the Adoption and Foster Care Automated Reporting System (AFCARS) latest update as of January, 1999. For more information on the demographics of the foster-care population, see the U.S. Children's Bureau Web site at: <http://www.acf.dhhs.gov/programs/cb/stats/afcars>.

placed in the least-restrictive and most home-like setting; sometimes that takes time. Next, either the child is returned home or will have to stay in foster care for awhile. In the latter case, the agency will have to file for temporary custody. Then, the child-welfare agency makes a case plan or a *permanency plan* detailing how, when, and if it will be safe for the child to return home. The judge's role is to review the case to see if the agency has followed regulations regarding permanency. That means that the caseworker should recommend either a return home or, if there is no improvement over a period of time, termination of parental rights. The court is required to review cases periodically (as is the agency) to ensure that children do not drift aimlessly through the system.

Court Involvement in Child Welfare

1. *Preliminary Protective Hearing*: one to three working days after removal, to consider whether the child can go home.
2. *Adjudication Hearing*: 60 days after removal, to consider whether allegations are legally sufficient to support state intervention.
3. *Disposition Hearing*: 30 days after adjudication, to consider who should have custody and whether reasonable efforts have been made to prevent removal.
4. *Review Hearing*: every six months that the child remains in foster care.
5. *Permanency Planning Hearing*: twelve months from time of entry into foster care.
6. *Termination of Parental Rights Hearing*: whenever determination is made that termination is in the child's best interest.
7. *Adoption Hearing*.

Source: Government Accounting Office (GAO), *Juvenile Courts: Reforms Aim to Better Serve Maltreated Children* (Washington, D.C.: Government Printing Office, January 1999).

H. Casework: Monitoring and Service Provision

Once a child enters foster care, the case and the requirements surrounding it become infinitely more complicated. Foster care is supposed to be a temporary placement for children. Once a child is removed from home by CPS, the child is placed in foster care, usually a home (sometimes a formal arrangement in a relative's home), a shelter, a group home, or even a residential treatment center (if the child has emotional problems). The child remains in care—often moved from one placement to another—while the parent (or parents) undergoes treatment or counseling in an attempt to become a fit caretaker. The caseworker must set clear goals for parents so that they know what must be done in order for the children to return home. The plan will also detail when the parent can visit with the child. As Duncan Lindsey, at the School of Public Policy and Social Research at the University of California at Los Angeles, notes: “one of the most important variables determining a child's progress while in foster care was the extent of parental visiting, which affected both the length of stay and how well the child adjusted while in foster care.”⁷³ Failure by the parent to attend supervised visitation with the child is one indication that the parent is uninterested in reforming and may lead the caseworker to consider termination.

⁷³ Lindsey, *The Welfare of Children*, p. 45.

If, after working with the parent, the agency decides that the best thing for a child is to place the child for adoption, the agency must get permission from the court to terminate parental rights (TPR). Because TPR permanently severs the legal bond linking children to their original family, regulation requires that strict standards must be met. The law requires that “reasonable efforts” must have been made by the agency to reunite the family. Once the “reasonable efforts” test is met and the court grants the state permanent custody, the child is free to be adopted.⁷⁴

The majority of children, however, are slated to return home. In fact, 60 percent of children currently in foster care are supposed to return to their homes eventually, according to the latest data from the U.S. Department of Health and Human Services.⁷⁵ Returning home, however, does not cease their involvement with CPS. Once reported, parents are likely to be reported again. In fact, many children will return home only to reenter foster care at a later date. The most-comprehensive national study suggests that the foster-care reentry figure is as high as 30 percent.⁷⁶ For those who are allowed to stay home, the story is not any better. In one longitudinal study conducted by Michael Wald, former Deputy Secretary for HHS, and his colleagues at Stanford University, over half of his sample of children who remained at home after a substantiated incident of abuse and neglect were abused again within two years.⁷⁷

At all points in the decision-making chain, CPS has the authority to provide family services, however “between 40 percent and 60 percent of cases in which maltreatment is substantiated receive no subsequent services.”⁷⁸ The track record of those who do receive services is not all that promising. Family-preservation services, for example, have never been able to demonstrate their effectiveness.

All rigorous studies of family intervention have failed to show that working intensively with parents for a short period of time has any affect on future abuse rates or future need for foster care.

Family preservation is a form of therapeutic treatment that has been around since the 1970s in which intensive services are provided to families whose children would normally be placed into foster care. With family preservation, caseworkers make themselves available, sometimes twenty-four hours a day, to a limited number of families for a short time (from six weeks to six months), in an attempt to get the family over a specific crisis and show the parents how to handle the stress without abusing or neglecting their children again. The worker will help organize every intimate detail of a family’s life: teaching parenting skills; helping with the shopping, cleaning, and bill paying; providing transportation to appointments and counsel to family members.

⁷⁴ The Adoption and Safe Families Act of 1997 clarified the “reasonable efforts” clause, allowing that the best interest of the child may not require reasonable efforts when, for example, the parent has already seriously harmed or murdered a sibling.

⁷⁵ The number is taken from the U.S. Department of Health and Human Services data system, the Adoption and Foster Care Analysis and Reporting System (AFCARS). See the Children’s Bureau Web site at: <http://www.acf.dhhs.gov/programs/cb/stats/afcars/index.html>.

⁷⁶ U.S. Department of Health and Human Services, *National Study of Protective, Preventive and Reunification Services Delivered to Children and Their Families* (Washington, D.C.: U.S. Government Printing Office, 1997), p. 3.11.

⁷⁷ Waldfoegel, *The Future of Child Protection*, pp. 50-51.

⁷⁸ English, “The Extent and Consequences of Child Maltreatment,” p. 49.

But initial claims of family preservation's success were based upon lower foster-care rates that result when agencies use family preservation. Peter Rossi, emeritus professor at the University of Massachusetts at Amherst, points out that avoidance of foster care is a terrible outcome to test because it is the intervention, not the outcome. Instead, he cautioned evaluators to look at indices such as child safety and future rates of abuse as better measures of whether family preservation works.⁷⁹ Richard J. Gelles, Chair of Child Welfare and Family Violence at the University of Pennsylvania, has also called attention to the bad effects of intensive intervention when it comes to serious cases of child abuse. Gelles notes that all rigorous studies of family intervention have failed to show that working intensively with parents for a short period of time has any affect on future abuse rates or future need for foster care.⁸⁰ An extensive evaluation of family preservation in Illinois showed little effect upon the families who got these intensive services and in fact, these families had a higher placement rate in foster care.⁸¹ Duncan Lindsay puts it starkly: "the more rigorous the research design, the more convincing has been the evidence that these services have failed to provide significant improvements for clients."⁸²

What happens to abused children is not good news either. While not all children suffer permanent damage from being abused or neglected, research cannot really tell why some are more resilient than others. The less resilient, however, suffer enormously. Depending on the type of maltreatment inflicted, children can be permanently retarded in physical or mental growth.⁸³ As they grow older they are more prone to suffer depression, are unable to bond with others, do poorly in school, exhibit criminal behavior, and have problems with drugs and alcohol.⁸⁴ So, the question becomes, just how many children are subject to abuse and neglect?

