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Mark S. Kaizen

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CHILD ABUSE: THE ROLE OF ADOPTION AS A PREVENTATIVE MEASURE

INTRODUCTION

The problem of child abuse, as manifested by the "battered child syndrome,"¹ has reached epidemic proportions in the United States.² The abused child has become the major statistical factor in child death, now outdistancing the major childhood diseases.³ Illinois has not been spared from the outbreak of child abuse⁴ and has relied largely upon the judiciary⁵ and the public⁶ in an attempt to halt its growing instances.

In an effort to care for a child that lacks a proper home or proper nurture, Illinois, as well as the forty-nine other states and the District of Columbia, has enacted adoption statutes⁷ with practical ramifications that are beneficial to the adopted child while likewise serving the best interests of society and the state.⁸ Adoption, by its defined purpose of benefit to the child as well

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1. This syndrome means that a child has received repeated and/or serious injuries by non-accidental means; characteristically, these injuries are inflicted by someone who is ostensibly caring for the child. There are several elements that are the criteria for the 'battered child syndrome.' These are: (1) the child is usually under three years of age; (2) there is evidence of bone injury at different times; (3) there are subdural hematomas with or without skull fractures; (4) there is a seriously injured child who does not have a history given that fits the injuries; (5) there is evidence of soft tissue injury; (6) there is evidence of neglect.
People v. Jackson, 18 Cal. App. 3d 504, 506, 95 Cal. Rptr. 919, 921 (1971).
 2. See N.Y. Times, August 16, 1971, at 16, col. 1. See also Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 COLUM. L. REV. 1 (1967) [hereinafter cited as Paulsen]; Fontana, *We Must Stop the Vicious Cycle of Child Abuse*, 50 PARENTS' MAG. 8 (1975) [hereinafter cited as Fontana].
 3. See Kempe, *The Battered Child Syndrome*, 181 J.A.M.A. 17 (1962) [hereinafter cited as Kempe]; Fontana, *supra* note 2, at 8.
 4. See generally R. HELFER & C. KEMPE, *THE BATTERED CHILD* (1968) [hereinafter cited as HELFER & KEMPE].
 5. In an attempt to curb child abuse the Juvenile Court Act has established a procedure for removing the child from the custody of the parent. ILL. REV. STAT. ch. 37, §§ 701-1—708-4 (1975).
 6. The public at large has become involved in child abuse through legislation requiring that such acts be reported. ILL. REV. STAT. ch. 23, §§ 2051-2061 (1975).
 7. ILL. REV. STAT. ch. 4, §§ 9.1-1—1-24 (1975). The adoption statutes may be a viable solution to ending the recurrence of child abuse in particular situations and thus an examination of adoption is important in determining whether this role is adequately being met.
 8. *In re Simaner*, 16 Ill. App. 2d 48, 147 N.E.2d 419 (1958). "The adoption of friendless, dependent or orphan children tends to conserve the best interests of society and the State The right of adoption is not only beneficial to those immediately concerned, but likewise to the public." *Hopkins v. Gifford*, 309 Ill. 363, 368, 141 N.E. 178, 180 (1923).

as to society, is a highly realistic and viable avenue for protecting children from the ravages of child abuse. With the increase in child abuse reaching the epidemic level, it must be questioned whether the Illinois adoption statute is adequately fulfilling this role.

This comment will examine the role that adoption plays in combating the child abuse dilemma. The examination will focus upon the provision of the present adoption statute which allows the termination of parental rights, a necessary step when the parent refuses to consent to his child's adoption. Also contained within this comment will be proposals for legislative amendments which will further the role of adoption in the prevention of child abuse.

THE EPIDEMIC

Historical Context

Although the ravages of child abuse have received recent publicity, in large measure such treatment of children is not a product of modern times. Child abuse dates back to the earliest times of recorded history⁹ and was practiced by the ancient civilizations.¹⁰ Past civilizations practiced infanticide and the abandonment of their children for practical reasons.¹¹ As the civilizations grew older, infanticide subsided and a less deadly form of abuse grew in its stead. As was stated by Sir William Blackstone:

The ancient Roman laws gave the father a power of life and death over his children; upon this principle, that he who gave had also the power of taking away. (a) But the rigour of these laws was softened by subsequent constitutions; so that (b) we find a father banished by the Emperor Hadrian for killing his son, though he had committed a very heinous crime, upon this maxim, that '*patria potestas in pietate debet, non in atrocitate, consistere.*'¹²

9. Abraham's attempt to use his son, Isaac, as a sacrifice to prove his faith to God serves as an example of early practices. *Genesis* 22:1-13. Joshua's demand that children were to be used in the cornerstones for the rebuilt walls of Jericho, *Joshua* 6:26, also tends to prove the practice of infanticide.

10. For an excellent discussion of the maltreatment of the child in a historical context, see Thomas, *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C.L. Rev. 293, 294-99 (1971-1972) [hereinafter cited as Thomas].

11. Such *practical reasons* included population control, avoidance of the embarrassment that ran concurrent with illegitimacy, the disposition of a deformed child, as a religious ceremony and to maintain a familial concentration of wealth by avoiding the dilution of an estate among many children. See generally G. PAYNE, *THE CHILD IN HUMAN PROGRESS* (1916); Thomas, *supra* note 10, at 294-95.

12. 1 BLACKSTONE, *COMMENTARIES* *452 (Cooley ed. 1884). Parental authority should consist or be exercised in affection, not in atrocity.

The Battered Child Syndrome

"Each year in this country, thousands of innocent children are beaten, burned, poisoned, or otherwise abused by adults."¹³ This physical maltreatment of a child is evidenced by the battered child syndrome. The battered child syndrome, as a definitional term, was coined by Kempe in 1962,¹⁴ however, a plethora of medical articles on the subject is indicative of the fact that the subject matter was not a recent development.¹⁵ The distinctive phenomenon of the syndrome is characterized by a specific pattern of injuries to the child.

The syndrome is defined best by a finding of multiple injuries in various stages of healing and by a finding of soft tissue generally in combination with malnutrition and poor hygienic attributes. An indispensable element of the syndrome is the marked conflicts between the historical medical facts of the child, as supplied by the parent, and the clinical findings of the attending physician.¹⁶ Parental failure to adequately explain the cause of an injury that is characterized by the physical symptoms of the syndrome acts as a strong indication of parental maltreatment.¹⁷ Parental discipline¹⁸ is theoretically to be exercised out of affection and not in atrocity. The statistics of abuse, however, fail to lend support to this belief.

The Growth Of The Epidemic

It is extremely difficult to obtain accurate information on the precise extent of child abuse in America. Much of the maltreatment of children occurs within the privacy of the home. Social class, poverty and geographical remoteness also tends to isolate the abused child from society.¹⁹ The major incidents of abuse occur among children of tender years who are often too young to adequately call out for help.²⁰ "Often, the child

13. [1974] U.S. CODE CONG. & AD. NEWS 2763, 2764 (legislative history).

14. Kempe, *supra* note 3.

15. See McCoid, *The Battered Child and Other Assaults Upon The Family: Part One*, 50 MINN. L. REV. 1, 3-19 (1965) [hereinafter cited as McCoid].

16. *Id.* at 18.

17. [T]he syndrome should be considered in any child exhibiting evidence of possible trauma or neglect (fracture of any bone, subdural hematoma, multiple soft tissue injuries, poor skin hygiene, or malnutrition) or where there is a marked discrepancy between the clinical findings and the historical data as supplied by the parents. Kempe, *supra* note 3, at 24.

