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Dependency and Neglect: Indiana's Definitional Confusion

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DEPENDENCY AND NEGLECT: INDIANA'S DEFINITIONAL CONFUSION

In Indiana, as in many states, the mere suspicion that a child is being neglected may be sufficient to allow an individual to invoke complex state mechanisms to protect the child and punish the offending parent.[1] Unfortunately, what circumstances will prompt the state to act, when that action will result in criminal punishment of the parent, or result solely in the protection of the child are issues thoroughly obscured by vague legislation, and definitions poorly understood.

The state faces a dual problem in regulating the upbringing of its children: first, assuring that someone rear each child; and second, assuring that each child be reared in a culturally acceptable manner. The Anglo-American legal response to this dual problem has been primarily through the development of two statutory concepts: child dependency and child neglect.[2] Traditionally, child dependency has referred to the situation in which an infant's parents are unable to provide for their child's support.[3] To correct this situation, the state assumes certain rights and duties in order to protect the interests of both the child and society. Child neglect refers to mistreatment of the child. Unlike dependency, which suggests only parental inability, child neglect involves parental culpability.[4] Mistreatment can range from the physical[5] or psychological[6]

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1. "Any person may and any peace officer shall give to the court information in his possession that there is within the county, a dependent or neglected . . . child." IND. ANN. STAT. § 9-3208 (Burns Repl. 1956).

2. At common law the power of the state over children as *parens patriae* was recognized, but a parent's rights of guardianship were very strong. Eyre v. Shaftsbury, 24 Eng. Rep. 659, 664 (Wms. 1722). A strong case was required before the State would intervene. *See, e.g.,* Shelley v. Westbroke, 37 Eng. Rep. 850 (Jacob 1821) where the poet was deprived of custody for pamphleteering in favor of atheism.

3. *See, e.g., In re* Souers, 135 Misc. 521, 238 N.Y.S. 738 (1930); *In re* People *ex rel.* McChesney, 103 Colo. 115, 83 P.2d 772 (1938).

4. *See, e.g.,* Floyd v. State, 115 Fla. 625, 155 So. 794 (1934), and McBrayer v. State, 112 Fla. 415, 150 So. 736 (1933). Note that culpability does not necessarily imply criminal intent but has been described as a failure to do that which was within the parent's ability. State v. Gilligan, 287 S.W. 779 (Mo. App. 1926). Criminal intent may, however, be present. State v. Mestemacher, 64 S.W.2d 130 (Mo. App. 1933).

5. The spectre of the physically abused infant, medically designated as the "battered child syndrome," has generated an extensive literature of its own. Kempe, Silverman, Steele, Droegemeller & Silver, *The Battered Child Syndrome,* 181 A.M.A.J. 17 (1962); V. FOUTANA, THE MALTREATED CHILD (1964); Reinhart and Elmer, *The Abused Child,* 188 A.M.A.J. 358 (1964); Shepherd, *The Abused Child and the Law,* 22 WASH. & LEE L. REV. 182 (1965); Morris, Gould, and Matthews, *Toward Prevention of Child Abuse,* 11 CHILDREN 55 (1964).

6. MINN. STAT. ANN. § 260.015(10d) (Supp. 1969). A neglected child may be one ". . . who is without necessary subsistence, education, or other care necessary for his

abuse of a child to the intentional or wanton deprivation of the essentials of life (*e.g.*, food, clothing, minimal cleanliness, and medical care.)[7] In cases of neglect, the state may not only protect the infant, but also penalize the culpable parent or guardian.[8]

State statutes and case law repeatedly employ the terms dependency and neglect in different but nonetheless interrelated contexts. Each use, beginning with juvenile codes and progressing through legislation on adoption, abandonment, guardianship, probate, welfare, and criminal behavior, unavoidably modifies whatever definition is provided. Combine flexible and internally inconsistent state "definitions" with such national legislation as the Social Security Acts' aid to families with dependent children,[9] and the mixture becomes one of truly impressive confusion. There is no exception in Indiana to this problem.

Throughout the nineteenth century Indiana attempted to cope with the problem of dependency and neglect.[10] However, even though statutes differentiated between the disposition of dependent and neglected children,[11] the legislature failed to provide meaningful guidelines upon which to base a determination that a child lacked adequate support or that a child was being mistreated. By the end of the century, Indiana had a

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physical or mental health or morals because his parent or guardian or other custodian neglects or refuses to provide it. . . ."

