DEALING WITH CHILD ABUSE IN A UNIFIED FAMILY COURT

Child abuse falls within the broad category of family law, along with such other family problems as divorce, alimony, separation, support, paternity, juvenile delinquency, neglect, desertion and custody. In a traditional court system like Nebraska's, family law problems fall under civil, criminal and juvenile court jurisdiction. This can lead to the fragmented handling of what is in effect a single problem. For instance, a case of child abuse may lead to both criminal proceedings against the abuser, and juvenile court proceedings to effect protective supervision or removal of the child from the home. This fragmented judicial approach makes effective resolution of the family's problem difficult. In addition, child abuse and other family law problems often result from underlying social or psychological causes. Judicial disposition of these cases can be expedited by the utilization of auxiliary professionals such as social workers and psychologists for background fact-finding investigation, counselling, therapeutic intervention, and follow-up.

A number of states and municipalities have created unified family courts in an attempt to deal with these problems. These family courts are designed to bring all family-related problems to one court with a specialized judge assisted by an auxiliary staff of social workers, probation officers, psychologists, etc. The motivation for creating these unified family courts has been both to increase judicial consistency and economy by avoiding fragmentation and to attempt to deal more humanely and effectively with widespread social problems like divorce, delinquency and neglect which it was felt were not being handled adequately by the tradi-

2. Id. § 43-202 (Reissue 1974).
6. Id. at 224-25.
7. Id. at 225.
tional legal system. There is strong scholarly support for the unified family court concept. This approach has been found to be an improvement over the traditional system.  

THE HAWAII PLAN

A model act called the Standard Family Court Act was drafted in 1959 by the National Probation and Parole Association, with the endorsement of the National Council on Crime and Delinquency, the U.S. Children's Bureau, and the National Council of Juvenile Court Judges. Of all the jurisdictions that have presently enacted family courts, the state of Hawaii has come closest to following the plan of this standard act. An examination of Hawaii's statutory scheme will clarify the major features of a unified family court.

JURISDICTION

Hawaii's family court has exclusive original jurisdiction over basically all matters involving the relationship of husband and wife or parent and child. Hawaii family courts have jurisdiction over the following matters concerning minors:

1. all alleged violations of federal, state or local laws or municipal ordinances by any person under 18 years of age;

2. all matters involving any person under 18 years of age who is neglected, abandoned or beyond the control of his parent or guardian, or whose behav-

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10. “Public acceptance of the [Hawaii Family Court Act] has been universal. Even in this age of dissent, no one has claimed that the old days were better . . . . The Family Court has made itself felt in the community as a positive force for family stability, a sympathetic friend for families in distress, and a center for research and planning in family law problems.” Corbett & King, The Family Court of Hawaii, 2 FAMILY L.Q. 32, 35 & 39 (1968).
11. Id.
12. Id. at 519.
15. Id. § 571-11(1). The Family Court may in its discretion waive jurisdiction and order a minor over 16 years of age to be held for criminal proceedings where he is alleged to have committed a felony. Id. § 571-72.
ior or environment is injurious to himself or others;\textsuperscript{16}

3. custody, guardianship, adoption, termination of parental rights, judicial consent to marriage, employment or enlistment of minors, commitment of mentally ill or retarded minors, and proceedings under the Interstate Compact on Juveniles.\textsuperscript{17}

Hawaii family courts have jurisdiction over the following matters concerning adults:\textsuperscript{18}

1. all offenses against a minor by the minor's parent, guardian, or other person having legal or physical custody of the minor (including child abuse, incest, contributing to the delinquency of a minor, etc.);\textsuperscript{19}
2. actions charging an adult with abandonment, desertion, or failure to support;\textsuperscript{20}
3. offenses other than felonies against the person of one spouse by the other spouse;\textsuperscript{21}
4. annulment, divorce and separation, and related custody, support and property matters and paternity proceedings;\textsuperscript{22}
5. proceedings for guardianship of an adult, or hospitalization of a person alleged to be mentally defective or mentally ill;\textsuperscript{23}
6. actions for support between spouses, or between parent and child.\textsuperscript{24}

The jurisdiction of Hawaii's Family Courts Act conforms to that of the standard act,\textsuperscript{25} giving the court broad original and exclusive jurisdiction over all matters involving children or the family relationship. Such a broad and inclusive grant of jurisdiction is desirable because it brings together in one proceeding, in one court, family related matters which were formerly handled by several different courts.

