Development of a Model Act to Free Children for Permanent Placement: A Case Study in Law and Social Planning

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Development of a Model Act to Free Children for Permanent Placement: A Case Study in Law and Social Planning*

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INTRODUCTION 262
I. STATUS OF CHILD WELFARE SERVICES IN UNITED STATES 262
   A. Child Welfare—Overall Well-being of Children 262
   B. Child Welfare—A Field of Services 265
      1. Protective Services 267
      2. Foster Care 273
      3. Adoption Services 276

II. DEVELOPMENTAL PLANNING PROCESS 279
   A. Planning Stages 279
      1. Definition of Planning 280
      2. Task Definition 281
      3. Research 283
      4. Policy Formulation 284
      5. Programming, Reporting and Feedback 285

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B. Major Social Policy Issues
   1. The Title
   2. Social Services
   3. Whose Interest Controls?
   4. Availability of an Adoptive Home
   5. Foster Parents

C. Major Legal Issues
   1. Specificity of Grounds
   2. Standard of Proof
   3. Counsel for Parents
   4. Counsel for Child
   5. Notice Owed Unwed Father

III. MAJOR PROVISIONS OF THE MODEL ACT
   A. General Mandate to Staff
   B. General Policy Provisions
   C. Definitions
   D. Who May Petition
   E. Grounds for Termination
      1. Voluntary Termination
      2. Involuntary Termination
   F. Procedural Due Process
      1. Contents of Petition
      2. Notice and Waiver
      3. Conduct of Hearings
      4. Preliminary Hearing
      5. Standard of Proof
      6. Time-frame for Proceeding
   G. Dispositional Phase
      1. Role of Child’s Guardian ad litem
      2. Psychosocial Assessment and Report
      3. Dispositional Orders

CONCLUSION

APPENDIX

Model Act to Free Children for Permanent Placement
Introduction

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.¹

Principle 2—United Nations Declaration of the Rights of the Child

American society appears to be child-centered. Certainly, during the twentieth century, major efforts have been made in the United States to promote the general welfare of children. There have been successful attempts to prevent industrial exploitation of children;² most states have legislation that expresses a public policy to promote the physical, moral and intellectual development and well-being of children;³ states have enacted compulsory education laws,⁴ mandatory child abuse and neglect reporting laws;⁵ and the stigma attached to birth out-of-wedlock is gradually declining.⁶ Over the

⁴ Every state with the exception of Mississippi requires persons between the ages of six or seven and sixteen to attend school. Most states have constitutional or statutory provisions for free public education including special provisions for mentally or physically handicapped children. Federal courts have held that children may not be excluded from school simply because they are labeled as mentally retarded, emotionally disturbed, hyperactive, or subject to behavioral problems. Compulsory school attendance laws stress an obligation to receive care and socialization.
⁵ BRIELAND & LEMMON, SOCIAL WORK AND THE LAW 63 (1977). See, e.g., MASS. GEN. LAWS ANN. ch. 76, § 1; ch. 71 B.
⁷ Steady progress is being made to accord children status as individuals, without concern
past decade "the rights of children" has been a central theme of concern for some child welfare advocates. Compared with most children elsewhere, children in the United States have a high standard of housing, clothing, nutrition, education, security, energy and good prospects for the future. Yet the high number of children who are deprived, fail in schoolwork, suffer or die, is hard to justify given the nation's affluence.

In the United States and other countries attempts are being

for the marital status of their parents at the time of their birth. Various states have legislatively extended to children born out-of-wedlock all the rights and privileges to which legitimate children are entitled under current state law. See e.g., 1978 Pa. Laws, Acts 288 (H.B. 1521), 289 (H.B. 1523) and 303 (H.B. 2007) as reported in 5 FAM. L. REP. 2235 (BNA) (January 23, 1979).

7. THE RIGHTS OF CHILDREN, supra note 1, at ix.

The assumption by lawyers of the role of advocates for children, either through litigation or policy channels, has created waves of reform in education (the right to be in school), institutional care (the right to treatment), income maintenance (the right to support), and education for the retarded and handicapped.

A.J. Kahn, Child Welfare, in ENCYCLOPEDIA OF SOCIAL WORK 112 (1977) [hereinafter cited as Child Welf.]. The literature in this area is extensive. See generally THE RIGHTS OF CHILDREN 7-46; Foster & Freed, A Bill of Rights for Children, 6 FAM. L.Q. 343 (1972), reprinted in I THE YOUNGEST MINORITY 318 (S.N. Katz ed. 1974); CHILDREN'S RIGHTS REPORT, since 1976 published ten times each year by the Juvenile Rights Project of the American Civil Liberties Union Foundation.


By virtue of the authority vested in me by the Constitution of the United States of America, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I) and the United Nations General Assembly resolution of December 21, 1976 which designated the year 1979 as the International Year of the Child, and as President of the United States of America, in order to provide for the observance of the International Year of the Child within the United States, it is hereby ordered as follows:

Section 1. Establishment of Commission. (a) There is hereby established the National Commission on the International Year of the Child, 1979, hereinafter referred to as the Commission.

* * *

Section 2. Functions of the Commission.

* * *

(b) In promoting this observance the Commission shall foster within the United States a better understanding of the special needs of children. In particular, the Commission shall give special attention to the health, education, social environment, physical and emotional development, and legal rights and needs of children that are unique to them as children.

* * *

Section 5. Final Report and Termination. The Commission shall conclude its work and submit a final report to the President, including its recommendations for improving the well-being of children, at least 30 days prior to its termination. The Commission shall terminate on April 1, 1979.

10. "The General Assembly of the United Nations has proclaimed the year 1979 as the International Year of the Child and designated the United Nations Children's Fund as the lead
made to focus attention during 1979 on the needs of children as part of the observance of the International Year of the Child (IYC). One of the general objectives of the International Year of the Child is: "To provide a framework for advocacy on behalf of children and for enhancing the awareness of the special needs of children on the part of decision-makers and the public."  

All governments have been urged: . . . to expand their efforts at the national and community levels to provide lasting improvements in the well-being of their children, with special attention to those in the most vulnerable and particularly disadvantaged groups. It is significant that 1979 also marks the twentieth anniversary of the United Nation's Declaration of the Rights of the Child. Observance of IYC should serve as an occasion to prompt further implementation of these basic rights.

It is well-documented that children need loving, nurturing parents or parent surrogates as well as stability and continuity of caring, so that they may grow up to be responsible and contributing adults, capable of mature parenting if that be their choice of role. Thus, the focus on removing barriers to achieving stability and continuity of caring for all children has a societal imperative, as well as urgency for meeting the developmental needs of individual children.


12. Id. at 14.
14. See Cohen et al. supra note 10. This classification plan provides a standard form for compiling and reporting a country's laws concerning the rights of the child. The key system should facilitate comparability of laws among nations.
16. There is evidence to support the view that "[t]his generation's battered children, if they survive, will in most cases be the next generation's battering parents." V. Fontana, The Maltreated Children of Our Times, 23 Vill. L. Rev. 448, 451 (1978). The state clearly "has its own interest to protect—that of seeing that children are brought up to become well-
As a case study in law and social planning, this article first reviews the present status of child welfare services in America. The pressing need to give priority to permanent planning for many children who are living within the foster care system without assurance of stability or continuity of caring is recognized. Next, the planning process used to develop a legal response, in the form of a model act, is reviewed in detail and critiqued in light of social planning theory. The major social policy and legal constitutional issues addressed during development of the act are discussed. The final part of this article describes the key sections of the act. Rationales for various provisions are presented with references made to recent trends in case law, state legislative enactments and sound child welfare practice.

I. Status of Child Welfare Services In United States

Alfred J. Kahn has identified four ways in which the term "child welfare" is used in the United States and recognized throughout the world. He says that "child welfare" may refer to: "(1) a field of service, (2) a specialized form of social work practice adapted to the needs of service programs for children, (3) the overall well-being of children, or (4) the policies and activities that contribute to the well-being of children." Child welfare, as described by (3) and (4), may overlap with "family policy," and so be subsumed under social policy.

A. Child Welfare—The Overall Well-being of Children

The maltreatment of children is as old as recorded history. Infanticide, ritual sacrifice, exposure, mutilation, abandonment, brutal discipline and the near slavery of child labor have existed in all cultures at different periods, and have been justified by disparate

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beliefs—that they were necessary to placate a god, to expel spirits, to maintain the stability of a race or simply to inculcate learning. Practices viewed today as victimizing children were accepted for long periods in civilized communities as "in the best interest" of society. The Spartans with their exposure of infants, the English and New England owners of factories partly "manned" by children of eight or ten, the Southern slave owners, were all convinced that their treatment of children was beneficial to the community and perhaps to the children themselves.20

In this country, the family is the basic societal unit. To it, fundamental responsibility has been delegated to care for and rear children in such a manner as to assure continuity of an ordered society, peopled by productive, contributing members.21 Thus, "the family is our society's primary child welfare institution."22 Since primary responsibility for child rearing has been given to the family unit, to improve the well-being of children generally, the capacities of individual families to nurture and rear their children successfully should be promoted and strengthened. Traditionally, when a family has needed help, "voluntary" supports provided by friends, the church or neighborhood have been viewed more favorably than aid provided by voluntary or governmental agencies.23 But, the family has come to share its childrearing responsibilities with many other social institutions. Decision-making and allocations regarding public education, housing, health services, school lunches, food stamps, income maintenance, recreational and cultural programs


all have significant impact, directly or indirectly, on the individual well-being of all American children.24

Kahn asserts that a major prerequisite to enhancement of the general well-being of all children, a comprehensive survey of the status of American children, does not exist. He claims that:

[S]uch a survey is probably beyond the present state of data collection and the art of measurement. A comprehensive survey would cover such major concerns as health, learning, safety, creativity, sense of fairness and other important values, preparation for constructive life roles, and access to needed resources. Most reports that purport to deal with the status of children really deal with interventions on behalf of children, not with how the children are from the perspective of specified and accepted criteria.25

As yet, no organization, voluntary or governmental, has a clear mandate to advocate on behalf of, or plan and implement overall policies and programs to further the well-being of all children.26 This is not to overlook the existence and efforts of both federal agencies, notably the U.S. Department of Health, Education, and Welfare (DHEW), primarily through the Children's Bureau,27 state public agencies,28 and parallel voluntary organizations.29 National organizations, like Child Welfare League of America (CWLA) and

27. Since 1912, the U.S. Children's Bureau (CB—now within HEW), "has carried on, with changing emphasis, these various functions: investigation, research, advocacy, standard-setting, service demonstration programs and coordination." Id. at 102. In 1969 the Children's Bureau became a subunit of HEW's Office of Child Development (OCD). As a result of reorganization under the Carter Administration, the CB is now a subunit of the Administration of Children, Youth and Families (ACYF) within the Office of Human Development Services (OHDS). For a critical review of the role played by the CB and the general absence of children's policy leadership at any high level of government, see G. STEINER, THE CHILDREN'S CAUSE (1976).
28. At the state level, public child welfare service agencies are often part of state public welfare departments. Sometimes they directly deliver services; sometimes they contract out to private voluntary agencies. A. KAHN, STUDIES IN SOCIAL POLICY & PLANNING 253 (1969).
29. In the United States there exists a voluntary private child welfare system of both sectarian and nonsectarian agencies that deliver services on the local level. Child Welf. supra note 7, at 102.
devote all or part of their efforts to setting child welfare policies, expanding or protecting specific services, or addressing specific needs."

Nevertheless, some observers conclude that the interests of all children, as contrasted with those of specific groups of handicapped or deprived children, are not powerfully represented in the federal government. Apparently, one of the realities of life in our society is that it is easier to mobilize support and constituencies to combat a specific problem, condition or need that affects an identifiable delimited group, like physically handicapped or abused children, than to undertake sustained efforts on behalf of all children. Further consideration of the current lack of effective mechanisms to promote the well-being of all American children is beyond the scope of this article. It clearly is not the present central focus of child welfare services in the United States.

B. Child Welfare—A Field of Services

The majority of American child welfare activities are best subsumed under references (1) and (2) supra. As a field of services in the United States, child welfare is a subsector of general social services and deals with only a small proportion of this country’s chil-
children who belong to "a minority of families in which parental behavior creates hazards for children that demand a protective response."  

Child welfare services may be supportive, supplementary or provide substitute care. Some services may be viewed as preventive, but generally they are always deemed "case" services that are selectively, not universally allocated. Unlike a universal social utility, such as a public nursery program—available to all on the basis of status (age) rather than problem or difficulty, most child welfare services are reached through a diagnostic door of intake, assessment and/or adjudication. As such, there is often some degree of stigma attached to their receipt. While specialized services for children first developed during the nineteenth century in response to public concern with the "food, shelter, clothing and education of..."
 orphaned, destitute, indigent children (economic problems),”42 and with the need to protect children, such as little Mary Ellen,43 today, the range of child welfare services has been expanded to also include the psychological welfare of poor children, as well as the emotional health and safety of children whose parents have enough money to provide for their physical needs.44

1. PROTECTIVE SERVICES

For nearly two decades the shocking reality of child abuse and neglect45 occurring in every stratum of American society has aroused wide public and private concern.46 Abuse and neglect has been identified as the most important problem in child welfare and as a major cause for placement of children in foster care.47 In 1974 the federal government became committed to the establishment and funding of a National Center of Child Abuse and Neglect (NCCAN).48 Since its establishment within the U.S. Children’s

42. Datta, supra note 2, at 222.

43. For discussion of how the plight of Mary Ellen’s brutal mistreatment by foster parents sparked the beginning of the child protection movement in the 1870’s, see Thomas, supra note 20, at 307-310. The New York City Society for the Prevention of Cruelty To Animals was the only existing organization that could be mobilized to intervene on her behalf. See also. R. Mulford, Protective Service for Children in 2 ENCY. OF SOC. WORK 1115 (1977).

44. Datta, supra note 2, at 222.

45. “Abuse” is commonly defined in terms of serious physical injury. It is the intentional, non-accidental use of physical force, or the intentional, non-accidental acts of omission, on the part of a parent or other caretaker interacting with a child in his care, that result in injury that endangers the health or life of the child.

“Neglect” is an uncertain concept both legally and in social application. It has sometimes been defined exclusively in terms of subjecting a child to physical harm from the lack of adequate food, clothing, shelter and supervision. But “neglect” can also be conceptualized as a failure to ensure positive social and psychological development of the child that results in emotional and mental harm to the child. Katz, supra note 2, at 22 views child neglect as occurring when the dominant expectations for parenthood are not met and a parent fails to provide for a child’s needs according to the preferred values of the community.

Some commentators also recognize “community neglect” which occurs when there is evidence of persistently inadequate community resources for child care and where the behavior and attitudes of community authorities offer little likelihood of improved resources without outside intervention. H. Lewis, Parental and Community Neglect, 16 CHILDREN 114 (1969).

Federal legislation defines “child abuse and neglect” as “the physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child under the age of eighteen by a person who is responsible for the child’s welfare under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby . . . .” The Child Abuse Prevention and Treatment Act of 1974. Act of Jan. 31, 1974, Pub. L. No. 93-247, 88 Stat. 5 (codified at 42 U.S.C. § 5103 (Supp. V 1975))).

For additional reading, see generally, V. Fontana, THE MALTREATED CHILD (3d ed. 1977) and THE BATTERED CHILD, supra note 20.


47. Id. See B. Boehm, Protective Services for Neglected Children, in CHILD WELFARE SERVICES: A SOURCEBOOK 4-17 (A. Kadushin ed. 1970).

48. The Secretary of DHEW was directed to establish a center that would:
Bureau, it has played a major role in mobilizing both lay and professional resources to combat abuse and neglect of children. Yet, the incidence of abuse and neglect, of children maimed and/or killed by their parents or substitute caretakers increases at an alarming rate.49

As early as 1962, amendments to the Social Security Act of 193550 clearly placed responsibility for child protective programs in the public welfare agencies by requiring that all states have a comprehensive plan for child protective services operational by 1975. At the state level, public concern was so great that between 1963 and 1967, all 50 states enacted laws requiring the reporting of injuries inflicted on children.51 Some of the first laws were passed hastily and reflected public indignation against parents who abuse children.52 During the 1970s all the 50 states, the District of Columbia, American Samoa, Puerto Rico and the Virgin Islands amended

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49. According to the U.S. NATL CENTER ON CHILD ABUSE & NEGLECT. DEPT OF HEALTH, EDUC., & WELF., CHILD ABUSE & NEGLECT REPS. 7 (Feb. 1977), approximately 1 million children are maltreated annually. Of these children, 100,000 to 200,000 are physically abused, 60,000 to 100,000 are sexually abused, and the remainder are neglected. More than 2,000 children die in circumstances suggestive of abuse or neglect. As cited in D. Besharov, The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect. 23 VILL. L. REV. 458 (March 1978).


51. DEFRANCIS & LUCHT. supra note 5, at 6.

52. Id.
prior laws or enacted new mandatory reporting laws.\textsuperscript{53}

Douglas Besharov, former director of NCCAN, has reviewed how amendments of State laws have generally increased the number of mandated professional reporters, the specificity of what is reportable, and the investigatory procedures to be followed by the receiving agency.\textsuperscript{54} Many states now provide for the appointment of counsel to represent the child in any resulting abuse and neglect proceedings.\textsuperscript{55} The child protective agency designated to receive reports is expected to take the following steps:

1. provide immediate protection to the child, through temporary stabilization of the home environment or, where necessary, protective custody;
2. verify the validity of the report and determine the danger of the children via personal visitation of the home;
3. assess the service needs of children and families;
4. provide or arrange for protective ameliorative and treatment services; and
5. institute civil court action when necessary to remove a child from a dangerous environment or to impose treatment on his family.\textsuperscript{56}

Staff of the local child protective agency must possess certain skills to adequately carry out the above steps. Staff must be well trained in early identification of children at risk. Staff need to have keen interviewing skills and to be able to make diagnostic assessments about the quality of parent-child interactions. It is critical that staff have a profound understanding of and sensitivity to differing ethnic and socio-economic class childrearing patterns and family structures.\textsuperscript{57}

\textsuperscript{53} Id. at 7; Berninger, supra note 5, at 23.
\textsuperscript{54} D. Besharov, The Legal Aspects of Reporting Known and Suspected Child Abuse And Neglect, 23 Vill. L. Rev. 458, 464-69; 471-75; 491-99 (1978) [hereinafter cited as Besharov].
\textsuperscript{But cf. Institute of Judicial Administration & American Bar Association, Joint Commission on Juvenile Justice Standards, Standards Relating to Abuse and Neglect (tent. ed. 1977) (R. Burt & M. Wald, Reporters) [hereinafter cited as II/ABA Standards] (proposed standards would limit mandatory reporting to suspected physical abuse).}
\textsuperscript{56} Besharov, id. at 495.
\textsuperscript{57} It is very important that protective service workers be able to distinguish between those cultural subgroup practices at variance with dominant group practices, yet not harmful to
In addition to traditional counselling and homemaker services to help the child remain in his/her own home, many agencies today also offer a range of group work services in the form of mother or parent groups. Various new strategies are being used, such as self-help Parents Anonymous, hotlines, emergency drop-in nurseries and child development centers.58 Recent research identifying new strategies both for early identification of potential children at risk and means of providing potential abusing parents with training in sound parenting skills are examples of preventive child welfare services modeled after public health secondary intervention.59

Some child welfare professionals recognized early that the 1962 Social Security Act Amendments and the enactment of state reporting laws would offer an opportunity to broaden, enrich and transform the field of public child welfare.60 It was wondered whether public agencies would be willing and able to expand their services to respond to increasing demands. Would protective services be important enough to require state and county agencies to adhere to federal and state standards? Would new public funds be allocated

child development and those practices and parental behaviors that are pathological and detrimental to sound child development.