7. IND. ANN. STAT. § 10-813 (Burns Repl. 1956).

8. IND. ANN. STAT. § 9-2809 (Burns Repl. 1956) (contributing to neglect); IND. ANN. STAT. § 10-813 (Burns Repl. 1956) (criminal neglect); and IND. ANN. STAT. § 10-807 (Burns Repl. 1956) (cruelty).

9. *Cf.* 42 U.S.C. §§ 607-08 (1935).

10. Even before statehood, the statutes of the Northwest Territory (including Indiana) provided that pauper children could be bound out as apprentices by the overseers of the poor, Ind. Terr. Laws, Ch. XIII, § 7 (1807) or by the sheriff in the case of vagrant children. *Id.* ch. LXXXII, § 2. In reworded forms these statutes were among Indiana's first laws. JOHNSTON'S COMPENDIUM OF THE ACTS OF THE STATE OF INDIANA 1817 at 26.

Binding a child over to someone for an apprenticeship was, from the state's point of view, an ideal way to dispose of children who would otherwise be a burden upon the community. The method cost the state nothing; it provided nearly free labor to craftsmen and trained the child in a trade and life-style acceptable to society. That the system worked well is evidenced by the fact that in 1852 the legislature expanded coverage of the act to include all children "if their parents abandon, neglect, or are unable to support them." Ind. Acts 1852, ch. 96, § 3(1). Judges (or in some cases overseers of the poor) were the sole authorities to decide whether one was a neglected or pauper child, and what was to be done with him. Owens v. Frager, 119 Ind. 537 (1889).

These early statutes made no provisions for criminal sanctions against parents or guardians. Judicial disposition of a dependent or neglected child was limited to binding out for apprenticeship or, in the case of a pauper child, removal to the county asylum or house of refuge. Perhaps an awareness of this lack of criminal sanctions prompted the Indiana legislature in 1889 to enact a statute making neglect or cruelty to children a misdemeanor. Acts 1889, ch. 201, § 1; IND. ANN. STAT. § 10-807 (Burns Repl. 1956). Unhappily, for the sake of clarity, no statutory definition of *neglect* was provided.

11. Ind. Acts 1867, ch. 143, § 10; Ind. Acts 1887, ch. 7, § 1; Ind. Acts 1852, ch. 46. These statutes provided for different treatment of a child depending upon whether he is neglected or dependent.

conglomeration of judicially made definitions for dependency and neglect. This history has contributed greatly to contemporary problems in the area.

In 1903, under the impetus of social reforms reflecting "new trends which marked the turn of the century,"[12] the Indiana legislature created its first juvenile court.[13] Four years later, in an effort to avoid confusion within the juvenile courts concerning the definitions of dependency and neglect, the legislature enacted a set of statutes which more fully defined those terms.[14] These 1907 statutes also permitted greater flexibility in the disposition of such children[15] and instituted penalities for contributing to the neglect of a child.[16] Until the 1940's these acts, in essentially unchanged form, remained Indiana's law on the subject. As reported cases show, the Acts of 1907 has much to do with shaping Indiana's current understanding of dependency and neglect.

The 1907 definition of a dependent child included any boy, sixteen years old or younger, and any girl seventeen years old or younger, "dependent upon the public for support, or . . . destitute, homeless, or abandoned."[17] Except for changing the appropriate ages, this definition stands today.[18] Cases defining dependency are rare, and often speak of the term in relation to some other factor.[19] Nonetheless, the cases do illustrate that the key to a finding of dependency is inadequate support. A child abandoned by its parents but adequately supported by its grandparents is not dependent.[20] An illegitimate child who is shuffled between mother and father is likewise not dependent if each parent can provide minimal support.[21] Today the statutory provision for dependency appears to be unnecessary. The concept has been incorporated nearly verbatim into the

12. Note, *Misapplication of the Parens Patriae Power in Delinquency Proceedings,* 29 IND. L.J. 475 (1954).

13. The first juvenile courts in Indiana were authorized by statute in 1903 (Ind. Acts 1903, ch. 237, § 1). Subsequent enactment providing for juvenile courts took place in 1913 (Ind. Acts 1913, ch. 325, § 1); 1931 (Ind. Acts 1931, ch. 43, § 1); 1935 (Ind. Acts 1935, ch. 243, §§ 1-2); 1937 (Ind. Acts 1937, ch. 298, § 1); 1941 (Ind. Acts 1941, ch. 233, § 4); IND. ANN. STAT. § 9-3101 (Burns Repl. 1956).

