

CHILD ABUSE REALITIES:
OVER-REPORTING AND POVERTY

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INTRODUCTION

In 1997, as in preceding years, about three million reports of suspected child abuse or child neglect were made to the police and child protective agencies.¹ This paper argues that many of these reports should not have been made. Some represent an overreaction to efforts to identify "every" endangered child, and some involve situations that are more properly considered symptoms of poverty, more appropriately handled outside the nation's child protection system. Heightening the need for corrective action is the fact that the most seriously affected children are disproportionately from racial and ethnic minorities.

This paper is divided into four sections: The first section summarizes what is known about both the prevalence and reporting of child abuse and neglect. The second section describes the available

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¹ Estimates are based on Ching-Tung Wang & Deborah Daro, Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1996 Annual Fifty State Survey tbl. 1 (1997) [hereinafter Wang & Daro] (3,126,000 reports of abuse and neglect), and Admin. on Children, Youth, and Families, U.S. Dep't of Health & Human Servs., Child Maltreatment 1997: Reports from the States to the National Child Abuse and Neglect Data System 3-2 (1999) [hereinafter 1999 U.S. Dep't of Health & Human Servs.] (nearly three million cases of child abuse reported to child protective service agencies).

evidence showing the overlap between poverty and child maltreatment. The third section describes the social costs of failing to deal with over-reporting of questionable cases and poverty-related situations. Finally, the fourth section describes a combination of policy and programmatic reforms to begin to address the problem.

I. PREVALENCE

This article opened with an oft-repeated and general statement that, each year, three million reports of child abuse and neglect are made.² To understand the nature and scope of contemporary child maltreatment, however, one must make distinctions among:

1. *Annual prevalence*: the total number of children who have been abused or neglected at least once in a particular year (whether or not reported to the authorities);³

2. *Reported cases*: the total number of families or children⁴ reported under formal procedures to child protective agencies (usually a social service agency but sometimes a law enforcement one); and

3. *Substantiated (or "indicated") reports*: the total number of reports (counted either as children or families) that were determined, after an investigation, to be supported by specific evidence. (The legal test is often "some credible evidence.")

As will be shown, each category results in a vastly different estimate of the amount of child maltreatment—but taken together they provide a useful portrait of the problem.

² Wang & Daro, *supra* note 1.

³ Annual "prevalence" should be contrasted to annual "incidence," which would count the total number of "incidents." An incidence study would add five incidents to its count if a child was abused five times during a year, while a prevalence study would add just one child to its count. The difference, obviously, could result in widely different counts, which, as we will see, seems to be distorting official reporting statistics.

⁴ Families versus children is a substantial and confusing difference, since some states include all children in the family automatically, whether or not they have actually been abused or neglected, further complicating reporting statistics.

A. *The Three National "Incidence" Studies*

Three major efforts have been made to estimate the total number of abused and neglected children (whether or not reported to the authorities): (1) The National Study of the Incidence and Severity of Child Abuse and Neglect ("NIS-1, 1981");⁵ (2) The Study of National Incidence and Prevalence of Child Abuse and Neglect ("NIS-2, 1988"),⁶ revised, expanded, and corrected in 1991;⁷ and (3) The Third National Incidence Study of Child Abuse and Neglect ("NIS-3, 1996").⁸ The federal government continues to call these "incidence" studies even though they carefully sort their counts of children to avoid duplication, so that they are really prevalence studies. All three studies were funded by the federal government's National Center on Child Abuse and Neglect (now the Office of Child Abuse and Neglect) and were conducted by Westat, Inc., a Washington-area research firm.

The three studies used essentially the same methodology. In a stratified sample of counties, a broadly representative sample of professionals who serve children was asked whether, during the study period, the children they had seen in their professional capacities appeared to have been abused or neglected.⁹ This methodology did not allow Westat to estimate the number of children seen by nonprofessionals, such as friends, neighbors, and relatives. Thus, even if these studies had no other problems, the methodology inherently underestimates the prevalence of maltreatment be-

⁵ Nat'l Ctr. on Child Abuse & Neglect, U.S. Dep't of Health & Human Servs., Pub. No. 81-30325, *The National Study of the Incidence and Severity of Child Abuse and Neglect (1981)* [hereinafter 1981 First Incidence Study].

⁶ Nat'l Ctr. on Child Abuse & Neglect, U.S. Dep't of Health & Human Servs., *Study of National Incidence and Prevalence of Child Abuse and Neglect (1988)* [hereinafter 1988 Second Incidence Study].

⁷ The original report for this study contained inaccurate information because of weighting errors by Westat. Andrea J. Sedlak, *National Incidence and Prevalence of Child Abuse and Neglect: 1988, Revised Report* (Sept. 5, 1991) [hereinafter 1991 Revised Report of Second Incidence Study].

⁸ Nat'l Ctr. on Child Abuse & Neglect, U.S. Dep't of Health & Human Servs., *The Third National Incidence Study of Child Abuse and Neglect (1996)* [hereinafter 1996 Third Incidence Study].

⁹ Actually, the professionals were not asked the ultimate question of whether the children appeared to be "abused" or "neglected." Instead, they were asked to identify children with certain, specified harms or conditions that were then decoded into a count of various types of child abuse and neglect.

cause it does not count those children whose condition was either not seen or not recognized by a professional. Complicated issues of sample frame and weighting also limit the ability of these studies to make more precise estimates of prevalence.

Nevertheless, these three federally sponsored studies are the best source of information about unreported child abuse and neglect. Unfortunately, design and definitional differences make the findings from the third incidence study not comparable with the first two, so they are not presented here in the same detail.¹⁰ However, substantial internal consistency exists between the findings of the first two studies, conducted six years apart, as well as between them and data about officially reported cases. Thus, it seems reasonable to use them to provide a general picture of the nature, extent, and distribution of the various types of child maltreatment. What do they tell us?

About 1 million children are victims of child abuse or neglect each year (14.8 per 1,000 children.)¹¹ The first two incidence studies had a rigorous definition of countable cases that required that the child suffer demonstrable harm, such as bruises, emotional distress, or depression, that lasted at least forty-eight hours (see Figure 1). However, since child protective agencies accepted cases of "threatened harm" to children, the 1986 study also employed an additional (or optional) definition that included cases where the child's "health or safety was endangered through abusive or neglectful treatment."¹² This broader definition resulted in about 500,000 additional countable cases.¹³

The third incidence study ("NIS-3"), however, had broader definitions of abuse and neglect, perhaps reflecting an inability to control for expanding professional interpretations of its original definitions. The result was a 60% increase in estimated prevalence of actual abuse and neglect under the so-called "harm standard,"

¹⁰ For a further discussion of the findings of the third incidence study, see Douglas Besharov & Jacob W. Dembosky, *Child Abuse: Threat or Menace?* Slate (Oct. 3, 1996) at <http://www.slate.msn.com/heywait/96-10-03/heywait.asp> [hereinafter Besharov & Dembosky].

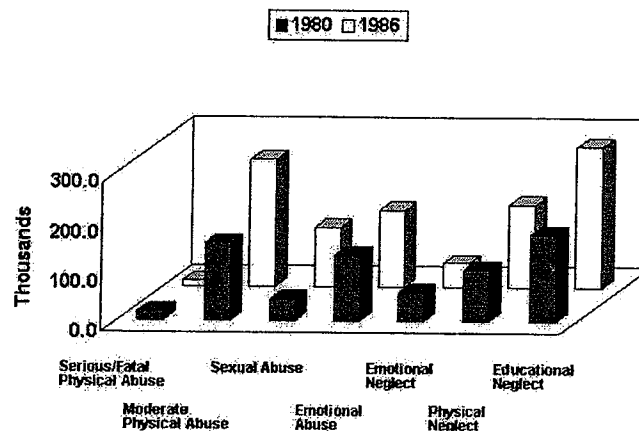
¹¹ See 1991 Revised Report of Second Incidence Study, *supra* note 7, at xii.

¹² See 1988 Second Incidence Study, *supra* note 6, at 2-6.

¹³ See *id.* at 3-2.

from 931,000 to 1,622,000 children.¹⁴ However, NIS-3 also applied an “endangerment standard,” that counted children who were not actually harmed by maltreatment but were “*in danger of being harmed*,” according to the views of community professionals or

Figure 1. Distribution of Child Abuse and Neglect by Type¹⁵



child-protective agencies.”¹⁶ Under this much broader definition, the estimates rose from 1,424,000 to 2,815,600.¹⁷ These higher estimates may be significant for what they say about changing pro-

¹⁴ 1996 Third Incidence Study, *supra* note 8, at 3-4 to 3-5. “In order to be countable under the Harm Standard, an abused child had to have experienced the abuse at the hands of a parent (birth or adoptive), parent-substitute (e.g., foster parent, step-parent), or an adult caretaker; a neglected child had to have experienced the neglect at the hands of a parent or parent-substitute. . . . The Harm Standard generally required a child to have been *moderately* harmed by abuse in order to be included in the abuse total, whereas it generally required a child to have been *seriously* harmed by neglect before permitting the child to be included in the neglect estimates.” *Id.* (emphasis in original).

¹⁵ See 1981 First Incidence Study, *supra* note 5, at 16, 18; 1991 Revised Report of Second Incidence Study, *supra* note 7, at 3-8, 3-9.

¹⁶ 1996 Third Incidence Study, *supra* note 8, at 2-9 (emphasis added).