58. Besharov, supra note 54, at 495. "After early emphasis on the 'rescue' of children and the prosecution of 'offending' parents, there has been an accelerating movement toward social and rehabilitative services." Id. at 493.

There is also increasing agreement that study, understanding and development of programs to deal effectively with child abuse and neglect are beyond both the professional competence of any one of the related professional disciplines—medicine, law, social work, psychiatry, psychology or others, and the capacity of any single community resource—law enforcement, welfare programs, courts, hospitals, private family agencies. Effective programs require interdisciplinary efforts and coordination of community resources. See generally, P. Agostino, Dysfunctioning Families and Child Abuse: The Need for An Interagency Effort, 30 PUB. WELF. 14 (1972); B. Steele, Experience with An Interdisciplinary Concept in Child Abuse & Neglect: The Family & The Community 163-168 (R. Helfer & C. Kempe eds. 1976) [hereinafter cited as CHILD ABUSE & NEGLECT].

Fontana, supra note 16, at 457 described the New York Foundling Hospital Center for Parent and Child Development as reputedly the only comprehensive in- and out-patient child abuse and neglect program in the United States.

In summary, the innovative approach of the multifaceted program . . . to the treatment and prevention of child maltreatment attempts to break the generational cycle of the battered child syndrome by a technique of behavior modification through corrective child care experiences, education in homeworking skills, environmental assistance and psychotherapy. This broad based concept of treating both parents and child has proven effective in providing crisis management services that not only protect the maltreated child but also simultaneously allow preventive rehabilitative treatment for the maltreated child and his family (emphasis added).

59. See CHILD ABUSE & NEGLECT supra note 58, at 363-407 for discussion of studies and issues related to early recognition of potential problems. See also, note 40 supra.

60. See Brieland, supra note 50.
to implement programs? Some clearly viewed the status of protective services as constituting a national dilemma and crisis. 61

In response to increased reporting during the mid-1970s, some states have sought to up-grade their child protective services by attempting to legislate the specific responsibilities and functions to be assumed by child protection agencies. 62 Other states 63 have enacted reporting laws without ensuring that a system existed to respond to the reports generated by the law. Besharov urges that all proposed child protection legislation fully and honestly describe the investigative and treatment services needed to support a strong reporting law.

All elements of the community should be clearly and unambiguously prepared for the full costs of an effective child abuse and neglect prevention and treatment program. Only if the real issues of prevention and treatment are faced openly can sufficient community and professional support be developed for the needed long term effort. To do less would be irresponsible and indefensible. 64

Since World War II, statistics indicate a slow but continuous rise in the annual number of neglect or dependency cases brought in our courts. 65 During the 1970s, as mandatory reporting requirements expanded, 66 there has also been a rapid rise in the number of children in foster care. 67 The incidence of reported child abuse and

64. Id. at 498-99. Besharow also id. at 496 refers to the problem of understaffing that plagues many public agencies. Some agencies experience 100 percent turnover every year or so. In such instances, the quality of services rendered may often be detrimental to the welfare of the families the agency is charged to serve. Undoubtedly this has contributed, as one reviewer of the IJA/ABA STANDARDS (supra note 54) recently commented, to "the current distrust of altruism and paternalism and the resulting disparagement of the parens patriae function of the state in protecting and aiding children" that is reflected in the proposed narrowing of statutory grounds for coercive intervention into the family. N. Dembitz, Book Review, 91 HARV. L. REV. 1940 (1978).
66. See supra notes 53 & 54.
67. See note 79 and accompanying text infra.
neglect is high among the poor and nonwhite minority groups.\textsuperscript{68} Our justice system has sometimes operated unevenhandedly upon those from lower socioeconomic and minority groups.\textsuperscript{69} Some may wonder if safeguards are needed to insure that the concept of \textit{parens patriae} is not misused to punitively intervene into the privacy of the family unit or to arrogantly impose dominant group standards and rules upon subgroups within our society.\textsuperscript{70}

A continuing basic legal issue with respect to child abuse and neglect is how to maintain a proper balance between state intervention into the privacy of the family on behalf of children at risk and the necessity to minimize state intrusion in order to preserve the essentials of our democratic society—individual autonomy and independence. The very quality of family life would change if it were constantly held up to public view.\textsuperscript{71} Should each and every family be visited as part of a communitywide screening effort to identify cases of abuse and neglect? Just how far should society attempt to monitor childrearing? Should the community organize itself for ultimate knowledge of how all, not just some, children are reared? If criteria for determining abuse and neglect were ever applied unevenly to various strata of our population, the quality of our democratic society could be destroyed, just as surely as the systematic denial of equal opportunities for participation within our society makes a mockery of our principles.

Yet, the societal dilemma, in a survival sense, is that a responsible society is justified in intervening to ensure that its children are reared to become responsible adults.\textsuperscript{72} Since the law has traditionally conceptualized the parent-child relationship in terms of "rights" and "duties,"\textsuperscript{73} intervention is justified if there is evidence of harm or the severe threat of harm to the child, since under the doctrine of

\begin{table}
\begin{tabular}{|c|c|}
\hline
\textbf{Criteria for Determining Abuse and Neglect} & \textbf{Evidence Indicating Harm}\tabularnewline
\hline
- \textit{Evidence to indicate that a large number of abused and neglected children will grow into adolescence and adulthood with tendencies towards committing crimes of violence.}\tabularnewline
\hline
\end{tabular}
\end{table}
parens patriae, the state is the ultimate guardian of every child. The sole purpose of a court inquiry into the behavior of allegedly abusive and neglectful parents should be to determine what harm their behavior has caused, is causing, or if uncorrected, could reasonably be anticipated to cause to the child. 74

Various proposals have been advanced regarding standards to govern intervention into the family in cases of abuse and neglect. 75 Should the standard of proof vary depending upon whether it is a question of initial intervention, removal from the parental home, or termination of parental rights? Should the age of the child make a difference? Resolution of these legal issues and sufficient allocation of funds for support services and programs staffed by well-trained personnel are pressing challenges. Action is needed if timely decision-making is to occur in behalf of individual children which will promote in them a sense of security and permanence within a stable family, if not theirs by birth, then within one formalized via adoption or long-term guardianship.

2. FOSTER CARE:
The majority of child welfare services under Title IV-B have not been supportive or supplementary, but substitute-care services: foster home, institutional or group care, or adoption. 76 While the purpose clauses of most state child neglect laws commit the state to support and strengthen natural families, 77 the existing infrastruct-

For fiscal year 1978, $266 million was authorized for Title IV-B federal matching funds to be allotted to states. But only $56.5 million was appropriated for a wide range of child welfare services and for foster care payments. [Phone conversation with Jim Huttleston, ACYF/HEW Staffer, Jan. 11, 1979.] “Thus, less than 20 percent of the authorized funds [were] actually available to the states . . . [A]pproximately 80 percent of the appropriated funds were used exclusively by the states for foster care maintenance payments for children not eligible for AFDC benefits instead of for the establishment of preventive services.” Senate Finance Committee Doing Its Own Thing On Welfare Reform, Cong. Q.—HEW 1865, 1867 (Sept. 3, 1977) as cited in Note, Foster Care and Adoption Reform: An Overview, 16 J. Fam. L. 751, 761 (1977-78) [hereinafter cited as Foster Care & Adoption Reform].
77. Child Neglect Laws, supra note 3 at 18-19; 52.
ture of child welfare services is geared more to placing children in substitute care than to providing rehabilitation services to the family. Until recently, direct work to strengthen care in natural families has been limited. Partially as a result, the number of children in foster care annually has increased from about 241,000 in 1960 to more than 500,000 in 1977, while the number of adoptive placements has been declining since 1971. In 1976 Frank Ferro, Children's Bureau Chief, estimated that perhaps 50 to 80 percent of the children in the foster care system were adrift, with no planned goal having been set for them.

Arthur C. Emlen, principal investigator on the Oregon Permanent Planning Project, wrote the following in the August 1978 issue of the project bulletin, Case Record:

In our eagerness to serve, teach, or protect children, we are sometimes led to ignore the parents. . . .
The absence of adequate and timely services to the family creates . . . a lack of "due process of service." . . .

78. Mnookin, testifying (Sept. 8, 1976) at Hearings on Foster Care in the United States before the House Subcommittee on Select Education stated that "because of funding pressures and social welfare staffing, foster care is sometimes the only remedy available to the state for responding to family problems." R. Mnookin, Foster Care: The Federal Role, All From The Family 5 (A.A.L.A. FAMILY & JUVENILE LAW SECTION NEWSLETTER, No. 4, December 1976).

Many agree that the foster care system is in need of an overhaul and that the present federal program is at odds with the best interests of children. Foster Care & Adoption Reform, supra note 76, at 752. Studies of the existing foster care system document an unfortunate lack of preventive and reunification services for the family. See Who Knows? Who Cares? Forgotten Children in Foster Care, 1979 Report of the Nat'l Commission on Children in Need of Parents; Vasaly, Foster Care in Five States: A Synthesis and Analysis of Studies from Arizona, California, Iowa, Massachusetts and Vermont, Social Research Group, The George Washington University (DHEW Publication No. (OHD) 76-30097).

Of critical importance is the cost reimbursement system for agency foster care services. Under the "per capita" reimbursement system used in many states, agencies are reimbursed according to the numbers of children actually served. Discharge related costs are often non-reimbursable; often there is a financial disincentive to either free the child for adoption or to work to return the child to his/her own home. In The Child's Best Interests, supra note 15 at 458 n.75 (citations omitted). Another ironic feature is that foster payments to support a foster placement are greater than payments to support a child through AFDC in his own home. Natl Council of Organizations for Children & Youth, America's Children 1976: A Bicentennial Assessment 85.

79. Ferro, supra note 76; Shyne & Schroeder, supra note 25.
80. Ferro, supra note 76.
81. "Freeing Children for Permanent Placement" was a 3-year demonstration project of the State of Oregon, Children's Services Division, supported by the Children's Bureau, Office of Child Development, U.S. Dep't of Health, Educ., & Welf. under grant CB-OCD No. 481. See Regional Research Inst. for Human Services, Portland State University, Overcoming Barriers to Planning for Children in Foster Care. ACYF/DHEW (DHEW Publication No. (OHDS) 78-30138 [hereinafter cited as Overcoming Barriers] (evaluation report).
When concern for children is coupled with inadequate technology for supporting parental capability, or an absence of resources or policies that strengthen the family, then we have created pressure to make unnecessary use of substitute forms of care and treatment. We overkill. . . .

"Due process of service" also means doing enough. In situations of extreme and probably long lasting parental inadequacy, the solution may not be foster care but termination of parental rights and adoption. . . . While termination of parental rights is a "radical" legal remedy, in another sense it is a less radical concept than foster care; a permanent legal family is more likely to offer security and protection than foster care if planning drifts, temporary becomes prolonged, relationships attenuate and the future blurs.82

"The decade of the '70s may prove to be a turning point in the history of foster care of children in the United States."83 That many more children annually enter the foster care system than leave it was recognized in a 1976 special issue of the U.S. Children's Bureau publication, Children Today. The foreword to this issue expressed the hope that the included articles would further development of a child welfare system that would:

1. reduce the need for separation of children from their natural parents;
2. improve the formulation, timeliness and execution of permanent placement plans for children who must be removed from their own homes; and
3. improve the quality of services to those children who require substitute care.84

More supportive and supplemental services to children in their own homes were called for through encouragement of self-referrals and outreach activities, including but not limited to hot-lines, information and referral services and utilization of day care. Change within the substitute care system was urged that would make all forms of foster care time-limited and goal-directed. A system for decision-making that included periodic review and case management activities was suggested to combat the reality of children adrift within the system instead of being reunited with natural parents or placed in adoptive homes or with permanent guardians.85

82. Emlen, supra note 22, at 1-2.
83. K. Wiltse, Foster Care in the '70s: A Decade of Change. (Paper presented to the Third National Permanency Planning Conference, Danvers, Mass. August 1978) (excerpts in CASE REC. 1-3 (November 1978)).
84. Ferro, supra note 76.
85. Id.
Fanshel and Shinn\textsuperscript{86} articulated this new perspective on foster care when they wrote:

A newly emphasized criterion is being used to assess the adequacy of an agency's performance, namely, whether a child can be assured permanency, in his living arrangements and continuity of relationship. It is not enough that he might be placed in a foster family home that offers him family-like care. If he cannot regard the people he is living with as his family on a permanent basis, his situation is increasingly regarded as reflecting something less than an adequate resolution of his life situation (emphasis in original).

3. ADOPTION SERVICES

Adoption, another aspect of current child welfare services, is a widely recognized institution with historical roots traceable into antiquity.\textsuperscript{87} Although the motivation to adopt may still include an interest in continuing a family line or in securing rights of inheritance, the key focus is now upon creation of a parent-child relationship between the adoptive couple or single person and the child.

There have been other notable shifts in social attitudes and agency practices regarding adoption. Once adoption was only available for the perfect or near-perfect baby. This led to prolonged study and observation before final placement after the first year of life. Basic changes in agency philosophy have resulted in earlier placements—eventually under three months of age, and placements of children with physical or psychological handicaps. The increasing use of contraceptives, a generally declining birth rate and an increased willingness of single parents to keep their babies are all factors that may have contributed to changed practices and attitudes, given a reduction in the supply of "ideally adoptable infants" without any appreciable reduction in the numbers of applicants seeking to adopt.\textsuperscript{88}

\textsuperscript{86} D. Fanshel & E. Shinn, Children in Foster Care: A Longitudinal Investigation 478 (1978) as cited in Wiltse, supra note 83.

\textsuperscript{87} Adoption was recognized in the Babylonian codes of Hammurabi and legally regulated in Greece, Egypt and Rome. In Ancient Greece and Rome the purposes differed substantially from those emphasized today. Then, the continuity of a particular family's male line was the main goal. The welfare of the adoptor in both this world and the next was a primary concern with little focus upon the welfare of the adoptee. See Clarke Hall & Morrison's Law Relating to Children & Young Persons 502 (5th ed. Butterworth & Co. Ltd. 1956) as quoted in Adoption, 1 Ency. Britannica 165d (200th Anniversary ed. 1969); Kadushin, Child Welfare: Adoption and Foster Care in 1 Ency. of Soc. Work 103-111 (16th edition 1971).

\textsuperscript{88} See E. Landes & R. Posner, The Economics of the Baby Shortage, 7 J. Legal Stud. 323 (1978). This article develops a model of the supply and demand for adoptive babies under the existing pattern of state and agency regulation. The authors argue that regulation has created both a baby shortage (and, as a result, a black market) and has contributed to a
American adoption laws and agency practices have tended to focus upon establishing a permanent new parent-child relationship with the adoptive parents. Over the last decade the need to safeguard and equitably balance three sets of sometimes conflicting interests: those of the child, the natural biological parents, and the adoptive parents—the adoptive triad—has received much attention in the literature and from concerned private interest groups.89

When it became apparent in the 1970s that more children entered the foster care system annually than left it either to return to their biological families or to move into new adoptive homes, studies90 were undertaken to discover why. Two major reasons were identified: (1) that many of these children were in "special circumstances"91 and could not be adopted without public financial assistance; and (2) that foster children are often not legally free to be placed in a permanent living arrangement. To meet the needs of children in special circumstances, the Children's Bureau commissioned the drafting of a Model State Subsidized Adoption Act92 to help remove one of the barriers to adoption. The efforts of the Boston College Law and Child Development Project to legally free children for adoption are discussed in Parts II and III infra.

At the end of 1978, some form of subsidized adoption had been enacted in all but seven (7) jurisdictions.93 Experience has...
demonstrated that subsidy is a viable strategy for moving youngsters out of foster care into permanent placements. States have realized substantial cost savings. 94 The biggest continuing impediment to increased adoptions, however, is the nonavailability of federal money to support or encourage adoption. 95 Some viewed the 1975 Social Service Amendments—Title XX of the Social Security Act, 96 as heralding a major new opportunity to serve children and youth. States that choose to use federal money for supplemental services to facilitate placements of children with special needs could now submit proposals for Title XX funding. However, current federal expenditure for such services average only a small percent of the $2.5 billion available under Title XX. "Compared to the average cost of $2,800 a year that the federal government invests per foster child, it spends only $5 per child per year on adoptive services." 97

The Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 mandated the Secretary of DHEW to develop a model adoption code by October 31, 1979, but did not, as yet, eliminate federal disincentives to the adoption of children in foster care. Federal legislation is still needed to permit a federal contribution to a state adoption subsidy and to make more monies available to support efforts to reunite a family or to legally free a child for

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94. Subsidized adoption is cost effective. The subsidy is generally far below the average cost of foster care. Even when the payment is identical to that under foster care, adoption eliminates most of the administrative overhead cost (which may total over 20 percent of the costs of maintaining a child in placement) by precluding the necessity of salaried case-workers monitoring the family. For example, for 1976 Delaware reported average foster care costs of $2,244.00 compared to average subsidy costs of $1,104.00; Virginia reported $1,980 for foster care as compared to $345 for subsidy; and New Jersey, $3,078.40 for foster care as compared to $825.00 exclusive of administrative costs or medical payments. Memorandum, Utilization of Subsidy in CWLA Eastern Region—Some Selective Cost Figures, May 1977 (on file B.C. Law and Child Development Project). See generally Foster Care & Adoption Reform supra note 76, at 756-57, n.18; Note, The Implementation of Subsidized Adoption Program: A Preliminary Survey, 15 J. FAM. L. 732 (1976-77).

95. See Foster Care & Adoption Reform supra note 76, at 768-69. Under present law, federal AFDC matching funds are not available for adoption subsidies for AFDC foster care children, and maintenance payments cease with an adoption.


adoption. Presently, states must grapple with the reality that once a child, often formerly in foster care and in all probability eligible for AFDC payments is adopted, the state loses the federal foster care matching funds and must cover the subsidy payments solely from state resources.