⁷⁹ P.H. Rossi, "Assessing Family Preservation Programs," *Children and Youth Services Review*, vol. 14 (1995), pp. 75-95.

⁸⁰ Richard J. Gelles, *The Book of David: How Preserving Families Can Cost Children's Lives* (New York: Basic Books, 1996).

⁸¹ John Schuerman, Tina L. Rzepnicki, Julia H. Littell, *Putting Families First: An Experiment in Family Preservation* (Hawthorne, New York: Walter de Gruyter, 1994).

⁸² Lindsey, *The Welfare of Children*, p. 43.

⁸³ English, "The Extent and Consequences of Child Maltreatment," p. 48.

⁸⁴ *Ibid.*

Part 4

Numbers Game: What the Data Tell Us

Because reliable data are both critical to public policy and expensive to gather, the two most-complete efforts of data collection to date have been mandated and funded by Congress. The privately funded Prevent Child Abuse America (PCAA), formerly the National Committee to Prevent Child Abuse, has also gathered data from the states over the years. While PCAA has done so for a longer period of time than the federal government, its numbers are point-in-time, aggregate data only and hence, not unduplicated. In other words, because PCAA does not work with raw (and continuously updated) data, some reports may be accidentally counted more than once; some cases counted as substantiated may not be. Despite this qualification, PCAA's numbers have always tracked closely with the public data-sets.

The two official sources of data are known as the National Child Abuse and Neglect Data System and the National Incidence Studies of Child Abuse and Neglect. (There have been three incidence studies: NIS-1, -2, and -3.) Both of these federal efforts are managed by the Children's Bureau in the U.S. Department of Health and Human Services (HHS). Each data set represents a different method of counting maltreatment. Each study shows us something different about child abuse and neglect.

A. NCANDS: What CPS Agencies See

The National Child Abuse and Neglect Data System, known as NCANDS, has been collected annually from state child-welfare agencies since 1991. From its inception, CAPTA required that the federal government develop a data system to collect and analyze case-based information on child abuse and neglect.⁸⁵ NCANDS captures what state child-welfare agencies know about child abuse and neglect by taking data directly from their management-information systems, compiling the data nationally, while checking that the files are as accurate as possible. NCANDS catalogs each report of abuse and neglect by type, records whether or not it was confirmed and who reported it, and provides general characteristics on both the victim and the perpetrator. The latest report, *Child Maltreatment 1996: Reports from the States to the National Child Abuse and Neglect Data System*, provides the most-complete picture of child-protective investigations available.⁸⁶

⁸⁵ NCANDS is a voluntary effort; states are not required to participate. It took NCCAN many years to reach consensus among child-welfare experts surrounding what information should be collected and counted: for example, what definitions of abuse should prevail.

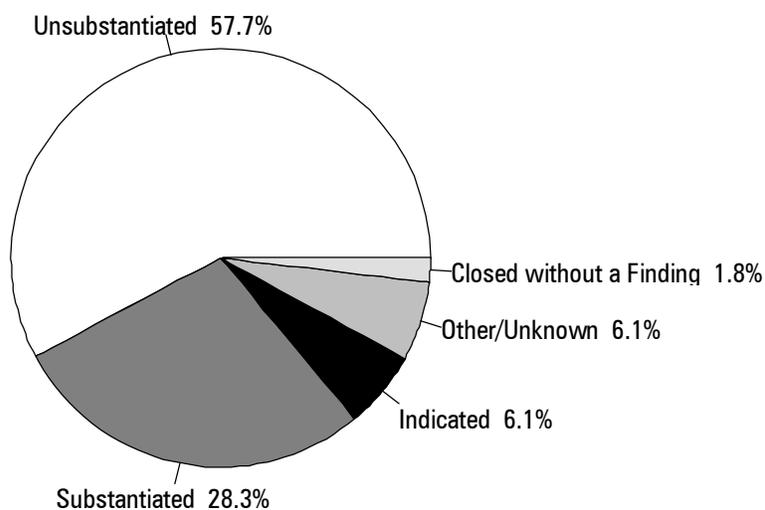
⁸⁶ Unless otherwise indicated, the data is from U.S. Department of Health and Human Services, *Child Maltreatment 1996: Reports from the States to the National Child Abuse and Neglect Data System*, (1998).

Beginning with the latest report, HHS has also begun incorporating more-detailed information from 11 states; this effort is known as the Detailed Case Data Component or the DCDC of NCANDS; the DCDC collects an additional 98 elements from 11 states. Children in these 11 states, moreover, constitute approximately one-third of the child population in the United States.⁸⁷ This detailed information allows for a more-refined analysis by providing more information about what kinds of cases CPS agencies are seeing annually.

NCANDS tells us the following about children who are abused and neglected and who are known to the child-welfare system. First, child-protection agencies investigated over two million reports in 1996 involving over three million children. CPS agencies were only able to substantiate 28.3 percent of the allegations. CPS investigations indicated abuse in an additional 6.1 percent of the cases.⁸⁸ In an overwhelming majority of investigations—57.7 percent—CPS agencies were unable to substantiate that children had been harmed.⁸⁹

In an overwhelming majority of investigations—57.7 percent—CPS agencies were unable to substantiate that children had been harmed