¹⁷ See *id.* at 3-19.

fessional attitudes, but they almost certainly do not reflect an actual increase in abuse and neglect.¹⁸

In the second incidence study ("NIS-2"), Westat examined the distribution of child maltreatment by sex, age, race, and family size. Except for sexual abuse, rates did not differ greatly between males and females. Females were, however, about three times more likely to be sexually abused than males (2.9 per 1,000 female children versus 0.9 per 1,000 male children).¹⁹

The study found that the risk of maltreatment increased with age (5.1 per 1,000 children ages 0 to 2 versus 21.8 per 1,000 children ages 12 to 14).²⁰ However, this may be a consequence of the study methodology, which relied on what professionals saw, and, since they tend to see older children who are in day care, schools, and so forth, there was an inherent bias against finding maltreatment among infants and toddlers. Further, the large proportion of educational neglect cases which, by definition, only involve older children, also raised the average age of victims.

As discussed below, rates of maltreatment did not differ by race. This is surprising given the relationship between reported maltreatment and poverty. It may be that Westat's definitions are so broad that they pick up many cases of problematic child rearing among the middle class. The only difference found was that blacks were marginally more likely than whites to die as a result of abuse or neglect (0.01 per 1,000 white children versus 0.05 per 1,000 black children).²¹ Because there were so few fatalities, however, this difference was not statistically significant. Family size likewise did not seem to be associated with differing rates of child maltreatment.

B. Types and Severity

A small proportion of maltreated children suffered serious battering, sexual abuse, or serious neglect. The Westat incidence

¹⁸ See 1996 Besharov & Dembosky, *supra* note 10.

¹⁹ 1991 Revised Report of Second Incidence Study, *supra* note 7, at 5-39.

²⁰ See *id.* at 5-11, 5-20.

²¹ See *id.* at 5-25.

studies establish six categories of child maltreatment.²² (See Box 1.) The largest proportion of maltreated children experienced educational neglect (31%), followed by physical abuse (29%), physical neglect (18%), emotional abuse (17%), sexual abuse (13%), and emotional neglect (5%).²³

Box 1. Types of Child Maltreatment²⁴

- **Physical Abuse:** includes any type of physical battering that leaves evidence of injury lasting forty-eight hours.
- **Sexual Abuse:** includes penile penetration (oral, anal, and/or genital), molestation with genital contact, or inadequate supervision of a child's voluntary sexual activities.
- **Emotional Abuse:** includes verbal or emotional assault (including habitual patterns of denigrating, belittling, or scapegoating) or close confinement (tying up the child or restricting the child to a small area).
- **Physical Neglect:** includes refusal of health care, delay in seeking health care, abandonment, expulsion of the child from the home, or inadequate supervision.
- **Educational Neglect:** includes permitted chronic truancy, keeping a child home from school for nonlegitimate reasons, failure to enroll a child in school, or failure to obtain remedial education services.
- **Emotional Neglect:** includes inattention to a child's emotional needs, chronic spouse abuse in the child's presence, permission of drug or alcohol use by the child, permission of maladaptive behavior, refusal of needed psychological care, or delay in seeking needed psychological care.

²² See 1981 First Incidence Study, *supra* note 5, at 23; 1988 Second Incidence Study, *supra* note 6, at 4-2 to 4-4; 1991 Revised Report of Second Incidence Study, *supra* note 7, at 3-6 to 3-9; and 1996 Third Incidence Study, *supra* note 8, at 3-12.

²³ The percentages add to over 100, because one calculation was made for children falling within each applicable category of maltreatment and a separate one was made for the total number of maltreated children. Andrea J. Sedlak, Supplemental Analyses of Data on the National Incidence of Child Abuse and Neglect at 2-15 (1991) [hereinafter 1991 Suppl. Analyses of Second Incidence Study].

²⁴ See 1981 First Incidence Study, *supra* note 5, at 23; 1988 Second Incidence Study, *supra* note 6, at 4-2 to 4-4; 1991 Revised Report of Second Incidence Study, *supra* note 7, at 3-6 to 3-9; and 1996 Third Incidence Study, *supra* note 8, at 3-12.

Over half of the maltreated children found by the study suffered from educational neglect (31%) and emotional maltreatment from both abuse and neglect (22%)—situations of concern, certainly, but probably not what comes to mind when the public thinks of “child abuse” and “child neglect” (see Figure 2).²⁵

The vast majority of maltreated children suffered from non-serious conditions. The Westat studies establish four categories of severity: fatal, serious, moderate, or inferred.

1. *Fatal*: death as a result of child maltreatment during the study period.

2. *Serious*: a life-threatening condition, requiring treatment to prevent long-term impairment.

3. *Moderate*: injuries or impairments for which observable symptoms persisted for at least forty-eight hours (e.g., bruises, depression, or emotional distress).

4. *Inferred*: the nature of the maltreatment itself gives reasonable cause to assume that injuries or impairment have occurred.²⁶

By far, the greatest proportion of children suffered “moderate” injuries (73%).²⁷ Only about 0.1% of maltreated children died as a result of child abuse or neglect.²⁸ Fifteen percent of the children experienced “serious” injuries and 11% had injuries that were “inferred.”²⁹

Although rating the cases by their severity is extremely helpful, some questionable classifications were made in the first two incidence studies (as well as the third). For example, the definition of “serious” sexual abuse excluded penile penetration if the child was not considered to have suffered serious emotional trauma. As a result, only 6% of all sexual abuse cases were considered seri-

²⁵ See 1991 Suppl. Analysis of Second Incident Study, *supra* note 23, at 2-15.

²⁶ 1981 First Incidence Study, *supra* note 5, at 18-19; 1988 Second Incidence Study, *supra* note 6, at 3-10 to 3-12; 1991 Revised Report of Second Incidence Study, *supra* note 7, at 3-10 to 3-11; 1996 Third Incidence Study, *supra* note 8, at 5-14 to 5-16.

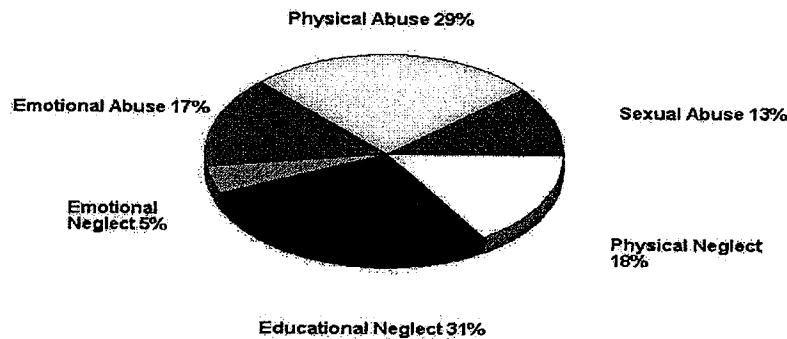
²⁷ See 1991 Supplementary Analyses of Second Incidence Study, *supra* note 23, at 2-18.

²⁸ See *id.*

²⁹ *Id.* at 2-15.

ous, even though over one-third of them included penile penetration.³⁰

Figure 2. Components of Child Mistreatment³¹



Conversely, the definition of “serious” emotional neglect included the delaying or refusal of psychiatric care and the permitting of maladaptive behavior. While these conditions might be a cause for child protective concern, they are hardly the equivalent of child battering. Yet, the study labels them both “serious.”

Public and professional definitions of child maltreatment seem to have expanded to include more cases of “moderate” harm to children. Although Westat counted a 49% increase in the prevalence of child maltreatment between its first and second studies, most of this increase was among cases of “moderate” physical abuse and neglect and educational neglect (with no corresponding increase among “fatal” or “serious” cases) (see Figure 3).³² Hence,

³⁰ See 1991 Supplementary Analyses of Second Incidence Study, *supra* note 23, at 2-7, 2-15.

³¹ 1991 Revised Report of Second Incidence Study, *supra* note 7, at 4-5 to 4-17 (percentages total over 100% because children were counted in each applicable category).

³² The estimated number of maltreated children increased from 625,100 children in 1980 to 931,000 in 1986. Over 90% of this increase was among moderate cases. A pro-

it seems reasonable to conclude that the level of child maltreatment did not grow nearly as much as suggested by the findings of the second incidence study. As Westat was careful to note, the increase "may have reflected an increase in the likelihood that professionals would recognize maltreatment, rather than an increase in the actual maltreatment occurrence, or incidence per se."³³

Awareness of possible child sexual abuse seems to have increased. Between 1980 and 1986, for example, the rate of observed sexual abuse cases nearly tripled, increasing from .7 per 1,000 children to 1.9 per 1,000 children (42,900 to 119,200 victims) (see Figure 3).³⁴ It seems highly improbable that the underlying prevalence of sexual abuse could increase almost three-fold in only six years. Hence, much of this increase was probably due to greater professional awareness of this heretofore hidden problem. Professionals who became more sensitive to possible abuse, or more adept to noticing it, would make more reports to Westat—even if the actual incidence had not risen at such a rapid rate.³⁵

NIS-3 reported a further increase in cases of sexual abuse under the harm standard to 217,700 victims (an 83% increase).³⁶ The endangerment standard further increased this figure to 300,200 (a 125% increase).³⁷ However, it was operating under a broader definition that included non-parental situations that are not included within the *child welfare definition* of child sexual abuse; that is, "adult caretakers other than parent(s)/substitute(s) permitted sexual abuse and situations where non-parental teenage caretakers perpetrated or permitted sexual abuse."³⁸

portion of these moderate cases, however, were cases of sexual abuse, which, for the reasons described above, might more properly be classified as "serious." Unfortunately, Westat's published report does not provide sufficient information to enable us to exclude sexual abuse cases from the increase in moderate cases. See 1991 Revised Report of Second Incidence Study, *supra* note 7, at 3-11.