18. "The power of a parent [must be] sufficient to keep the child in order and obedience. He may lawfully correct his child, being under age, in a reasonable manner; . . . for this is for the benefit of his education." 1 BLACKSTONE, COMMENTARIES *452 (Cooley ed. 1884).

19. See Thomas, *supra* note 10, at 333.

20. In a study by Dr. Vincent De Francis of 662 cases of child abuse

victims are too young to either complain or understand that their treatment is inappropriate."²¹ Cases of abuse may often go undetected or be disregarded by neighbors who do not wish to become involved, or by relatives who refuse to believe that a parent would intentionally brutalize his own child.²²

Statistics concerning the maltreatment of minor children tend to be awesome in number, although, due to the inadequacy of accurate information,²³ statistical data is often based upon projections. Statistical reports have varied in the conclusions reached as to the total number of child abuse incidents per year. This discrepancy is due to the different methods of research employed. The extent of child abuse is reflected in different studies which contain estimates that range as high as 1% of all children,²⁴ and reported or projected incidents ranging from 350,000²⁵ to 4 million incidents per year.²⁶

No less staggering than the numbers involved are the methods of savagery and brutality employed. The techniques used in committing the abuse may be characterized as "a negative testimony to the ingenuity and inventiveness of man."²⁷ The implements and instrumentalities that the perpetrator uses range from the common to the extraordinary. The more common weapons include hairbrushes, bare fists, and heavy work boots.

only 10% of the children were over ten years of age with the preponderance below four years of age. Of the 178 children who died from the abuse over 80% were under four years of age and 53.98% were under two years of age. Seventy-two and one-half percent of the cases studied consisted of parental infliction of the abuse. DE FRANCIS, CHILD ABUSE—PREVIEW OF A NATION-WIDE SURVEY (Am. Humane Ass'n 1963) [hereinafter cited as DE FRANCIS]. See also HELFER & KEMPE, *supra* note 4; Thomas, *supra* note 10, at 333.

21. Thomas, *supra* note 10, at 333. "The child in many cases cannot speak for himself; he is either too young or too frightened to tell what really happened." Miller, *Fractures Among Children: I. Parental Assault as Causative Agent*, 42 MINN. MED. 1209, 1211 (1959).

22. What informed persons have suspected and what many doctors and social workers have believed, has been demonstrated, viz., that parents too often are their children's worst enemies. It may be because one or more parent is psychotic, of extremely low intelligence, of uncontrollable temper or was himself an abused child with serious psychiatric after effects. Harper, *The Physician, the Battered Child, and the Law*, 31 PEDIATRICS 899 (1963).

23. See notes 20-22 and accompanying text *supra*.

24. N.Y. Times, Jan. 3, 1976, at 21, col. 1 (when non-physical neglect and sexual abuse are considered in the child abuse definition).

25. N.Y. Times, June 27, 1973, at 28, col. 2. The number of child abuse incidents is estimated to be 500,000 in another survey which took into account physical, sexual and emotional child abuse. N.Y. Times, August 16, 1971, at 16, col. 1-6.

26. The National Opinion Research Center of the University of Chicago conducted a study of 1,520 adult respondents of which 3% reported personal knowledge of incidents of child abuse. The study thus set the range of incidents of abuse between 2.5 and 4.0 million per year. HELFER & KEMPE, *supra* note 4.

27. McCoid, *supra* note 15, at 15.

The extraordinary instrumentalities that mete out a deadlier punishment include chair legs, baseball bats, bottles and even hot liquids, open flames and plastic bags.²⁸

Resultant injuries cannot be defined simply in terms of broken bones or the type or extent of wounds inflicted. The characteristics that manifest themselves in the abuse are evidenced by the entire condition of the child. Physical and mental injuries in various stages of healing as well as a lack of a suitable explanation for such injuries act as a signal for suspected abuse.²⁹ While abuse may be detectable from the presence of these signals the initial incident is extremely difficult to predict as abuse transcends class, racial, ethnic and religious lines. Unfortunately, the initial occurrence is nonetheless as vicious³⁰ as any subsequent maltreatment. The court's power to act lies with the court's ability to prevent a recurrence of the abuse to the same child.

Recidivism

The recidivism rate of child abuse has reached the same epidemic proportions as the initial instances of abuse. Studies have revealed that in most cases the maltreatment of a child is not an isolated occurrence. Such studies indicate that the recidivism rate may be as high as 90%.³¹ In a study by Morris and Gould³² of twelve children who were subjected to physical abuse, eleven had been injured previously. Three of the twelve children were fatally injured upon the second event.³³ A follow-up survey of fifty battered children found that three had subsequently been killed and four others had been injured due to a second attack.³⁴ Estimates indicate that 25% to 50% of all cases will result in re-injury or death within a relatively short period of time.³⁵ Why is it that an abused child is returned to his parent after an initial confrontation has resulted in the child's injury?

28. *Id.* See also DE FRANCIS, *supra* note 20.

29. Comment, *The Child Abuse Epidemic: Illinois' Legislative Response and Some Further Suggestions*, 1974 U. ILL. L.F. 403 [hereinafter cited as *The Child Abuse Epidemic*].

30. A study on child abuse injuries found bruises and contusions, welts, swelling, lost teeth and eyes. Simple and compound fractures are prevalent with many children exhibiting more than one break. One child, five months old, suffered 30 broken bones. Ruptured livers, spleens and lungs, and skull fractures with brain hemorrhage and brain damage are a frequent diagnosis. McCoid, *supra* note 15, at 15-16; DE FRANCIS, *supra* note 20, at 5-7.

31. Morris and Gould, *Role Reversal: A Necessary Concept in Dealing with the Battered Child Syndrome*, 33 AM. J. ORTHOPSYCHIATRY 296 (1963).

32. *Id.*

33. *Id.*

34. Elmer, *Identification of Abused Children*, 10 CHILDREN 180, 183 (1963).

35. HELFER & KEMPE, *supra* note 4, at 51.

The Illinois juvenile court system allows, as one possible alternative, the return of a child to his parent after custody of the child has been previously revoked in a custody proceeding.³⁶ The Juvenile Court Act³⁷ establishes both the procedure³⁸ by which an abused child³⁹ is taken from parental custody⁴⁰ and the procedure which may be employed to reinstate such custody. The procedure which the Act requires for the revocation of custody contemplates essentially a trifurcated process.

The first phase occurs at the detention hearing⁴¹ where the court determines whether there exists probable cause for the removal of a child from parental custody.⁴² If the court fails to find probable cause the minor is released and the petition for custody removal is dismissed. If, however, there is a probable cause finding, an examination of persons with relevant testimony will be held. The court may then place the minor in a shelter care facility if such action is needed for the child's protection.⁴³ A probable cause finding brings the second stage into play.

The second phase is the adjudicatory hearing⁴⁴ in which the court applies all of the civil rules of evidence⁴⁵ in an attempt to determine whether the minor is actually in need of care. If the court does not find the minor to be in need of care the petition is dismissed.⁴⁶ However, upon a finding of neglect the judicial process continues. The court may make the minor a ward of the court if the child is found to be neglected and it is found to be in the child's best interests.⁴⁷ Both requirements may be necessary to make the child the ward of the court,⁴⁸ and if such wardship occurs then step three is applicable.

36. *In re Overton*, 21 Ill. App. 3d 1014, 316 N.E.2d 201 (1974).