Figure 1: Substantiation Rates in the U.S. for 1996

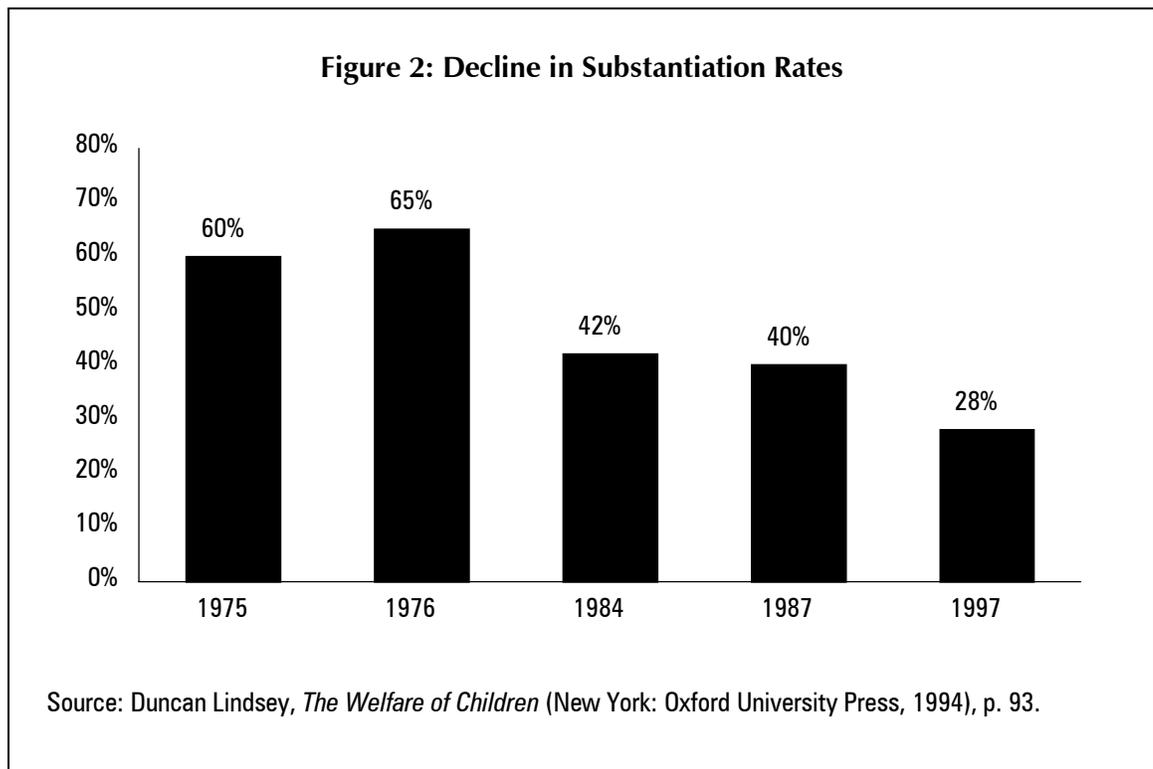


Source: U.S. Department of Health and Human Services, *Child Maltreatment 1996* (Washington, D.C.: Government Printing Office, 1998).

⁸⁷ The states are Delaware, Florida, Illinois, Louisiana, Massachusetts, New Jersey, North Carolina, South Carolina, Texas, Vermont, and Washington.

⁸⁸ As previously noted, some states have moved to a three-tiered system of findings: substantiated, indicated, and unsubstantiated. Substantiated means that the agency found enough evidence to support that the child abuse or neglect occurred. Indicated means that the agency did not have enough evidence to substantiate the case, but there were also grounds to suspect that abuse or neglect had occurred.

⁸⁹ Of the remainder, 1.8 percent were closed without a finding and 6.1 percent of the records fell into the “other” category.



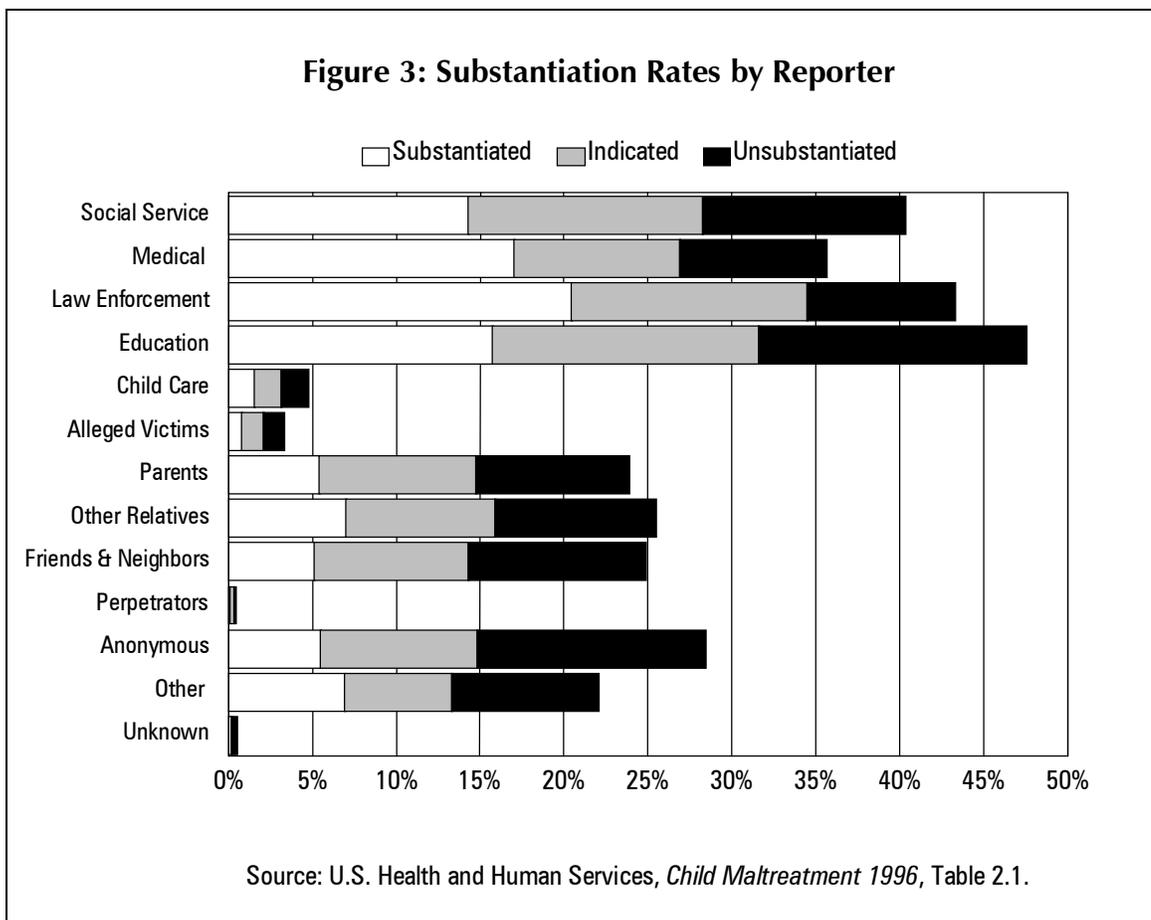
Either CPS is intruding into too many families' lives unnecessarily or its ability to detect maltreatment is seriously flawed.