³³ 1991 Revised Report of Second Incidence Study, *supra* note 7, at 3-12.

³⁴ *Id.* at 3-6.

³⁵ See generally Besharov & Dembosky, *supra* note 10 (detailing why over-reporting occurs and its detrimental effects).

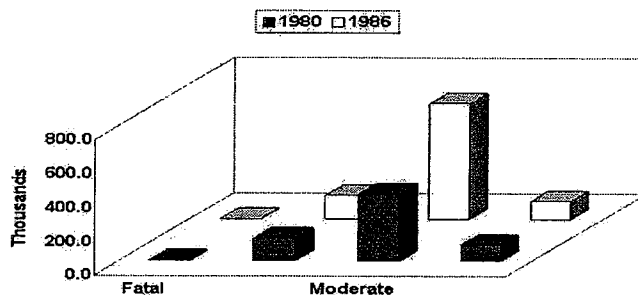
³⁶ See Nat'l Ctr. on Child Abuse and Neglect, U.S. Dep't of Health & Human Servs., Executive Summary of the Third National Incidence Study of Child Abuse and Neglect, 4 (1996).

³⁷ See *id.* at 5.

³⁸ 1996 Third Incidence Survey, *supra* note 8, at 2-9.

The Westat statistics cover all cases of child maltreatment seen by the surveyed professionals, whether reported or not. What about actual reports?

Figure 3. Distribution of Child Abuse and Neglect, Absolute Numbers by Severity³⁹



C. Official Reports

Since the early 1960's, all states have passed laws that mandate designated professionals to report specified types of child maltreatment. Over the years, both the range of designated professionals and the scope of reportable conditions have been steadily expanded.

Initially, mandatory reporting laws applied only to physicians, who were required to report only "serious physical injuries" and "non-accidental injuries." In the ensuing years, however, many

³⁹ 1981 First Incidence Study, *supra* note 5, at 18; 1991 Revised Report of Second Incidence Study, *supra* note 7, at 3-10.

states expanded their reporting requirements due to increased public and professional attention, sparked in part by the number of abused children revealed by these initial reporting laws. Now, almost all states have laws which require the reporting of all forms of suspected child maltreatment, including physical abuse, physical neglect, emotional maltreatment, and, of course, sexual abuse and exploitation.⁴⁰ These laws require most professionals who serve children to report suspected child abuse and neglect, and authorize civil and criminal penalties to discipline those who do not comply. About twenty states require all citizens to report, but in all states, any citizen is permitted to report. In addition, there have been extensive public awareness campaigns and professional education programs.

Despite this increased public and professional attention, it is surprisingly difficult to get nationwide information about official reports of child maltreatment. Federal efforts to collect state data have been uneven, and have actually been suspended a number of times.⁴¹ A number of private organizations have filled the gap: primarily the National Committee to Prevent Child Abuse ("NCPA"), now called Prevent Child Abuse of America ("PCA"), and the American Public Welfare Association ("APWA"), now called the American Public Human Services Association ("APHSA").

1. Surveys of States

Each of these efforts uses essentially the same methodology: a survey of state child protective agencies to determine how many reports were made in a particular year. This is not as easy as it sounds. Definitions and procedures vary sharply. For example, some states use family-based reports, while others use child-based reports. Some states collect their data on a calendar year basis,

⁴⁰ See Douglas J. Besharov, *Recognizing Child Abuse: A Guide for the Concerned* 23-26 (1990) [hereinafter Besharov, *Recognizing Child Abuse*].

⁴¹ Two major efforts were conducted for the federal government's National Center on Child Abuse and Neglect. The first effort, collecting state data from 1974-1987, was organized by the American Humane Association ("AHA"), while the second effort, collecting data from 1990 to the present, was performed by Walter R. McDonald & Assoc., in conjunction with Bowers & Associates and the AHA. See W. McDonald & Assoc., *National Child Abuse and Neglect Reporting Data System: Working Paper 2* (1993) [hereinafter McDonald & Assoc.].

while others use a fiscal year.⁴² Compiling a national total requires a fair amount of interpretation and, thus, presents opportunity for error. Nevertheless, like the first two incidence studies, there is a sufficient amount of consistency across the various studies to tell a reasonably reliable story.

In 1997, nearly three million reports of children suspected of being abused or neglected were made.⁴³ This is a twenty-fold increase since 1963, when about 150,000 children were reported to the authorities.⁴⁴ As we will see, however, this figure is inflated by unfounded reports and substantial double counting.

A relatively small percentage of reported cases involve serious harms to children. The American Humane Association (“AHA”) found that, in 1986, about 3% of maltreatment cases involved serious injury to the child, which is consistent with Westat’s prevalence findings.⁴⁵ This would be consistent with the findings of all three incidence studies.

Professionals still fail to report many of the children they see who have observable signs of child abuse and neglect. According to Westat, in 1986, 56% of apparently abused and neglected children were not reported to the authorities.⁴⁶ This is a decline in non-reporting from 1980, when professionals failed to report nearly two-thirds of the maltreated children they saw.⁴⁷ (The study methodology, which involved asking professionals about children they had seen in their professional capacities, did not allow Westat to estimate the number of children seen by nonprofessionals, let alone their non-reporting rates). For reasons described below, the third incidence study seems to badly exaggerate non-reporting.

Professionals seem to report most of the children they see who are suffering from serious forms of abuse and neglect. The second incidence study indicated that the more serious the maltreatment,

⁴² See *id.* at 4.

⁴³ Wang & Daro, *supra* note 1; 1999 U.S. Dep’t of Health & Human Servs., *supra* note 1.

⁴⁴ See Besharov, *Recognizing Child Abuse*, *supra* note 40, at 9.

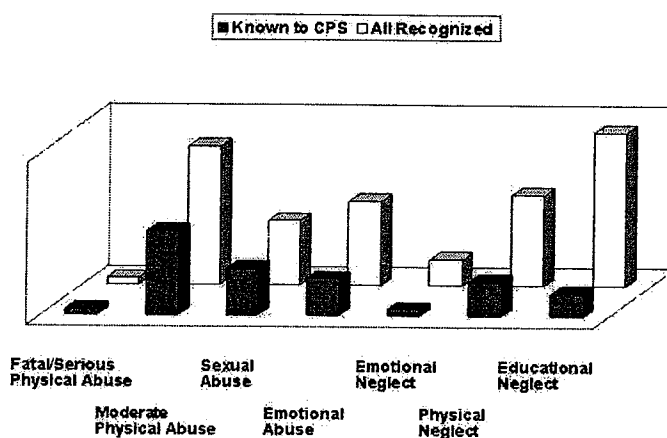
⁴⁵ See Am. Ass’n for Protecting Children, *Highlights of Official Neglect and Abuse Reporting: 1986, 22 (1988)* [hereinafter 1988 Am. Ass’n for Protecting Children].

⁴⁶ See 1991 Revised Report of Second Incidence Study, *supra* note 7, at 6-23.

⁴⁷ See *id.*

the more likely a professional will report it. The surveyed professionals failed to report only 14% of the fatal or serious physical abuse cases that they observed.⁴⁸ They also failed to report approximately 28% of the sexually abused children, and 40% of the moderate physical abuse cases that they observed (see Figure 4).⁴⁹

Figure 4. CPS Awareness of Maltreated Children by Type⁵⁰



⁴⁸ See 1991 Suppl. Analyses of Second Incidence Study, *supra* note 23, at 3-19.

⁴⁹ See *id.*

⁵⁰ See 1991 Revised Report of Second Incidence Study, *supra* note 7, at 6-9.

Non-reporting was concentrated in five types of cases: educational neglect (85% not reported); emotional neglect (76%); moderate physical neglect cases (75%); serious physical neglect cases (67%), and emotional abuse (56%).⁵¹

This means that, in 1986, about 2,000 children with observable physical injuries severe enough to require treatment were not reported.⁵² Over 100,000 children with moderate physical injuries were also not reported, as were over 30,000 apparently sexually abused children.⁵³ These results are difficult to interpret, however, in part because of the problems with Westat's classifications of severity described above.

The third incidence study found that investigations of child abuse and neglect had dropped yet another 36%, but this number deserves closer scrutiny as well.⁵⁴ In estimating the number of uninvestigated cases, the study compared the number of cases identified by professionals with those known to local agencies. Emotional abuse and neglect cases, 30% of cases not investigated, are usually avoided by child protective agencies because they tend to involve subjective judgments, and there is little that a quasi-law-enforcement agency can do about them.⁵⁵ Another 33% of cases that are not reported involve educational neglect—but most communities do not consider them to be within the jurisdiction of child protective agencies.⁵⁶ Despite these instances of non-reporting shown in the national incidence studies, child abuse reporting has obviously risen sharply, as described above.

2. Substantiated Reports

After a report is made, a child protective agency is supposed to investigate it to determine whether there is reason to be concerned about the child and, if so, what action should be taken. All states make this a formal process—which concludes with a determina-

⁵¹ See 1991 Suppl. Analyses of Second Incidence Study, *supra* note 23, at 3-19.