14. IND. ANN. STAT. § 9-2806 (Burns Repl. 1956), IND. ANN. STAT. § 9-2807 (Burns Repl. 1956).

15. IND. ANN. STAT. § 9-2808 (Burns Repl. 1956) (Ind. Acts 1907, ch. 41, § 3). This statute broadens the court's power to make effective disposition of the child, including making the infant a ward of the court, placing him in "a proper family home. . . ."

16. IND. ANN. STAT. § 9-2809 (Burns Repl. 1956).

17. Ind. Acts 1907, ch. 41, § 2.

18. IND. ANN. STAT. § 9-3205 (Burns Repl. 1956).

19. Dependency usually arises in a context of non-support or abandonment. It is seen in other situations as well. There have been no reported cases involving a state prosecution for dependency alone. *See, e.g.,* Denning v. Star Publishing Co., 94 Ind. App. 300, 180 N.E. 685 (1932) (workmen's compensation); State *ex rel.* Layton v. Geckler, 209 Ind. 157, 198 N.E. 297 (1935) (support and custody).

20. Orr v. State, 70 Ind. App. 242, 123 N.E. 470 (1919).

21. Groves v. Smith, 127 Ind. App. 109, 138 N.E.2d 295 (1956).

current expanded definition of neglect.[22] Its continued presence only adds confusion to the area of neglect.

The oldest statutory use of "neglect" in Indiana which is still in effect dates from 1889. This is a criminal statute[23] which makes cruelty, abandonment, or neglect of a child a misdemeanor offense. No statutory definition of neglect is provided, but it is plainly separated from physical cruelty and joined with the non-physical crime of abandonment (". . . wilfully abandon or neglect . . ."). A statutory definition of neglect was first provided by the Acts of 1907,[24] which also made it a misdemeanor to contribute to the neglect of a minor.[25] Though involving a criminal offense, the statute was made part of the juvenile code. Under this act the initial applications of the definition of neglect appeared. The typical case involved a parent, usually separated from the spouse, charged with contributing to the neglect of his child.[26] In these cases, the courts discuss dependency and neglect simultaneously and make little effort to draw distinctions between the two.[27] This situation led to a problem in delineating the scope of each term. Consequently, the breadth of each concept resulted in overlap and confusion. Recent history compounded that confusion.

In 1941, extensive legislation was passed providing for stronger control of juvenile delinquency.[28] Within the act were a re-authorization of the juvenile court system,[29] and a repetition of the 1907 definition of

22. IND. ANN. STAT. § 9-3206 (Burns Repl. 1956). *See* note 36 *infra*.

23. IND. ANN. STAT. § 10-807 (Burns Repl. 1956).

24. IND. ANN. STAT. § 9-2807 (Burns Repl. 1956).

> The words "neglected child" as used herein, or in any other statute concerning the care, custody and control of children, shall mean any boy under the age of sixteen years or any girl under the age of seventeen years, who has not proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill fame, or with any vicious or disreputable persons; or who is employed in any saloon; or whose home, by reason of neglect, cruelty or depravity on the part of its parent or parents, guardian or other person in whose care it may be, is an unfit place for such child; or whose environment is such as to warrant the state, in the interest of the child, in assuming its guardianship.

25. IND. ANN. STAT. § 9-2809 (Burns Repl. 1956).

26. Neglect might be adultery by the mother and the encouragement of her daughter's fornication. Nunn v. State, 55 Ind. App. 37, 103 N.E. 439 (1913). It has been found in cases of a parent's adultery and drunkenness. Woolbright v. State, 90 Ind. App. 704, 169 N.E. 883 (1930). It might be beating a child, depriving her of adequate education or clothing, over-working her, cursing, and threatening to kill the child. Heber v. Drake, 68 Ind. App. 448, 118 N.E. 604 (1909). It has also been described, probably incorrectly, as the non-support by a divorced husband of his children in the custody of his former wife. Spade v. State, 44 Ind. App. 529, 89 N.E. 604 (1909).