The low levels of substantiation have led many experts from across the political spectrum to call for a narrowing of the purview of child protection, particularly when considering that the substantiation rate has declined by 38 percent over the last two decades.⁹⁰ Either CPS is intruding into too many families' lives unnecessarily or its ability to detect maltreatment is seriously flawed.

Professionals who report suspected child abuse and neglect have the highest substantiation rates; however, no profession has a higher than 35 percent substantiation rate. Law enforcement had the highest substantiation rate of 35 percent, followed by education personnel with 32 percent, and medical personnel with 27 percent. This figure includes both substantiated and indicated cases; considering only substantiation rates, no one has a higher accuracy rate than 20 percent.⁹¹ The lowest rate of substantiation comes from childcare personnel, victims, and perpetrators. On the other hand, anonymous reporters have a substantiation rate of 14.8 percent. Figure 3 provides details on substantiation rates based on who does the reporting.

⁹⁰ Lindsey, *The Welfare of Children*, p. 93.

⁹¹ *Child Maltreatment 1996*, Table I, 2-1, p. 2.4.

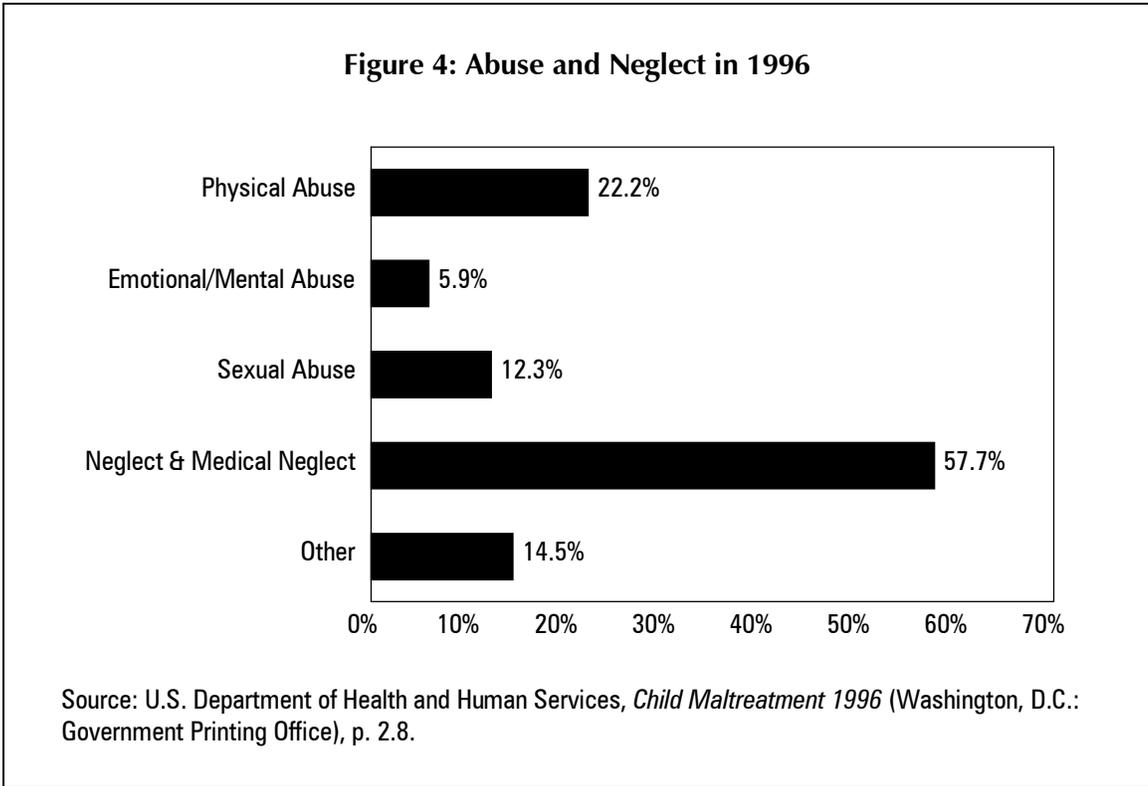


From 1990 to 1996 the number of children harmed by abuse or neglect has increased by 17.6 percent.

Out of the 3 million children whose families were investigated, CPS agencies substantiated or indicated 970,000 cases of child abuse and neglect. The cases broke down into the following subsets of maltreatment:

- 58 percent were cases of neglect
- 22 percent were physical abuse
- 12 percent were sexual abuse
- 6 percent were emotional abuse
- an additional 15 percent fell into the category of “other.”

When comparing data over the years, these numbers have held fairly constant, with a slight decrease in sexual abuse and a slight increase in neglect. The decrease in sexual abuse may be due to a backlash from episodes like Wenatchee.



From the details of the cases, NCANDS also reveals some information about the victims. According to NCANDS, the younger the child, the more dangerous it is to be in an unstable household. Two-thirds of all neglect cases (62.9 percent) occur to children who are under eight years old. Three out of every four children who died from abuse and neglect were three years old or younger. Girls were maltreated slightly more often than boys were, 52 percent versus 48 percent. Girls were also much more likely to be sexually abused than boys (77 percent of all sexual abuse victims were girls). While the majority of children maltreated were white, African-American and American-Indian children make up a disproportionate number of the victims compared to their representation in the population at large.

Parents are the usual perpetrators, accounting for the majority of all cases of abuse and neglect (77 percent). Four out of every five incidents involve a perpetrator under the age of 40. Although public attention has focused on teenaged mothers, those at highest risk for abusing a child are between the ages of 30 and 40. In the majority of cases (61 percent), a woman is responsible for the harm.

Child Abuse Facts From NCANDS	
<p>Little known facts about the <u>abusers</u>:</p> <ul style="list-style-type: none"> ▪ Mothers commit most abuse and neglect. ▪ These mothers aren't teenagers, but are between 30 and 40 years old. 	<p>Little known facts about maltreated <u>children</u>:</p> <ul style="list-style-type: none"> ▪ The younger the child, the greater the risk. ▪ Most children are victims of neglect, not sexual abuse.