II. Developmental Planning Process

Many children, “drifting” within the foster care system, are not legally free for adoption.98 Their status is thus a major barrier to permanency. To address this major barrier, the Model Act to Free Children for Permanent Placement was developed as the result of a long, carefully structured planning process—one that valued and actively sought out representative participation from all viable segments of the child welfare community. First, the developmental stages of the Act will be reviewed chronologically from the perspective of social planning theory. Second, the major social policy and constitutional legal issues addressed during the drafting will be discussed.

A. Planning Stages

In democratic societies, like the United States, there exists a need for a multiplicity of planning centers in the administrative and executive branches of government, as well as in the voluntary sector.

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98. The problem of children adrift in foster care has been a matter of recurrent concern in the child welfare field. . . . Perhaps more dramatically than any other single study, Maas and Engler’s Children in Need of Parents (1959) demonstrated how allowing children to drift in an indefinite state of temporary foster care tends to lock the children into the foster care system ever more firmly with the passage of time. If children . . . drift in this state of limbo for 1½ or 2 years, their chances of ever leaving it [are] slim.


AMERICA’S CHILDREN 1976, supra note 97, at 84 states: “Estimates of the number of foster children permanently adrift in foster care, never returning to their own homes, vary from 50 percent to 80 percent.” From the figures in Shyne & Schroeder, supra note 25, at 1 it appears that nearly one out of every five youngsters in foster care (100,000) at the end of March 1977 had been in foster care at least six years. Of the more than 500,000 children in foster care, there is no accurate figure for the number legally free for adoption. Currently, it is estimated that about 102,000 have been processed for adoption. (Phone conversation with Elaine Schwartz, Children’s Bureau Adoption Specialist, ACYF/HEW, Jan. 11, 1979.)

It should be emphasized that the imprecision in child welfare statistics is notable. Some states do not report to DHEW; other states send data, but it is incomplete or inexact. Some data refer to one-time counts; other data may refer to program participation over a year without clearly specifying the time period. Child Welf., supra note 7, at 101.
"In a theoretical sense, then, any citizen or group of citizens has a "right" to plan and to offer policy guidelines and specific programmatic proposals to the politically established decisionmaking machinery." 99 It is notable that in this area of termination of parental rights there has been diversity of planning. The planning and policy discussion in the area of termination of parental rights has included participation of citizens, specialists, politicians, governmental departments and interests groups. Various statutory proposals in this area have been advanced. 100

1. DEFINITION OF PLANNING

"Planning begins with a problem, a widely felt need, major dissatisfaction or crisis." 101 It is a normative activity that has been variously broken down into stages or steps. 102 Successful implementation of a rational planning process "involves policy choice and programming in light of facts, projections and application of values." 103 Objectives must be clarified, alternative solutions and their positive or negative consequences considered. Evaluation should be continuous to improve strategy and programs.

These planning steps may be subsumed under the broad categories of: (1) task definition; (2) research; (3) policy formulation; (4) programming; and (5) reporting, feedback and evaluation. Development of the Model Act and related activities by the Boston College Law and Child Development project staff can be analyzed in terms of such a rational planning model.


101. KAHN, THEORY & PRACTICE, supra note 99, at 12.

102. See GILBERT & SPRECHT, supra note 41, at 14-21 for comparison of models of policy development. One model conceptualizes the planning process as involving five basic stages: (1) definition of the problem; (2) establishment of structural and communication links for consideration of the problem; (3) study of alternatives, solutions and adoption of a policy; (4) development and implementation of a program plan; and (5) monitoring and feedback. R. PERLMAN & A. GURIN, COMMUNITY ORGANIZATION & SOCIAL PLANNING 58-74 (1972).

Gilbert & Sprecht posit an eight stage policy formulation process including: (1) identification of the problem; (2) analysis; (3) informing the public; (4) development of policy goals; (5) building public support and legitimation; (6) program design; (7) implementation; and (8) evaluation and assessment. Id. at 16.

103. KAHN, THEORY & PRACTICE, supra note 99, at 18. According to Kahn, planning "is a team activity dependent on subject matter expertise, research skills, social science scholarship, competence in administration, and capacity to generate expressions of value choices, and the achievement of consensus where possible." Id.
2. TASK DEFINITION

As noted in Part I, child abuse and neglect is considered the most pressing problem for child welfare today and as a major cause for placement of children in foster care. During the 1970s the numbers of children reported annually in foster care more than doubled over those reported in 1960. Although the need for permanency planning had been recognized nearly twenty years ago in the literature, it was during the early 1970s, as part of the growing child advocacy movement that the U.S. Children's Bureau and CWLA played key roles in sponsoring and supporting research that identified two major drawbacks to decreasing the numbers of children inappropriately within the foster care system and to increasing effective permanent planning for children entering the system. (1) Few states had effective mechanisms for tracking or monitoring youngsters within their foster care systems. At any given point in time, it was unclear how many children were at what point along a continuum from entry into care to either return to their families or movement into adoptive homes. (2) Even if youngsters were "targeted" for adoption, the laws were often not helpful in facilitating termination of parental rights. In some states provisions for termination of parental rights were buried in adoption statutes, usually included in sections governing required consent or waivers of consent to adoption. Before a child is legally free to be adopted, it is often very difficult for an agency to engage in meaningful adoptive planning.

The Oregon Project—"Freeing Children for Permanent Placement" pioneered in addressing the backlog of children whose status in foster care was indeterminate, drifting and vague. First, the project developed screening criteria to identify within the state
foster care caseload children who had been in care more than one year, were not likely to return home and were adoptable.\textsuperscript{111} Five hundred and nine (509) children from 17 of Oregon's 36 counties were identified and assigned to one of 15 project caseworkers charged with effectuating a permanent plan for each youngsters. By October 31, 1976, three years after the project officially began, permanent placements had been implemented for 72 percent of the 509 children accepted by the project: 131 returned to their parents, 184 were adopted (96 by foster parents and 88 by new parents), 37 were in contractual foster care, and 15 went to relatives.\textsuperscript{112} Where termination of parent-child relationships was indicated it occurred in two ways. Some parents voluntarily relinquished their rights to the agency; in other instances where parents did not release voluntarily, referrals were made to the Metropolitan Public Defender's Office in Portland. This office was under contract with Children's Service Division to represent the child in state judicial termination of parental rights proceedings. How the project accomplished permanent planning for these youngsters has been recorded in Overcoming Barriers to Planning for Children in Foster Care (DHEW Publication No. (OHDS) 78-30138). Through a National Center for Child Advocacy follow-up contract, the Regional Research Institute for Human Services of Portland State University has provided 25 or more states with technical assistance in the utilization of permanent planning strategies developed by the Oregon Project.\textsuperscript{113}

As part of its commitment to promote greater permanency for children within our foster care systems, the U.S. Children's Bureau, Office of Child Development, in 1974, awarded a three year grant\textsuperscript{114} to the Law and Child Development Project of Boston College Law School to develop model state legislation to govern termination of parental rights.

While the Oregon Project was a major effort to develop and demonstrate strategies for changing social service agency practices, the

\textsuperscript{111} Overcoming Barriers, \textit{supra} note 81, at 1.
\textsuperscript{112} Id. at 4-5.
\textsuperscript{113} Id. at 118. In a separate, but tandem effort, ACYF/HEW has awarded demonstration grants to states to replicate the Oregon Project in 1976, 1977 and 1978.
\textsuperscript{114} Legal Bases for Child Protection, Grant No. OCD-CB-473. Staff: Director, Professor Sanford N. Katz; Assistant Director, Professor Ruth-Arlene W. Howe; Constitutional Law Consultant, Professor Jerome A. Barron; Project Administrator, Melba McGrath; Research Assistants, Maura Connelly, James Hanrahan, Michael Pfau, Alan L. Phillips, John Racicot, Peter Zupcofska; Secretary, Rosalind Kaplan.
B.C. Law and Child Development Project goal was to develop a model state act that would facilitate the kind of permanent planning results achieved in Oregon.

3. RESEARCH

The first steps undertaken by staff to develop the Model Act involved comparative legal research and analysis conducted during 1974 and 1975 to inquire into what a termination statute should include. All the existing state approaches to termination were studied and charted. In addition, a comparative analysis was made of the laws of the nine States which then had separate termination chapters in their statutes. The kinds of provisions typically included, the most frequently used grounds for termination, and the required evidentiary standards were all noted. From the study of these nine state termination chapters, it was concluded, in a working paper, that a model act might contain some 18 clauses. Clauses taken from Idaho and New Hampshire were used to put together a suggested model act. During this initial stage of comparative legal research staff wrote two other working papers.

In February 1975, the above background materials were sent to the project's constitutional law consultant, who prepared a series of working papers that grappled with these problems:

1. The extent to which the Constitution requires termination standards to be explicit or precise?
2. What standards of proof should be required—civil or criminal? and
3. To what extent is counsel mandated by the Constitution for parents? For children?

Four working papers on the constitutional aspects of termination, entitled: (1) Vagueness; (2) Quantum of Proof; (3) Counsel for Parents; and (4) Counsel for Children were produced and dis-

115. See Child Neglect Laws, supra note 3, at 47-49; 66-68.
116. As of August 1974, only nine states: Arizona, California, Georgia, Idaho, Nevada, New Hampshire, New York, Texas and Wyoming (dealt with termination in separate chapters in their statutes). Id. at 66.
tributed to members of the National Advisory Committee\textsuperscript{120} attending the first meeting held in Washington, D.C., May 5, 1975.

At the close of this introductory phase, project staff framed three major policy questions for the Advisory Committee to consider:

1. As between parents and children, whose interests should be controlling?
2. Does the State have a responsibility to offer substantial social service prior to initiating a termination proceeding? and
3. Should the availability of an adoptive home be a controlling factor in determining whether termination is decreed?

4. POLICY FORMULATION

The next planning phase in the development of the Model Act spanned the 15-month period between May 1975 and September 1976. Project activities during this period were a blend of continuing research, policy formulation, programming, and feedback and evaluation, as a series of drafts were prepared and reviewed by the National Advisory Committee.

Two vehicles were utilized for crystallizing the formulation of consensus on the key policy issues identified during the initial research period. First, five meetings of the National Advisory Committee were held in: Washington, D.C., May 2, 1975; New York City, October 9, 1975; Chicago, November 28, 1975; San Diego, February 17 and 18, 1976; and Washington, D.C., May 3, 1976. Second, in addition to the 67 persons who attended one or more meetings, another group of comparable size requested and were sent one or more drafts. Many of the views and comments received from such persons were helpful to staff in later drafting the Model Act.

For each Advisory Committee session a different draft was prepared which attempted to both reflect the consensus of the prior meeting and to be responsive to project staff views, comments received from the many persons who requested and were sent copies, and directives and guidelines from Children's Bureau staff.\textsuperscript{121} From

\textsuperscript{120} The 69-member committee included lawyers, judges, social work practitioners, academicians, physicians, psychiatrists, lay citizen advocates.

\textsuperscript{121} Frank Ferro, Children's Bureau Chief; Jim Rich, Esq. CB/OCD legal liaison; Miss Ursula Gallagher, former Adoption Specialist of CB/OCD, now retired; Elaine Schwartz, present adoption specialist; and Cecelia Suida, Research Specialist.
the dialogue between staff and the multidisciplinary Advisory Committee (members were from all parts of the nation, and represented major ethnic and racial minorities) and comments from the second group of reviewers which was equally diverse, it was possible to explore and consider a range of policy choices, value preferences and the implications of alternative approaches.

5. PROGRAMMING, REPORTING AND FEEDBACK
The actual drafting done by staff can be viewed as the equivalent of programming—proposing establishment of a judicial framework to govern termination. Both discussions at the five advisory meetings and the written comments and suggestions received from reviewers were carefully sifted and treated as feedback to be evaluated and applied in developing the next draft. During this period the general public was also informed about the project by reports in various newsletters and presentations made by staff at various conferences and professional meetings.

After the final Advisory Committee meeting in May 1976, the next nine months, through February 1977, were spent refining the Model Act draft and commentary. While a comprehensive project report, dated September 1976, was submitted to the Children's Bureau, CB/OCD staff did not respond or confer with project staff until after the 1976 Presidential election. At that time, the Children's Bureau requested a shorter, more descriptive commentary and revisions in the text of the Act to make it consistent with other Model Acts developed and being developed by DHEW.

122. See discussion in Part II B and C infra.
123. E.g., CHILD PROTECTION REPORT: THE INDEPENDENT NEWSLETTER COVERING CHILDREN/YOUTH HEALTH & WELFARE SERVICES (William E. Howard ed.); Child Welfare League of America's Newsletter; NORTH AMERICA CENTER ON ADOPTION, ADOPTION REPORT.
124. During this period Professor Katz made the following presentations: December 1, 1975, Western Federal Regional Council—Region IX Conference on Children's Services, San Francisco; May 10, 1976, American Psychiatric Association, 129th Annual Meeting, Miami Beach, FL; May 20, 1976, New Hampshire Action Committee for Foster Children, Annual Conference, Manchester, NH. Ruth-Arlene W. Howe made a presentation at the American Public Welfare Association National Round Table Conference, New Orleans, LA, December 17, 1975 (see note 21, supra).
When a seventh draft, dated February 8, 1977 was finalized, the Children's Bureau widely distributed it to all state child welfare public agencies, private national and statewide agencies, state attorney generals, judges, academicians, and child advocacy groups for comment. During the Spring of 1977 this February 8th draft was also sent to all Advisory Committee members.

There then followed another time period devoted to analyzing and tabulating the numerous comments received on the February 1977 draft. Each section of the Model Act was reviewed and redrafted to reflect the consensus of views expressed in the comments. Some sections were rewritten to make allowances for certain practices, such as accepting voluntary relinquishments in those States where strong opposition to judicial terminations had been expressed. After all the comments that the Children's Bureau and project staff received were fully processed, another draft, dated March 8, 1978 was submitted to the Children's Bureau with revised Commentary. The final draft was finalized September 21, 1978.

Although DHEW has not yet officially approved this Model Act, beginning in 1977, the proposed Act began to have an impact on legislative deliberations in various States\textsuperscript{127} that were contemplating amendment or enactment of termination laws. Sometimes project staff merely responded to inquiries by sharing a copy of the Model Act or by answering questions over the telephone. In other instances, technical assistance was provided via site visitations and presentations to groups interested in child welfare and adoption legislative reform.\textsuperscript{128}

\begin{footnote}
\textsuperscript{127}E.g., Tennessee enacted language similar to portions of the September, 1976 draft. TENN. CODE ANN. § 37-246(c) and (d). In the state of Washington legislation was filed, based almost exclusively upon the September 1976 draft, but it was not enacted. Groups in Nebraska, New Jersey, Ohio and Vermont studied the Model Act drafts as they reviewed their laws.

\textsuperscript{128}Project staff were involved in the following on-site consultations and meetings during 1976-77:
Since passage of the 1978 Child Abuse Prevention and Treatment and Adoption Reform Act 129 mandating HEW to develop a model Adoption Code, no official action by the Secretary of DHEW has been taken regarding the Model Act to Free Children. Thus, the Adoption Code Advisory Committee 130 can review the Model Act and has the freedom to recommend that termination be treated separate and apart from adoption, or to decide to include termination within an Adoption Code. It is the firm belief of project staff that termination is such an important deprivation of parental rights and intrusion into the privacy of the family unit that it should be treated separately. Also, it is firmly believed that sound pre-adoptive planning requires that a child be legally freed prior to adoptive placement. Other views about the wisdom of a separate termination proceeding are discussed infra in later sections.

Before describing the proposed Model Act in Part III, subsections B and C of Part II will summarize how the major social policy and constitutional legal issues were resolved through the vehicles of presentation of successive drafts at meetings of the Advisory Committee and wide circulation of drafts to interested persons.

B. Major Social Policy Issues

Five key policy issues dominated discussions at Advisory Committee meetings:

1. Should the central focus of the Act, as reflected in the title, be upon parental rights or the parent-child relationship?
2. Does the State have a responsibility to offer substantial social services prior to initiating a termination proceeding or prior to actual termination?


"Out of the interaction of planner, advisory groups, and policymakers with the situation’s 'givens'—and out of the appraisal of knowledge and available experience—new solutions and proposals may occasionally evolve. Planning is not simply programming: it is also potential vehicle for social invention and social change." KAHN, THEORY & PRACTICE, supra note 99, at 132.


130. For information on the composition of this 17-member committee, contact American Public Welfare Association, Bruce Gross, project director of Contract No. 105-78-1100.
3. As between parents and children, whose interest should be controlling?

4. Should the availability of an adoptive home be a controlling factor in determining whether termination is decreed?

5. Should foster parents have standing to file a petition for a child in their care?

While the first four were framed by project staff, the last one was raised by Advisory members, especially agency practitioners. How each issue was resolved will be reviewed chronologically. All the issues were discussed against a backdrop of critical concern about the available statistics on completed adoptions, long waiting lists of adoptive applicants, increasing reports of an expanding adoptive baby "black market" in response to the shortage of adoptable white infants.131

1. THE TITLE

The five drafts reviewed by the Advisory Committee were entitled: "Model Termination of Parental Rights Statute"—Drafts I and II; "Model Termination of Parental Rights and Responsibilities Act"—Drafts III and IV; and "Freeing Children for Permanent Placement"—Draft V. Several other titles were suggested: "Termination of Parent-Child Legal Relationship" and "Termination of Rights and Responsibilities between Parent and Child."

The first Washington, D.C. meeting did not reach any consensus on the title. At the New York City meeting no consensus was reached, but strong arguments were made for focusing upon "parental rights and responsibilities" rather than upon the "parent-child relationship." It was noted that a court may reorder legal rights and duties, but that it cannot dissolve a psychological relationship. Although attendees of the Chicago meeting endorsed the title, "Model Termination of Parental Rights and Responsibilities Act," the San Diego group was strongly divided. Draft V thus made no reference to termination but rather focused exclusive-

ly on the purpose of the act—"freeing children for permanent planning." Then, at the final Washington, D.C. meeting, although staff again raised the title as a possible issue for discussion, the group accepted the proposed title. Thus, the final choice of "Model Act to Free Children for Permanent Placement" reflects a decision to emphasize not the rights or sins of the parents, but the needs of children for permanency.

2. SOCIAL SERVICES

The purpose clauses of most Juvenile or Family Court Acts and other chapters establishing jurisdiction over neglected/dependent/deprived/abused or neglected children articulate a public policy: "to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal." Thus, at all the Advisory meetings the extent of the state's responsibility to assist parents in fulfilling their parental roles was discussed. Must the state show an offer of substantial social services prior to filing a petition for termination, or just prior to issuance of an actual termination decree? While all the states now have child abuse reporting laws and federal guidelines require the states to provide protective and supportive services to reported families, it was questioned whether such crisis intervention services really prevent further reportable incidents and whether long-term supportive services exist in meaningful quantity.

Drafts I and II only indirectly touched this question of social services. The Purpose sections stated: "Implicit in this act, is the philosophy that whenever possible family life should be strengthened and preserved." At the first Washington meeting in 1975, this issue was not directly discussed.