⁵² See *id.*

⁵³ See *id.*

⁵⁴ See generally Besharov & Dembosky, *supra* note 10, for further discussion of the third incidence study.

⁵⁵ See *id.* (relying on statistics presented in the 1996 Third Incidence Study, *supra* note 8, at tbl.3-1, fig.7-3).

⁵⁶ See *id.*

tion that the report was “substantiated,” “founded,” or “indicated” (terminology differs) or, conversely, that the report was “unsubstantiated,” “unfounded,” or “not indicated.”⁵⁷

Collecting data on state substantiation rates is even more difficult than collecting data about raw reports, partly because states do not always keep the information and partly because there can be a long delay between the making of the report and a final decision about its validity. Nevertheless, all the efforts to collect nationwide data on the subject point toward a decline in the substantiation rate in the past twenty years.

More recently, the U.S. Department of Health and Human Services (“HHS”) reported that, in 1997, only about 34% of the reports received by child protective agencies were substantiated or indicated.⁵⁸ This is a sharp contrast to 1975, when about 65% of all reports were substantiated.⁵⁹ Thus, of the approximately three million reports to child protective agencies in 1997, under one million were substantiated or indicated (see Figure 5).⁶⁰

But even this is an overestimation. Many states are unable to tell how many reports are repeat reports on the same child. Hence, these national estimates are likely based on duplicated counts—meaning that repeat reports on the same child are added to the total. In its analysis of the Illinois State Central Registry, the Chapin Hall Center for Children at the University of Chicago found that in one year about 20% of the founded reports were repeat reports.⁶¹ Other studies have reported similar findings.⁶²

⁵⁷ See 1999 U.S. Dep’t of Health & Human Servs., *supra* note 1, at 1-2.

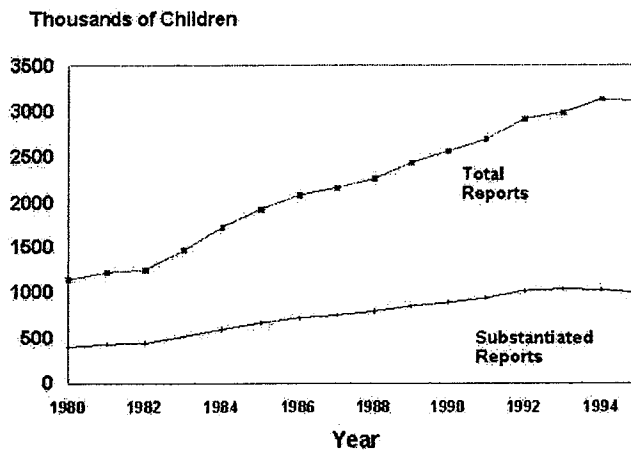
⁵⁸ See *Id.* at 3-4 (reporting that, of 1,485,658 investigations in 46 states, only 33.8% were “substantiated” or “indicated;” 56.2% were “unsubstantiated;” 8.1% were “other;” and 1.9% were “closed without a finding”). See also 1997 Wang & Daro, *supra* note 1, at 6 (reporting that 1996 data from 37 states shows 31% of the reported maltreatment was “substantiated” or “indicated”).

⁵⁹ See American Humane Ass’n, *National Analysis of Official Child Neglect and Abuse Reporting*, 11 (1976) [hereinafter 1976 American Humane Ass’n].

⁶⁰ See 1999 U.S. Dep’t of Health & Human Servs., *supra* note 1, at 3-2, 3-4.

⁶¹ This is a rough estimate calculated using 1990 data from the Illinois State Registry. See Douglas J. Besharov & Lisa L. Lauman, *Overlap Among Human Service Programs: Mapping Social Services in Illinois* (American Enterprise Institute, 1994) (on file with author).

⁶² In its study of four states with data on duplicative reporting, AHA found that about 25% of reports to child protective agencies were repeat reports. AHA also cites a 20%

Figure 5. Reports of Child Maltreatment, 1980-1995⁶³

Subtracting unsubstantiated cases and duplicated cases from the total number of reports reveals a vastly different picture of child abuse and neglect: the three million reports made in 1997 melt down to about 800,000 children involved in substantiated cases of child maltreatment (see Figure 6).⁶⁴ This figure reflects the number of individual children involved in child abuse and neglect cases, not the number of families involved. If we want to see how many families are involved in substantiated cases, a better way to gauge caseloads, we need to divide the number of substantiated reports of children by the average number of children in a family. The National Center on Child Abuse and Neglect esti-

duplication rate for official reports analyzed in Westat's second incidence study. See 1988 Am. Ass'n for Protecting Children, *supra* note 45, at 9.

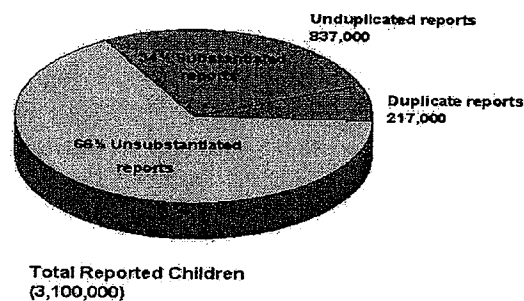
⁶³ AHA (total reports, 1980-1987); NCPCA (total reports, 1985-1995); NCANDS (total reports, 1990-91). These reports are on file with author. Author's estimates of substantiated reports based on AHA and NCPCA data.

⁶⁴ Author's calculation based on data from 1999 U.S. Dep't of Health & Human Servs., *supra* note 1, at 3-4, and Robert Goerge et al., Chapin Hall Ctr. for Children, *The Point-In-Time Multiple Service Use of Illinois Families with Children* (1993) [hereinafter Goerge et al., *Point-In-Time*].

mated that in 1993, there were about 1.7 children per reported family.⁶⁵ This means that, if a case is a family, child protective agencies handled about 470,000 cases of substantiated child maltreatment.

As mentioned above, most experts attribute the increase in reports to greater public and professional awareness. But recent increases in social problems such as out-of-wedlock births, inner-city poverty, and drug abuse, may have raised the underlying rates of child maltreatment. On the other hand, a substantial portion of what is labeled child maltreatment is more properly considered a symptom of poverty and is more appropriately handled outside the nation's quasi-criminal child protection system. The expansion of child protective programs to cover such poverty-related cases also explains a portion of the increase in reports.

Figure 6. Reports of Child Mistreatment by Substantiation and Duplication, 1997⁶⁶



⁶⁵ See 1993 McDonald & Assoc., *supra* note 41, at 21.

⁶⁶ See 1999 U.S. Dep't of Health & Human Servs., *supra* note 1, at 3-4; 1988 Am. Ass'n for Protecting Children, *supra* note 44, at 9. Included in the percentage of unsub-

II. THE POVERTY CONNECTION

A visit to any child welfare office would suggest a strong relationship between child maltreatment and poverty. And yet, data on income, poverty status, and welfare recipients is rarely collected in the studies described above. What is available, however, reveals a clear relationship between maltreatment and poverty.

A. Income

Across all types of maltreatment, prevalence rates are highest among low-income families. Comparing families with incomes above and below \$15,000, the second national incidence study found that the rate of maltreatment was over five times higher in low-income families than high-income families (29.3 versus 5.5 per 1,000 children).⁶⁷ Two-thirds of all cases of maltreatment identified by the study involved families with incomes below \$15,000.

These low-income families were more concentrated among particular types of maltreatment. They were nine times more likely than high-income families to be involved in cases of educational and physical neglect, but only three to five times more likely to have been victims of the remaining types of maltreatment (see Figure 7).

Poor families also made up the majority of families reported to the authorities. The Virginia Department of Social Services, for example, found that 45% of the families reported to the child protective agencies in 1991 had incomes of less than \$12,000.⁶⁸ (In 1991, the poverty rate for a family of four was \$13,924.)⁶⁹ Similarly, in 1976, the AHA found that the median family income for reported families was only about one third of the national median

stantiated reports are: 56.2% "unsubstantiated," 8.1% "other," and 1.9% "closed without a finding."

⁶⁷ See 1991 Revised Report of Second Incidence Study, *supra* note 7, at 5-27.

⁶⁸ See Va. Child Protective Servs., Virginia Cares About its Children: 1991-1992 Annual Report 10 (1992).

⁶⁹ See Committee on Ways and Means, 105th Cong., 2d Sess., 1998 Green Book: Background Material and Data Within the Jurisdiction of the Committee on Ways and Means 1301 tbl.H-2 (Comm. Print 1998) [hereinafter 1998 Green Book].

income (\$5,051 versus \$13,900).⁷⁰ Almost 30% had incomes below \$3,000.⁷¹

The association between poverty and child maltreatment is even greater for welfare families. In Illinois, for example, 48% of the children born in 1988 who were the subject of founded reports of child abuse or neglect between 1988 and 1992 also received welfare.⁷² Likewise, welfare families made up about half of all reported families.⁷³ Nationwide, 41% of the families reported for any type of child maltreatment received public assistance, while many of the families reported for neglect suffered economic distress.⁷⁴

Further, Leroy Pelton, now a professor at the Nevada School of Social Work, found that welfare parents who maltreated their children were palpably poorer than welfare parents who did not.⁷⁵ They were, for example, more likely to live in crowded housing and to have to share their child's sleeping spot, and they were less likely to have a shower or a telephone in their home.⁷⁶

Poor children also predominate in foster care. National data on the income of the families of foster children do not exist. To fill this gap, researchers look at the proportion of foster care children who are Title IV-E eligible,⁷⁷ that is, whose families received or would have been eligible for welfare prior to the child's removal from the home. Data from HHS show that, in 1998-1999, 56% of the national foster care caseloads were Title IV-E eligible.⁷⁸ In

⁷⁰ See 1976 American Humane Ass'n, *supra* note 59, at 13-14.