Table 4: Child Abuse and Neglect Victims by State, 1990 and 1996			
State	1990	1996	Percent Change
Alabama	16,508	18,640	12.9%
Alaska	5,217	7,544	44.6%
Arizona	24,244	20,633	-14.9%
Arkansas	7,922	8,571	8.2%
California	78,512	182,160	132.0%
Colorado	7,906	6,906	-12.6%
Connecticut	12,481	19,906	59.5%
Delaware	2,065	2,337	13.2%
Washington, D.C.	3,210	5,867	82.8%
Florida	79,086	74,587	-5.7%
Georgia	34,120	48,572	42.4%
Hawaii	1,974	2,374	20.3%
Idaho	2,667	8,816	230.6%
Illinois	37,539	43,973	17.1%
Indiana	26,818	22,861	-14.8%
Iowa	8,215	9,967	21.3%
Kentucky	22,239	27,293	22.7%
Louisiana	15,383	14,911	-3.1%
Maine	4,133	4,656	12.7%
Massachusetts	28,621	27,219	-4.9%
Michigan	25,774	21,073	-18.2%
Minnesota	9,256	10,200	10.2%
Missouri	21,732	23,522	8.2%
Nebraska	5,595	3,612	-35.4%
Nevada	7,703	8,135	5.6%
New Hampshire	1,056	1,063	0.7%
New Jersey	19,546	10,537	-46.1%
New Mexico	4,379	8,845	102.0%
New York	57,931	70,602	21.9%
North Carolina	24,880	33,133	33.2%
North Dakota	2,893	270	-90.7%
Ohio	49,434	56,336	14.0%
Oregon	8,126	9,238	13.7%
Pennsylvania	7,951	6,183	-22.2%
Rhode Island	5,393	4,181	-22.5%
South Carolina	9,632	8,917	-7.4%
South Dakota	4,132	2,617	-36.7%
Tennessee	11,473	11,439	-0.3%
Texas	53,939	44,704	-17.1%
Utah	8,524	8,538	0.2%
Vermont	1,500	1,221	-18.6%
Virginia	14,174	10,280	-27.5%
Wisconsin	14,165	16,667	17.7%
Wyoming	2,478	895	-63.9%
Totals	790,526	930,001	17.6%

Data not available for Guam, Kansas, Maryland, Mississippi, Montana, Oklahoma, Puerto Rico, Virgin Islands, Washington, West Virginia.

Source: U.S. Department of Health and Human Services, *Child Maltreatment 1996: Reports from the States to the National Child Abuse and Neglect Data System* (1998) Table 2-2, p. 2-6.

Because NCANDS data have been collected over time, we can begin looking for trends. As can be seen from Table 4, from 1990 to 1996 the number of children harmed by abuse or neglect has increased by 17.6 percent. Some states' abuse rates have risen dramatically in the past six years: California's abuse rate has gone up 132 percent; Washington, D.C. by 82.8 percent; New Mexico by 102 percent; Idaho by 230.6 percent. On the other hand, some states have actually decreased their caseloads: New Jersey by 46.1 percent, Virginia by 27.5 percent, and South Dakota by 36.7 percent. Further analysis of why rates in certain states rose and fell will yield useful information for policymakers in years to come. Furthermore, a refined analysis of the DCDC to determine how many children suffer repeated incidents of maltreatment may lead to a better understanding of when the termination of parental rights and the release of the child for adoption are appropriate.

B. NIS: A More Comprehensive Look

While NCANDS measures the cases of maltreatment that state agencies know about, it cannot tell us whether the state made an accurate assessment of the cases investigated. Nor can it tell us anything about the cases that child-protective agencies screened out or the ones that no one reported. The National Incidence Study, known as NIS, is an attempt to get that more-complete picture.

HHS has funded three national incidence studies by congressional mandate. The department was charged with providing current estimates of the incidence of child abuse and neglect, measuring the change with the previous studies, among other things. The NIS studies are actually a compilation of analyses and findings based on a nationally representative statistical sample of the United States. One benefit of the NIS data is its availability to researchers to use and run further analyses of their own.⁹² The study also provides periodic benchmarks to measure progress or decline. The only variation across studies is the addition of an endangerment standard (whether the professional thought the child was at risk for harm) in NIS-2 and NIS-3. The addition of the endangerment standard was a response to child advocates' complaints that the estimates were too low and failed to capture at-risk children. All three studies measured a harm standard.

For each study, data were collected from professionals who work with children by gathering information from these "sentinel" individuals on any incidence of abuse or neglect that they saw during given timeframes in 1980, 1986, and 1993. In order for an incident to be counted, the event had to fall within strict definitional guidelines. The researchers then traced the event at the incident level to see whether or not the authorities had investigated it. The latest study involved 5,600 sentinels across the nation, drawn from across the demographic spectrum—from big cities and small, rural and metropolitan areas, from schools to hospitals to day-care centers, anywhere that children are seen on a daily basis.

According to the latest incidence study, known as the *Third National Incidence Study on Child Abuse and Neglect* (NIS-3), the incidence of child abuse and neglect has increased substantially since the last national incidence study was conducted in 1986.⁹³ Table 5 shows that the largest increase was in the number of cases of serious child abuse and neglect, which quadrupled from 1986. To be counted as serious, a child would have to present broken bones, a condition known as "failure-to-thrive," third-degree burns, or an event involving a life-threatening condition.

⁹² The data sets are stored at the National Data Archive on Child Abuse and Neglect at Cornell University. Each summer researchers at the National Data Archive conduct a seminar on how to use the data properly.

⁹³ All of the findings presented here use the more stringent "harm" standard.

Table 5: Severity of Outcomes from Maltreatment in the NIS-3 compared with NIS-2 and NIS-1

Severity of Injury or Impairment	NIS-3 Estimates 1993		Comparison with earlier studies			
	Estimated Total	Rate per 1,000	NIS-2 (1986)		NIS-1(1980)	
			Estimated Total	Rate per 1,000	Estimated Total	Rate per 1,000
Fatal:	1,500	0.02	1,100	0.02	1,000	0.02
Serious:	565,000	8.4	141,700	2.3*	131,200	2.1*
Moderate:	165,300	12.2	682,700	10.8	393,400	6.2*

* The difference between this and the NIS-3 estimate is significant at or below the $p < .05$ level.

Note: estimated totals are rounded to the nearest 100.

Source: U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *The Third National Incidence Study of Child Abuse and Neglect* (Washington, D.C.: U.S. Government Printing Office, 1996), p. 3.13, based on Table 3-2.

Another disturbing finding is the percentage of children identified as being harmed, but who were not investigated by CPS agencies. As many as 72 percent of the children that NIS-3 identified as having been abused or neglected were not investigated.⁹⁴ Because of data limitations, researchers could not tell whether these incidents had been reported but screened out or had never been reported at all. Comparing this information with the low substantiation-rates suggests that CPS agencies may be misdirecting their efforts. CPS agencies may be failing at the intake process by screening out real cases and choosing to investigate mistaken reports; or the reporting system is not triggering citizens to call in real cases.⁹⁵ Whatever the reason, the system is not consistently identifying cases of significant abuse.