At the October, New York City meeting, participants were keenly interested in considering the extent of the state's responsibility to

132. See Child Neglect Laws, supra note 3, at 17-19; 52-54.
134. See Berninger, supra note 5.
assist parents. This group strongly felt that parents were entitled to more than the legal procedural due process guarantees of notice, a fair hearing and counsel. The group felt that parents were also entitled to “a timely offer of service,” something akin to “due process of service.” Some attendees wondered if one day a constitutional “right to services” analogous to a “right to treatment” would be recognized.”

The New York group clearly felt that Draft II’s required social study or the power of the court to order medical or psychological testing was not the equivalent of an offer of services. Some attendees urged that a “significant offer” of services to parents be required prior to an agency’s initiation of termination proceedings. Other advisory members expressed concern that if the Act required an agency to make (and prove) “diligent and reasonable efforts” to rehabilitate parents prior to petitioning for termination that many children could ultimately be left in harmful situations. Also, many participants stressed that the large majority of youngsters involved in termination proceedings have been in foster care for a period of time and generally are not in their own homes when proceedings are begun. Concern was thus expressed that if services were only mandated to be offered prior to termination, rather than requiring an agency to show a meaningful offer of services prior to filing a termination petition, the time-frame of a proceeding would be unduly expanded. Subsumed under the concept of “due process of service” for some was concern about safeguarding against “system failure” and protecting and balancing the rights of parents and children’s needs in the face of bureaucratic inefficiencies and mishaps of non-service.

In response to the views expressed by participants at the New York meeting, Draft III explicitly stated in its Purpose clause:

137. See Emlen, supra note 22, at 2.

Some scholars doubt that a constitutional claim of a “right to services” based upon the Due Process Clause of the Fourteenth Amendment and U.S. Supreme Court cases such as Stanley v. Illinois, 405 U.S. 645 (1972) and Quilloin v. Walcott, 434 U.S. 246 (1978) will ever fully succeed. It is thought that a more acceptable basis will be found in state statutes like Minn. Stat. § 260.011 (see supra note 133) that call for the preservation and strengthening of family ties.
139. See text accompanying supra notes 76-86.
“Whenever possible, the State shall make a timely offer of service to strengthen and preserve family life... To implement the philosophy of this Act, there shall be developed and established within the State Department of Social Services: 1. A Parent Service Division; and 2. A Child Defenders’ Division.” This proposed Parent Services Division would have responsibility for making the “timely offer” of service. However, all attendees at the Chicago meeting had grave reservations about the feasibility of creating a new service division within their state departments of social service or public welfare. It was thought that such would encourage an adversarial relationship between divisions that would be most wasteful of time and limited financial resources.

Drafted IV, reviewed in San Diego in February 1976, repeated the philosophy that the State should make a timely offer of service. Instead of a social service division for parents, subsection C of the Purposes Section read: “To implement the philosophy of this Act, there shall be developed and established, subject to appropriate specific legislative funding, within the State Department [of Social Services]: 1. A Parent Legal Services Division; and 2. A Child Legal Service Division.”

After lengthy discussion, it was generally agreed that the Parents Legal Services should be dropped as both unnecessary and legislatively difficult to promote. San Diego attendees felt that the Child Legal Services Division should cover more than just termination proceedings and ought to stand independent of the state department of social services. It was suggested that staff in the next draft devote an entire section to the purposes and duties of such a Child Legal Services Division. However, following a March 1976 consultation with CB/OCD staff, it was agreed that creation of such a Department of Child Legal Services was beyond the scope of the task of drafting a model act to govern termination. Subsequent drafts, thus, included no further mention of such a new division.

At the second Washington meeting in May 1976 Draft V was reviewed. Attendees endorsed the proposed Purpose clause policy statement that: “Whenever possible, the natural family relationship shall be recognized, strengthened, and preserved through

140. Working Draft III, § 1(C) (Nov. 18, 1975) in September 1976 Report supra note 136
141. Working Draft IV, § 1(C) (Jan. 15, 1976) id.
efforts and procedures as provided for under [state] statutes(s)."  
Since all subsequent drafts have included this policy statement, the issue about the extent of the services that must be offered is addressed in the Section: *Grounds for Involuntary Termination*. During a termination proceeding the court must specifically consider and inquire into "the services provided or offered to the parents to facilitate a reunion." In part III *infra*, other portions of the Model Act will be discussed in terms of how the principle of family preservation and rehabilitation can be advanced even in the context of a termination statute.

3. WHOSE INTEREST CONTROLS?

The purpose clause of Draft I called for "safeguarding the rights and interests of all parties concerned and promoting their welfare and that of the State." It quickly became clear that parents, children and the State have differing interests that cannot always be served equally. Thus Drafts II and III stated: "When children's and parents' rights conflict, the rights of the child shall prevail." Advisory members attending the New York and Chicago meetings concurred in this affirmative policy preference for the child. The entire tenor of the New York meeting reflected the belief that children should be accorded an inalienable right to have the opportunity to grow and to develop as individuals in their own right, if necessary, separate and apart from their birth parents.

This issue was not central to discussions at either the San Diego or the final Washington, D.C. meetings. Draft V employed slightly different language. It read: "the best interests of the child shall prevail when children's interests and parents' rights conflict." Now, the Model Act directs that: "the interests of the child shall prevail if the child's interests and parental rights conflict."

4. AVAILABILITY OF AN ADOPTIVE HOME

At all the advisory meetings the consensus was clear that termination should be a separate decision based on justifiable grounds that

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144. See *infra* 49-51; 56-60.
146. Working Drafts II & III, *id.*
147. Working Drafts V, § 1(b)(4).
148. *Model Act to Free Children for Permanent Placement* with Commentary, § 1(b)(4) [hereinafter cited as *Model Act*]. *See Appendix.*
did not depend upon the availability of an adoptive home. It was argued that to further the "best interests of the child" termination should not occur until there is a specific adoptive home identified. Youngsters should not be left in the legal limbo of having the relationship to their birth parents permanently severed only to be left to the insecurities of long-term foster care. However, two considerations were important to the Advisory Committee. (1) If the availability of an adoptive home was the controlling factor, would a hardship be worked on some youngsters? And, (2) could due process and equal protection be assured to parents if, instead of being held to a general community standard of adequacy, they were pitted against the merits of a prospective adoptive couple whose lifestyle, demeanor and economic means more closely adhered to the "dominant preference" as perceived by the judge? Since Advisory Committee members opposed making the availability of an adoptive home a precondition to termination, a strong consensus developed that the Model Act must not just state a policy of promoting permanent planning, but that the Act must also mandate a time-frame to ensure that the agency accepting guardianship of any child whose parental relationship is terminated moves quickly to finalize a permanent plan.

5. FOSTER PARENTS

Project staff did not initially present the question of standing of foster parents to file a termination petition for a child in their care for Advisory Committee discussion. Members of the Advisory Committee raised the matter and it became a hotly contested issue. Draft I granted standing to: "Any person or agency that has a legitimate interest in the welfare of a child, including, but not limited to, a relative, foster parent, physician, department of welfare, or a private licensed child welfare agency...." Draft II, in response to suggestions made by participants at the first Washington, D.C. meeting, dropped the phrase "that has a legitimate interest." During the New York City meeting serious debate developed over who should have a right to petition for termina-

149. See Note, Children in Limbo: The Illinois Solution, 73 Nw. U.L. Rev. 180, 191-92 (1978) for discussion of the "spectre of subjective judicial discretion, along with its inherent possibility of class bias" [hereinafter cited as Children in Limbo].
150. See Part III F-6 infra.
Some participants objected to Draft II's open-ended reference to "any other person who has knowledge of circumstances." Others felt that specific standing should be given to foster parents and other relatives.

In Draft III "any other person" was omitted, but specific reference was made to foster parents. The public agency administrators who attended the Chicago meeting strongly opposed giving foster parents the right to petition for terminating the parental relationship of a child in their care. These agency people felt that granting such a right to foster parents would hamper agency planning for a child or limit selection of the best therapeutic foster family placement. They feared that permitting foster parents to petition would make them adversaries rather than partners of the agency. Following staff explanation that according standing to foster parents could provide a safeguard against the problem of agency non-service or under-service of foster care caseloads, it was agreed that the reference to foster parents should be retained, but qualified by language similar to that used in the Model State Subsidized Adoption Act.

Draft IV thus read: "[a] foster parent who seeks to adopt and between whom and the child a significant emotional bond has been established." The San Diego group consensus was that "any interested party" should be able to petition and that it was neither necessary nor desirable to mention foster parents specifically. However, Draft V essentially retained the same provision as found in Draft IV, reflecting the policy preference of the Children's Bureau expressed during a March 1976 conference with project staff. At the final Washington, D.C. meeting participants agreed to recommend use of "any interested person such as a de facto parent, foster parent or relative."

153. See Part III D infra.
154. See supra note 91.

Section 2. [Definition of "Child"]...
(c) in special circumstances ... (1) because he has established significant emotional ties with prospective adoptive parents while in their care as a foster child. . . ."
Subsequently, this issue continued to provoke strong reaction from reviewers of the widely circulated February 8, 1977 draft. In the present Model Act foster parent petitions are limited by two requirements. The child must have been in foster care at least two years; and the foster parent must be a de facto parent—that is, a person having physical custody of a child one year and one with whom the child has developed significant emotional ties. The compromise on this issue reveals continuing unresolved tension over what the appropriate role and status of foster parents should be. Traditionalists view foster parents as necessary agents of the placement agency who for the integrity of the whole foster care system must accept the charge to provide temporary care and to work cooperatively with the agency to carry out plans for the child—either reunion with his/her birth family or movement into a new adoptive home. Foster care should not become a "backdoor" to adoption. Those who advocate changing the status and role of foster parents note that in some instances it is only the foster parent who knows when a child has been permanently abandoned by both parents and agency. As time passes, significant emotional ties inevitably develop. At this point, in view of the growing awareness and popular acceptance of the "psychological parent" concept as advanced by Goldstein, Freud & Solnit in *Beyond the Best Interests of the Child*, there is recognition that removal from foster parents may be just as detrimental as removal from birth parents.

C. Major Legal Issues

To conclude this description of the planning process that resulted in the Model Act To Free Children, the Advisory Committee's chronological treatment of five key legal issues is reviewed.

1. To what extent should the grounds for termination be precise?
2. What should be the standard of proof?
3. Should indigent parents have a right to appointed counsel?
4. Should the child have a right to appointed counsel?
5. What is the duty of notice owed to the unwed father?

From the beginning the discussion and resolution of these issues was guided by the declaration in Section 1 of the Act that one of the general purposes was "to ensure that the constitutional rights and interests of all parties are recognized and enforced in all proceedings and other activities pursuant to this Act." 160

1. SPECIFICITY OF GROUNDS

Initial research led to the conclusion that termination is an area where too much precision is not possible, desirable nor constitutionally required. 161 Draft I thus employed very general language to describe parental conduct that would justify termination. Advisory Committee members generally agreed that the grounds should not be too specific. The judges particularly preferred a general standard and cautioned against codifying some "petty areas" while unintentionally omitting unforeseen problems.

Staff, in preparing Draft II, continued to accept the view that a broad neglect standard, allowing a judge to examine each situation on its own facts, complied with the Supreme Court's emphasis on "individualized hearings" in Stanley v. Illinois. 162 Some attempt was made to provide minimal guidelines (specificity) within the general language. Neglect was defined in terms of failure to provide for a child's physical, mental or emotional health and well-being rather than, as some suggested, solely in terms of serious physical injury or severe emotional damage. 163 Attendees of the New York City meeting concurred with the consensus of the Washington group that overspecificity would both insufficiently protect the child and not allow flexibility for an individualized termination proceeding. The New York group urged that wherever possible the Model Act's

161. Barron, Working Papers, 1. Vagueness (1975) (on file B.C. Law School). See also, In The Child's Best Interests, supra note 15, at 469: "Indeed, strict statutory criteria may not even be desirable, as too much specificity might inhibit the weighing of unenunciated factors present in a particular case."
162. 405 U.S. 645, 657, n.9 (1972).
163. See e.g., M. Wald, supra note 75, at 10007-10008; IJA/ABA STANDARDS, supra note 54.
definitions of terms and grounds for termination should parallel the approaches of other model acts, especially the Model Child Protective Services Act, then also being developed under HEW auspices.

At the Chicago meeting, Draft III's treatment of grounds was endorsed, but it was recommended that voluntary terminations should appear before consideration of involuntary termination. Draft IV was so reorganized and at the San Diego meeting, the issue of specificity was one of two legal issues that became the center of the discussions. General consensus was reached that the major focus should be upon the condition of the child rather than upon conduct of the parents.

Staff in preparing Draft V carefully weighed both the views expressed in California and the implications of the decision in Alsager v. District Court of Polk County\textsuperscript{164} declaring the Iowa termination statute\textsuperscript{165} violative of the Due Process Clause of the Fourteenth Amendment. Thus, in Draft V, three broad conditions or statuses of children could justify involuntary termination; abandonment, abuse or neglect; or more than one year's separation from the custody of a parent when it is determined that a reunion is unlikely in the near future and continuance of the legal parent-child relationship greatly diminishes the child's chances of early integration into a stable and permanent home.\textsuperscript{166} Draft V dropped the general language\textsuperscript{167} of earlier drafts that was similar to the Iowa statute held unconstitutional in Alsager.\textsuperscript{168} Specific factors were enumerated for the court to consider when it is alleged that a child has been abused or neglected or removed from the custody of the parent. While providing more guidelines (greater specificity) the "individualized hearing" approach stressed in Stanley\textsuperscript{169} was retained. This approach received general endorsement at the final Washington, D.C. meeting, but just how the Model Act should resolve the specificity...

\textsuperscript{164} 406 F. Supp. 10 (S.D. Iowa 1975), aff'd, 545 F.2d 1137 (8th Cir. 1976).
\textsuperscript{165} IOWA CODE ANN § 232.1 et seq.
\textsuperscript{166} Working Draft V, § 3(b), in September 1976 Report.
\textsuperscript{167} For example, Working Draft II, § 2(L) had defined "neglected" to refer "to a situation in which the child lacks proper parental care necessary for his physical, mental and emotional well-being." Section 4(B)(3) provided for termination of parental rights when a court found "[t]hat, the parents have substantially or continuously or repeatedly refused or neglected . . . to give the minor the proper parental care necessary, for his physical, mental or emotional health and well-being, . . .".
\textsuperscript{168} See supra note 165.
\textsuperscript{169} See supra note 162.
and due process issues continued to occupy much staff time. How other sections of the Model Act address these issues is discussed infra in Part III.

2. STANDARD OF PROOF

No clear consensus was reached at Advisory Committee meetings on this question until the final Washington, D.C. session in May 1976. Draft I proposed a clear and convincing standard.170 Participants were about equally divided. Some felt that such a standard should accompany decision-making in the best interest of the child; and, others argued for use of a preponderance of the evidence test. Several participants felt uncomfortable with this lesser civil standard in cases involving varying life styles of minority groups and argued for retaining the option of a jury trial upon request. The majority saw no necessity for a jury trial. A reasoned reservation about the clear and convincing standard held by one participant was shared with staff following the Washington, D.C. meeting.171 It was viewed as an euphemism developed to avoid the seeming contradiction inherent in applying a criminal court standard to an admittedly civil proceeding. Though the least detrimental alternative standard172 was suggested, it was not generally accepted.

For the second meeting in New York City, Draft II presented the alternative standards, clear and convincing and preponderance of the evidence for discussion. Again, there was no clear consensus other than the view that use of the criminal beyond a reasonable doubt standard would be inappropriate. Some, like in Washington, argued that under the preponderance of the evidence standard, it might be too easy for a state agency to show parental unfitness and leave parents insufficiently protected. Others felt that the stricter civil standard of clear and convincing would be responsive to due process requirements and underscore the severity of permanent dissolution of the parent-child relationship. A few urged consideration of variable standards, depending upon the age of the child, the length of time apart from the birth parents and/or the cir-

cumstances of the petition. Some considered preponderance of the evidence to be sufficient for older children in foster care a number of years, while the clear and convincing standard might be applied with younger children. The one judge in attendance believed that the preponderance of the evidence standard was subject to more uniform interpretation among judges and lawyers.

The standard of proof issue was not actively discussed by the Chicago agency practitioners. It did receive major attention at the San Diego meeting for Draft IV again presented the two civil standards as alternative choices. At first the group seemed to favor the higher civil standard of clear and convincing evidence, but by the end of the sessions many accepted the use of preponderance of the evidence if (1) all parties were represented by independent counsel; (2) the agency responsibility to offer social services did not become a barrier to termination; and (3) the grounds were reworked to emphasize the condition of the child rather than conduct of the parents.

As noted supra, Draft V was developed after reassessment of Alsager and reflected both the views and concerns expressed at prior meetings and CB/OCD policy decisions shared with project staff at a March 1976 conference. Draft V required clear and convincing proof to justify a termination. All Advisory Committee members approved, except for one attendee who feared introduction of a chilling effect upon termination so long as many states continued under their traditional child neglect and abuse statutes to only require the preponderance of the evidence standard.