⁷¹ See *id.*

⁷² This figure refers to first-born children born in 1988. Of the children who had a founded report of maltreatment at some point in their first five years of life, 48% also received AFDC at some point during this time. See Robert Goerge et al., *Chapin Hall Ctr. for Children, A Longitudinal Analysis of Public Aid & Child Welfare Experiences of Illinois Families with Children 14* (1993) [hereinafter 1993 Goerge et al.].

⁷³ See *id.*

⁷⁴ See 1988 Am. Ass'n for Protecting Children, *supra* note 45, at 28.

⁷⁵ See Leroy H. Pelton, *The Role of Material Factors in Child Abuse and Neglect*, in *Neighbors Helping Neighbors: A New National Strategy for the Protection of Children*, 110-113 (1993) [hereinafter Pelton].

⁷⁶ *Id.*

⁷⁷ Title IV-E funding supports the placement and maintenance of AFDC children in foster care. See 1998 Green Book, *supra* note 69, at 742-43.

⁷⁸ Although the data used to determine these figures were from different years and were not calculated in the same manner, these differences do not appear to bias the find-

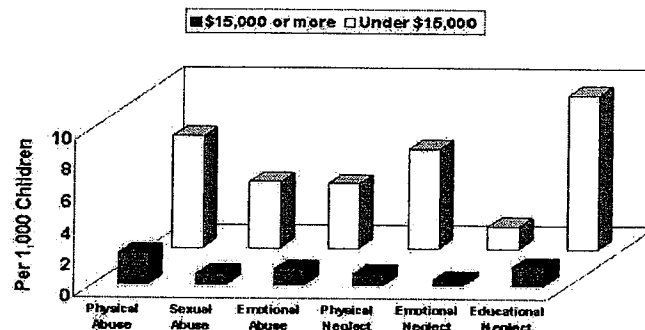
2000]

Child Abuse Realities

21

some states, however, the proportions of welfare children in foster care are considerably higher. For example, in 1998-1999, the percentages were 67% in California, 77% in New York, and 71% in Illinois.⁷⁹

Figure 7. Differences in Rate by Family Income by Type⁸⁰



A study in Illinois found that children who received welfare within the first five years of their life were twice as likely as chil-

ings. The data on the number of Title IV-E eligible children were from FY 1998 and were given as an average monthly number. The foster care data were from the October 1, 1998 to March 31, 1999 (period #99A) and were given as a snapshot of all the foster care children served on March 31, 1999. The calculated percentages were determined by dividing the number of Title IV-E eligible children by the total number of children in foster care. This method was used to calculate the national percentage of Title IV-E eligible children as well as the state percentages of Title IV-E eligible children. For data on the number of children in foster care, see Children's Bureau, U.S. Dep't of Health & Human Servs., Adoption and Foster Care Analysis and Reporting System ("AFCARS"), #99A (1999) (on file with author). For data on the number of Title IV-E eligible children, see Children's Bureau, U.S. Dep't of Health & Human Servs., AFCARS, Title IV-E Financial Report (1998-1999) (on file with author).

⁷⁹ Id.

⁸⁰ See 1991 Revised Report of Second Incidence Study, *supra* note 7, at 5-29.

dren who did not to be placed in foster care during this period (2.1% versus 1.2%).⁸¹ Title IV-E eligible children made up over 58% of the state's foster care population.⁸²

The level of poverty-related child protective intervention could grow even higher. Westat's second incidence study found that professionals did not report over 85% of the children who had been educationally neglected and 75% of the children with moderate cases of physical neglect.⁸³ As noted earlier, poor children were particularly concentrated in these two types of maltreatment. If greater proportions of these types of "child maltreatment" were reported, an even higher proportion of child protective cases would involve the problems of poverty.

B. Family Demographics

This sharp connection between poverty and child maltreatment is further concentrated among families headed by single mothers, especially those who had their first babies as unwed teens.

Reported child maltreatment is many times more prevalent among single-parent families than among two-parent families. In Minnesota, for example, in 1992, families headed by single parents were almost seven times more likely than two-parent families to have founded reports of maltreatment (28.7 per 1,000 children living in single-parent families versus 4.3 per 1,000 children living in two-parent families).⁸⁴ About 57% of all substantiated victims lived in single-parent homes.⁸⁵ In New Jersey, this proportion was even higher: 69% in 1992.⁸⁶

The second Westat study showed this relationship by maltreatment type. While less than one quarter of the nation's children lived in single-parent families in 1986, 36% of the children with

⁸¹ This study looked at first-born Illinois children born in 1988. 1993 Goerge et al., *supra* note 72, at 15 tbls.2, 58.

⁸² *Id.*

⁸³ See 1991 Suppl. Analyses of Second Incidence Study, *supra* note 23, at 3-19.

⁸⁴ See Minn. Dep't of Human Servs., *Child Maltreatment Report: 1982-1991*, 48-49 (1993).

⁸⁵ See *id.*

⁸⁶ See N.J. Dep't of Human Servs., *Child Abuse and Neglect in New Jersey: 1992 Annual Report 23* (1993).

substantiated reports of educational neglect lived in such homes.⁸⁷ The proportions of single-parent families among the other maltreatment types were: physical neglect (33%); sexual abuse (32%); and physical abuse (31%).⁸⁸

Reported child maltreatment is more prevalent among families headed by teen mothers than families headed by non-teen mothers. For instance, in Illinois, 73% of teen-headed families had founded reports of maltreatment, as compared to only 30% of families headed by mothers who delayed their births until at least their twenties.⁸⁹

Among mothers on welfare in Illinois, families headed by mothers under sixteen years at the time of their first birth were almost twice as likely as those headed by mothers who delayed childbirth until their twenties to have founded reports of maltreatment (16% versus 9% for a four-year period).⁹⁰ The likelihood of maltreatment decreased as the age of the mother increased. Founded reports of maltreatment were 13% for welfare families headed by mothers who were sixteen to seventeen at first birth, 11% for those with mothers eighteen to nineteen at first birth, and 9% for those with mothers twenty or over at the time of first birth.⁹¹

A strong association exists between race and reported maltreatment. Although the Westat studies found no association between the two, this was probably due to the broad definition of maltreatment that they used. According to HHS, in 1997, black children were disproportionately over-represented in reported cases—making up 29.5% of substantiated reports.⁹² (In 1997, blacks comprised about 15% of the national population of children

⁸⁷ See 1991 Suppl. Analyses of Second Incidence Study, *supra* note 23, at 5-2.

⁸⁸ See *id.*

⁸⁹ These figures represent the proportion of families that had their first child in 1988 that had founded reports of child abuse or neglect within five years of the birth the child. See 1993 Goerge et al., *supra* note 72, at tbl.49.

⁹⁰ These figures represent the proportion of welfare families who had founded reports of child maltreatment at any time in the four-year period from 1986 to 1990. See Goerge et al., *Point-In-Time*, *supra* note 64, at tbl.19.

⁹¹ See *id.*

⁹² 1999 U.S. Dep't of Health & Human Servs., *supra* note 1, at 4-5.

under eighteen, whites about 66%, and Hispanics about 15%).⁹³ And, according to APHSA, black children were even more over-represented among the foster care population: In fiscal year 1995, 45.1% of the children who entered foster care were black, 36.5% were white, and 11.3% were Hispanic.⁹⁴

A 1993 study in Illinois found that black children were almost three times as likely as white and Hispanic children to have a substantiated report of child maltreatment in their first five years of life. (The rates were 85 per 1,000 black children, 29 per 1,000 white children, and 23 per 1,000 Hispanic children.)⁹⁵

This "association" between race and reported maltreatment should not be over-interpreted. It is largely explained by the higher rates of poverty and single-mother households among African Americans.

Given these realities, some commentators blame poverty for the parents' abusive or neglectful behavior. Certainly "poverty exposes parents to the increased likelihood of additional stresses that may have deleterious effects upon their capacities to care adequately for their children."⁹⁶ However, lest all families be stigmatized, it is important to remember that most poor families do not abuse or neglect their children. In any one year, fewer than 15.3% of welfare families are reported for suspected abuse or neglect.⁹⁷

⁹³ Not included are the percentages of American Indian, Eskimo, Aleut, Asian and Pacific Islander children under age eighteen. Together, these comprise the remaining five percent. See Bureau of the Census, U.S. Dep't of Commerce, *Statistical Abstract of the United States* 22 (1998).

⁹⁴ See Toshio Tataru, *Am. Pub. Human Servs. Ass'n, U.S. Child Substitute Care Flow Data and the Race/Ethnicity of Children in Care for FY 95, Along with Recent Trends in the U.S. Child Substitute Care Populations* 2 (1997).

⁹⁵ See 1993 Goerge et al., *supra* note 72, at tbl.48.

⁹⁶ Jeanne M. Giovannoni & Andrew Billingsley, *Child Neglect Among the Poor: A Study of Parental Adequacy on Families of Three Ethnic Groups*, 49 *Child Welfare* 196, 204 (1970).