37. ILL. REV. STAT. ch. 37, § 701-1 (1975).

38. See *In re Garmon*, 4 Ill. App. 3d 391, 280 N.E.2d 19 (1972).

39. The Juvenile Court Act includes the concept "abused child" within its definition of a neglected minor. A neglected minor is any child under 18 years of age:

(a) who is neglected as to proper or necessary support, education as required by law, or as to medical or other remedial care recognized under State law or other care necessary for his well-being, or who is abandoned by his parents, guardian or custodian; or

(b) whose environment is injurious to his welfare or whose behavior is injurious to his own welfare or that of others.

ILL. REV. STAT. ch. 37, § 702-4 (1975).

40. Custody must be distinguished from termination of parental rights. Custody only deals with a temporary removal from the parent while termination of parental rights is permanent.

41. ILL. REV. STAT. ch. 37, § 703-6 (1975).

42. Removal is based upon a finding in accordance with ILL. REV. STAT. ch. 37, § 702-4 (1975); see note 39 *supra*.

43. ILL. REV. STAT. ch. 37, § 703-6(2) (1975).

44. *Id.* § 704-2.

45. *Id.* § 704-6.

46. *Id.* § 704-8(1).

47. *Id.* § 704-8(2). This section requires that if a finding of neglect was based on physical abuse, then the court's order should so state.

48. The statutory language seems to require two elements: (1) a

The third stage in the proceeding is the dispositional phase.⁴⁹ After hearing evidence, the court determines how to best preserve the interests of the child and society. The court's dispositional alternatives for the child include, but are not restricted to, placement with a relative,⁵⁰ a state agency,⁵¹ or a return to the parent.⁵² Even though the child is removed from parental custody such disposition is not final, for the Act states that "any person interested in the minor may apply to the court for a change in custody of the minor"⁵³ This allows the parent, from whose custody the child had been removed, to request the return of the child.

Reflecting an awareness of the recidivism rate once a child has been returned to its parents, the Illinois legislature has attempted to alleviate this problem by enacting two amendments to the Juvenile Court Act. The first such amendment requires that adequate notice of any subsequent custody hearing be given to any current foster parent who is the custodian of a neglected child. This notice allows the foster parent to testify at the custody rehearing and to offer evidence of the child's previous treatment before the status of the minor may be changed.⁵⁴ Prior to the amendment the custody rehearing was often held in privacy without the knowledge of the foster parent. Under the force of the current amendment the court may receive additional evidence, in the form of the foster parent's testimony, and is thus assured of having all of the relevant facts concerning the past treatment of the child. The second amendment denies the immediate restoration of custody to any parent whose custody was revoked based on a finding of child neglect resulting from physical abuse.⁵⁵

finding of neglect and, (2) best interests of the child, as a prelude to revocation of parental custody. In relevant part the statute states that "[i]f the court finds that the minor is [neglected] and that it is in the best interests of the minor and the public that he be made a ward of the court . . . [the court] shall adjudge him a ward of the court" *Id.* § 704-8(2) [emphasis added].

49. *Id.* § 705-1.

50. *Id.* § 705-7(1)(a).

51. *Id.* § 705-7(1)(f).

52. *Id.* § 705-2(1)(c). Before the parent may regain custody of the child the statute requires a hearing as to the parental fitness if the child had been found to be neglected due to physical abuse.

53. *Id.* § 705-8(3).

54. *Id.* § 701-20(2). The amendment became effective Sept. 7, 1973.

55. *Id.* § 705-8(3). The amendment became effective Aug. 27, 1975.

In relevant part the amendment states:

custody of the minor shall not be restored to any parent . . . in any case in which the minor is found to be neglected . . . and such neglect is found by the court . . . to be the result of physical abuse inflicted on the minor by such parent . . . until such time as a hearing is held on the issue of the fitness of such parent . . . to care

While both amendments are commendable, they serve only as the first step in protection of the abused child. The expressed purpose of the Juvenile Court Act is to care for the child in his own home if possible, to preserve family ties, and to serve the best interest of the child. The Act allows removal of the child from *custody* of the parent only when the safety of the child cannot be protected.⁵⁶ Other recent legislative responses, in addition to the amendments to the Juvenile Court Act, have attempted to curtail the maltreatment of the child.

The main thrust of early child abuse prevention in Illinois was the enactment of child abuse reporting laws.⁵⁷ "With speed uncharacteristic of state legislatures, all fifty states adopted some form of child abuse reporting statute within a four year period from 1963 to 1967."⁵⁸ The objective of such laws is to receive reports of abusive treatment so as to protect the best interest of the child by offering protective services to prevent further harm.⁵⁹ The recent revision of the Illinois Reporting Act has expanded the number of persons who are required to report any suspected child abuse. The original reporting act was limited in scope and effectiveness due to the placing of mandatory requirements of reporting only upon "any physician, surgeon, dentist, osteopath, chiropractor, podiatrist or Christian Science Practitioner . . ."⁶⁰ The amendment's expanded list of persons who are required to report is inclusive of those in the previous statute plus "any . . . hospital . . . coroner, school teacher, school administrator, truant officer, social worker, social service administrator, registered nurse, licensed practical nurse, director or staff assistant of a nursery school or a child day care center, law enforcement officer, or field personnel of the Illinois Department of Public Aid . . ."⁶¹ Such an extension of the reporting laws is a laudable step. The rise in child abuse, however, raises questions as to the effectiveness of the reporting laws in combat-

for the minor and the court enters and [sic] order that such parent . . . is fit to care for the minor.

Id.

56. *Id.* § 701-2(1). The statute actually speaks to removal from the parent's custody, while stressing the strong necessity of strengthening family ties. The effect of removal from custody, as distinguished from the effect of termination of parental rights, see note 40 *supra*, allows the parent to seek the restoration of custody. The statute seems to favor the restoration in its policy statement. It further requires a liberal construction "to carry out the foregoing purpose and policy." ILL. REV. STAT. ch. 37, § 701-2(4) (1975).

57. ILL. REV. STAT. ch. 23, §§ 2051-2061 (1975) (effective July 1, 1975) (repealing ILL. REV. STAT. ch. 23, §§ 2041-2047 (1965)).

58. Thomas, *supra* note 10, at 332; see Paulsen, *supra* note 2, at 1 n.1 (citations to the reporting statutes for the fifty states).

59. ILL. REV. STAT. ch. 23, § 2052 (1975).

60. *Id.* § 2042 (1973) (repealed July 1, 1975).

61. *Id.* § 2054 (1975).

ing the problem.⁶² The information gathered from the use of reporting laws may lead to a temporary removal of the child from the custody of his parents. However, when consent to such action is withheld, a termination of parental rights is still necessary if the court intends permanently to remove the child from the parents and to provide the child with a more stable environment through adoption.⁶³

THE ADOPTION ASPECT

The essence of the artificial relationship of adoption is to provide the child with the same atmosphere of love and care that would theoretically exist if the child were the natural child of the adoptive parents. Adoption finds its roots in the ancient civilizations and the civil law.⁶⁴

In ancient times, adoption, as one of the oldest legal fictions, served to prevent the extinction of the family and became one of "the most perdurable of all artificial relationships designed to prolong the continuity of the family existence."⁶⁵ Adoption in ancient civilizations had religious overtones as each familial group constituted and contrived its own domestic worship. The adopted child was not only brought into a new family, but also a new religion and consequently was required to sever all of his past familial relationships.⁶⁶

The practice of adoption while ingrained in the Roman law and in ancient civilizations was, nonetheless, unknown in England under the Common Law.⁶⁷

The legal adoption by one person of the offspring of another, giving him the status of a child and heir of the parent by adoption was unknown to the law of England or of Scotland, but was recognized by the Roman law, and exists in many coun-

62. See McCoid, *supra* note 15; Paulsen, *supra* note 2; Thomas, *supra* note 10.

63. The motivation behind many adoption statutes is to encourage a strong family life as a means of normal child development "not only as a worthy citizen, but as a person entitled to fulfillment of his personal happiness." Simpson, *The Unifit Parent: Conditions under which a Child May Be Adopted without the Consent of his Parent*, 39 U. DET. L.J. 347, 350 (1961).