3. COUNSEL FOR PARENTS

In contrast to the first two legal issues, consensus was reached at the first Washington meeting that parents should have counsel and that in cases of indigency, counsel should be appointed. All subsequent groups concurred. New York City meeting attendees suggested that limitations to waiver of counsel be clear. As mentioned supra, the California group agreed that the idea of a parent Legal Services Division should be dropped. At the final Washington, D.C. meet-

173. Id. See also IIA/ABA STANDARDS. supra note 54.
174. See text accompanying notes 164-169 supra.
175. See supra note 164.
176. See text accompanying notes 140-142 supra.
ing attendees endorsed Draft V's introduction of a Preliminary Hearing at which time the judge must inform all parties of their right to representation. Furthermore, Draft V permitted the court to appoint an attorney as guardian ad litem for any unknown putative father and a minor or incompetent parent.\textsuperscript{177}

4. COUNSEL FOR CHILD

Because of recognition that in any termination proceedings, the tripartite interests of: (1) the parent; (2) the child; and (3) the state or private agency may diverge,\textsuperscript{178} Draft I provided for the child to be represented by independent counsel, appointed by the court.\textsuperscript{179} The Washington meeting participants urged that future drafts delineate the role of counsel more fully. Thus, Draft II's Hearing section attempted to outline the role of child's counsel and no waiver provision was provided because it was believed that neither counsel for the parent nor for the social agency could automatically be counsel for the child.\textsuperscript{180} Both Drafts II and III envisioned appointment of a guardian ad litem who was an attorney. Only one New York City participant expressed reservation about such a requirement, feeling that this might increase the adversarial nature of the proceeding. Drafts III and IV called for creation of a Child Defender's Division and a Child Legal Services Division respectively.\textsuperscript{181} Except for the San Diego meeting, the Advisory Committee endorsed the idea of requiring that the guardian ad litem be an attorney. Some at the California sessions felt that the court should be given discretion to appoint other professionals, court, probation officers or volunteers. At the final Washington, D.C. meeting, there was general agreement with Draft V's requirement that the child's

\textsuperscript{177} Working Draft V, § 11(b)(3) and (d), September 1976 Report.
\textsuperscript{178} See Singleman, supra note 16, at 1065; Note, Termination of Parental Rights—Suggested Reforms and Responses, 16 J. Fam. L. 239, 246 (1977-78) stating: Ordinarily, the presumption exists that a child's parents are best suited to represent and protect his interests. This presumption, however, should not prevail when those same parents are charged with failing to provide the child minimum needs. Conflicts also arise between the interests of the child, and the practices and policies of both child care agencies and the State.
\textsuperscript{179} Working Draft I, Notice: Waiver; Guardian Ad Litem Section (D), September 1976 Report.
\textsuperscript{180} See supra Part II, B-3, at 35.
\textsuperscript{181} See text accompanying notes 140-141 supra.
guardian ad litem be an attorney who could legally represent the child. A full discussion of the guardian's role is presented infra in Part III. 182

5. NOTICE OWED UNWED FATHER

Draft I was silent regarding notice to the unwed father, but questions raised by Advisory Committee members at the first Washington, D.C. meeting prompted the project's constitutional law consultant to continue research on this matter. Draft II included a new Notice & Waiver section which provided for holding a hearing to determine whether notice by publication should be ordered if the father's identity is unknown. Participants agreed with this approach, but urged that the mother's name, without her consent, not be used in a publication notice. Thus, Draft III rewrote the Notice & Waiver section and empowered the court to appoint a guardian ad litem to conduct a "diligent discreet search" for an unknown father. 183 Drafts IV and V treated this issue essentially the same, except that in Draft V the determination regarding notice by publication or appointment of a guardian ad litem for the unknown putative father is decided at a Preliminary Hearing. These measures were endorsed by the Advisory Committee. It was accepted that the unwed father, in light of Stanley v. Illinois, 184 did have a constitutional right to assert a claim to the care and custody of his child and hence that there was some duty on the state to make a reasonable effort to notify even the unidentified unwed father. There was strong consensus that efforts should not continue to the point of causing an unreasonable delay in the placement of a child nor should the unwed mother's privacy rights be violated. 185 Thus, the Committee charged the drafters to accommodate these separate and conflicting rights and duties of the child, the parent and the state.

182. See infra Part III, G-1.
185. The Model Act does not follow the approach of Federal Regulations implementing Pub. L. No. 93-647 (Fed't Child Support Enforcement Program), 45 C.F.R. § 232.12 that requires a state plan to make parental cooperation in identifying, locating and establishing the paternity of a child born out of wedlock a condition of eligibility for AFDC assistance.
III. Major Provisions of the Model Act

While Part II focused upon the formulation of policy guidelines for project staff to follow in drafting the Model Act, this concluding section will describe the important provisions of the Model Act as finally drafted. (For the complete text of the Act, see Appendix.) Various key provisions are examined in light of the social policy and legal issues discussed supra in Part II B and C with some references made to relevant cases, state legislative enactments and sound child welfare practice.

A. General Mandate to Staff

The general mandate from the Advisory Committee to project staff was to draft an act that:

1. provided a prompt judicial procedure for termination of a parent-child relationship in order to free a child for permanent placement;
2. gave priority to the interests of the child, if the child's interests and parental rights conflict;
3. was consistent with state policies to strengthen and preserve the natural birth family;
4. recognized and enforced the constitutional rights and interests of all parties in all proceedings; and
5. stated the grounds for termination with enough specificity to give guidance to the court and meet constitutional standards of "due process," but left some discretion to the court to decide cases on an individualized basis.

B. General Policy Provisions

In response to the above mandate, the Model Act begins in Section 1: Purposes of Act; Construction of Provisions with a statement of three broad general purposes and articulation of five key underlying policy principles that are to guide a State's approach to judicial termination of parental rights. Judicial procedures are to be prompt, promote permanent placements of children, preferably via adoption or the vesting of permanent guardianship with de facto parents, and ensure that the constitutional rights and interests of all

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187. Id. § 1(b).
parties are recognized and protected. Thus, the Model Act reflects the philosophy that a child's ongoing needs for proper physical, mental and emotional growth and development can best be met when he is firmly anchored in a family of his own. In calling for prompt judicial procedures, the Act recognizes that the time-frames of children are such that timely planning and decision-making in their behalf must be encouraged to avoid severe trauma to them.

In American law the family consists of a bundle of legal relationships, one of which is that of parent and child. Although the Constitution does not speak directly to familial relationships, the United States Supreme Court has employed "substantive due process" and the concept of a "penumbra of rights" extracted from the Bill of Rights to protect these relationships from unwarranted governmental intrusion. The right to raise a child is now recognized as a fundamental personal liberty, guaranteed by the Constitution. But, this fundamental right of a parent to the custody of his child and to provide for his child's physical, moral and mental welfare, now accorded constitutional dimensions, is not an absolute right. Since severance of the legal parent-child relationship is so

188. See supra notes 15 and 16. Also see Nat'l Council of Juvenile Court Judges, Model Statute for Termination of Parental Rights, supra note 100.
191. Justice Goldberg, concurring in Griswold v. Connecticut, stated that "[t]he entire fabric of the Constitution and the purposes that clearly underlie its specific guarantees demonstrate that the rights to marital privacy and to marry and raise a family are of similar order and magnitude as the fundamental rights especially protected." (emphasis added) 381 U.S. 479, 485 (1965).
192. See, e.g., Id.; Meyer v. Nebraska, 262 U.S. 390, 399 (1923); Prince v. Massachusetts, 321 U.S. 158, 166 (1944); Stanley v. Illinois, 405 U.S. 645, 651 (1972). In Meyer the Supreme Court, in dicta, stated that the term "liberty" when used in the context of due process, includes an individual's right to establish a home and bring up children. In Prince supra, it was said that "the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." 321 U.S. at 166. More recently, the Court has applied these concepts to family relationships not legitimized by marriage ceremonies. In Stanley v. Illinois, the Supreme Court held that the putative father of illegitimate children could not be denied custody without a hearing and proof of neglect. Id., at 658. See also, Singleman, A Case of Neglect, supra note 16, at 1063; In The Child's Best Interests, supra note 15, at 446.
193. The state has long been recognized to have such an interest in the welfare of its citizens, and especially its children, that under limited circumstances involving matters of health, morality, financial support and education, parental rights may be overridden. Under the doctrine of parens patriae the state may invoke its power to promote certain policies or to
momentous, especially when involuntary, careful steps must be taken to adequately protect the rights of both parents and children. The Model Act is drafted upon the premise that a judicial proceeding, separate from both an abuse or neglect determination hearing or an adoptive proceeding, is the best to guarantee protection of the constitutional rights and interests of all parties.

The first basic policy principle in Section 1(b)(1) accepts the family as the basic unit in society and affirmatively states that it should be strengthened and preserved via a meaningful offer of services. Termination proceedings under the Model Act should only commence when further efforts to maintain the integrity of the birth family are impossible and when a child cannot be adequately protected within his home. If a child has been placed out of his home for more than a year and it is determined that he cannot be returned home within a reasonable time, then the state has an obligation to "promptly find an alternative arrangement to provide a stable, permanent home for him." Perhaps the most significant statement of policy is Section 1(b)(4)'s declaration that "the interests of the child shall prevail if the child's interests and parental rights conflict." This is a departure from the wording of most existing termination purpose clauses. The Model Act, in keeping with its basic stance of ac-

intervene into the privacy of the family unit to protect children. Whether the government intrudes on a public level, like compulsory education, or on an intimate basis, such as temporary removal of a child from its home or termination of all parental rights and responsibilities the interference must be "reasonable."

194. See Appendix.

195. See infra text accompanying notes 235-238.

196. No exact length of time is specified. What is reasonable will vary, depending upon a child's age, the nature of any developing relationship with a caring adult and the quality of the biological parent-child relationship. This provision thus recognizes that with the passage of time, a child may develop significant emotional ties with a substitute caretaker and suffer trauma if separated from such a "psychological" parent.

197. Model Act, § 1(b)(3). Many state statutes, typified by California's WELF. & INSTNS CODE § 202, require that "when [a] minor is removed from his own family, the state provide custody, care and discipline nearly as possible equivalent to that which should have been given him by his parents." See Mnookin, Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy, 39 LAW & CONTEMP. PROB. 226, 277-79 (1975).

198. See Child Neglect Laws, supra note 3, at 17-19; 52-54. Generally, the purpose clauses of state neglect and reporting statutes refer to serving both the welfare of the minor and the best interests of the state. It is hoped that the policy directive of the Model Act will provide courts with a clear statutory norm to apply. As one commentator observed, courts rarely adequately resolve the tension often present in the natural parents' assertion of a biological right to a continuous relationship with their child and the child's need for a caring and stable home environment. In The Child's Best Interest, supra note 15, at 447.
cording priority to the needs of children, gives positive direction for resolving the conflict between parental rights and children's needs. The Act also, in furtherance of promoting sound planning for children, declares all non-judicial attempts to voluntarily relinquish or surrender parental rights by contractual arrangements invalid, unless judicially approved. 199

C. Definitions

In Section 2: Definitions, twenty terms and phrases which can be divided into three categories are defined. To minimize confusion over terminology, the Model Act draws heavily upon other existing uniform and model laws. 200 First, all the possible parties in a termination proceeding: such as "child," "parent," "de facto parent," "legal custodian," "guardian of the child's person," guardian ad litem," "agency" and "court" are defined. 201 The Model Act does include one term, "de facto parent," that does not generally appear in termination statutes. This definition is derived from a concept found in the Uniform Child Custody Jurisdiction Act's 202 definition of "person acting as parent." The Model Act employs the term "de facto parent" to describe a person who has had continuous physical custody of a child in his home for one year and with whom the child has developed significant emotional ties, but who has no other legal status pursuant to court order. A "de facto parent" or "psychological parent" may be a relative, a stepparent, or a foster parent.

199. Model Act, § 1(b)(5). Recently enacted termination statutes also so mandate. See IOWA CODE ANN. § 600 A.3 (1978).


201. This enumeration of major parties is consistent with the terms found in most separate state termination chapters. See e.g., N.H. REV. STAT. ANN. §§ 170 C:1-170 C:15 (1977).

The definition of "child" parallels the Uniform Adoption Act, § 1 and the general trend to recognize any person under the age of 18 years as a child. See A. SUSSMAN, THE RIGHTS OF YOUNG PEOPLE: THE BASIC ACLU GUIDE TO A YOUNG PERSON'S RIGHTS 13 (1977).

It should be carefully noted that the definition of "parent" follows the approach of the Uniform Parentage Act, §§ 1-2. Any natural or adoptive parent without regard to marital status is covered. This should be viewed as a positive step toward eliminating discriminatory distinctions based solely on the status of legitimate or illegitimate birth. This broad definition of "parent" requires, in later sections, that certain steps be taken to accord the unwed father an opportunity to receive notice and to be given an opportunity to be heard. See infra Part III, F-4.

The second category of definitions includes an "abused or neglected child," with specific examples of what constitutes "harm" or "threatened harm" to a child's health or welfare. "Physical injury" and "mental injury" are also defined. The definition of an "abused or neglected child" is consistent with the Federal Child Abuse Prevention and Treatment Act of 1974,203 the Code of Federal Regulations204 and the Model Child Protective Services Act.205 However, something new is added by expressly directing the court to give "due regard to the child's culture"206 when weighing evidence to determine if a substantial impairment of ability to function within a normal range has occurred or is threatened. It should also be noted that the Model Act's definition of "abandonment"207 is very narrow and addresses only the situation of a "foundling" left without any clue to the identity of the parent, under circumstances that indicate a complete abdication of all parental responsibility for the child.208 (A phone call to authorities notifying them of the location of the child—in a phone booth, bus depot, or rest room, for example—would not rebut the presumption of abandonment.) If within two months the parents do not voluntarily appear or cannot be located by diligent inquiry by the agency or appropriate law enforcement personnel, the Model Act views such parental conduct as a ground for termination of parental rights so that permanent planning for such an infant can proceed. The Model Act does not require a finding of an intent to abandon.209

The third category includes various statuses and relationships: such as "minor," "legal custody," "parent-child relationship," "protective supervision," "residual parental rights and responsibilities." These status and relationship definitions are modeled after the

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203. Supra note 19.
204. 45 C.F.R. § 1340-1-2.
205. Section 4(b) supra note 126, at 4.
207. "(A) Abandonment is conclusively presumed if the child is found under such circumstances that the identity or whereabouts of the parent is unknown and has not been ascertained by diligent searching and the parent does not claim the child within 2 months after the child is found." Model Act, § 2(a)(4)(iv).
208. Other types of abandonment situations, like the child left in foster care without contact with his parents, are dealt with under Section 4(a)(3) which provides guidance to the court when a child has been out of the custody of the parent for the period of one year.
DHEW Model Family Court Act\textsuperscript{210} and state statutes\textsuperscript{211} employing language suggested in the 1961 Children's Bureau publication, Legislative Guides for the Termination of Parental Rights and Responsibilities and the Adoption of Children.\textsuperscript{212}

D. Who May Petition

One of the most controversial features of the Model Act is found in Section 8: \textit{Persons Eligible to Petition}. Subsection (b)(4) gives standing to file a termination petition to a \textit{de facto} parent of a child who has been in foster care for two years. This right should not be equated with awarding foster parents permanent guardianship for the court must still weigh all the evidence presented and decide what is in the child's best interests. By according standing\textsuperscript{213} to foster parents who qualify as \textit{de facto} parents of foster children in care two years or more, the Model Act provides such a child who may have been forgotten by parents and/or agency with an advocate.\textsuperscript{214} Thus, if a foster parent should bring a petition, the court should be alert to investigate and question why permanent placement has not been worked out for the child. This provision accepts the relevancy of the concept of the "psychological parent" and rejects the traditionalist view of foster parents recently articulated by

\begin{footnotes}
\item[\textsuperscript{210}] Section 2. Definitions (18), (24), (26) in [1974-1979 Reference File] \textsc{Fam. L. Rep. (BNA) 201:0022-0023}.
\item[\textsuperscript{212}] \textsc{U.S. Dept. of Health, Educ., & Welfare, Legislative Guides for the Termination of Parental Rights & Responsibilities & the Adoption of Children 38-40 (Reprinted 1968) Children's Bureau Publication No. 394-1961}.
\item[\textsuperscript{214}] See discussion supra, Part II, B-2, regarding the need to build in safeguards against "system failure." The final consensus of the Advisory Committee was that a foster parent may be in the best position to know the child, the frequency and quality of contacts with both the birth parents and the agency.
\end{footnotes}
the New York Court of Appeals in *Ninesling et al. v. Nassau County Department of Social Services.* 215 The Model Act's provision is consistent with the statutory preferences already given foster parents in some states to adopt children in their care a stated period of time. 216 In addition to the *de facto* parent, other persons traditionally deemed legitimately interested, such as the guardian of the child's person, a legal custodian or the child's guardian *ad litem* appointed in a prior proceeding, 217 may petition. A parent, either directly or through an authorized agency, may file a petition seeking voluntary termination. Any parent may file seeking termination with respect to the other parent. An authorized agency must file a petition within ten (10) days after establishment of the abandonment of any child under its custody. 218

E. Grounds for Termination

Since the right to raise a child is now recognized as a fundamental personal liberty, 219 the State may not deprive a person of parental rights without due process of law. Due process has a dual dimension: it includes both procedural process (discussed *infra*) 220 and substantive due process, meaning that the State must demonstrate a rational or compelling purpose to justify the deprivation. The substantive grounds which will justify termination of parental rights are stated in Sections 3 and 4 of the Model Act.

1. VOLUNTARY TERMINATION

In keeping with the policy mandate of Section 1(b)(5) that all terminations be judicially supervised, Section 3 requires the court to decide upon all voluntarily sought terminations. The Model Act recognizes that some biological parents may elect to relinquish their parental rights and that in the best interests of their children, it would be futile for the State to prohibit such action. Two general

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216. *See N.Y. Soc. Serv. Law § 383(3) (McKinney 1977) (foster parents who have had a child two or more years given preference in adoption); Calif. Civ. Code § 4600 (West Supp. 1979).*
217. For example, a guardian appointed in a prior neglect, abuse or child custody matter as required in the DHEW Model Child Protection Act § 25 & Comment, 98-99 (Aug. 1977 Draft); or as required by Federal Regulations implementing Pub. L. No. 93-247, 45 C.F.R. § 1340.3-3(d)(7).
218. *Model Act § 8(c).*
220. *See Part III infra.*
types of circumstances are envisioned. A voluntary petition seeking termination of a parent-child relationship may be filed by a parent either directly or through an authorized agency. Or, an authorized agency which has accepted a written, notarized relinquishment, no earlier than 72 hours after the child’s birth may present such release to the court. Since some states\(^{221}\) have well established administrative procedures for accepting voluntary relinquishments, this section is designed to accommodate such practices. Under this and later provisions of the Act a voluntarily relinquishing parent may be excused from appearing personally in court.\(^{222}\) However, in the interest of according constitutional protection to the right of family integrity, Section 3(a)(2) requires that all administrative relinquishments presented to the court be found to have been voluntarily and knowingly executed. A notarized statement must be attached to the petition. Agencies may need to rethink their procedures for accepting voluntary relinquishments, including the oral explanations given to parents about the significance of their decision, the language of the form executed by the parent, and the numbers and kinds of staff present at the execution of the relinquishment.\(^{223}\) Is the language of the form clear? Does it sufficiently explain the meaning and consequences of terminating the parent-child relationship? If the parent is also waiving rights to future notice of hearings, is this clearly explained? Agencies may wish to consider making counsel available to parents before accepting any such waiver.

2. INVOLUNTARY TERMINATION

In response to the new demand for greater specificity, Section 4: *Grounds for Involuntary Termination* is carefully drafted to satisfy constitutional due process requirements. Unlike the Iowa statute\(^{224}\)

\(^{221}\) E.g., California and Minnesota.

\(^{222}\) Advisory committee member agency practitioners from those states with administrative relinquishment procedures asserted that some parents, especially unwed mothers so dreaded going to court that they would not relinquish if they had to appear in court.

\(^{223}\) These changes should occur to ensure that parents’ due process rights are not violated and that they were indeed acting voluntarily. As the supply of newborn ideally adoptable infants shrinks, such safeguards become more essential. *See supra* note 88.


The court may upon petition terminate

2. If the court finds that one or more of the following conditions exist:

b. That the parents have substantially and continuously or repeatedly refused to give the child necessary parental care and protection.
stricken in Alsager, the stated grounds for termination are sufficiently precise to give meaning to the general phrases employed. Yet, flexibility is granted by the statute language directing the court to "consider, among other factors" various stated conditions, while not limiting the consideration just to those enumerated. This blend of specificity and flexibility meets both the policy objectives of the Act and the mandate for an individualized hearing, enunciated by the U.S. Supreme Court in Stanley.