27. *See, e.g.*, Orr v. State, 70 Ind. App. 242, 123 N.E. 470 (1919); Wheeler v. State, 51 Ind. App. 622, 100 N.E. 25 (1912).

28. Ind. Acts 1941, ch. 233.

29. Ind. Acts 1941, ch. 233, §§ 1-17, *superceded by*, IND. ANN. STAT. §§ 9-3101, 9-3201 (Burns Repl. 1956).

contributing to neglect, with minor alterations.[30]

In *Stone v. State*[31] the constitutionality of these statutes was challenged on grounds of vagueness, overbreadth, and violation of a provision of the Indiana Constitution which requires that every act shall embrace only those matters clearly expressed in its title.[32] Because the title of the 1941 statute, "An Act Concerning Juvenile Courts," did not express the intent that the act would establish criminal penalties, the section pertaining to contributing to the delinquency of a minor was found unconstitutional. In addition, by way of *dicta,* the court pointed out that because the second section, contributing to the neglect of a minor, also established criminal penalties it likewise would be unconstitutional.

Yet, since the nearly identical 1907 version of contributing to neglect was presumably left in force,[33] this decision would have had no impact. Nonetheless, the legislature, in 1945, passed a bill readopting contributing to neglect as an emergency provision.[34] To avoid constitutional problems, the new statute was clearly made a part of the criminal code.[35] In addition, the legislature broadened the already expansive statutory definition of a neglected child.[36]

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30. IND. ANN. STAT. § 9-2847 (Burns Repl. 1956). Ind. Acts 1941, ch. 233, § 19.

31. 220 Ind. 165, 41 N.E.2d 609 (1942). Miss Stone was initially indicted in the Circuit Court of Owen County sitting as a juvenile court under IND. ANN. STAT. § 9-2846 (Burns Repl. 1956).

32. IND. CONST. art. 4, § 19.

33. IND. ANN. STAT. § 9-2809 (Burns Repl. 1956) Compiler's Notes p. 331. The notes to this section regard it as effective since the repeal of Ind. Acts 1941, ch. 233, § 19.

34. Ind. Acts 1945, ch. 218, § 6.

35. IND. ANN. STAT. §§ 10-813, -815 (Burns Repl. 1956). Section 10-813 defines abuse, abandonment, cruelty, and neglect. Neglect is differentiated from physical cruelty and is confined to

> . . . wilfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or failure to do or permit to be done any act necessary for the child's physical or moral well-being.

Section 10-815 prescribes the maximum punishment for cruelty or neglect as a $500 fine and six months in the county jail, or seven years in the state prison; and in addition to either, disenfranchisement for seven years.

36. IND. ANN. STAT. § 9-3206 (Burns Repl. 1956).

> The words "neglected child" as used herein, or in any other statute concerning the care, custody or control of children shall mean any boy under the age of eighteen years or any girl under the age of eighteen years who:
>
> (1) Has not proper parental care or guardianship;
>
> (2) Is destitute, homeless or abandoned;
>
> (3) Habitually begs or receives alms;
>
> (4) By reason of neglect, cruelty or disrepute on the part of parents, guardians or other persons in whose care the child may be is living in an improper place;
>
> (5) Is in an environment dangerous to life, limb, or injurious to the health or morals of himself or others.
>
> However, such a child receiving care from an authorized agency need not necessarily come to the attention of the court.

Thus, after 1945 Indiana had a 1907 statute defining neglect which had not been repealed,[37] a developed body of case law construing that definition,[38] and an essentially identical 1945 definition with no case development.[39] The state also had two statutes prohibiting contribution to the neglect of minors: the 1907 juvenile code statute,[40] the 1945 criminal statute.[41] Over both these statutes hung the nearly identical statute of 1941 which had just been declared unconstitutional.[42] In addition there were separate criminal provisions dealing with cruelty and abuse of children.[43]