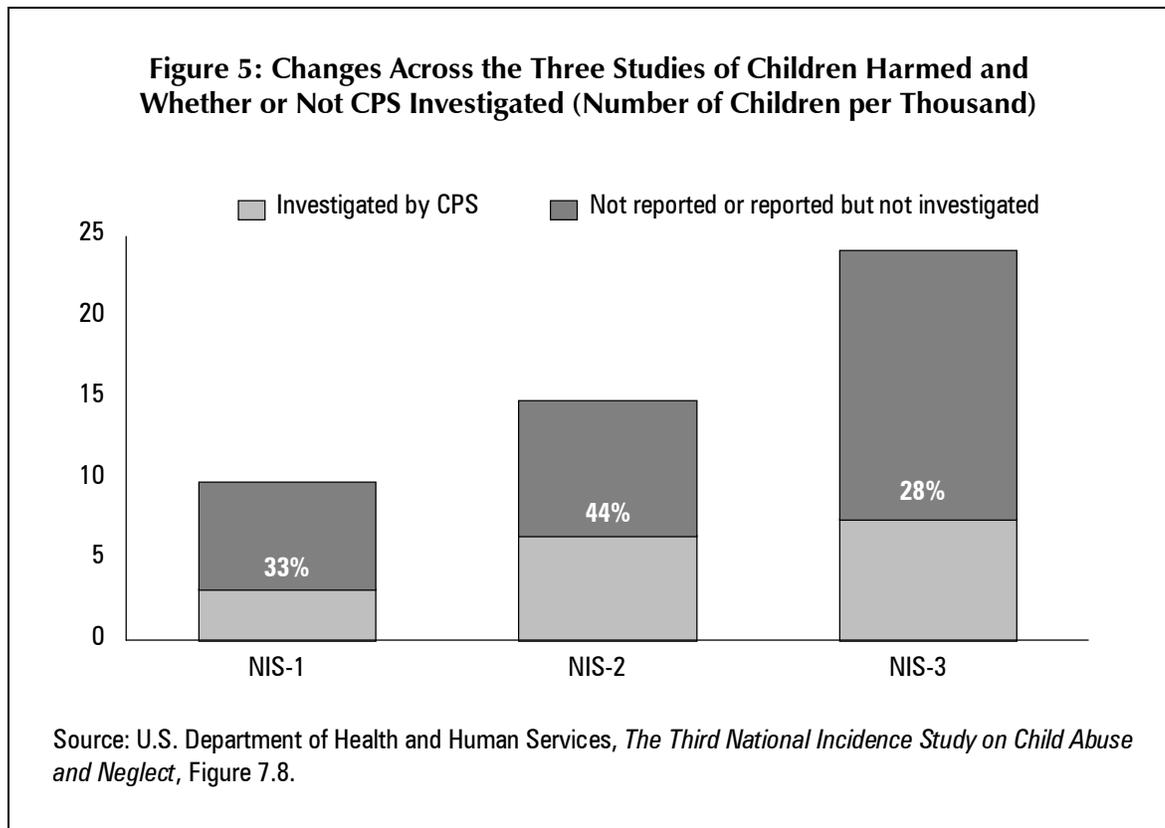
Like the NCANDS data, the NIS-3 report provides researchers with details about what kinds of maltreatment occur, at what age, and to which sex. The findings across these lines were remarkably similar to NCANDS. But NIS also reveals some interesting data that NCANDS does not. As in all previous NIS efforts, the third study found no significant race or ethnicity differences in the incidence of maltreatment.⁹⁶ However, family structure and income were related to a child's risk of harm. Children of single parents had a 77 percent greater risk of being harmed by physical abuse, an 87 percent greater risk of being harmed by physical neglect, and an 80 percent greater risk of suffering serious injury or harm from abuse or neglect than children living with both parents. Children from families with annual incomes below \$15,000 as compared to children from families with annual incomes above \$30,000 per year were over 22 times more likely to experience some form of maltreatment.⁹⁷ Of course, an increased risk of harm (either because of poverty or family structure) does not mean that abuse will occur, only that it is more likely to occur in these circumstances.

⁹⁴ U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *The Third National Incidence Study on Child Abuse and Neglect* (Washington, D.C.: U.S. Government Printing Office, 1996), p. 7.16. Hereafter cited as *NIS-3*.

⁹⁵ This may be a result of a reporter's previous experience with CPS failing to do an adequate job of monitoring when a prior call was placed. If, for example, a teacher has repeatedly reported suspicions and not seen any CPS results, she may decide it is a wasted effort.

⁹⁶ This finding is not at odds with the NCANDS' finding that minorities are disproportionately represented in child-maltreatment cases. To assess which variable is the key to maltreatment, the NIS researchers controlled for various data-elements. When they did so, race vanished as a factor.

⁹⁷ *NIS-3*, p. xviii.



Between the second and third studies, drug abuse, particularly in the form of crack cocaine, increased from the previous years, and the study authors suspect a link, but because the study did not ask for this information, it is only speculative. Other studies tend to support this theory. An analysis of California data yielded the finding that “for every 100 new drug arrests, there were an additional 99 children reported for abuse and neglect.”⁹⁸ This link is further affirmed by research on the child-welfare population at large:

Children with open child welfare cases whose parents have substance abuse problems are younger than other children in the child welfare system, are more likely to be the victims of problems overall, and are more likely to be the victims of chronic neglect, are from families with more problems overall, and are more likely than other children to be placed in foster care rather than served while remaining at home. Once in foster care, children whose parents have substance abuse problems tend to remain in care for longer periods of time than other children.⁹⁹

Experts disagree on interpreting the NIS-3 findings, i.e., whether the magnitude of the increase between 1986 and 1993 constitutes a real increase in abuse and neglect or is simply the result of better-informed sentinels uncovering incidents that were missed before.¹⁰⁰ For public policy, however, this distinction makes little difference. The more important question is what to do about the increased number of children harmed.

⁹⁸ Waldfogel, *The Future of Child Protection*, pp. 100-1.

⁹⁹ *Blending Perspectives and Building Common Ground*, p. x.