Under Section 4, the Model Act requires that the court first determine whether one of the conditions justifying termination exists. This means that the court must first apply the clear and convincing evidence standard to facts presented to establish one or more of these conditions. As a second level of consideration, the court must then make a dispositional order "in the best interest of the child." Section 16 recognizes that there may be cases in which grounds for termination are in fact shown to exist, and yet the court may decide not to terminate the parent-child relationship but make some other order.

During the adjudicatory phase of the proceedings the court must determine whether one or more precisely defined conditions exist. Under Section 15 all findings must be reported in writing. Section 4(a) sets forth three fact situations: abandonment, prior ad-

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225. 406 F. Supp. 10,26 (S.D. Iowa 1975), aff'd, 545 F.2d 1137 (8th Cir. 1976) held IOWA CODE § 232.41(2)(b) & (d) unconstitutional as violating the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Also, see supra note 164.
226. See Model Act § 4(a) through (f).
227. See Model Act § 4(b) and (c) and Commentary.
228. See supra note 162.
229. This conforms to the recent trends in both state and federal courts which is to reject the two other alternatives: the beyond a reasonable doubt and the preponderance of the evidence standards. See Model Act § 15 and Commentary. But cf., Comment, Dependency Proceedings: What Standard of Proof? An Argument Against the Standard of "Clear and Convincing." 14 SAN DIEGO L. REV. 1155 (1977) ("clear and convincing" evidence standard impairs the court's ability to obtain jurisdiction over children who are possible victims of neglect or abuse; the standard applicable in neglect proceedings should favor the rights of the child, not those of the parents).
230. Although the Model Act §§ 3 and 4 retain the well known generalized "best interest of the child" test, the court must first determine whether one or more of the precisely defined conditions, such as parental conduct or fitness, in fact exist. Next, as a second level consideration, the court must determine whether it would be in the child's social developmental and emotional interest to have parental rights terminated. See discussion infra of the Psychosocial Assessment, Part III, G-2. See also Children in Limbo, supra note 149, at 188 (discussion of the distinction drawn by the Supreme Court between an unfitness standard and a "best interests" test in Quillien v. Walcott, 434 U.S. 246 (1978) quoting Justice Stewart concurring in Smith v. OFFER, 432 U.S. 816, 862-863 (1977)).
231. Model Act § 4(a)(1)-(3).
judicated abuse or neglect, and being out of the custody of the parent for a year and the court finds that:

(i) the conditions which led to separation still exist, or similar conditions of a potentially harmful nature continue to exist;
(ii) there is little likelihood that those conditions will be remedied at an early date so that the child can be returned to the parent in the near future; and
(iii) the continuation of the parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent home.

Subsection (b) establishes guidelines for the court's consideration if termination is sought because of prior adjudicated abuse or neglect. The emphasis is upon whether a parent's present emotional or mental condition or use of alcohol or controlled substances consistently renders the parent unable to care for immediate and ongoing physical and psychological needs of the child. Parental acts of abuse or neglect toward other children in the family must be considered in determining whether the child who is the subject of the petition is harmed or threatened with harm. A “spiritual healing” clause, (b)(3), exempts a parent from being deemed negligent for the sole reason that, in legitimately practicing his religious beliefs, he does not provide specified medical treatment.

In subsection (c) a number of factors are listed for the court to consider when a child has been out of the custody of the parent for a year because of either private placement arrangements made by the parent or under court order. In order to ascertain whether return is likely in the foreseeable future, the court is directed to explore (1) the timeliness, nature and extent of services provided to the parents; (2) the terms of any social service contract agreed to by an authorized agency and the parent; and (3) the extent to which all parties have fulfilled their obligations under the service contract.

232. Id.

233. Although earlier drafts would have permitted termination in conjunction with an initial adjudication of abuse or neglect, the final draft forecloses this because of the policy commitment to encourage and strengthen the family unit whenever possible and because termination is seen as a serious intrusion into the family unit that should only result from a separate proceeding held after specific notice has been given to the parent.


235. Model Act § 4(c) and (d). This part of the Act envisions supporting back-up legislation such as TENN. CODE ANN. § 37-1502 which requires an agency to prepare a plan for each child in its care.

When a plan provides for foster care for the child, such plan shall include a statement of
This directive to consider a social service contract is in line with current task-oriented, reality-based casework which has been proven to be helpful in improving the parenting capacity of borderline or character disordered parents. It is also in line with the emerging recognition of the State's obligation to offer meaningful services to help reunite families found in various recent termination cases. There is also a growing awareness that agency intake and service practices must provide adequate fair warning to parents who abuse or neglect their children or who may for reasons of illness or other family disruptions voluntarily place their children in foster care that their parental rights may be in jeopardy. Treatment services should be offered by workers, trained in differential diagnosis, who have the capacity to encourage positive growth, but who also can set realistic goals and limits with parents.

Consistent with the Act's policy of according priority to the child's needs, subsection (d) requires the court to evaluate and consider the child's feelings and emotional ties with his birth parents. Whether the parent has made efforts to adjust his circumstances, conduct or condition to make it in the child's best interest to return

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responsible between the parent, the agency, and the caseworker of such agency. Such statement shall include the responsibilities of each party in specific terms and shall include the statutory definition of an abandoned child as defined in § 37-202(7), and the procedures for termination of parental rights. Each party shall sign the statement and be given a copy. Non-compliance by the parent to the statement of responsibilities provides grounds for termination of parental rights by the court notwithstanding other statutory provisions for termination of parental rights.

See also, OVERCOMING BARRIERS, supra note 81 for discussion of new strategies.

236. See In Matter of Jane Doe, 385 A.2d 221 (1978) (involving decree terminating parental rights), the court held that a parent who has made "only minimal efforts to support or communicate with a child" is not guaranteed rights under a statute which directs the state social worker to "ensure that every effort has been made to enable parents to provide a family for their own children." New Hampshire REV. STAT. ANN. § 161:4 (1977).

Under the N.Y. FAM. Ct. ACT § 611 (McKinney Supp. 1978), an agency is required to provide services prior to termination unless "such efforts would be detrimental to the moral and temporal welfare of the child. . . ." N.Y. FAM. Ct. ACT § 614 (McKinney Supp. 1978).

237. TENN. CODE ANN. § 37-1502 quoted in part supra note 235. Also this section states: In cases involving child abuse and neglect, with such child being placed in foster care, the statement of responsibility shall stipulate that the abusive or neglectful parent shall receive appropriate rehabilitative assistance through mental health consultation if so ordered by the court.

238. What is needed are skilled workers who will be unlike those noted by the Supreme Court in Smith v. OFFER:

. . . Studies also suggest that social workers of middle-class backgrounds, perhaps unconsciously, incline to favor continued placement in foster care with a generally higher-status family rather than return the child to his natural family, thus reflecting a bias that treats the natural parent's poverty and lifestyle as prejudicial to the best interests of the child. . . . This accounts, it has been said for the hostility of agencies to the efforts of natural parents to obtain the return of their children.

in the foreseeable future must be weighed. The court must consider such matters as whether the parent has maintained regular visitation, assumed reasonable support and maintenance obligations and cooperated with the agency. These aspects are thought to be important indices of whether additional services are likely to bring about a lasting parental adjustment which will permit the child's return to the parent. In cases where parental contact has been sporadic, i.e., merely a card at Christmas, and does not indicate any pattern or ability to sustain ongoing communication, subsection (e) permits the court to disregard such incidental contacts. Furthermore, subsection (e) states: "It is irrelevant in a termination proceeding that the maintenance of the parent-child relationship may serve as an inducement for the parent's rehabilitation." This section thus underscores the Model Act's general commitment to the interests of the child and recognizes that some children need the opportunity to grow and mature, separate and apart from their birth parents.

F. Procedural Due Process

The minimum requirements in any proceeding made subject to due process are adequate notice of the proposed action and an opportunity to be heard. Various sections of the Model Act include provisions drafted to satisfy the expanding requirements of procedural and substantive due process in a termination proceeding. Important features are found in Sections 9, 10, 11 and 12 that accord more than minimum procedural due process.

1. CONTENTS OF PETITION

While initial research seemed to indicate that too much precision regarding grounds for termination was not possible, desirable or constitutionally required, various court decisions during the mid-70s led staff to reappraise and redraft provisions to provide sufficient specificity of standards to withstand constitutional challenges of "void-for-vagueness" or violative of "due process." Particular attention was paid to the Federal District Court for Southern Iowa's holding in Alsager that the Iowa termination statute violated the Due Process Clause of the Fourteenth Amendment.

240. See supra Part II, C-1.
241. See supra note 225.
242. See supra note 224.
since it "failed to give the necessary fair warning of prohibited parental conduct and improvidently allowed state officials the greatest discretion in interpretation and application."243

The Model Act in Section 9(a)(6) requires that the termination petition state "the facts on which termination is sought, grounds authorizing termination, the effects of a termination decree as set forth in Section 18 of this Act, and the basis of the court's jurisdiction." This requirement for specificity in the termination petition complements another constitutional requirement recognized by the Model Act—the rights of all parents to counsel and all children to guardians ad litem who are attorneys experienced in child welfare. If counsel for the parties do not know the facts on which termination is sought, as well as the statutory grounds which the petitioner invokes to justify termination, counsel cannot begin to prepare adequately for the proceedings. The theory of the Model Act is that by requiring the petition to state the precise statutory grounds on which termination is sought, plus the facts, the court, counsel and the parties will all have a clearer idea of the issues relevant to the proceeding.

2. NOTICE AND WAIVER

Section 10: Notice; and Waiver requires that all hearing notices clearly state that a party is entitled to counsel and that if one is indigent the court will appoint counsel. Also, a certified copy of the petition must be attached to the notice.244 Subsection (a) identifies all the interested parties who should receive notice: "the petitioner, the parents of the child, any guardian of the child's person, any person having legal custody of the child, and any guardians ad litem appointed in a prior proceeding." When the parent is a minor, the court has discretion to also give notice to such minor parent's parent or guardian. Personal service is required, but if it cannot be effected, then service by registered mail or publication is acceptable. Subsection (e) imposes a new obligation upon the petitioner who has reason to know that a person entitled to receive notice is unable to read or to comprehend English. If a party is known to be illiterate, the notice must be given verbally. If one is known to be

243. See supra note 225.
244. Model Act § 10(b). See Commentary to this section for a discussion of how this provision fulfills the due process requirements of Mullane, supra note 239.
unable to comprehend English, the notice should be given, if practicable, in the person's native language or through an interpreter.

Subsection (d) allows a party at any time before the preliminary hearing to waive notice and appearance by either appearing before the court or submitting a writing attested by two or more credible witnesses who are over 18 years of age and who subscribe their names thereto in the presence of the person executing the waiver. This feature is designed to be used in the case of voluntary terminations. As suggested supra, agencies may wish to reconsider their procedures and possibly provide parents with counsel before accepting a waiver from them.

3. CONDUCT OF HEARINGS

The Model Act envisions a three phase proceeding, commencing with the preliminary hearing discussed infra, followed by adjudication to determine the appropriateness of termination, and concluding with a disposition, pursuant to Section 16, discussed infra. All hearings are to conform to state procedures for a non-jury civil trial, closed to the general public. A record must be kept. Consistent with the decision to afford simplified procedures to accommodate established administrative relinquishment practices in some states, provision is made for excusing the presence of a parent who has executed a waiver, pursuant to Section 10(d).

Section 15(c) requires that all findings be based upon rules applicable to the trial of civil causes. The court under Sections 11 and 15 may require the presence of professional persons who have examined or are treating any party. If information is received in evidence, the person who made the examination or study is subject to both direct and cross-examination. The Model Act draws a

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245. See discussion supra Part III, E.
247. See infra, Part III, G.
248. In dispensing with a jury trial, the Model Act is consistent with the Supreme Court's stance in McKeiver v. Pennsylvania, 403 U.S. 528 (1971). See Child Neglect Laws supra note 3, at 10-11, 32-33, 67, 310, 348 for an analysis of those states which permit a jury trial for a neglect proceeding and the states where termination may be a possible disposition at the close of a neglect proceeding. The overwhelming sentiment expressed at Advisory Committee meetings was against trial by jury. A few participants did argue for the option of a jury as a protection for minority families against the prejudices and majoritarian values of the court and the agency. It was decided that a jury might be equally an instrument of such prejudices and values.
distinction between court ordered examinations for which no privilege exists and ongoing treatment relationships between a parent or child and a psychiatrist, licensed clinical psychologist or social worker. For such past or ongoing relationships, the Model Act recognizes a therapist-client privilege, although no existing physician-client or similar privilege can be the basis for excluding evidence regarding abuse or neglect of the child or his siblings or any parental conduct or condition specified in Section 4. This approach is consistent with a majority of current state child abuse and neglect reporting statutes which commonly waive the doctor-patient, husband-wife and either similar or all privileges.

4. PRELIMINARY HEARING
A most important phase in the termination proceeding under the Model Act is the preliminary hearing mandated by Section 12. At this time it is the function of the judge to ascertain if all necessary parties are before the court and fully apprised of their constitutional rights to be represented by counsel, to remain silent, to confront, cross-examine and subpoena witnesses. If any party is not represented by counsel or is absent, the hearing may be adjourned to provide time to acquire counsel or to locate and give proper notice to a party. The Model Act rejects the distinction made by some courts that since neglect or termination proceedings are civil and

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249. It should be noted that the psycho-therapeutic relationship is unique and unlike any other. There is an unparalleled need in psychotherapy to preserve the confidence of the patient who reveals his most private personality to the therapist. Revelation by the therapist of the patient's inner self would be disastrous to the patient's reputation and standing in the community. See Slovenko, Psychiatry and a Second Look at the Medical Privilege, 6 WAYNE L. REV. 175, 184-185 (1960); also State ex rel. Juv. Dept. of Clatsop Cty. v. Martin, 533 P.2d 780, 781 (1975) (summary of authorities supporting recognition of a psychotherapist-patient privilege).

Special note should be made that this privilege covers confidential communications between social worker and client that are not generally privileged. Cf., N.Y. CIV. PRAC. LAW § 4508 (McKinney Supp. 1978) (grants a privilege to social worker-client communications). It is reasonable to anticipate that parents involved in termination proceedings will have had substantial contacts with social workers. This provision, thus, should help to protect such social work treatment relationships from disastrous intrusion and to implement the policy articulated in Section 1(b) of the Model Act to offer meaningful services to families. See generally, Bernstein, Privileged Communications to the Social Worker, 22 SOC. WORK 264 (1977); Comment, Privileged Communications: A Case by Case Approach, 23 ME. L. REV. 443, 450 (1971), and Note, The Social Worker-Client Relationship and Privileged Communications, 1965 WASH. U.L.Q. 362.

250. See D. BERNINGER, CHILD ABUSE AND NEGLECT STATE REPORTING LAWS, supra note 5, at 9, 12-13.

251. E.g., In re Cager, 251 Md. 473, 248 A.2d 384 (1968); In re Robinson, 8 Cal. App. 3d 783, 87 Cal. Rptr. 678 (Ct. App. 2d Dist. 1970), cert. denied sub nom. Kaufman v. Carter,
not criminal, court appointed counsel for the indigent parent is not required. The rationale of the Act is the same as that enunciated by the Supreme Court of Oregon in *State v. Jamison*. "It would be unconscionable for the state forever to terminate the parental rights of the poor without allowing such parents to be assisted by counsel." The court may appoint a guardian *ad litem* to represent any incompetent or minor parent.

Section 12 delineates the steps to be taken when the identity or the whereabouts of a putative unwed father are unknown. Subsection (b) tries to respond to the declaration in *Stanley v. Illinois* that unwed fathers are entitled to notice of adoption and custody proceedings concerning their children. To some extent the Model Act parallels the approach taken in the Wisconsin Children's Code of 1973 by imposing a duty on the State to take some affirmative action to notify an unwed father. Subsection (b), in the main, contemplates a fact situation where the mother has relinquished or wishes to relinquish an infant for adoption but the identity and/or whereabouts of the unwed father are not known. At the preliminary hearing the court may ask the mother about the father, but may not compel disclosure in deference to the privacy interests of both mother and child. If the mother cannot or does not provide identifying information, the court may determine whether publication or posting is likely to lead to identification of the father. The court may also appoint a guardian *ad litem* to conduct a discreet search for the putative father. The guardian *ad litem* talking privately with the mother or others may be able to ascertain sufficient information to lead to location of the father or to verify that the mother does not know. The guardian *ad litem* must report back to the court within thirty days at which time the court may determine that all further efforts would be futile and order that the hearing proceed. This pro-

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253. Id., 444 P.2d at 17.
254. 405 U.S. at 657, n.9.
procedure is designed to render proper deference both to the due process rights of the birth father and to a proper and sensitive concern for the future placement and welfare of the child.

The preliminary hearing is also important for at this time the court may on its own motion or on motion by any party, order medical, psychiatric or psychological examinations of the child and/or the parent or custodian whose ability to care for the child is at issue. In all involuntary termination proceedings the court must "appoint an individual attorney to represent the separate interests of the child and to serve as the child's guardian ad litem."

Appointment of a guardian ad litem may be made in any voluntary termination proceeding. Lastly, in all involuntary proceedings, the court must order a psychosocial assessment, discussed infra. Such an assessment may, in the discretion of the court, be ordered in a voluntary proceeding.

5. STANDARD OF PROOF

In accordance with the broad policy directive of the Advisory Committee to draft an Act that meets procedural due process requirements and protects the constitutional rights and interests of all parties, Section 15: Findings requires that all determinations of grounds for termination be based "upon clear and convincing evidence." The Model Act, in adopting this clear and convincing standard follows both state and federal courts which have rejected both the lesser civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt.

The Model Act rejects the criminal standard of proof because a termination proceeding is fundamentally an equitable one. More interests are involved than the clear contest between the State and a defendant found in a criminal proceeding. In termination, the overriding consideration is the welfare of the child, rather than culpability of the parent. As between the two traditional civil standards, preponderance of the evidence and clear and convincing evidence,

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256. See Barron, supra note 184.
257. Model Act § 12(d).
258. See discussion infra, Part III, G-2.
259. E.g., In re Rose J. Gibson, 322 N.E.2d 323 (III. 1975); In re K.S., 543 P.2d 1191 (Alaska 1975).
the higher civil standard is selected because of belief that it accords greater protection to both the child and the privacy interests of the family unit.261

6. TIME-FRAME FOR PROCEEDING

Another important aspect of due process is ensuring that procedures are "timely." The Model Act as drafted attempts to provide a clear workable time-frame to ensure that proceedings move forward and that timely decisions are made in behalf of children to reduce the numbers who drift within the foster care system throughout their minority. Wherever possible the Model Act makes explicit references to time.