⁹⁷ The thirteen percent figure is the upper bound, calculated by dividing the number of substantiated cases in 1997 (502,610) by the average monthly AFDC caseload in FY 1997 (3,947,000). This almost certainly exaggerates of the number of welfare families reported for abuse or neglect because: (1) it assumes that *all* of the 502,610 cases were from families on welfare; and (2) it underestimates the number of families that received AFDC for FY 1997 because the average monthly number of families is a point-in-time figure and does not reflect the total number of families that received AFDC throughout the year. See 1999 U.S. Dep't of Health & Human Servs., *supra* note 1, at 3-

III. SOCIAL COSTS

For thirty years, advocates, program administrators, and politicians have joined the cause to encourage even more reports of suspected child abuse and neglect. As we saw, their efforts have been spectacularly successful, with about three million children now reported each year.⁹⁸ Although child protective programs still have major problems, some of which are discussed in this paper, the results of the past thirty-year effort to upgrade them have been unquestionably impressive. All states now have specialized child protective agencies to receive and investigate reports, and treatment services for maltreated children and their parents have been expanded substantially. Federal and state expenditures for child protective programs and associated foster care services are almost seven billion dollars a year.⁹⁹

As a result, many thousands of children have been saved from death and serious injury. The best estimate is that over the past twenty years, child abuse and neglect deaths have fallen from over 3,000 a year—and perhaps as many as 5,000—to about 1,100 a year.¹⁰⁰ In New York State, for example, within five years of the passage of a comprehensive reporting law that also created specialized investigative staffs, there was a 50% reduction in child fatalities, from about 200 a year to under 100.¹⁰¹

4; Committee on Ways and Means, 106th Cong., 2d Sess., 2000 Green Book: Background Material and Data Within the Jurisdiction of the Committee on Ways and Means 376 tbl.7-4 (Comm. Print 2000).

⁹⁸ See Wang & Daro, *supra* note 1, at tbl.1.

⁹⁹ Federal expenditures for foster care, child welfare and related services make up less than 50% of total expenditures (federal plus state) for these services. In 1998, they were: \$292 million for Title IV-B child welfare services; \$1.660 billion for Title IV-E foster care maintenance; \$1.700 billion for foster care administration and training; \$70 million for Title IV-E independent living program; and \$495 million for Title IV-E adoption assistance, totaling \$4.217 billion. See 1998 Green Book, *supra* note 59, at tbl.11-2. In addition, states may use a portion of the \$2.2 billion federal Social Services Block Grant for such services, though detailed data on these expenditures are not available. Additional federal appropriations will fund family preservation and support services (an estimated \$239 million in 1998). See Budget of the United States Government: Appendix, FY 2000, 456, 458 (1999).

¹⁰⁰ Estimates are based on 1999 U.S. Dep't of Health & Human Servs., *supra* note 1, at 6-1 (1,196 fatalities); 1997 Wang & Daro, *supra* note 1, at tbl.2 (1,046 fatalities); and 1991 Revised Report of Second Incidence Study, *supra* note 7, 3-10 (1,000 fatalities).

¹⁰¹ See N.Y. State Dep't of Social Servs., Child Protective Services in New York

This is not meant to minimize remaining problems. Even at this level, maltreatment is the fourth largest cause of death for children under fourteen years of age.¹⁰² But it does suggest that concerns other than non-reporting should come to the fore.

A. The Costs of Inappropriate Reports

The determination that a report is unfounded can only be made after an unavoidably traumatic investigation that is, inherently, a breach of parental and family privacy. To determine whether a particular child is in danger, caseworkers must inquire into the most intimate personal and family matters. Often, it is necessary to question friends, relatives, and neighbors, as well as school teachers, day care personnel, doctors, clergy, and others who know the family.

Laws against child abuse are an implicit recognition that family privacy must give way to the need to protect helpless children. But in seeking to protect children, it is all too easy to ignore the legitimate rights of parents. Each year, about 700,000 families are put through investigations of unfounded reports.¹⁰³ This is a massive and unjustified violation of parental rights.

Few unfounded reports are made maliciously. Studies of sexual abuse reports, for example, suggest that, at most, from three to ten percent of these reports are knowingly false.¹⁰⁴ Many involve

State: 1979 Annual Report, tbl.8 (1980).

¹⁰² See Sharon Murphy, Deaths: Final Data for 1998, vol. 48 no. 11, National Center for Health Statistics, tbls.8 & 28 (2000); and U.S. Dep't of Health & Human Servs, Child Maltreatment 1998: Reports from the States to the National Child Abuse and Neglect Data System (2000). The National Center for Health Statistics (NCHS) reports deaths to children ages 28 days to 14 years in 1998 as follows: (1) accidents (5,861); (2) congenital anomalies (2,652); (3) SIDS (2,634); (4) malignant neoplasms (1,441); (5) homicide and legal intervention (1,138); and (6) pneumonia and influenza (619). The first 28 days, the "neonatal" period, is excluded because many of the deaths during this time result from pregnancy complications. Although the NCHS lists homicides against children, it does not identify child maltreatment fatalities. The U.S. Department of Health and Human Services estimates 1,046 such deaths.

¹⁰³ See 1999 U.S. Dep't of Health & Human Servs., *supra* note 1, at 3-4.

¹⁰⁴ See, e.g., Nancy Thoennes & Jessica Pearson, A Difficult Dilemma: Responding to Sexual Abuse Allegations in Custody and Visitation Disputes, *in* Protecting Children From Abuse and Neglect 91, 93 (Douglas J. Besharov ed., 1988) (noting that three percent of reported child sex abuse cases in Denver, Colorado, during 1993, were determined not to have occurred); Lucy Berliner, Deciding Whether a Child has been Sexu-

situations in which a well-intentioned person who reports (in an effort to protect a child) is overreacting to a vague and often misleading possibility that the child may be maltreated. Others involve situations of poor child care that, though of legitimate concern, simply do not amount to child abuse or neglect. In fact, a substantial proportion of unfounded cases are referred to other agencies for them to provide needed services for the family.

Moreover, an unfounded report does not necessarily mean that the child was not actually abused or neglected. Evidence of child maltreatment is difficult to obtain and may not be uncovered when agencies lack the time and resources to complete a thorough investigation or when inaccurate information is given to the investigator. Other cases are labeled unfounded when no services are available to help the family. Some cases must be closed because the child or family cannot be located.

A certain proportion of unfounded reports are, therefore, an inherent—and legitimate—aspect of reporting *suspected* child maltreatment and is necessary to ensure adequate child protection. Hundreds of thousands of strangers report their suspicions; they cannot all be right. But unfounded rates of the current magnitude go beyond anything reasonably needed. Worse, they endanger children who are really abused.

The current flood of unfounded reports is overwhelming the limited resources of child protective agencies. For fear of missing even one abused child, workers perform extensive investigations of vague and apparently unsupported reports. Even when a home visit based on an anonymous report turns up no evidence of maltreatment, workers usually interview neighbors, schoolteachers, and day-care personnel to make sure that the child is not abused. And even repeated anonymous and unfounded reports do not prevent a further investigation. But all of this takes time.

ally Abused, in *Sexual Abuse Allegations in Custody and Visitation Cases: A Resource Book for Judges and Court Personnel* 48, 51 (E. Bruce Nicholson ed., 1988) (detailing studies of child sex abuse, which revealed that six to ten percent of reports were false); David P.H. Jones & J. Melbourne McGraw, *Reliable and Fictitious Accounts of Sexual Abuse to Children*, 2 *J. on Inter-personal Violence*, Mar. 1987, at 27, 31 (estimating that eight percent of sexual abuse reports are falsely made with two percent by children and six percent by adults).

As a result, children in real danger are getting lost in the press of inappropriate cases. Forced to allocate a substantial portion of their limited resources to unfounded reports, child protective agencies are less able to respond promptly and effectively when children are in serious danger. Some reports are left uninvestigated for a week and even two weeks after they are received. Investigations often miss key facts because workers rush to clear cases. Dangerous home situations receive inadequate supervision, as workers must ignore pending cases as they investigate the new reports that arrive daily on their desks. Decision-making also suffers. With so many cases of insubstantial or unproven risk to children, caseworkers are desensitized to the obvious warning signals of immediate and serious danger.

Inconsistent as it may seem, given the heavy use of child protective programs, workers and judges are deeply conscious of the hazards of foster care. Hence, they hesitate to remove children from their parents' custody except in the most extreme cases. Many children are left in the custody of parents who have repeatedly abused them. One study of child abuse fatalities, for example, described how: "In two of the cases, siblings of the victims had died previously In one family, two siblings of the victim had died mysterious deaths that were undiagnosed. In another family, a twin had died previously of abuse."¹⁰⁵

These realities help explain why, over the years, various state studies have shown that about 30-55% of all child fatalities attributed to abuse or neglect involve children previously reported to a child protective agency.¹⁰⁶ The National Committee to Prevent Child Abuse reported that, in 1996, of the estimated 1,046 child maltreatment fatalities, 41% had prior or current contact with CPS.¹⁰⁷ (see Figure 8) Tens of thousands of other children receive serious injuries short of death while under child protective supervision.

¹⁰⁵ Confidential report (on file with author).

¹⁰⁶ See Region VI Resource Ctr. on Child Abuse, *Child Deaths in Texas* 26 (University of Texas ed., 1981); Elizabeth Mayberry, *Welfare Research, Inc., Child Protective Services in New York City: An Analysis of Case Management* 109 (May 1979).