64. See generally Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743 (1955-1956) for an excellent discussion of the history of adoption. Adoption dates as far back as the Hindu laws of Manu and the Code of Hammurabi, approximately 2,000 B.C.

65. *Id.*

66. *Id.* at 743-44.

67. The English regard for blood lineage played a strong role in barring the spread of adoption to England. Since adoption was primarily for the continuation of the family the adoptee acquired an interest in the adoptor's property. Consequently, there was a lack of acceptance of adoption in England. England did not enact its first adoption statute until 1926. *Id.* at 745.

tries on the continent of Europe which derive their jurisprudence from that law.⁶⁸

The laws of the United States were derived primarily from the English common law. Adoption, therefore, did not arrive in the United States until the latter half of the 19th century⁶⁹ and was born purely as a statutory measure. Legislative enactments that have no basis in the common law are granted special treatment by the courts since there exists no case law history on which to base the interpretation of the statute.

When a statute is enacted in derogation of the common law such statute must be strictly and narrowly construed.⁷⁰ A statute in derogation of the common law creates a special power conferred by that statute. Such power lacks the aid of the common law as an interpretative agent. Consequently, the courts have employed a strict constructional approach to the actual language of the statute.⁷¹ In dealing with an adoption statute, however, the Illinois courts have developed a "substantial compliance" test which will allow an adoption so long as there is substantial compliance with the Adoption Act.

[I]t is well to remember that since the right of adoption is not only beneficial to those immediately concerned but likewise to the public, construction of the statute should not be narrow or technical nor compliance therewith examined with a judicial microscope in order that every slight defect may be magnified, rather, the construction ought to be fair and reasonable, so as not to defeat the act or beneficial results where all material provisions of the statute have been complied with.⁷²

The "substantial compliance" test, however, does not apply to a finding of unfitness in order to terminate parental rights in a situation where the parent refuses to tender his consent to

68. *Ross v. Ross*, 129 Mass. 243, 262 (1880); *accord*, *In re Tilliski*, 390 Ill. 273, 61 N.E.2d 24 (1944); *Ashlock v. Ashlock*, 360 Ill. 115, 195 N.E. 657 (1935); *Butterfield v. Sawyer*, 187 Ill. 598, 58 N.E. 602 (1900).

69. Illinois' first adoption statute was enacted in 1867. However, adoption did arrive in the United States at an earlier time. States that had based their legal systems upon the Civil Law—Louisiana and Texas—had practiced adoption prior to the enactment of legislation in derogation of the common law. *Ross v. Ross*, 129 Mass. 242 (1880).

70. The question of construction of adoption acts has been a problem area for many years. The highly remedial effect of adoption has caused a desire to require only substantial compliance, in lieu of strict compliance, with statutory requirements in cases of adoption. The argument that a mere technical flaw in pleadings should not vitiate an adoption has been upheld in Illinois. *Gebhardt v. Warren*, 399 Ill. 196, 77 N.E.2d 187 (1948); *McDavid v. Fiscar*, 342 Ill. App. 673, 97 N.E.2d 587 (1951). The Adoption Act states as the policy of the Legislature that "[t]his Act shall be liberally construed and the rule that statutes in derogation of the common law must be strictly construed shall not apply to this Act." ILL. REV. STAT. ch. 4, § 9.1-20 (1975).

71. *Brown v. Barry*, 3 U.S. (Dall.) 364, 367 (1797); *Watts v. Dull*, 184 Ill. 86, 56 N.E. 303 (1900).

72. *Carter Oil Co. v. Norman*, 131 F.2d 451, 455 (7th Cir. 1942).

the adoption.⁷³ "[T]he rights of natural parents to their children cannot be severed unless a clear and convincing case is presented in strict compliance with the Adoption Statute."⁷⁴

The Illinois Adoption Act⁷⁵ requires the termination of parental rights or parental consent before an adoption decree may be judicially rendered.⁷⁶ The termination of parental rights is judicially determined and based upon a finding of parental unfitness as defined in the Adoption Act.⁷⁷ This termination must be proven by a showing of clear and convincing proof of unfitness.⁷⁸ In consideration of the requirement of strict and narrow construction plus the requirement of clear and convincing proof for the establishment of unfitness, the legislature must clearly delineate the grounds set forth for the termination of parental rights.⁷⁹ A clear delineation would help to effectuate the benign purpose of adoption in the modern context.

73. Under the circumstances of termination of parental rights the courts require that there be a strict and narrow construction of the Adoption Act. *Watts v. Dull*, 184 Ill. 86, 56 N.E. 303 (1900). While the Adoption Act requires a liberal construction, regardless of being in derogation of common law, the case law dealing with the termination of parental rights does not follow this legislative pronouncement. *E.g.*, *In re Overton*, 21 Ill. App. 3d 1014, 316 N.E.2d 201 (1974); *In re Moriarity*, 14 Ill. App. 3d 553, 302 N.E.2d 491 (1973).

74. *In re Overton*, 21 Ill. App. 3d 1014, 1018, 316 N.E.2d 201, 204 (1974).

75. ILL. REV. STAT. ch. 4, §§ 9.1-1—1-24 (1975).

76. *Id.* § 9.1-8; *In re Schuman*, 22 Ill. App. 3d 151, 319 N.E.2d 287 (1974).

77. ILL. REV. STAT. ch. 4, § 9.1-1(d) (1975 & Supp. 1976).

78. *Culkin v. Culkin*, 30 Ill. App. 3d 1073, 333 N.E.2d 698 (1975); *In re Moriarity*, 14 Ill. App. 3d 553, 302 N.E.2d 491 (1973); see note 54 and accompanying text *supra*.