First, there is the mandate in Section 1(b)(3) that the State seek to provide an alternative, stable and permanent home for any child removed from his home for more than a year when there is no possibility of return to the birth family within a reasonable time.262 A measure of accountability on this matter is built in by permitting a de facto parent to initiate proceedings for any child who has been in foster care for two years.263 Whenever a conclusive presumption of abandonment is established the agency having custody of such child must file for termination within ten (10) days.264

Following the filing of a petition for termination, the court must set a date for a preliminary hearing to be held within forty-five (45) days.265 Personal notice of the hearing, accompanied by a copy of the petition must be served at least ten (10) days before the hearing.266 In a voluntary proceeding if all parties are present and repre-

261. This selection of the clear and convincing standard of proof does not necessarily assure a predisposition in favor of the parent in a termination proceeding; but at least it should make it somewhat more likely than a preponderance of the evidence standard that a termination decree has an evidentiary basis behind it that comports with due process standards. Use of the clear and convincing standard is a way of emphasizing to courts and the parties that while a permanent deprivation of parental rights decree is not equivalent to a criminal finding of guilt, it nevertheless differs from the typical civil decree ordering relief for one of two contesting parties.


262. Consistent with the Model Act's approach of allowing for some flexibility no specific time is here specified. The court is given guidance, as noted in the discussion supra in Part III, E. But cf., IJ/A/ABA STANDARDS, supra note 54 which lay out specific time periods.

263. Model Act § 8(b)(4).

264. Id., at § 8(c).

265. Id., at § 10(a).

266. Id., at § 10(b).
sented by counsel at the preliminary hearing, the court may move immediately into the adjudicatory and dispositional phases. In an involuntary hearing, if the court appoints a guardian ad litem to search for a putative unwed father, the guardian ad litem must report back within thirty (30) days.267 Secton 15(b) requires that the court commence an adjudicatory hearing within fifteen (15) days following the end of the preliminary hearing.268

The psychosocial assessment report that the court orders at the preliminary hearing must be submitted within thirty (30) days unless the court grants an extension.269 This report is utilized by the court during the disposition stage to fashion an appropriate decree. Following the dispositional hearing, if termination is decreed, the person or agency appointed guardian of the child’s person has ninety (90) days to formulate a final placement plan which must be reported to the court.270 Under Section 16(b) the case remains open an additional ninety (90) days until a final report is made to the court on the implementation of the proposed placement plan. Under Section 16(c) when the termination petition is dismissed and the court places the child under protective supervision, under guardianship or vests legal custody in an authorized agency or person other than the parent, the court must review the situation no later than one year thereafter.271 Under Section 6: Retention of Jurisdiction the court retains jurisdiction until the child is adopted or emancipated. Hence, the court has the power to hold further hearings or make further orders deemed necessary. Finally, Section 22: Appeals provides a thirty (30) day period following entry of judgment for any aggrieved party to appeal; and Section 25: Priority requires that all termination hearings be given calendar priority and handled expeditiously.

G. Dispositional Phase

The final set of features to be examined include (1) the unique functions assigned to the child’s guardian ad litem; (2) the need for

267. Id., at § 12(c).
268. See Model Act Commentary to § 15.
269. Model Act § 13(a)(3).
270. Id., at § 15(b).
271. This provision is consistent with a growing legislative trend to mandate court review of all placement cases.
interdisciplinary judgments as expressed in the court ordered psychosocial assessment; and (3) the range of dispositional orders that the court may make. As noted supra,272 in all involuntary proceedings the court must appoint as guardian ad litem, "an attorney, preferably one who is experienced in the field of children's rights" to be the child's legal representative. 273

1. ROLE OF CHILD'S GUARDIAN AD LITEM

Section 14 specifically imposes legal duties on the child's guardian ad litem in order to avoid the oft reported situation of mere last minute superficial coverage by court appointed counsel in the Juvenile Court.274 By conducting investigations and personal interviews the attorney should be prepared to effectively participate in the adjudicatory stage of the proceeding. The guardian ad litem may present and cross-examine witnesses. Subsection (b) contemplates that during the dispositional stage the guardian ad litem will be an advocate for the child to ensure that the best possible permanent plan is made. The guardian ad litem for an American Indian child is especially charged with reporting on the child's legal status in any federally recognized Indian tribe because special benefits frequently accrue from membership. The guardian ad litem must apply his legal judgments, but these should also be informed by the psychosocial assessment prepared by social service workers. The effective guardian ad litem must have an understanding of and appreciation for the multidisciplinary insights to be gained from the various helping professionals who must be mobilized to evaluate a child and his/her parents and assess what will be in the child's best interest.

Persuasive arguments were made at Advisory Committee meetings that the investigatory and diagnostic tasks of the guardian ad litem could well be performed by other qualified professionals or volunteers.275 The decision to limit appointments to attorneys was made because judicial termination is presently a legal adversarial proceeding. A lay guardian ad litem would still need to retain counsel for the child, thus introducing another person with whom the

272. See supra, Part III, E-1.
273. Model Act § 14(c) and Commentary.
275. In King County, Washington (the Seattle/Tacoma area) a successful program has been developed that uses both professional and law citizen volunteers.
child must relate. For economy of costs and limiting the number of significant adults with whom the child must interact, the Model Act opts to combine the roles of independent legal counsel and guardian ad litem. It is recognized that in many parts of the country it may be very difficult to secure a pool of qualified attorneys, or even an attorney with prior experience in the field of children's rights. A model should point the way to improved practice and thus it is hoped that this provision of the Model Act will encourage the development of such a specialized bar.

2. PSYCHOSOCIAL ASSESSMENT AND REPORT

Section 13: Psychosocial Assessment and Report describes the contents of this critical aid to the court in fashioning an appropriate dispositional order. This feature of the Model Act builds upon suggestions in the 1961 DHEW Legislative Guides For The Termination of Parental Rights and Responsibilities And The Adoption of Children. The psychosocial assessment may be done by social service personnel attached to the court, or by an authorized agency which is not the petitioner, a mental health agency or by an independent social work practitioner.

A carefully prepared study and report will describe where a child is developmentally, the quality of both past and existing relationships with parents and other current caretakers and estimate the nurturing capacity of any adult whose parental rights are subject to termination. It will also refer to all available medical, psychiatric, and psychological evaluations. The proposed plan for the child, adoption or long-term guardianship, will be evaluated in light of these assessments. For example, a plan that proposed adoption by foster parents with whom strong emotional ties had developed


277. Supra note 212, at 18:

Caseworkers bring . . . a body of professional knowledge of human motivations and behavior and the physical, social and economic circumstances that influence the life patterns of individuals plus knowledge of constructive helping methods. Skillful application of this expert knowledge enables the caseworker to make an accurate assessment of the . . . situation presented.

278. Model Act § 13(a). The term "psychosocial" rather than "social study" is used to highlight the interdisciplinary judgments that should be weighed in assessing a child's current social, emotional and psychological needs and in evaluating parental capacity to adequately nurture the child and meet his needs.
might be deemed preferable to a plan that projected several additional moves for a child before finalization of a permanent placement. The child’s own wishes, depending upon his age and maturity of judgment, must also be considered.

3. DISPOSITIONAL ORDERS

Section 16: Dispositions, in accordance with the broad policy directives of Section 1(b), grants the courtwide discretion to either decree termination or not after a finding that grounds exist. Or, the court, finding that grounds do not exist, may dismiss the petition and make an appropriate order.\textsuperscript{279} Even within the context of a termination proceeding, the basic principle of supporting and strengthening the birth family can be advanced, for when all the considerations are weighed, it may be determined that a child can be reunited with his parents either with or without continuing court monitoring (protective supervision). The court is given latitude to also recognize that although the parent(s) may not be able to assume physical custody that the parent-child relationship has such meaning for the child that it would not be in his interest to terminate it. The court may vest guardianship in someone other than the parent without terminating all parental rights when there is a possibility of long-term placement with a \textit{de facto} parent appointed guardian of the child’s person.\textsuperscript{280} This type of order comports with the concept of “open adoption”\textsuperscript{281} without going so far as adoption. It posits a situation where the \textit{de facto} parent is accepting of and permits the birth parent to have some continuing contact and relationship with the child. For the older child who may find adoption unacceptable, guardianship may be the best solution.

Guardianship can provide a greater sense of security than foster care. One commentator who advocates this as an alternative draws the following comparison between guardianship and foster care:

The substitute parent when holding letters of guardianship enjoys the dignity of being in law as well as in fact a substitute parent subject only to the control of the court appointing him. He is not a foster parent whose role is

\textsuperscript{279} Model Act § 16(d).

\textsuperscript{280} Id., § 16(a)(2).

\textsuperscript{281} Experiences with older children adopted by foster parents have demonstrated the viability of an “open” rather than a “closed” adoptive process. The old hallmarks of confidentiality, secrecy and closed records is being replaced by varying degrees of continued contact between the child and his blood relatives.
contingent upon continuous supervision by a child welfare agency or juvenile court probation officer. His sense of responsibility for the child is probably stronger and the child's respect for him is probably greater when their relationship is a formal and settled one.282

The range of possible dispositions coupled with the continuing jurisdiction of the court further the overall aim to remove barriers to the achievement of permanency for children, either through return to their birth family or movement into new situations. All dispositional orders must "be in writing and shall recite the findings upon which the order is based, including findings pertaining to the court's jurisdiction. Every order must fix responsibility for the child's support. All orders are final, conclusive, and binding on all persons after the date of entry."283 Under Section 22 any aggrieved party may appeal within thirty days of entry.

Conclusion

This article began by first recognizing that 1979 is the International Year of the Child during which all nations have been encouraged to reexamine their efforts to promote the well-being of all their children. In Part I the present status of child welfare services in the United States was reviewed. Of pressing concern is the growing incidence of abuse and neglect and the increasing numbers of children coming into foster care and drifting for long periods of time within the foster care system without successful efforts being made to gain permanency for them. It is widely acknowledged that children need a stable home environment and a continuous nurturing parent-child relationship in order to grow to healthy maturity.

As part of the current child welfare policy commitment to promote permanent planning decisions for children, the Law and Child Development Project of Boston College Law School was awarded a Children's Bureau grant to draft a model state statute that could give direction to States as they review their existing approaches to termination and consider amending or enacting new statutes to facilitate better permanent planning decisions for children. With federal and state legislation, one can always study the legislative his-

283. Model Act § 16(f).
tory of a bill by looking at the reports of committee hearings or the legislative debates when the measure was considered by the legislature. Part II should be read as providing the legislative history of the development of the Model Act To Free Children For Permanent Placement. The planning process and the role played by the National Advisory Committee in addressing key social policy and legal issues is described.

Finally, in Part III the major provisions of the Model Act are analyzed in terms of how they further the broad policy mandate to provide for a prompt judicial proceeding to terminate the parent-child relationship, in order to promote decision-making that leads to permanent placement for children, either via adoption or long-term guardianship, and that affords constitutional protections to the rights and interests of all parties.
Appendix
Model Act to Free Children for Permanent Placement
September 21, 1978

Table of Contents
Section 1 - Purposes of Act; Construction of Provisions
Section 2 - Definitions
Section 3 - Grounds for Voluntary Termination of the Parent-Child Relationship
Section 4 - Grounds for Involuntary Termination of the Parent-Child Relationship
Section 5 - Jurisdiction for Termination of Parent-Child Relationship
Section 6 - Retention of Jurisdiction
Section 7 - Venue
Section 8 - Persons Eligible to Petition
Section 9 - Contents of the Petition
Section 10 - Notice; and Waiver
Section 11 - Hearings; Phases and Conduct
Section 12 - Preliminary Hearing
Section 13 - Psychosocial Assessment and Report
Section 14 - Guardians ad litem
Section 15 - Findings
Section 16 - Dispositions
Section 17 - Authority of Guardian of Child's Person
Section 18 - Effect of Decrees
Section 19 - Contempt
Section 20 - Records: Access and Confidentiality
Section 21 - Penalties for Disclosure of Confidential Records
Section 22 - Appeals
Section 23 - Termination Decrees of Other State or Tribal Courts
Section 24 - Severability
Section 25 - Priority
Section 26 - Effective Date
Section 27 - Repeal
Model Act to Free Children for Permanent Placement

Section 1

[Purposes of Act; Construction of Provisions]
(a) The general purposes of this Act are to:
   (1) provide prompt judicial procedures for freeing minor children from the custody and control of their parents, by terminating the parent-child relationship;
   (2) promote the placement of such minor children in a permanent home, preferably through adoption or by vesting their de facto parents with legal guardianship; and
   (3) ensure that the constitutional rights and interests of all parties are recognized and enforced in all proceedings and other activities pursuant to this Act.
(b) It is the policy of this State that:
   (1) whenever possible and appropriate, the birth family relationship shall be recognized, strengthened, and preserved through efforts and procedures as provided for under [state] statute(s);
   (2) removal of a child from his home shall occur only when the child cannot be adequately protected within the home;
   (3) if a child has been removed from his home for one year and cannot be returned home within a reasonable time thereafter, the state should promptly find an alternative arrangement to provide a stable, permanent home for him;
   (4) the interests of the child shall prevail if the child's interests and parental rights conflict; and
   (5) because termination of the parent-child relationship is so drastic, all non-judicial attempts by contractual arrangements, expressed or implied, for the surrender or relinquishment of children, are invalid unless approved by the court.
(c) This Act shall be liberally construed to promote the general purposes and policies stated in this section.

Section 2

[Definitions]
(a) As used in this Act, unless the context otherwise requires:
   (1) "Authorized agency" means a public or private non-profit social agency expressly empowered by law to place children for adoption or foster care.
   (2) "Child" means a son or daughter whether by birth or by adoption, under the age of 18 years.
   (3) An "abused or neglected child" means a child whose physical or mental health or welfare is harmed or threatened with harm by the acts
or omissions of his parent or other person responsible for his welfare.

(4) "Harm" to a child's health or welfare can occur when the parent or other person responsible for his welfare:

(i) inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(ii) commits, or allows to be committed, against the child, a sexual offense, as defined by state law;

(iii) fails to supply the child with adequate food, clothing, shelter, education (as defined by law), or health care, although financially able to do so or offered financial or other reasonable means to do so; for the purposes of this Act, "adequate health care" includes any medical or non-medical remedial health care permitted or authorized under state law;

(iv) abandons the child; abandonment is conclusively presumed if the child is found under such circumstances that the identity or whereabouts of the parent is unknown and has not been ascertained by diligent searching and the parent does not claim the child within 2 months after the child is found; or

(v) fails to provide the child with adequate care, supervision, or guardianship by specific acts or omissions of a similarly serious nature requiring intervention of the child protective service or a court.

(5) "Threatened harm" means a substantial risk of harm.

(6) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ.

(7) "Mental injury" means injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in his ability to function within his normal range of performance and behavior with due regard to his culture.

(8) "Court" means the [________] court.

(9) "Guardian of the child's person" means a person, other than the parent of a child, or an authorized agency appointed by a court having jurisdiction over the child, to serve as custodian and to promote the general welfare of the child, with the duty and authority to make decisions permanently affecting the child's health and development.

(10) "Guardian ad litem" means an attorney appointed by a court having jurisdiction, to represent a person: either the child, his minor or incompetent parent, or his putative father in a judicial proceeding brought to terminate the parent-child relationship.

(11) "Legal custodian" means a person, or an authorized agency to whom legal custody of the child has been given by a court having jurisdiction over the child.

(12) "Legal custody" means a status created by court order under which a legal custodian has the following rights and duties:

(i) to maintain the physical custody of a child;
(ii) to protect, nurture, train and discipline a child;
(iii) to provide adequate food, clothing, shelter, and education as required by law, and routine medical care for a child; and
(iv) to consent to emergency medical and surgical care; and to sign a release of medical information to appropriate authorities, pursuant to state law.

(13) "Minor" means an unmarried person under the age of 18 years.
(14) "Parent" means the birth or adoptive mother or father of a child, regardless of the marital status of the parent; but the term excludes a parent whose rights have been terminated by judicial decree.
(15) "De facto parent" means a person, other than a parent, legal custodian, or guardian of the person, such as a relative, stepparent, or foster parent, who has had continuous physical custody of a child for one year and with whom the child has developed significant emotional ties.
(16) "Parent-child relationship" includes all rights, powers, privileges, immunities, duties and obligations existing between parent and child, as defined by state law.
(17) "Party" includes the child, the parents, and the petitioner.
(18) "Protective supervision" means a legal status under which a court, following an adjudication of abuse or neglect, permits a child to live in his home, subject to the supervision of an authorized agency designated by the court and subject to return to the court at any time during the period of protective supervision in case of harm or threatened harm.
(19) "Relinquishment" means the informed and voluntary release of the physical custody of a child by a parent to an authorized agency for the purpose of freeing the child for adoption or other permanent placement.
(20) "Residual parental rights and responsibilities" means the rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not limited to, the right to reasonable visitation, consent to adoption, and the responsibility of support.

(b) As used in this Act, pronouns of the masculine gender include the feminine.

Section 3

[Grounds for Voluntary Termination of the Parent-Child Relationship]

(a) If the court determines that termination of the parent-child relationship is in the best interest of the child, it may order such termination provided that:

(1) a parent either directly or through an authorized agency voluntarily petitions for the termination of the parent-child relationship; or
(2) a parent has executed an out-of-court notarized statement evincing to the court's satisfaction that the parent has voluntarily and knowingly relinquished the child to an authorized agency no earlier than 72 hours after the child's birth.

Section 4

[Grounds for Involuntary Termination of the Parent-Child Relationship]

(a) An order of the court for involuntary termination of the parent-child relationship shall be made on the grounds that the termination is in the child's best interest, in light of the considerations in subsections (b) through (f), where one or more of the following conditions exist:

(1) the child has been abandoned, as defined by Section 2(a)(4)(iv);
(2) the child has been adjudicated to have been abused or neglected in a prior proceeding;
(3) the child has been out of the custody of the parent for the period of one year and the court finds that:
   (i) the conditions which led to the separation still persist, or similar conditions of a potentially harmful nature continue to exist;
   (ii) there is little likelihood that those conditions will be remedied at an early date so that the child can be returned to the parent in the near future; and
   (iii) the continuation of the parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent home.

(b) When a child has been previously adjudicated abused or neglected, the court in determining whether or not to terminate the parent-child relationship shall consider, among other factors, the following continuing or serious conditions or acts of the parents:

(1) emotional illness, mental illness, mental deficiency, or use of alcohol or controlled substances rendering the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
(2) acts of abuse or neglect toward any child in the family; and
(3) repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, shelter, and education as defined by law, or other care and control necessary for his physical, mental, or emotional health and development; but a parent or guardian who, legitimately practicing his religious beliefs, does not provide specified medical treatment for a child, is not for that reason alone a negligent parent and the court is not precluded from ordering necessary medical services for the child according to existing state law.