Today, a father who does not attempt to fulfill the obligation to support his children can be charged with neglect.[44] A woman who encourages the debauchery of a child in her custody is neglecting that child.[45] Although either case might clearly be child neglect, it is unclear with which statutory niche such behavior should be matched. Such conduct might reasonably be classified as contribution to neglect,[46] cruelty,[47] abuse,[48] contribution to delinquency,[49] or some other offense. Considering the different punishments for each offense, concern as to these distinctions is of more than semantic importance. One involves only a five dollar fine,[50] while another imposes a five-hundred dollar fine or seven years in prison.[51] A third possibility is not criminal at all, but nonetheless establishes the child as neglected.[52]

Framing any useful definition of neglect from these divergent sources is difficult. However, a recent attempt was made in *Eaglen v. State*[53] involving a prosecution under the 1945 criminal neglect statute.[54] That case followed a definition of child neglect given in an earlier English case:[55] "neglect" is that want of reasonable care such as an

37. IND. ANN. STAT. § 9-2807 (Burns Repl. 1956).
38. *See, e.g.*, note 26 *supra*.
39. IND. ANN. STAT. § 9-3206 (Burns Repl. 1956).
40. IND. ANN. STAT. § 9-2809 (Burns Repl. 1956).
41. IND. ANN. STAT. § 10-813 (Burns Repl. 1956). IND. ANN. STAT. § 10-815 (Burns Repl. 1956).
42. IND. ANN. STAT. § 9-2847 (Burns Repl. 1956).
43. IND. ANN. STAT. §§ 10-807, -813 (Burns Repl. 1956).
44. Schultz v. State, 227 Ind. 33, 83 N.E.2d 784 (1949).
45. Ault v. State, 249 Ind. 545, 233 N.E.2d 480 (1968).
46. IND. ANN. STAT. §§ 9-2809, 10-813 (Burns Repl. 1956).
47. IND. ANN. STAT. §§ 10-807, -813 (Burns Repl. 1956).
48. IND. ANN. STAT. § 10-815 (Burns Repl. 1956).
49. IND. ANN. STAT. § 10-812 (Burns Repl. 1956).
50. IND. ANN. STAT. § 10-807 (Burns Repl. 1956). This outdated statute has been criticized by at least one other commentator. *See* 1 IND. LEG. FORUM 4 (1967).
51. IND. ANN. STAT. § 10-815 (Burns Repl. 1956).
52. IND. ANN. STAT. § 9-3206 (Burns Repl. 1956).
53. 249 Ind. 144, 231 N.E.2d 147 (1967).
54. IND. ANN. STAT. §§ 10-813, -815 (Burns Repl. 1956).
55. Oakey v. Jackson, 1 K.B. 216 (1914).

ordinary parent would take. This broad definition could embrace all conduct currently labelled "neglectful" under Indiana statutes. But by itself, the definition is entirely unsatisfactory.

The potential for misuse by the state is certainly present in *Eaglen's* ambiguous definition. If neglect is anything done to a child a reasonable parent would not have done, there is probably no parent who has not committed that offense. It is crucial, therefore, that more specific guidelines be established to resolve the issue of when the state should intervene and when it should not. Otherwise, "there is nothing to indicate. . . where the line is to be drawn between trivial and substantial things."[56] In a society of rapidly and drastically diverging sets of moral values, such a line is difficult to discern. Yet, it is precisely in such a society that the line most needs to be drawn. The value gap between Lake and Morgan counties, for example, may be substantial. In Indiana that line has yet to be clearly drawn because of vestigial and confusing statutes, and legislative failure to form a coherent policy on the issue of dependent and neglected children.[57]

Confusion concerning the definitions of dependency and neglect is reflected and compounded by jurisdictional overlap and conflict, making judicial determination of who is a dependent or neglected child an uneven process at best.

After 1907,[58] cases involving dependency and neglect were handled in juvenile courts, or circuit courts sitting as juvenile courts.[59] Eventually, attempts were made not only to dispose of the neglected child but also to punish offending parents in the same action. However, in *Board of Childrens' Guardians v. Gioscio*[60] this practice was prohibited. A civil action under the juvenile code could not be brought to make a neglected child a ward of the court, if at the same time criminal prosecution of the parent was sought. Actions against the parent had to be filed as criminal cases by the state. This meant that two separate actions were necessary: one for the protection of the child, and the other for the punishment

56. Stone v. State, 220 Ind. 165, 175, 41 N.E.2d 609, 619 (1942). This statement was in reference to the vagueness of the 1941 "contributing to neglect" statute.