79. The grounds for a finding of unfitness are:

- (a) Abandonment of the child;
- (b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare;
- (c) Desertion of the child for more than 3 months next preceding the commencement of the Adoption proceeding;
- (d) Substantial neglect of the child if continuous or repeated;
- (e) Extreme or repeated cruelty to the child;
- (f) Failure to protect the child from conditions within his environment injurious to the child's welfare;
- (g) Other neglect of, or misconduct toward the child; provided that in making a finding of unfitness the court hearing the adoption proceeding shall not be bound by any previous finding, order or judgement affecting or determining the rights of the parents toward the child sought to be adopted in any other proceeding except such proceeding terminating parental rights as shall be had under either this Act or the Juvenile Court Act;
- (h) Depravity;
- (i) Open and notorious adultery or fornication;
- (j) Habitual drunkenness for the space of one year prior to the commencement of the adoption proceeding.
- (k) Failure to demonstrate a reasonable degree of interest, concern or responsibility as to the welfare of a newborn child during the first 30 days after its birth.
- (l) Failure to make reasonable efforts to correct the conditions which were the basis for the removal of the child from his parents

The purpose of an adoption statute is to promote the general welfare of the child and benefit society.⁸⁰ The status of the adopted child⁸¹ is changed in relation to the adoptive parent in a process in the nature of an *in rem* proceeding⁸² with the effect that "[t]he decree, by force of . . . statute, establishe[s], *eo instanti* its rendition, the relation of parent and child, impos[ing] upon the parties the reciprocal duties and obligations of that relation"⁸³ The modern adoption statute has, therefore, altered the ancient concept of "adoption as furthering the family" to "adoption for the welfare of the child and the benefit to society."⁸⁴ "The true genesis of our adoption laws, whatever their exact vintage, seem to lie in the increasing concern for the welfare of neglected and dependent children"⁸⁵ and thus the promotion of societal interests.⁸⁶

The most striking consequence of the adoption process is the ultimate effect upon the relationship of the natural parent to the adopted child. The requirement in ancient civilizations of a complete severance by the adopted child of all previous familial bonds has been carried to the modern adoption statutes.⁸⁷ Consent to adoption by the natural parent or a finding that such parent is unfit is a prelude to the conclusive severance of parental rights. In a consensual termination of parental rights,⁸⁸ the parent voluntarily relinquishes any claims upon the child. An order terminating parental rights on a finding of unfitness also dissolves all legal claims to the child.⁸⁹ Consequently, a termina-

or to make reasonable progress toward the return of the child to his parents within twenty-four months after an adjudication of neglect under Section 2-4 of the Juvenile Court Act. ILL. REV. STAT. ch. 4, § 9.1-1(D) (1975 & Supp. 1976).

80. *E.g.*, *People ex rel. O'Conner v. Cole*, 322 Ill. 95, 152 N.E. 554 (1926); *Hopkins v. Gifford*, 309 Ill. 363, 141 N.E. 178 (1923).

81. *See* 2 J. AUSTIN, JURISPRUDENCE 709-11 (1869) (discussion of status).

82. *Van Matre v. Sankey*, 148 Ill. 536, 36 N.E. 628 (1893).

83. *Id.* at 558-59, 36 N.E. at 634.

84. *See generally* Kuhlman, *Intestate Succession by and from the Adopted Child*, 28 WASH. L.Q. 221, 223-24 (1943).

85. Huard, *The Law Of Adoption: Ancient And Modern*, 9 VAND. L. REV. 743, 748 (1955-1956).

86. *People ex rel. O'Connor v. Cole*, 322 Ill. 95, 152 N.E. 554 (1926).

87. "[A]doption severs conclusively the rights and interests of natural parents." *In re Shuman*, 22 Ill. App. 3d 151, 153, 319 N.E.2d 287, 289 (1974); *accord*, *Willey v. Lawton*, 8 Ill. App. 2d 344, 132 N.E.2d 34 (1956).

88. ILL. REV. STAT. ch. 4, § 9.1-8 (1975 & Supp. 1976).

89. *E.g.*, *People v. Gibbs*, 30 Ill. App. 3d 878, 333 N.E.2d 266 (1975); *Jackson v. Russell*, 342 Ill. App. 637, 97 N.E.2d 584 (1951).

After the entry either of an order terminating parental rights or the entry of an order of adoption, the natural parents of a child sought to be adopted shall be relieved of all parental responsibility for such child and shall be deprived of all legal rights as respects the child, and the child shall be free from all obligations of maintenance and obedience as respects such natural parents.

ILL. REV. STAT. ch. 4, § 9.1-17 (1975 & Supp. 1976).

tion of parental rights is a harsh step which the courts believe must only be taken upon strict compliance with the grounds set forth in the adoption statute.⁹⁰

With the termination of parental rights, the parent foregoes all of the benefits that a natural parent normally enjoys, yet some of the liabilities remain. The adopted child may still inherit property from the natural parent even though there has been a judicial termination of parental rights.⁹¹ The natural parent may also discover that regardless of the termination of the rights, including all obligations, there still exists a duty of the natural parent to support the adopted child if the adopting parent fails to do so.⁹² While the child's right to inheritance continues and the natural parents' duty to support remains, the natural parent retains only a limited benefit.⁹³ Another adverse consequence of the termination of parental rights is the forfeiture of the natural parents' right to child visitation.⁹⁴ Due to such severe consequences, the courts are reluctant to allow involuntary termination unless the statute defining unfitness is strictly complied with.

Grounds For Involuntary Termination Of Parental Rights

Absent parental consent to adoption, a finding of unfitness must occur before a termination of parental rights may be ordered.⁹⁵ Such a finding of unfitness must be made in accord-

90. "In adoption it is not the duty of the court to determine if petitioners could best provide for the child. The court must first determine if statutory grounds for adoption exist." *Oeth v. Erwin*, 6 Ill. App. 2d 18, 22, 126 N.E.2d 526, 528 (1955). See notes 70-73 and accompanying text *supra*. A finding of unfitness based upon the grounds set forth in the Adoption Act has also been incorporated into the Juvenile Court Act. See note 95 and accompanying text *infra*.

91. See, e.g., *In re Cregar*, 30 Ill. App. 3d 798, 333 N.E.2d 540 (1975) (construing ILL. REV. STAT. ch. 3, § 2-4 (1975)). The statute allows the child to inherit from both his adoptive and natural parents. The statute further allows the adoptive parents and their lineal and collateral kindred the right to inherit from the child.

92. *Dwyer v. Dwyer*, 366 Ill. 630, 10 N.E.2d 344 (1937); *Anderson v. Anderson*, 320 Ill. App. 75, 49 N.E.2d 841 (1943); *Ryan v. Foreman*, 181 Ill. App. 262 (1913), *aff'd*, 262 Ill. 175, 104 N.E. 189 (1914).

93. The natural parent may, however, inherit from the adopted child any property that the child had received from the natural parent or his lineal or collateral heirs by gift, will or by intestacy laws. ILL. REV. STAT. ch. 3, § 2-4(b) (1975).

94. *People v. Gibbs*, 30 Ill. App. 3d 878, 333 N.E.2d 226 (1975). The adoptive parent does not actually replace the natural parent in all legal respects. A distinction between the natural parents and the adoptive parents still remains with the child always being the child of the natural parents, even though all obligations on behalf of the child are removed. *In re Leichtenberg*, 7 Ill. 2d 37, 131 N.E.2d 487 (1956).

95. ILL. REV. STAT. ch. 37, § 705-9(1) (1975) (The Juvenile Court Act requires consent of the parent or a finding of unfitness under the Adop-

ance with the grounds set forth in the Adoption Act as expressly incorporated into the Juvenile Court Act.⁹⁶ Many of the provisions enacted set forth viable instructions for the court in arriving at a decision on termination. Abandonment,⁹⁷ desertion,⁹⁸ depravity,⁹⁹ open and notorious adultery or fornication,¹⁰⁰ habitual drunkenness,¹⁰¹ failure to care for a newborn,¹⁰² and failure to correct conditions from which an earlier finding of neglect has arisen¹⁰³ are statutory grounds for unfitness. The mentioned statutory grounds are clear and explicit. Other grounds, however, tend to be ambiguous—a factor working against a finding of parental unfitness.