¹⁰⁷ See Wang & Daro, *supra* note 1, at 12.

In a 1992 New York City case, for example, five-month-old Jeffrey Harden died from burns caused by scalding water and three broken ribs while under the supervision of New York City's Child Welfare Administration.¹⁰⁸ The Administration knew of Jeffrey Harden's family for more than a year-and-a-half.¹⁰⁹ Over this period, the case had been handled by four separate caseworkers, each conducting only partial investigations before resigning or being reassigned to new cases.¹¹⁰

It is unclear whether Jeffrey's death was caused by his mother or her boyfriend, but because of insufficient time and overburdened caseloads, all four workers failed to pay attention to a whole host of obvious warning signals: Jeffrey's mother had broken her parole for an earlier conviction of child sexual abuse; she had a past record of beating Jeffrey's older sister; and she had a history of crack addiction and past involvement with violent boyfriends.¹¹¹

Here is how two of the Hardens' caseworkers explained what happened: Their first caseworker could not find Ms. Harden at the address she had listed in her files. She commented, "It was an easy case We couldn't find the mother so we closed it."¹¹² Their second caseworker stated that he was unable to spend a sufficient amount of time investigating the case, let alone make the minimum monthly visits because he was tied down with an overabundance of cases and paperwork. He stated, "It's impossible to visit these people within a month They're all over New York City."¹¹³ Just before Jeffrey's death, every worker who had been on the case had left the department.

¹⁰⁸ See Celia W. Dugger, *Litany of Signals Overlooked in Child's Death*, N.Y. Times, Dec. 29, 1992, at A1.

¹⁰⁹ *Id.*

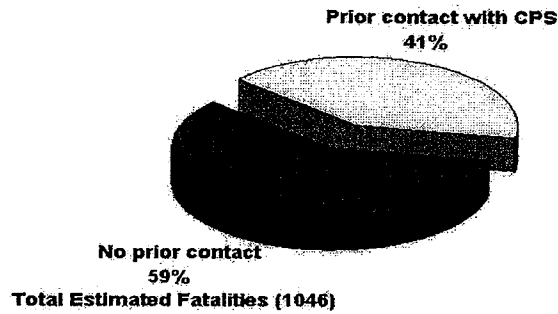
¹¹⁰ *Id.*

¹¹¹ See *Id.*

¹¹² *Id.*

¹¹³ *Id.*

Figure 8. Child Maltreatment Fatalities Previously Known to CPS, 1996¹¹⁴



Ironically, by weakening the system's ability to respond, unfounded reports actually discourage appropriate ones. The sad fact is that many responsible individuals are not reporting endangered children because they feel that the system's response will be so weak that reporting will do no good or may even make things worse. In 1984, a study of the impediments to reporting conducted by Jose Alfaro, Coordinator of the New York City Mayor's Task Force on Child Abuse and Neglect, concluded that:

Professionals who emphasize their professional judgment, have experienced problems in dealing with the child protective agency, and are more likely to doubt the efficacy of protective service intervention are more likely not to report in some

¹¹⁴ See Wang & Daro, *supra* note 1, at tbl.2, tbl.3 (number of fatalities based on data from 30 states and projected to national figure; information on prior contact with CPS based on the average percentage between 1994 and 1996 from at least 16 states).

situations, especially when they believe they can do a better job of helping the family.¹¹⁵

IV. POLICY AND PROGRAMMATIC REFORMS

The emotionally charged desire to “do something” about child abuse, fanned by repeated and often sensational media coverage has led to an understandable but counterproductive overreaction on the part of the professionals and citizens who report suspected child abuse. For thirty years, advocates, program administrators, and politicians have all pushed for more reporting of suspected child abuse and neglect.

Potential reporters are frequently told to “take no chances” and to report any child for whom they have the slightest concern. There is a recent tendency to tell people to report children whose behavior suggests that they may have been abused—even in the absence of any other evidence of maltreatment. These “behavioral indicators” include, for example, children who are unusually withdrawn or shy as well as children who are unusually friendly to strangers. However, only a small minority of children who exhibit such behaviors have actually been maltreated.

A. Address over-reporting

Thirty years ago, even fifteen years ago, when many professionals were construing their reporting obligations narrowly to avoid taking action to protect endangered children, this approach may have been needed. Now, all it does is ensure that child abuse hotlines will be flooded with inappropriate and unfounded reports.

Few people fail to report because they do not care about an endangered child. Instead, they may be unaware of the danger the child faces or of the protective procedures that are available. A study of non-reporting among teachers, for example, blamed their “lack of knowledge for detecting symptoms of child abuse and neglect.”¹¹⁶ Likewise, few inappropriate or unfounded reports are de-

¹¹⁵ Jose D. Alfaro, Mayor’s Task Force on Child Abuse & Neglect, *Impediments to Mandated Reporting of Suspected Child Abuse and Neglect in New York City* 66 (May 1984).

¹¹⁶ Patricia G. Levin, *Teachers’ Perceptions, Attitudes, and Reporting of Child*

liberately false statements. Most involve an honest desire to protect children coupled with confusion about what conditions are reportable.

Confusion about reporting is largely caused by the vagueness of reporting laws—aggravated by the failure of child protective agencies to provide realistic guidance about deciding to report. As far back as 1987, a national group of thirty-eight child protective professionals from nineteen states met for three days at Airlie House, Virginia, under the auspices of the American Bar Association's National Legal Resource Center for Child Advocacy and Protection in association with the American Public Welfare Association and the American Enterprise Institute. The "Airlie House Group," as it has come to be called, developed policy guidelines for reporting and investigation decision making. (This writer was the "rapporteur" for the effort.) One of the group's major conclusions was that there should be better guidelines for public and professional education about what should and should not be reported. This group urged, "[b]etter public and professional materials are needed to obtain more appropriate reporting."¹¹⁷ The group specifically recommended that educational materials and programs: (1) clarify the legal definitions of child abuse and neglect, (2) give general descriptions of reportable situations (including specific examples), and (3) explain what to expect when a report is made. Brochures and other materials for laypersons, including public service announcements, should give specific information about what to report—and what not to report.¹¹⁸

Based on these recommendations, a relatively clear agenda for reform emerges: (1) clarify child abuse reporting laws, (2) provide continuing public education and professional training, (3) screen reports, (4) modify liability laws, (5) give feedback to persons who report, and (6) adopt an agency policy.

Abuse/Neglect, 62 *Child Welfare* 14, 19 n.1 (1983).

¹¹⁷ Douglas J. Besharov, *Protecting Children from Abuse and Neglect: Policy and Practice* 346 (1988).

¹¹⁸ *Id.*

1. Clarify child abuse reporting laws.

Existing laws are often vague and overbroad. They should be rewritten to provide real guidance about what conditions should, and should not, be reported. This can be accomplished without making a radical departure from present laws or practices. The key is to describe reportable conditions in terms of specific parental behaviors or conditions that are tied to severe and demonstrable harms (or potential harms) to children.¹¹⁹

It would help, for example, to make a distinction between (1) *direct evidence*, meaning firsthand accounts or observations of seriously harmful parental behavior, and (2) *circumstantial evidence*, meaning concrete facts, such as the child's physical condition, which suggest that the child has been abused or neglected. (Behavioral indicators, however, should not, by themselves, be considered a sufficient basis for a report.)

Direct evidence includes: eyewitness observations of a parent's abusive or neglectful behavior; the child's description of being abused or neglected, unless there is a specific reason for disbelief; the parent's own description of abusive or neglectful behavior (unless it is long past); accounts of child maltreatment from spouses or other family members; films, photographs or other visual material depicting a minor's sexually explicit activity; newborns denied nutrition, life-sustaining care, or other medically-indicated treatment; children in physically dangerous situations; young children left alone; apparently abandoned children; demonstrated parental disabilities (for example, mental illness or retardation or alcohol or drug abuse) severe enough to make child abuse or child neglect likely; and demonstrated parental inability to care for a newborn baby.

Circumstantial evidence includes: "suspicious" injuries suggesting physical abuse; physical injuries or medical findings suggesting sexual abuse; signs of sexual activity in young children; signs of severe physical deprivation on the child's body; severe dirt and disorder in the home suggesting general child neglect; apparently untreated physical injuries, illnesses, or impairments sug-

¹¹⁹ See generally Besharov, *Recognizing Child Abuse*, supra note 40, at 29-32 (describing a reporting system focused on only the most serious actual or threatened harms).

gesting medical neglect; "accidental" injuries suggesting gross inattention to the child's need for safety; apparent parental indifference to a child's severe psychological or developmental problems; apparent parental condemnation of or indifference to a child's misbehavior suggesting improper ethical guidance; chronic and unexplained absences from school suggesting parental responsibility for the non-attendance; and newborns showing signs of fetal exposure to drugs or alcohol.

2. Provide continuing public education and professional training

Few people fail to report because they want children to suffer abuse and neglect. Likewise, few people make deliberately false reports. Most involve an honest desire to protect children coupled with confusion about what conditions are reportable. Thus, educational efforts should emphasize the conditions that do not justify a report, as well as those that do.

3. Screen reports:

No matter how well professionals are trained and no matter how extensive public education efforts are, there will always be a tendency for persons to report cases that should not be investigated. Until recently, most states did not have formal policies and procedures for determining whether to accept a call for investigation. Such policies should be adopted by all states and they should provide explicit guidance about the kinds of cases that should not be assigned for investigation.