(c) Whenever a child has been out of physical custody of the parent for more than a year, the court shall consider, pursuant to subsection (a)(3),
among other factors, the following:

1. the timeliness, nature and extent of services offered or provided by the agency to facilitate reunion of the child with the parent;
2. the terms of social service contract agreed to by an authorized agency and the parent and the extent to which all parties have fulfilled their obligations under such contract.

(d) When considering the parent-child relationship in the context of either subsections (b) or (c), the court shall also evaluate:
1. the child's feelings and emotional ties with his birth parents; and
2. the effort the parent has made to adjust his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home in the foreseeable future, including:
   (i) the extent to which the parent has maintained regular visitation or other contact with the child as part of a plan to reunite the child with the parent;
   (ii) the payment of a reasonable portion of substitute physical care and maintenance if financially able to do so;
   (iii) the maintenance of regular contact or communication with the legal or other custodian of the child; and
   (iv) whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time.

(e) The court may attach little or no weight to incidental visitations, communications, or contributions. It is irrelevant in a termination proceeding that the maintenance of the parent-child relationship may serve as an inducement for the parent's rehabilitation.

(f) If the parents are notified pursuant to Section 10(a) and fail to respond thereto, such failure shall constitute consent to termination on the part of the parent involved. The court may also, pursuant to Section 12(c), terminate the unknown father's relationship with the child.

Section 5
Jurisdiction for Termination of Parent-Child Relationship
The Juvenile/Family court has original and exclusive jurisdiction over proceedings to terminate the parent-child relationship.

Section 6
Retention of Jurisdiction
For the purposes of this Act, when a court has obtained jurisdiction over a child pursuant to this Act, the jurisdiction may continue until the child becomes 18 years of age, unless adopted or emancipated earlier.
Section 7
[Venue]
Proceedings under this Act shall be commenced in the court of original and exclusive jurisdiction sitting in the county either where the child resides, or the petitioner resides or does business.

Section 8
[Persons Eligible to Petition]
(a) A parent, either directly or through an authorized agency, may file a petition seeking voluntary termination of the parent-child relationship.
(b) A petition seeking involuntary termination of the parent-child relationship may be filed by:
   (1) an authorized agency;
   (2) either parent seeking termination with respect to the other parent; or
   (3) a guardian of the child’s person, legal custodian, the child’s guardian ad litem appointed in a prior proceeding; or
   (4) a de facto parent, as defined in Section 2(a)(15), of a child who had been in foster care for 2 years.
(c) An authorized agency having custody of any child conclusively presumed abandoned pursuant to Section 2(a)(4)(iv) shall file a petition seeking involuntary termination within 10 days after establishment of abandonment.

Section 9
[Contents of the Petition]
(a) A petition for termination of the parent-child relationship shall be entitled, “In the Interest of ______, a person under the age of 18 years,” and shall set forth with specificity:
   (1) the name, sex, date and place of birth, and address, of the child;
   (2) the name and address of the petitioner; and the nature of his relationship to the child;
   (3) the names, dates of birth, and addresses of the child’s parents;
   (4) if the child’s parent is a minor, the names and addresses of such minor’s parents or guardian of the person;
   (5) the names and addresses of any:
      (i) guardian of the child’s person,
      (ii) custodian of the child, and
      (iii) guardians ad litem appointed in a prior proceeding;
   (6) the facts on which termination is sought, the grounds authorizing termination, the effects of a termination decree as set forth in Section 18 of this Act, and the basis of the court’s jurisdiction;
   (7) the names of the persons or authorized agencies to whom or to
which temporary legal custody or guardianship of the child's person may be transferred upon disposition.

(b) If the information required under paragraphs (2) and (6) of subsection (a) is not stated, the petition shall be dismissed; if any other facts required under paragraphs (1), (3), (4), (5) or (7) of subsection (a) are not known or cannot be ascertained by the petitioner, he shall so state in the petition.

(c) A copy of any relinquishment or consent to adoption, previously executed by a parent to an authorized agency, shall accompany the petition, pursuant to Section 3(a)(2).

Section 10

[Notice: and Waiver]

(a) Within 10 days after the filing of a petition, the court shall set a place and time for the preliminary hearing, to be held pursuant to Section 12 of this Act; the preliminary hearing shall be held no later than 45 days after filing of the petition. The court shall cause notice thereof to be given to the petitioner, the parents of the child, any guardian of the person of the child, any person having legal custody of the child, and any guardians ad litem appointed in a prior proceeding. If the parent of the child is a minor, the court may give notice to such child's parent or guardian if the court finds that notice is in the best interest of the minor's child.

(b) Notice of the preliminary hearing and copy of the petition, certified by the petitioner, his agent or attorney, or the court clerk, shall be personally served on the persons named in subsection (a) at least 10 days before the hearing. The notice shall state that a party is entitled to counsel in the proceeding and that if a party is indigent the court will appoint counsel.

(c) If personal service on a parent, either within or without this State, cannot be effected, notice shall be given by registered mail sent at least 20 days before the hearing to his last reasonably ascertainable address. If notice is not likely to be effective, the court may order notice to be given by publication at least 20 days before the hearing. Publication shall be in a newspaper of general circulation, likely to give notice, in the place of the last reasonably ascertainable address of the parent, whether within or without this State, or if no address is known, in the place where the termination petition has been filed.

(d) At any time before the preliminary hearing, notice and appearance may be waived by a parent or a person described in subsection (a) before the court or in a writing attested by 2 or more credible witnesses who are 18 or more years of age and subscribe their names thereto in the presence of the person executing the waiver. The face of the waiver shall contain language explaining the meaning and consequences of the waiver and the termination of the parent-child relationship. A parent who has executed a
waiver is not required to appear. If the parent resides outside this State, the waiver shall be acknowledged before a notary public of the foreign jurisdiction and shall contain the current address of the parent. The court shall review all waivers to determine their effectiveness. All waivers to be effective shall be found by the court to have been knowingly and voluntarily executed.

(e) If the petitioner has reason to know that a person entitled to notice is unable to read, such notice shall be given verbally. If the person is unable to comprehend English, all notices, if practicable, shall be given in that person’s native language or through an interpreter.

Section 11
[ Hearings: Phases and Conduct ]

(a) All termination petitions, filed under this Act, shall be considered by the court in three distinct phases, commencing with a preliminary hearing, pursuant to Section 12, followed by the adjudicatory phase to determine the appropriateness of termination, and concluding with a dispositional hearing, pursuant to Section 16.

(b) All hearings shall be conducted in the manner of a non-jury civil trial. The proceedings shall be recorded. Only those persons whose presence is requested by persons entitled to notice under Section 10 or who are found by the court to have a direct interest in the case or the work of the court shall be present. Those persons so admitted shall not disclose any information obtained at the hearing which would identify an individual child or parent. The court may require the presence of witnesses deemed necessary to the disposition of the petition, including persons making a report, study, or examination which is before the court if such persons are reasonably available. A parent who has executed a waiver pursuant to Section 10(d) need not appear at the hearing. If the court finds that it is in the best interest of a child, the child may be excluded from the hearing.

Section 12
[Preliminary Hearing]

(a) If a party appears without counsel, the court shall inform him of his right thereto and upon request, if he is indigent, shall appoint counsel to represent him. No party may waive counsel unless the court shall have first explained the nature and meaning of a petition seeking termination of the parent-child relationship.

(b) If identity of the birth father of the child is unknown to the petitioner, at the preliminary hearing required under Section 10(a) the court shall:

(1) Inquire of the mother concerning the identity of the father, but may not compel disclosure by the mother;
(i) If the mother provides identification of the father, the court shall immediately give notice to the father pursuant to the provisions of Section 10;

(ii) If the mother does not or cannot provide identification of the father, the court shall determine whether notice of the proceedings by publication or posting is likely to lead to the identification of the father and, if so, shall order such notification; but only upon the mother's written informed consent.

(2) If the procedures in (i) and (ii) above fail to provide identification of the father, then the court shall appoint an attorney as guardian ad litem for the putative father to conduct a discreet search for him and to report the results to the court no later than 30 days from the date of the preliminary hearing.

(c) If after acting upon the provision stated in subsection (b), the identity of the father is not determined within 30 days following the preliminary hearing, the court shall immediately enter an order terminating the unknown father's relationship with the child.

(d) In all involuntary termination proceedings, the court shall appoint an independent attorney to represent the separate interests of the child and to serve as the child's guardian ad litem. The court, in its discretion, may appoint a guardian ad litem for the child in any voluntary termination proceeding pursuant to Section 3 of this Act.

(e) Upon a finding at the preliminary hearing that reasonable cause exists to warrant an examination, the court, on its own motion or on motion by any party, may order the child to be examined at a suitable place by a physician, psychiatrist, licensed clinical psychologist, or other expert appointed by the court, prior to a hearing on the merits of the petition. The court also may order examination of a parent or custodian whose ability to care for a child before the court is at issue. The expenses of any examination, if ordered by the court, shall be paid by the [__________].

(f) In all involuntary termination proceedings the court shall order a psychosocial assessment pursuant to Section 13. In any voluntary proceeding the court may so order.

Section 13

[Psychosocial Assessment and Report]

(a) The court, if it assumes jurisdiction at the preliminary hearing, shall order a psychosocial assessment of the child's needs in all involuntary proceedings. This study shall be made either by:

(1) social service personnel attached to the court;

(2) an authorized agency which is not the petitioner or a mental health agency; or

(3) an independent social work practitioner. An authorized agency which is the petitioner may make the assessment only upon court deter-
mination that none of the above alternatives are possible. The report shall be submitted within 30 days after the court directive, unless the court grants a request for an extension.

(b) The court, when it hears a voluntary petition brought pursuant to Section 3, may order a psychosocial assessment if deemed in the best interest of the child.

(c) The psychosocial assessment shall be based upon consideration of:
   (1) the circumstances described in the petition;
   (2) the present physical, mental and emotional conditions of the child and his parents, including the results of all medical, psychiatric, or psychological examinations of the child or of any parent whose relationship to the child is subject to termination;
   (3) the nature of all past and existing relationships among the child, his siblings and his parents;
   (4) the proposed plan for the child;
   (5) the child's own preferences according to his maturity of judgment; and
   (6) any other facts pertinent to determining what will be in the child's best interest, including, but not limited to the child's culture, such as services provided or offered by the [State Department of Social Services] or by any other agencies or individuals.

Section 14

[Guardians ad litem]

(a) During all stages of the proceeding, the child's guardian ad litem shall be the legal representative of the child, and may examine, cross-examine, subpoena witnesses and offer testimony. The guardian ad litem may also initiate an appeal of any disposition that he determines to be adverse to the best interest of the child.

(b) In addition, the guardian ad litem shall be an advocate for the child during the dispositional phase to ensure that the best possible permanent placement plan is made. To ascertain the child's wishes, feelings, attachments, and attitudes, he shall conduct all necessary interviews with persons, other than parents, having contact with and knowledge of the child and, if appropriate, with the child. In the case of an American Indian child, he shall report on the legal status of the child's membership in any federally recognized Indian tribe.

(c) The guardian ad litem for a child shall be an attorney, preferably one who is experienced in the field of children's rights.

(d) The guardian ad litem for other persons entitled to such representation pursuant to Section 2(a)(10) shall protect the rights, interests, and welfare of the party and may exercise the powers enumerated in subsection (a).

(c) The court shall compensate the guardian ad litem for services and related expenses according to the court's fee schedule.
Section 15

[Findings]

(a) If a petition has been voluntarily filed under Section 8(a) and is uncontested, the court shall make its findings at the end of the preliminary hearing if all parties are then before the court; but if not all parties are present, the court shall continue the hearing to give the absent parties opportunity to appear. The court will also continue the hearing to give parties without counsel the opportunity to be represented.

(b) If an involuntary petition has been filed pursuant to Section 8(b), the court shall hold an adjudicatory hearing to commence within 15 days following the end of the preliminary hearing in order to determine whether grounds for termination of the parent-child relationship exist.

(c) All findings shall be based upon clear and convincing evidence and rules applicable to the trial of civil causes. If information contained in a court-ordered report, study, or examination is received in evidence, the person making the report, study or examination shall be subject to both direct and cross-examination. If a parent or child has been or is in treatment with a psychiatrist, licensed clinical psychologist, or social worker, a privilege shall be deemed to exist between the patient and the therapist. However, no existing physician-patient or similar privilege other than the attorney-client privilege may be asserted to exclude evidence of abuse and neglect of the child or his siblings or parental conduct or condition specified in Section 4 of this Act; nor does any privilege exist if a court has ordered an examination of a parent or child pursuant to Section 12(e) of this Act.

Section 16

[Dispositions]

(a) After considering all the evidence, if the court finds that sufficient grounds exist for termination of the parent-child relationship, the court shall:

(1) Decree termination of the parent-child relationship and after having considered the psychosocial assessment and report elect one of the following alternatives:

   (i) appoint an individual as guardian of the child's person and vest legal custody in that person; or
   (ii) appoint an individual as guardian of the child's person and vest legal custody in another individual or in an authorized agency; or
   (iii) appoint an authorized agency as guardian of the child's person and vest legal custody in that agency; or

(2) Not decree termination of the parent-child relationship and after having considered the psychosocial assessment and report order that a long-term or permanent home for the child be provided by appointing as guardian of the child's person the present de facto parent if:
(i) it is deemed that the child would benefit from the continued parent-child relationship; or
(ii) the child is 14 or more years of age and objects to the termination of the parent-child relationship.

(b) Any person or agency appointed guardian of the child’s person under subsection (a) shall report to the court within 90 days on a permanent placement plan for the child. Within an additional 90-day period thereafter, a report shall be made to the court on the implementation of such plan.

(c) In making an order under subsection (a)(2), the court must specify what residual rights and responsibilities remain with the birth parent.

(d) If the court finds that sufficient grounds for termination do not exist, it shall dismiss the petition and under applicable statutory standards make an order:
   (1) returning the child to the custody of his parents;
   (2) placing the child under protective supervision or under guardianship of the person; or
   (3) vesting or continuing temporary legal custody in an authorized agency or person.

(e) Any order the court makes under subsection (d)(2) or (3) shall designate the period of time it shall remain in effect, with mandatory review by the court no later than one year thereafter. The court shall also specify what residual rights and responsibilities remain with the birth parent. Any individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court.

(f) Every order the court makes pursuant to this section shall be in writing and shall recite the findings upon which the order is based, including findings pertaining to the court’s jurisdiction. Every order must fix responsibility for the child’s support. All orders are final, conclusive, and binding on all persons after the date of entry.

Section 17

[Authority of Guardian of Child’s Person]

(a) The guardian of the child’s person has the authority without limitation:

   (1) to consent to marriage, enlistment in the military service of the United States, and any medical, psychiatric, or surgical treatment; and to represent the child in legal actions, unless another person has been appointed guardian ad litem to represent the child;
   (2) to serve as custodian, unless another person or authorized agency has been appointed custodian by court order; and
   (3) to consent to adoption of the child if the parent-child relationship has been terminated under this Act.
(b) The guardian of the child's person also has the duty of reasonable visitations when he does not have physical custody of the child, except to the extent that the right to visitation is limited by court order.

Section 18

[Effect of Decrees]

(a) An order terminating the parent-child relationship divests the parent and the child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parent. This right of inheritance shall be terminated only by a final order of adoption.

(b) The parent-child relationship may be terminated with respect to one parent without affecting the relationship between the child and the other parent.

(c) Any parent whose relationship with the child is terminated is not entitled to notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or otherwise to participate in the proceedings.

(d) No order or decree entered pursuant to this Act shall deprive a child of any benefit due him from any third person, agency, state, or the United States; nor shall any action under this Act be deemed to affect any rights and benefits, that a child derives as a descendant of a member of a federally recognized American Indian tribe.

(e) If an order is made pursuant to Section 16(c), only those residual parental rights and responsibilities specified by the court remain. All custodial rights and duties are subject to the rights, powers, and duties of the guardian of the child's person and to residual parental rights and responsibilities not terminated by judicial decree.

Section 19

[Contempt]

(a) If, without reasonable cause, any person served with a citation within this State as provided in this Act fails to appear, or to abide by an order of the court, or to bring a child before the court if required by the notice of hearing, the court in its discretion may adjudicate the failure to be a contempt of court, as defined and punished by [the applicable state statutes.]

Section 20

[Records: Access and Confidentiality]

(a) All court files and records of any proceedings conducted under this Act shall be kept in a separate locked file and withheld from public inspection, but on special order of the court shall be open to inspection by a
party in the case and his attorney, an authorized agency to which guardianship of the person or legal custody of the child has been transferred, or by legitimate researchers if all identifying data is withheld unless the identifying data cannot be concealed, in which case the researcher has a duty not to disclose.

(b) As used in this section, the term "files and records" includes the court docket and entries therein, petitions and other papers filed in a case, transcripts of testimony taken by the court, and findings, orders, decrees, and other writings or evidentiary materials filed in proceedings before the court, other than social records.

(c) Social records shall be withheld from public inspection, but information contained in those records may be furnished to persons or agencies having a legitimate interest in protection, welfare, or treatment of the child, in a manner the court determines.

(d) As used in this section, the term "social records" includes the psychosocial study and investigation reports required under Section 14 and other related papers, materials and correspondence, including medical, psychiatric, or psychological studies and reports, either in the possession of the court or an authorized agency.

(e) No person, official, or agency may make copies of the files and records or social records or parts thereof, unless the court so orders.

Section 21

[Penalties for Disclosure of Confidential Records]

(a) Except as authorized under Section 20 and under a court order, it is unlawful for any person to disclose, receive, or make use of, authorize, knowingly permit, participate in, or acquiesce in the use of any information involved in any proceeding under this Act, directly or indirectly derived from the files, records, or other papers compiled pursuant to this Act or acquired in the course of the performance of official duties.

(b) A person who discloses information or aids and abets another in gathering such information in violation of the provisions of this section is guilty of a misdemeanor punishable by [the applicable state statutes.]

Section 22

[Appeals]

Any party aggrieved by an order, judgment, or decree of the court, within 30 days after notice of its entry, may appeal to the [_______] for review of questions of law. The procedure of an appeal is governed by the rules applicable to appeals from the [_______] court in civil cases. The pendency of an appeal or application therefor does not suspend an order of the court regarding a child, but a petition for the child's adoption may
not be heard pending the appeal of an involuntary petition to terminate a parent-child relationship.

Section 23

[Termination Decrees of Other State or Tribal Courts]
If the parent-child relationship has been terminated by judicial decree in another state, the decree shall be accorded full faith and credit. Such termination by decree of a federally or state recognized Indian Tribal Court shall also be accorded recognition.

Section 24

[Severability]
If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 25

[Priority]
All termination proceedings under this Act shall be given calendar priority and handled expeditiously.

Section 26

[Effective Date]
This Act shall take effect on ________________.

Section 27

[Repeal]
(a) The following acts and parts of acts are repealed as of the effective date of this Act.
(1) 
(2) 
(3) 
(b) On the effective date of this Act any pending termination proceedings are not affected thereby.