Such other grounds as the failure to maintain a reasonable degree of interest,¹⁰⁴ the failure to protect the child from an injurious environment,¹⁰⁵ substantial neglect if continuous and repeated,¹⁰⁶ other neglect or misconduct,¹⁰⁷ and extreme or repeated cruelty¹⁰⁸ fail to sufficiently illuminate the exact requirements which are necessary for a finding of unfitness. Such a failure causes a degree of uncertainty within the statute, and consequently, a finding of unfitness in *strict compliance* with those grounds is extremely difficult. The idea of allowing the

tion Act). ILL. REV. STAT. ch. 4, § 9.1(D)(g) (1975 & Supp. 1976) requires a finding under the Adoption Act or the Juvenile Court Act for termination.

96. ILL. REV. STAT. ch. 37, § 705-9(3) (1975).

97. ILL. REV. STAT. ch. 4, § 9.1-1(D)(a) (1975). Abandonment requires proof of an intent by the parent to relinquish all claims, duties, and obligations to the child. "Abandonment is conduct on the part of a parent which demonstrates a settled purpose to forgo all paternal duties and to relinquish all parental claims to the child." *In re Cech*, 8 Ill. App. 3d 642, 644, 291 N.E.2d 21, 23 (1972). *Accord*, *Townsend v. Curtis*, 15 Ill. App. 3d 209, 303 N.E.2d 566 (1973); *In re Moriarity*, 14 Ill. App. 3d 553, 302 N.E.2d 491 (1973).

98. ILL. REV. STAT. ch. 4, § 9.1-1(D)(c) (1975). The legislature distinguishes desertion from abandonment by specifying each as a separate ground. *Stalder v. Stone*, 412 Ill. 488, 107 N.E.2d 696 (1952); *Hill v. Allabaugh*, 333 Ill. App. 602, 78 N.E.2d 127 (1948). Desertion is an intention to terminate custody only and not to terminate all parental claims and obligations. *In re Cech*, 8 Ill. App. 3d 642, 291 N.E.2d 21 (1972); *In re Smith*, 4 Ill. App. 3d 261, 280 N.E.2d 770 (1972).

99. ILL. REV. STAT. ch. 4, § 9.1-1(D)(h) (1975). Depravity has been defined as "an inherent deficiency of moral sense and rectitude." *Stalder v. Stone*, 412 Ill. 488, 498, 107 N.E.2d 696, 701 (1948). *Accord*, *Taylor v. Starkey*, 20 Ill. App. 3d 630, 314 N.E.2d 620 (1974).

100. ILL. REV. STAT. ch. 4, § 9.1-1(D)(i) (1975); *Culkin v. Culkin*, 30 Ill. App. 3d 1073, 333 N.E.2d 698 (1975).

101. ILL. REV. STAT. ch. 4, § 9.1-1(D)(j) (1975).

102. *Id.* § 9.1-1(D)(k).

103. *Id.* § 9.1-1(D)(l); *People v. Gibbs*, 30 Ill. App. 3d 878, 333 N.E.2d 226 (1975).

104. ILL. REV. STAT. ch. 4, § 9.1-1(D)(b) (1975); *In re Einbinder*, 31 Ill. App. 3d 133, 334 N.E.2d 187 (1975).

105. ILL. REV. STAT. ch. 4, § 9.1-1(D)(f) (1975); *People v. Gibbs*, 30 Ill. App. 3d 878, 333 N.E.2d 226 (1975).

106. ILL. REV. STAT. ch. 4, § 9.1-1(D)(d) (1975).

107. *Id.* § 9.1-1(D)(g) (1975 & Supp. 1976).

108. *Id.* § 9.1-1(D)(e) (1975).

courts great flexibility in defining unfitness so as to permit such a finding under varied factual situations is a laudable idea since each case turns on its own peculiar set of facts.¹⁰⁹ The requirement of strict compliance with the statutory provisions, however, must be viewed as a limitation to this judicial elasticity when such provisions are difficult to define.

Due to the uncertainty inherent in a finding of unfitness, the courts, acting under the Juvenile Court Act, frequently find a child to be "neglected," thereby temporarily avoiding permanent termination of parental rights. In *In re Garmon*,¹¹⁰ although the trial court found that the children had been abused and neglected, the children were returned to the custody of their parents under court supervision.¹¹¹ The *Garmon* court failed to terminate parental rights of the natural parents because of the difficulty it had in determining "whether or not the degree of neglect was such that the parents have forfeited their natural rights"¹¹² Therefore, the courts may *find* that a person¹¹³ caring for a child has physically abused that child but *conclude* that no permanent revocation of rights should occur.

In *People v. Paris*,¹¹⁴ the stepfather of the injured children was criminally convicted of cruelty to children under an Illinois statute which provided for imprisonment from one to three years.¹¹⁵ In this case the defendant had stripped the children of their clothing and whipped them with a length of insulated electric bell wire with almost two inches of copper wire exposed. Bloody marks were found on the children *six days later* when one of them "complained to his teacher that he hurt."¹¹⁶ The natural mother had protested but took no action to stop the attacks. Because it was his first offense and testimony was of-

109. *In re Grant*, 29 Ill. App. 3d 731, 331 N.E.2d 219 (1975).

110. 4 Ill. App. 3d 391, 280 N.E.2d 19 (1972).

111. "Child protection service is foster-home care and counseling; in most communities it is of inadequate quality, continuity and supervision by a welfare department." N.Y. Times, March 2, 1976, at 32, col. 3; *accord*, [1974] U.S. CODE CONG. & AD. NEWS 2763.

112. 4 Ill. App. 3d at 393, 280 N.E.2d at 20.

113. While a termination of parental rights is being dealt with in this comment, the Adoption Act does not restrict a finding of unfitness solely to a parent. "[A]ny person whom the court shall find to be unfit to have a child sought to be adopted . . ." (ILL. REV. STAT. ch. 4, § 9.1-1(D) (1975)) may be permanently denied accessibility to a child.

114. 130 Ill. App. 2d 933, 267 N.E.2d 39 (1971).

115. ILL. REV. STAT. ch. 23, § 2368 (1975) ("[a]ny person who shall willfully and unnecessarily . . . in any manner injure in health or limb any child . . . shall be guilty of a Class 4 felony."). ILL. REV. STAT. ch. 38, § 1005-8(1)(b)(5) (1975) (a class 4 felony permits a sentence of one year to a maximum of three years). The judge, however, may reduce or modify the sentence. ILL. REV. STAT. ch. 38, § 1005-8(1)(d) (1975).

116. *People v. Paris*, 130 Ill. App. 2d 933, 935, 267 N.E.2d 39, 41 (1971). The children's ages ranged from three years of age to seven years of age.

ferred that the defendant was actually a *mild mannered* person, the appellate court remanded the case to the circuit court for resentencing in accordance with its opinion and ordered the sentence restricted to a fine or probation. The abused children were merely removed from the custody of their mother and the defendant without a termination of parental rights based upon unfitness.¹¹⁷ The offense committed was serious enough to allow a sentence in the penitentiary for a maximum period of three years, yet under the Adoption Act neither the defendant nor the mother were found to be unfit. Whether the lack of such a finding is based upon the inadequacy of the Adoption Act or the failure of the judge to act in accordance with the Adoption Act, the fact remains that the child suffers.