Reports should be rejected when the allegations fall outside the agency's definitions of "child abuse" and "child neglect," as established by state law. Often, the family has a coping problem for which they would be more appropriately referred to another social service agency. Prime examples include children beyond the specified age, alleged perpetrators falling outside the legal definition, and family problems not amounting to child maltreatment. Reports should also be rejected when the caller can give no credible reason for suspecting that the child has been abused or neglected. (Although actual proof of the maltreatment is not required, some evidence is.) Reports whose unfounded or malicious nature is established by specific evidence, of course, should also be rejected. Anonymous reports, reports from estranged spouses,

and even previous unfounded reports from the same source should not be automatically rejected, but they need to be carefully evaluated. And, finally, reports in which insufficient information is given to identify or locate the child should likewise be screened (although the information may be kept for later use if a subsequent report about the same child is made).

In questionable circumstances, the agency should contact the caller again before deciding to reject a report. When appropriate, rejected reports should be referred to other agencies that can provide services needed by the family.

4. Modify liability laws:

Current laws provide immunity for anyone who makes a report in good faith, but give no protection to those who, in a good faith exercise of professional judgment, decide that a child has not been abused or neglected and, hence, should not be reported. This combination of immunities and penalties encourages the over-reporting of questionable situations.

5. Give feedback to persons who report:

If persons who report are not told what happened, they may conclude that the agency's response was ineffective or even harmful to the child, and the next time they suspect that a child is maltreated, they may decide not to report. In addition, finding out whether their suspicions were valid also refines their diagnostic skills and thus improves the quality and accuracy of their future reports. Reporters also need such information to interpret subsequent events and to monitor the child's condition.

6. Adopt an agency policy:

Appropriate reporting of suspected child maltreatment requires a sophisticated knowledge of many legal, administrative, and diagnostic matters. To help ensure that staffs respond properly, an increasing number of public and private agencies are adopting formal agency policies about reporting. Some state laws mandate them. The primary purpose of these policies, or agency protocols, is to inform staff members of their obligation to report and of the procedures to be followed. Such formal policies serve another important function use: They are an implicit commitment by agency

administrators to support front-line staff members who decide to report. Moreover, the very process of drafting a written document can clarify previously ambiguous or ill-conceived agency policies.

B. Address Poverty-Related Neglect

In the wake of welfare reform, the ways in which child protective agencies respond to the condition of poverty takes on added importance. As noted, the combination of over-reporting and the overreaction to poverty-related child maltreatment can endanger children who are in real jeopardy. Social agencies fail to protect children who need help the most—the victims of physical brutality—by not removing them from their abusive parents. At the same time, they overreact to cases of social deprivation in poor families. In fact, poor, socially deprived children are more likely to be placed in foster care than are abused children. These disadvantaged children, in no real danger of physical injury, languish for years in foster care. Living in emotionally traumatic conditions, hundreds of thousands of poor children suffer more harm than if they were simply left at home.

To say that poor children are inappropriately included in programs for abused and neglected children is not the same as saying that they do not have pressing needs, nor that they should not be the concern of public and private programs. But the nature of the intervention should be different—and it should be voluntary. Child protective agencies have not been established as society's response to poverty, and for them to assume this role misdirects their resources from their proper mission. Dr. Barton Schmitt explains:

Including [poverty-related cases] in child abuse and neglect investigations will dilute the efforts of child protection units in responding to more serious cases and also lose them the respect of certain constituents of their community. We live in an imperfect world. Neglect is easily confused with poverty, ignorance, or parents who are overwhelmed by other problems. Some ethnic groups have defined neglect as "a failure to live up to the white middle classes' standards." For this reason neglect should not be reported automatically to the child protective ser-

vice unit. Instead the family should be offered help, especially financial assistance. Only if the family refuses services for their children, should the child neglect laws be implemented.¹²⁰

Helping these families, usually involving single mothers, does not require mandatory reporting laws, involuntary investigations, central registers of reports, or psychologically oriented "treatment" interventions. In too many instances, such efforts are ineffectual, and even harmful.

Society should acknowledge the overlap between child maltreatment and poverty and adopt intervention strategies that address the families' broader problems. Such strategies might include compensatory child development programs housed in integrated service centers for teen mothers. But, even in the absence of such specialized services, society would do better if it did nothing in poverty-related cases, rather than the wrong—and often harmful—something. When it comes to the plight of these children, we should remember the ancient medical maxim: *Primum, non nocere*—first, do no harm.

In other places, I have written extensively about the kinds of services that might appropriately be offered to such parents—for their voluntary acceptance or rejection.¹²¹ For present purposes, let me just address the problem of inappropriate reporting of the conditions of poverty.

To begin with, to say that there is a connection to poverty does not mean that children who are actually abused or neglected should not be reported just because of their families' low income. Poor children should be assured of their basic needs, including adequate food, clothing, shelter, and medical care. But when the problem is the parent's low income, the answer must come from

¹²⁰ Barton D. Schmitt, Child Neglect, in *Child Abuse and Neglect: A Medical Reference* 297, 305 (Norman S. Ellerstein ed., 1981).

¹²¹ See generally Douglas J. Besharov & Lisa A. Laumann, Don't Call It Child Abuse if it's Really Poverty, 3 *J. Children & Poverty* 5, 25-29 (1997) (discussing alternatives to state intervention); Douglas J. Besharov, The Misuse of Foster Care: How the Desire to Help Children Outruns the Ability to Improve Parental Functioning, 20 *Fam. L.Q.* 213 (1986) (urging the expansion of "compensatory" services such as preschool in place of foster care in non-emergency situations where there is no threat of immediate harm to the child).

income support programs (such as public assistance, food stamps, Medicaid, and child support).

Writing almost twenty years ago, Schmitt concluded that the following factors were prone to over-reporting:

o *Clothing neglect*: Examples are wearing torn pants, wearing cast-off clothing, or not having a raincoat or gloves.¹²²

o *Nutritional neglect*: Examples are eating unbalanced meals, eating too many “junk foods,” or cultural food preferences. Even skipping breakfast can be normal if it’s the child’s choice. We must remember that approximately one third of adults prefer not to eat breakfast.¹²³

o *Hygiene neglect*: Examples are coming to school with a dirty face, dirty hair, or dirty clothing. If the child is not malodorous and the problem is periodic, it is probably of minimal importance.¹²⁴

o *Home environment neglect*: Mildly unsanitary homes are quite common. We should not be over critical of housekeeping below standards, such as poorly washed dishes or a house that is covered with dog hair and needs vacuuming.¹²⁵

o *Cultural deprivation or intellectual stimulation neglect*: This term is often directed at families whose children allegedly are not talked to enough or presented with sufficient creative toys. All too often this term is applied to children with developmental delays due to normal variation or pre-maturity.¹²⁶

o *Safety neglect*: Many normal accidents are called safety neglect to the detriment of the parents, for example, blaming the parents for burns that occur on space heaters despite numerous precautions the parents have taken. On a practical level, some unsafe environments cannot be changed.¹²⁷

¹²² Schmitt, *supra* note 120, at 304.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

o *Minor acute illness neglect*: Insect bites, lice, scabies, and impetigo occur in children from all socioeconomic groups. Often parents are blamed for diaper rashes and cradle cap. Parents may be criticized because they have not given their child antipyretics before bringing them to the physician for a fever. Parents may be blamed for not coming to the clinic soon enough for an ear infection that they did not know existed.¹²⁸

Almost all states, therefore, have provisions designed to delineate differences between welfare and child protective functions. The District of Columbia Code, for example, expressly excludes from the definition of child neglect "deprivation . . . due to the lack of financial means."¹²⁹ Other states, such as New York, prohibit a finding of abuse or neglect unless the parents are "financially able" to care for their children or were "offered financial or other reasonable means to do so."¹³⁰

Nevertheless, children who are actually neglected need protection. No state excuses child neglect simply because the parents are poor. Instead, laws establish "a minimum baseline of proper care for children that all parents, regardless of lifestyle or socioeconomic position, must meet."¹³¹ Thus, in assessing such cases, a two-pronged inquiry is appropriate:

(1) Does the care of the child fall below commonly accepted community standards? To justify a report, the deviation must be clear and unambiguous, and should not be the product of responsible differences in culture or lifestyle. Children, for example, must be fed nutritionally adequate meals. Coke and potato chips do not make an adequate diet.

(2) Has the child's physical or mental condition been impaired or is it in danger of being impaired? Again, using nutrition as an example, if the child seems hungry and emaciated, a report should be made.¹³²

¹²⁸ Id.

¹²⁹ D.C. Code Ann. § 16-2301(24) (Supp. 1999).

¹³⁰ N.Y. Fam. Ct. Act § 1012(f)(i)(A) (McKinney 1999).

¹³¹ Douglas J. Besharov, Supplementary Practice Commentary to McKinney's Family Court Act, N.Y. Fam. Ct. Act § 1012(f)(i)(A) (McKinney 1999).

¹³² See Besharov, Recognizing Child Abuse, *supra* note 40, at 101.

CONCLUSION

This paper has proposed a broad agenda for reform. It is not the first time that this writer, and others, have made these points. And, happily, some change is evident—in both federal and state laws, regulations, and procedures. But so much more needs to be done if the nation's child protective system is to meet the high responsibilities assigned to it, without harming some of the children and families entrusted to its care.