¹⁰⁰ See, for example, Douglas Besharov and Jake Dembosky, “Hey Wait A Minute,” *Slate*, October 3, 1996 compared to the analysis of the NIS researchers, Andrea J. Sedlak and Diane D. Broadhurst, in the concluding chapter of the report. In response to such concerns, HHS conducted a symposium of research experts to discuss the NIS findings on February 24-26, 1997. A summary report of the proceedings is available from the National Clearinghouse at (800) FYI-3366.

Part 6

Where Should We Go From Here?

Tinkering around the edges of child welfare will not lead to enough of a change to address the problems laid out thus far. Only a restructuring of the child-protection system will. The current problem in child protection results in part from policies that do not hold parents accountable for their behavior, by placing their behavior outside the bounds of criminal conduct. The problems are heightened by policies that repeatedly return, or never remove, children from situations that no one could call home-like or family. Remember that the focus in child welfare is always on the child and only tangentially on the perpetrator.

To put it succinctly, child welfare is structured on the therapeutic model. That is, when someone harms a child, the state steps in, not to dispense justice, but to help the family, to attempt to repair or heal it. Yet the public-sector record is not very good when it comes to service provision, especially when the hand that can take a child is the same one dispensing treatment. The therapeutic-treatment model does not seem to be an effective method of dealing with child abuse and neglect.

Even if abuse and neglect rates decline, the current structure will not wither away on its own. CPS agencies will simply focus attention on less serious cases such as neglectful supervision or emotional abuse, involving more families in the child-welfare system that should not be there in the first place.

Families in crisis will always defy easy solutions. No policy proscription can prevent some parents from assaulting their children. Yet, some solutions can be teased out from the difficulties already noted.

A. Recommendations for Reform

1. Narrow the scope of child abuse and neglect definitions.

Scholars and child-welfare experts from across the political spectrum agree that narrowing the scope of child abuse and neglect would allow CPS to focus on the most drastic cases. Much that is now defined as child abuse and neglect does not merit governmental interference. When less than 20 percent of substantiated cases require removal from the home, the definitions of child abuse and neglect are too broadly drawn.

Narrowing the scope in which the government can interfere will mean that some behavior, which is bad for children, will not be responded to by state authorities. But a parent whose skills and knowledge of child development are deficient may be better aided by someone unassociated with a state authority. Help from a charitable or civic association that holds no threat of harm to the family may be better received. For example, emotionally abusive behavior, such as screaming invectives at a child, may be poor parenting, but does not

rise to the level of serious maltreatment. A mother who screams, however, may benefit from someone offering her the possibility of a day out of the house on her own by baby-sitting for her.

Poverty is not a crime either. No one should be persecuted for simply being unable to clothe or house a child adequately. Injuries to children, on the other hand, should be treated as criminal assaults. In fact, most poor parents do not harm their children. Reasonable people can distinguish between shabbily dressed, but well-cared for, children and those who are chronically neglected: one may require private, charitable help, the other state intervention.

2. Place the investigatory powers with the police.

Police are trained in matters of investigation. It is the nature of child protection to be accusatory. Cloaking the investigation under social services and anonymity does nothing to hide that essential fact. The behavior that we are discussing is criminal in nature; therefore police should gather the evidence. Once the scope of what constitutes child abuse is appropriately narrow, local police would be the best government agency to conduct investigations. If the investigation suggests a crime was committed, the case would then proceed to court for adjudication.

Florida is already moving in this direction. Manatee County's sheriff's department conducts all investigations and is the model for the reform efforts in the state. Arkansas has also moved its hotline and investigation units to the state troopers' jurisdiction.

3. Re-criminalize child abuse and neglect

The ability of the government agencies to intrude in the lives of families has to be limited. The most effective way to do that is to treat child abuse as a criminal matter entirely. Having already narrowed the scope of child abuse and neglect to serious cases, what remain are cases of assault and serious neglect. That means that the standard would be the same if someone harmed a stranger's child or her own. Now child abusers are only guaranteed punishment if they harm someone not related to themselves.

Recriminalization would give both the state and the family clear guidelines. The evidentiary standard would protect the parent from undue state action; the child would be protected, because the child would not be returned to a parent found guilty of harming him, without the parent having been punished. More importantly, placing maltreatment under the purview of criminal courts also brings with it vital protections in the form of due process rights to the parents involved.

Criminal cases, moreover, are not confidential. It should not be a secret if someone is prone to assault his children. Nor should any of the investigative material be closed to the alleged perpetrator or victim. Fellow citizens, through jury trials, should hear evidence and decide whether or not someone intended to harm his child and whether that harm was severe enough to warrant a sentence. Most states already have criminal laws on their books; it is only a question of enforcing them.¹⁰¹

Recriminalization would also require the abandonment of central registries. For agencies that work with children that need to do background checks on potential employees, criminal background checks should be sufficient.

¹⁰¹ To see what statutes your state has, look at *The State Statute Series* available at the National Clearinghouse on Child Abuse and Neglect Information at: <http://www.calib.com/nccanch>.

4. Repeal mandatory reporting laws that are in effect in all the states.

Mandatory reporting laws, designed to encourage those who work with children to report incidents of maltreatment, have served their intended purpose of raising public awareness and have had unintended consequences. These laws create two negative effects. First, they encourage unnecessary reporting because professionals must report all of their suspicions under threat of prosecution. While such prosecutions are rare, one should not have to report suspicions. Reporting should be restricted to more concrete evidence of a crime.

Since mandatory reports were required, reports have increased exponentially. In 1968, CPS agencies took in 11,000 reports; in 1975 (the first year after CAPTA), CPS had 294,796 reports; now they handle one million with low substantiation rates.

Second, mandatory reporting discourages fellow citizens from taking positive neighborhood action with families in trouble. Some evidence suggests that depression and social isolation are contributing factors to maltreatment, particularly chronic neglect.¹⁰² Citizens tend to consider that their responsibilities have been met when they call an anonymous hotline, because that is what the law tells them to do. Knocking on the door and offering help to a troubled family not engaged in criminal behavior, may be the more appropriate alternative.

5. Make child and family services voluntary.

Having separated criminal behavior from deficient parenting, we could enable caseworkers to do what they were trained to do and what they do best, i.e., social work. Without the threat of child removal hanging over their heads, parents might more willingly accept services—such as help with parenting skills. Knowing that an agency only provides services, parents might be more receptive to receiving such help. Moreover, these services should be privatized, as private agencies with performance-based contracts tend to work more effectively than state bureaucracies.¹⁰³

B. Conclusion

Few now deny the success of welfare reform effort in the nineties. But there were plenty of nay-sayers before the caseloads began dropping. After only three years of federal reform, the caseloads have dropped by 49 percent. Even more remarkably, the state bureaucracies have shifted from a “welfare-check delivery system” to a “work-first empowerment system.” All of this has occurred in a relatively short period of time. Releasing the states from federal mandates so that they can experiment in child welfare reform could yield similar fundamental shifts.