It appears that often the termination of parental rights is based upon judicial whim. In *Townsend v. Curtis*,¹¹⁸ the appellate court stated that it should not reverse the circuit court's decision concerning the unfitness of the natural parent unless such decision was against the weight of the evidence. The *Townsend* court, therefore, refused to reverse a finding of unfitness,¹¹⁹ based on the ground of abandonment,¹²⁰ where the divorced natural father, while serving a prison sentence, contributed child support and sent occasional postcards. This situation raises the question as to whether or not the legislature has established proper judicial standards for a finding of unfitness. The lack of proper legislative guidance is apparent where the court allows termination in a *Townsend*-type case as compared with the situation where a child is severely beaten,¹²¹ or where a child lacks food, proper medical care and is continually placed in physical danger¹²² and termination is *not* permitted. Failure to provide

117. Since the children are placed in a foster-home the possibility exists that the mother and the defendant would regain custody. See notes 36-40 and accompanying text *supra*.

118. 15 Ill. App. 3d 209, 303 N.E.2d 566 (1973).

119. The appellate court did state, however, that under the facts the denial of a termination would be proper. *Id.* at 212, 303 N.E.2d at 569.

120. See note 99 *supra*. But cf. *In re Moriarity*, 14 Ill. App. 3d 553, 302 N.E.2d 491 (1973) where the appellate court reversed a finding of abandonment when the parent, recently released from jail, failed twice to keep an appointment to see her child.

121. *People v. Paris*, 130 Ill. App. 2d 933, 267 N.E.2d 39 (1971).

122. *In re Garmon*, 4 Ill. App. 3d 391, 280 N.E.2d 19 (1972). In *Garmon*, the children were found to be abused, without needed medical attention for infected diaper rash and sores, dirty, and ill-fed. Testimony was also introduced to show that the baby was often found covered with flies. There was no running water or electricity, improper sanitation and an out-house that had been inoperative for a long period of time. The police had been summoned on a number of occasions in order to quell fights between the parents which placed the children in physical danger. In a previous proceeding to the one at bar, a trial court, after considering the situation, returned the children to the custody of the parents. The persistence of these conditions eventually caused parental termination.

strict legislative standards creates uncertainty among the courts and may play a major role in causing the unwarranted return of a child to an otherwise unfit parent.

The Best Interests Of the Child

The Adoption Act requires that "[t]he welfare of the child shall be the prime consideration in all adoption proceedings."¹²³ While the "prime consideration" of the statute is clearly the "welfare of the child," the judicial interpretation of the statute has been otherwise. The termination of parental rights involves immediate and future consequences that the natural parent should not be forced to accept based solely upon the "welfare of the child." While the welfare of the child may require that the child be placed with a party better equipped financially and emotionally to care for it, the natural parent's right to the society and service of his child should not be displaced unless parental violation of the statute on unfitness has occurred.¹²⁴ Absent consent, a finding of unfitness is required for termination and consequent adoption. Without such a finding, there can be no adoption regardless of the child's needs.¹²⁵

The Adoption Act also requires that "[t]he best interests and welfare of the person to be adopted shall be of paramount consideration in the construction and interpretation of this Act."¹²⁶ The courts, however, have recognized that the inherent rights of the natural parent cannot be judicially abrogated absent clear and convincing proof of a statutory violation. Thus, the best interest of the child tends to play an important but subservient role.¹²⁷

Unless the proof is clear that the natural parents are unfit to have the care, custody and control of the child, the contest for the control of the child's future between persons having no vested interest in the child . . . as against the natural law which binds a mother to her child, should be resolved in favor of the mother.¹²⁸

123. ILL. REV. STAT. ch. 4, § 9.1-15 (1975).

124. *In re Shuman*, 22 Ill. App. 3d 151, 319 N.E.2d 287 (1974); *In re Walpole*, 5 Ill. App. 2d 362, 125 N.E.2d 645 (1955).

125. See *In re Smith*, 4 Ill. App. 3d 261, 280 N.E.2d 770 (1972); *Robinson v. Neubauer*, 79 Ill. App. 2d 362, 223 N.E.2d 705 (1976).

126. ILL. REV. STAT. ch. 4, § 9.1-20a (1975).

127. E.g., *In re Gonzales*, 25 Ill. App. 3d 136, 323 N.E.2d 42 (1974); *Breger v. Seymour*, 74 Ill. App. 2d 197, 219 N.E.2d 265 (1966).

128. *In re Dickholtz*, 341 Ill. App. 400, 404, 94 N.E.2d 89, 91 (1950). See *In re Cech*, 8 Ill. App. 3d 642, 645, 291 N.E.2d 21, 23-24 (1972) ("[A]bsent consent or unfitness, an adoption can[not] be granted solely upon the basis of the best interest of the child."); accord, *Tiernan v. Stewart*, 33 Ill. App. 3d 545, 338 N.E.2d 153 (1975); *In re Grant*, 29 Ill. App. 3d 731, 331 N.E.2d 219 (1975). The best interests of the child are not independent grounds for allowing a termination. *Culkin v. Culkin*, 30 Ill. App. 3d 1073, 333 N.E.2d 698 (1975).

The proper environment for a child is of paramount importance when the issue to be decided is *custody* and not *termination* of parental rights.¹²⁹ The Juvenile Court Act states that parental rights cannot prevail when the court determines that such rights are contrary to the child's well-being.¹³⁰ Relief for the child may be the compelling reason behind a temporary revocation of custody. However, it cannot be the sole dictate for a similar result in an adoption proceeding.¹³¹

Adoption, which effects the course of inheritance deprives a child of a place in which it was placed by nature, and by force of law thrusts the child into another relationship, while severing forever and conclusively the legal rights and interests of the natural parents, and is a very different matter from a change of custody, which could be on a temporary basis.¹³²

CONCLUSION

Child abuse, which is currently at epidemic levels, creates not only personal injuries to the child but also scars society as a whole. One of the expressed purposes of adoption is the benefit to society by providing the care to which these unfortunate children are entitled.¹³³ Preventing the spread and incidents of child abuse is a benefit to society in that the abused child, may be prevented from becoming an abusing adult.¹³⁴ This correlation between allowing adoption and the prevention of child abuse is therefore of great import.

Legislative attempts to protect the abused child have proven ineffective in checking the growth of abuse. The increase in the incidents of child abuse are testimony to the ineffectiveness of such legislation as the child abuse reporting laws.¹³⁵ In Illinois, cases of suspected child abuse have been reported in increasing numbers from 500 in 1965, to 800 in 1972. The number of incidents estimated to have occurred in Illinois, however, number

129. See note 40 *supra*, for the distinction between custody and termination.

130. ILL. REV. STAT. ch. 37, § 701-2(3) (c) (1975).

131. See *People ex rel. Edwards v. Livingstone*, 42 Ill. 2d 201, 247 N.E. 2d 417 (1969); *In re Grant*, 29 Ill. App. 3d 731, 331 N.E.2d 219 (1975); *In re Cech*, 8 Ill. App. 3d 642, 291 N.E.2d 21 (1972).

132. *Jackson v. Russell*, 342 Ill. App. 637, 639, 97 N.E.2d 584, 585 (1951). See generally Comment, *The Best Interests Of The Child—The Illinois Adoption Act In Perspective*, 24 DE PAUL L. REV. 100 (1974).

133. *Bartholow v. Davies*, 276 Ill. 505, 114 N.E. 1017 (1916); *Meyer v. Meyer*, 32 Ill. App. 189 (1899).