57. *Compare* the penalties for child neglect under IND. ANN. STAT. § 10-807 (Burns Repl. 1956) *with* IND. ANN. STAT. § 10-815 (Burns Repl. 1956).

58. Ind. Acts 1903, ch. 237, § 1 gave the juvenile courts jurisdiction over "all children, delinquent, truant. . . ." Dependent and neglected children were added to the list in 1907. Ind. Acts 1907, ch. 41, § 3.

59. A circuit court sitting as a juvenile court has exactly the same jurisdiction and function as a juvenile court. Specially designated juvenile courts exist in counties having a population of 250,000 or more. IND. ANN. STAT. § 9-3101 (Burns Repl. 1956). In other counties the circuit court has identical powers. IND. ANN. STAT. § 9-3102 (Burns Repl. 1956).

60. 210 Ind. 581, 4 N.E.2d 199 (1936).

of the parent.

To avoid the impact of *Stone*[61] and *Gioscio*[62] the Indiana legislature in 1945 revised the law of dependency and neglect. A statute prohibiting contribution to the neglect of a minor and authorizing the criminal court to dispose of neglected children incidental to punishment of guilty parents[63] was made a part of the criminal code. Nevertheless, to emphasize that the role of the juvenile courts had not been diminished, the legislature reaffirmed their "exclusive and original jurisdiction . . . in all cases in which a child is dependent or neglected".[64] The result was a serious overlap and conflict of jurisdiction which has been neither remedied,[65] nor raised.[66]

Suppose, for example, that a parent neglected his child. The parent might be criminally prosecuted in a superior or circuit court.[67] That court could presumably deal with the disposition of the child,[68] despite the exclusive grant of such jurisdiction to juvenile courts.[69] The criminal action might also be brought in the juvenile court, and identical action taken.[70] Finally, there is the possibility of a civil action in juvenile court, without prosecution against the parent.[71]

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61. 220 Ind. 165, 41 N.E.2d 609 (1942).

62. 210 Ind. 581, 4 N.E.2d 199 (1936).

63. IND. ANN. STAT. §§ 10-813, -815 (Burns Repl. 1956).

64. Ind. Acts 1945, ch. 347. In amended form this section now reads ". . . all cases in which a child is alleged to be dependent or neglected. . . ." IND. ANN. STAT. § 9-3103 (Burns Repl. 1956). The courts have repeatedly emphasized this grant of exclusive and original jurisdiction to the juvenile courts. State *ex rel.* Geckler, 212 Ind. 440, 9 N.E.2d 93 (1937); State *ex rel.* Gannon v. Lake Circuit Court, 223 Ind. 375, 61 N.E.2d 168 (1945); Lehman v. Montgomery, 233 Ind. 393, 120 N.E.2d 172 (1954); Summers v. State, 248 Ind. 551, 230 N.E.2d 320 (1967).

65. An analogous statutory conflict of jurisdictions has occurred at least once before in Indiana history. Spencer v. State, 5 Ind. 41 (1853). In that case a general grant of exclusive and original jurisdiction and a contradictory grant of specific jurisdiction were enacted by the same legislature. Decision was for the exclusive jurisdiction since it had been ratified two weeks after the grant of specific jurisdiction and acted as a repeal of the earlier contradictory legislation. Under this approach the juvenile court's original and exclusive jurisdiction over dependent and neglected children (enacted March 9, 1945) impliedly repeals any such dispositional grant authorized to a criminal court (enacted March 6, 1945). Dispositions of neglected children made by non-juvenile courts would therefore be void.

66. Only two cases dealing with this criminal statute have been reported. *See* Eaglen v. State, 249 Ind. 144, 231 N.E.2d 147 (1967); Ault v. State, 249 Ind. 545, 233 N.E.2d 480 (1968). (Ault involved a prosecution for contributing to delinquency under IND. ANN. STAT. § 10-812 (Burns Repl. 1956) and child abuse under IND. ANN. STAT. § 10-815 (Burns Repl. 1956)).