While most are enthusiastic about the aftermath of welfare reform, no one can be happy about the state of things in child welfare, because, with a few renowned exceptions, it has yet to be reformed. It is a world in

¹⁰² National Research Council, *Understanding Child Abuse and Neglect*, p. 111-12.

¹⁰³ See Craig, et al., *Blueprint for Child Welfare Privatization*, Policy Study No. 248 (Los Angeles: Reason Public Policy Institute, November 1998) and Bill Eggers, *Performance-Based Contracting: Designing State-of-the-Art Contract Administration and Monitoring Systems*, How-To Guide No. 17 (Los Angeles: Reason Public Policy Institute, May 1997).

which there are little incentives for behaving responsibly—a world remarkably similar to the way in which the old AFDC- pre-reform world operated.

About The Author

Susan Orr, Ph.D. is the director of the Center for Social Policy at RPPI in Washington D.C. Prior to joining RPPI, Dr. Orr worked as a child welfare program specialist for the National Center on Child Abuse and Neglect within the U.S. Department of Health and Human Services. Some of her major projects included: overseeing the Third National Incidence Study on Child Abuse and Neglect, a nationally representative sample study of the incidence of maltreatment in the United States, and serving as project officer for the federal child-welfare demonstration effort and its evaluation.

She received her bachelors degree in Politics at the University of Dallas; both her M.A. and Ph.D. in Government are from the Claremont Graduate School. She has published in the fields of political philosophy, American government, and child and family policy in both academic textbooks and journals, as well as more popular venues.

Dr. Orr works out of RPPI's Washington Office.

Other RPPI Studies

Conna Craig, Ted Kulik, Tim James, and Shamin Nielsen. *Blueprint for Child Welfare Privatization*, Policy Study No. 248 (Los Angeles: Reason Public Policy Institute, November 1998).

Bill Eggers, *Performance-Based Contracting: Designing State-of-the-Art Contract Administration and Monitoring Systems*, How-To Guide No. 17 (Los Angeles: Reason Public Policy Institute, May 1997).

Further Recommended Readings

Besharov, Douglas J., editor. *When Drug Addicts Have Children: Reorienting Child Welfare's Response* (Washington, D.C.: Child Welfare League of America, 1994).

Committee on Ways and Means, U.S. House of Representatives. *1998 Green Book* (Washington: D.C.: U.S. Government Printing Office, 1998).

Costin, Lela B., Howard Jacob Karger, and David Stoesz. *The Politics of Child Abuse in America* (New York: Oxford University Press, 1996).

Fagan, Patrick. *The Child Abuse Crisis* (Washington, D.C.: Heritage Foundation, 1997).

Gelles, Richard. *The Book of David* (New York: Basic Books, 1995).

Helfer, Mary Edna, Ruth S. Kempe, and Richard D. Krugman. *The Battered Child, Fifth Edition* (Chicago: University of Chicago Press, 1998).

Lasch, Christopher. *Haven in a Heartless World: The Family Besieged* (New York: Basic Books, 1977).

Lindsey, Duncan. *The Welfare of Children* (New York: Oxford University Press, 1994).

McKenzie, Richard. *Rethinking Orphanages in the Twenty-first Century* (Newbury Park, CA: Sage Publications, 1998).

U.S. Health and Human Services. *Child Maltreatment 1996* (Washington, D.C.: U.S. Government Printing Office, 1996).

U.S. Health and Human Services. *The Third National Incidence on Child Abuse and Neglect* (Washington, D.C.: U.S. Government Printing Office, 1996).

Waldfoegel, Jane. *The Future of Child Protection* (Cambridge, MA: Harvard University Press, 1998).

Glossary of Terms and Abbreviations

Abuse: harming a child (anyone under age 18) by a caretaker. There are three broad categories of abuse: 1) physical abuse is physical harm that is not accidental or physical punishment that is developmentally inappropriate; 2) emotional or mental abuse are acts or omissions by caretakers that have caused or could cause serious behavioral, cognitive, or emotional harm; and 3) sexual abuse is the use, persuasion, or coercion of a child to engage in any sexually explicit conduct for the purpose of pornography, rape, molestation, prostitution, or incest. Neglect is often subsumed into the term “abuse,” but is its own category of maltreatment.

CAPTA: the Child Abuse Prevention and Treatment Act, federal legislation enacted in 1974.

Case: when a report has been substantiated or indicated, i.e., abuse or neglect seems to have occurred, the child protection agency opens a case on a child or a family. The child protection worker keeps all relevant data in a case file. That case remains open until the risk of harm diminishes or the child can remain safely

with the family; then it is closed. All of the information accrued in the case-file remains with the agency and is not available for scrutiny by either the public or the family involved.

HHS: the U.S. Department of Health and Human Services.

Indicated: this term is used in some states when an investigation suggests that maltreatment occurred, but without the necessary level of proof to substantiate it according to state law.

Maltreatment: term encompassing both abuse and neglect in all its forms.

NCANDS: the National Child Abuse and Neglect Data Set compiled by the Children's Bureau.

NIS: the National Incidence Study on Child Abuse and Neglect.

Neglect: a category of child maltreatment that centers around a failure by the caretaker to do something, i.e., a failure to feed, shelter or clothe a child adequately. Also included in this category of maltreatment is insufficient supervision of a child.

Report: a report of child abuse, as distinguished from a case, is when someone calls child protection, usually a toll-free hotline, to relay suspicion of either child abuse or neglect. Some professionals are required to report all suspicions. A report becomes a case when child protection decides to investigate after an initial screening the report.

Screening: when an agency determines whether an investigation of a report is necessary; the report is either screened in for investigation or screened out, i.e., not investigated.

Substantiated: this term is used to denote that a report of maltreatment was verified by the child protection agency in accord with state law. If an investigator finds that abuse or neglect occurred, then the report is substantiated or founded. Most states have a two-tiered system of findings: either the abuse occurred or it did not, i.e., it was substantiated or unsubstantiated. (In some states, reports can be substantiated, indicated, or unsubstantiated; see "indicated" above.)

Termination of parental rights (TPR): a judicial procedure that permanently severs the legal bond linking children to their original family. This step is required after a judge determines that reasonable efforts to reunify the family have been made. TPR is required before an adoption can take place.

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