134. See Harper, *The Physician, the Battered Child, and the Law*, 31 PEDIATRICS 899 (1963).

135. Studies have shown that incidents of abuse range from the hundreds of thousands to the millions, yet reports of incidents are only a fraction of those numbers. The discrepancy between the number of incidents and the number of reported cases, while not conclusive, does indicate the inadequacy of the reporting laws to expose child abuse let alone work as a preventative measure. See generally *The Child Abuse Epidemic*, *supra* note 29, at 403.

between 17,500 and 200,000.¹³⁶ The reluctance of private physicians to report suspected cases of child abuse, especially when the physician is a personal friend of the perpetrator or his family, is a partial explanation for the discrepancy between the number of incidents estimated and the actual number of reported cases.¹³⁷ Such reported cases may constitute only the "more sensational 'tip of the iceberg.'" ¹³⁸

With the reported incidents of abuse representing only a small portion of the number of children actually maltreated the legislature and the judiciary must act, not to vindictively abrogate the laws of nature but rather to designate a class of persons who shall forfeit such natural rights. Social and welfare agencies cannot adequately fulfill this role on their own.

While the medical profession plays a major role in the identification of the battered child and will have a primary role in the alleviation of the consequences of parental abuse and the rehabilitation of the abuser, and while the welfare and social worker must play major roles in the resolution of the problem, ultimately the solution must be legal, in the form of legislation and judicial decisions and the machinery of the state designed for the protection of the child.¹³⁹

The judiciary generally seeks to glean the legislative intent from the statutes that have been enacted. The apparent policy of the legislature is toward child protection and the courts, reluctant as they are to terminate parental rights when nonconsensual,¹⁴⁰ should pay more than mere lip service to this legislative intent.

In no area is the combined work of the legislature and the judiciary needed more than in the area of reducing the rate of child abuse recidivism.¹⁴¹ The courts must work to prevent situations where a child is returned to his parents' custody only to be hung upside down by his ankles and beaten until he dies,¹⁴² or where a mother regains custody of her child after an initial removal for abuse and then beats the child to death.¹⁴³

136. *Id.* at 404.

137. *Id.* at 404 n.16. The recent amendment expanding the category of people required to report suspected child abuse should have a beneficial effect upon lowering the discrepancy between the number of child abuse incidents and the number of reported cases. Yet the same factors of not wanting to be involved and personal friendship with the suspected abuser may cause the reported incidents to remain lower than the actual incidents.

138. Thomas, *supra* note 10, at 334.

139. McCoid, *supra* note 15, at 3.

140. See notes 93-96 and accompanying text *supra*.

141. The difficulty in preventing the initial incident makes it even more imperative that the recidivism rate be lowered. Even though the first attack cannot be stopped, it is within the court's power and the legislature's power to combat a recurrence.

142. Chicago Tribune, Sept. 1, 1972, at 1, col. 1. The infamous case of six year old Johnny Lindquist.

143. N.Y. Times, Feb. 10, 1976, at 35, col. 1. The recent amendment to the Juvenile Court Act denying the return to the parent of a physically

Adoption therefore, although not a panacea, assists in the reduction of recidivism while concurrently promoting the natural parent-child relationship.

The ability to prove child abuse in a court of law is often very difficult.¹⁴⁴ One problem is that each incident of abuse tends to contain a unique set of facts.¹⁴⁵ In the battered child syndrome, child abuse is manifested not only by the immediate injury but also by the discovery of old or hidden injuries.¹⁴⁶ Once child abuse is found, the burden of proof should be placed upon the parent to prove that he is fit to retain his parental rights. The child's right to safety should take precedence over the parental right to the custody of his child.

The assumption that, generally the child is "better off" in the home, surrounded by the loving care of his parents is no doubt sound enough, but the exceptions are sufficiently numerous to warrant more attention by appropriate agencies and professional individuals, public and private, than they have received.¹⁴⁷

The basic premise that the child receives better care in the home of his natural parent is questionable when such parental care includes abuse.¹⁴⁸ The experiences of child maltreatment requires, in the words of the former Secretary of Health, Education, and Welfare, Caspar W. Weinberger, that "child abuse and neglect . . . is grave and that we have yet to find 'an ultimate solution' "¹⁴⁹ in today's society.

Socio-economic conditions,¹⁵⁰ the lack of employment¹⁵¹ and emotional stress¹⁵² serve as contributing factors in the dilemma's growth rate and in the continuation of the cyclical pattern in which an abused child becomes an abusing adult. "With the many stresses all of us experience these days, there is more adult frustration and anger which can trigger child abuse."¹⁵³ Swift judicial and legislative action is, therefore, urgently needed to prevent child abuse. In an effort to facilitate such action the following legislative amendments to the Adoption Act's definition of an unfit person are proposed.

abused child, before a hearing as to parental fitness, will hopefully alleviate this problem. ILL. REV. STAT. ch. 37, § 705-8(3) (1975).

144. See Paulsen, *The Legal Framework for Child Protection*, 66 COLUM. L. REV. 675 (1966).

145. *In re Grant*, 29 Ill. App. 3d 731, 331 N.E.2d 219 (1975).

146. See note 1 *supra*. Soft tissue, healing sores and scratches, and bones in various stages of repair all indicate a prior abuse. See also *People v. Jackson*, 18 Cal. App. 3d 504, 95 Cal. Rptr. 919 (1971).

147. Harper, *The Physician, the Battered Child, and the Law*, 31 PEDIATRICS 899 (1963).

148. Comment, *The Best Interests Of The Child—The Illinois Adoption Act In Perspective*, 24 DE PAUL L. REV. 100 (1974).

149. [1974] U.S. CODE CONG. & AD. NEWS 2763, 2766.

150. Thomas, *supra* note 10, at 334-38.

151. N.Y. Times, Jan. 3, 1976, at 21, col. 2.

152. See Fontana, *We Must Stop The Vicious Cycle Of Child Abuse*, 50 PARENT'S MAG. 8 (1975).

153. *Id.*

“Unfit person” means any parent or other person responsible for a child whom the court shall find to be unfit to have the child sought to be adopted, the grounds of such unfitness being any one of the following:

- (a) Abandonment of the child;
- (b) Desertion of the child for more than three months next preceding the commencement of the adoption proceeding;
- (c) Depravity;
- (d) Open and notorious adultery or fornication;
- (e) Failure to demonstrate a reasonable degree of interest, concern or responsibility as to the welfare of a newborn child during the first thirty days after birth;
- (f) Failure to make reasonable efforts to correct the conditions which were the basis for the removal of the child from the parent’s custody or to make reasonable progress toward the return of the child to his parents within twenty-four months after an adjudication of neglect under Section 2-4 of the Juvenile Court Act;
- (g) Addiction to a hazardous substance or habitual drunkenness for the space of one year prior to the commencement of the adoption proceeding provided that the addiction is so severe that the person lacks the capacity to control or provide for the child sought to be adopted;
- (h) The infliction or allowance of an infliction of any act which causes grievous bodily harm, by other than accidental means, or any act which tends to cause disfigurement or loss of bodily function, by other than accidental means;
- (i) The performance or allowance to be performed of any act of sexual abuse with or upon the child;
- (j) Any act of omission or commission which subjects the child to an injurious environment, by failing to provide the minimum degree of care in supplying adequate education, food, supervision, shelter, clothing, medical or surgical or other remedial care, so as to indicate harm or threatened harm to the child’s health or welfare, provided that the person having custody of the child is financially able to provide the minimum degree of such care;
- (k) Any other act of omission or commission, not ordinary or reasonable, which creates or allows to be created a serious deteriorating or endangering of the health, emotional well-being or morals of the child.

Mark S. Kaizen