67. Prosecution pursuant to IND. ANN. STAT. § 10-813 or 9-2809 (Burns Repl. 1956).

68. IND. ANN. STAT. § 10-813 (Burns Repl. 1956).

69. IND. ANN. STAT. § 9-3103 (Burns Repl. 1956).

70. IND. ANN. STAT. § 10-816 (Burns Repl. 1956).

71. Civil actions can be suggested by anyone. IND. ANN. STAT. § 9-3208 (Burns Repl. 1956). The juvenile court can exercise its jurisdiction in only two ways: certifi-

Thus, behavior by a parent in one county may lead to nothing more than a civil suit to declare a child neglected, while identical behavior in a different county could conceivably result in criminal proceedings in a superior court against that parent. As in the case of definitions dealing with neglect, jurisdictional confusion on this matter reflects the legislature's failure to form coherent policy goals. It is unclear who a neglected child may be, which court will make the decision, and what legal effect such a decision will have on the neglected child and his parent.

CONCLUSION

Irregularity and uncertainty are the rule in dependency and neglect problems in Indiana.[72] This confusion is caused in a large part by definitional problems. Definitions must be clarified and inconsistencies eliminated.[73] Unneeded statutes should be repealed: dependency,[74] for example, appears to be outmoded and never used. Its definition is subsumed by the current definition of neglect,[75] and its existence only complicates the problem. Exactly the same situation holds true for the child cruelty statutes,[76] and the possibility of their repeal should also be considered.

A model statute might consist of one definiton of neglect, ranging from physical cruelty to deprivation of essentials. Jurisdiction over child and parent would be clarified, and unified provision made for disposition of the child, and punishment of the parent.[77]

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cation by another court, or petition. IND. ANN. STAT. § 9-3207 (Burns Repl. 1956). Petitions may be filed only by the probation officer or welfare department. IND. ANN. STAT. § 9-3208 (Burns Repl. 1956).

72. To learn more of actual practice in this area a questionnaire was formulated (with the guidance of Professor Dan Hopson of the Indiana University School of Law) and sent to all Indiana county prosecutors. Of ninety-two counties twenty-seven replied. Replies were unanimous in their criticism of the confusion surrounding the area of dependency and neglect (particularly unclear definitions and ambiguous jurisdiction).

73. For a partial discussion of standards used by other states in determining neglect, *see* Note, 7 J. FAMILY LAW 66 (1967) and Note, 13 CATHOLIC LAWYER 231 (1967). *See also* INDIANA JUDICIAL CONFERENCE REPORTS (1968) (Committee on Mental Health and Correction) for the following proposed definition of neglect:

> The term "neglected child" shall mean a child under the age of eighteen (18) years:
>
> (1) who has been abandoned by his parents, guardian or custodian; or
>
> (2) who lacks proper parental care and control, or subsistence, education or other care or control necessary for his physical, mental or emotional health or morals because of the faults or habits of his parents, guardian, or other custodian or their neglect or refusal, when able to do so, to provide them; or
>
> (3) who has been placed for care or adoption in violation of law.
>
> The fact that the child or his parent, guardian or custodian, or both, receive assistance from public funds shall not be considered in determining whether the child is a "neglected child."

74. IND. ANN. STAT. § 9-3205 (Burns Repl. 1956).

75. IND. ANN. STAT. § 9-3206 (Burns Repl. 1956).

76. IND. ANN. STAT. §§ 10-807, -813 (Burns Repl. 1956).

77. Criminal courts should not dispose of a child incidentally to the punishment of

In Indiana, these are not the only problems which plague the field of dependency and neglect.[78] Yet until these basic problems are resolved, the area will remain uncertain and confusing.

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a parent found guilty of child neglect. A unified jurisdiction over parent and child in neglect cases would help eliminate confusion. Such unification could be accomplished by amending existing statutes to insure juvenile courts the exclusive and original jurisdiction which one statute already gives them. IND. ANN. STAT. § 9-3103 (Burns Repl. 1956). In so far as IND. ANN. STAT. §§ 10-815, -816 bestow jurisdiction on criminal courts they should be amended.

78. This discussion has deliberately avoided the numerous constitutional problems in this area. Vagueness, overbreadth and the resulting violation of due process and equal protection are all issues present here. But those issues cannot be reached without an understanding of the how and why of the current state of Indiana's law of dependency and neglect.