In a child abuse case, for instance, the family court has jurisdiction over the parent as well as the abused child. In resolving

\textsuperscript{16} Id. § 571-11(2).
\textsuperscript{17} Id. §§ 571-11(3) to (8).
\textsuperscript{18} Id. § 571-14.
\textsuperscript{19} Id. § 571-14(1).
\textsuperscript{20} Id. § 571-14(2) (A).
\textsuperscript{21} Id. § 571-14(2) (B). In any case falling under (1), (2), or (3) in the text, the Family Court may in its discretion waive jurisdiction in respect of the adult. Id. § 571-14.
\textsuperscript{22} Id. § 571-14(3).
\textsuperscript{23} Id. § 571-14(5), (6).
\textsuperscript{24} Id. § 571-14(6).
\textsuperscript{25} Dyson & Dyson, \textit{Family Courts in the United States}, 8 J. FAMILY L. 505, 525-26 (1968).
the situation the family court has a wide range of remedies to
choose from, including punishment of the parent, change in the
child's custody, protective supervision and/or termination of paren-
tal rights.\textsuperscript{26} This broad jurisdiction over all aspects of the family-
related problem in one judicial proceeding saves time and judicial
energy, prevents duplicated investigation of the family background,
and allows the court to deal with the problem as a whole rather
than just isolated aspects of it.

**Status**

The family courts in Hawaii are established as divisions of the
circuit courts of the state.\textsuperscript{27} Thus they are courts of general juris-
diction equal in dignity to the state's other circuit courts rather
than being inferior courts of limited jurisdiction. Giving family
courts equal status with the state's other courts, and broad original
and exclusive jurisdiction, maximizes their effectiveness\textsuperscript{28} and ends
the jurisdictional and procedural conflicts inherent in the traditional
fragmented system.\textsuperscript{29}

**Administration**

There is general agreement that the goal of family court ad-
ministration should be to "promote the efficient administration of
justice . . . [p]romote the development of uniform practices and
procedures . . . [and] provide better services to children and fami-
lies."\textsuperscript{30} However, the question of where to place administrative re-
sponsibility so as to best achieve these abstract ideals is a difficult
practical question.

The standard act envisions that all family court judges be re-
ponsible for administration. Full power to develop rules, poli-
cies and forms would be vested in a board of family court judges,
which would also prepare budgets and annual reports.\textsuperscript{31}

Hawaii's Family Courts Act provides for less autonomous ad-
ministration than the plan of the standard act outlines above. Ha-

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\textsuperscript{26} Hawaii Rev. Stat. §§ 571-48(2) to (10) (1968), § 571-63 (Supp.
1974).

\textsuperscript{27} Id. § 571-3 (1968).

\textsuperscript{28} Arthur, *A Family Court—Why Not?*, 51 Minn. L. Rev. 223, 230-
31 (1966); Dyson & Dyson, *Family Courts in the United States*, 8 J. Family
L. 505, 520-21 (1968).

\textsuperscript{29} Dyson & Dyson, *Family Courts in the United States*, 8 J. Family
L. 505, 531 (1968).

\textsuperscript{30} Id., quoting Sheridan, *Standards for Juvenile and Family

\textsuperscript{31} Id. at 531-32.
Hawaii's act does establish a board of family court judges consisting of all the state's family court judges. This board is to meet not less than once every six months. However, this board's power is limited to discussing and attempting to achieve agreement on policies, procedures and forms for the family courts. The board must then recommend any such proposed policies, procedures and forms to the state supreme court for adoption. This provision will lead to desirable uniformity among the various family courts in the state since it does provide for establishment of rules governing all the courts. However, the fact that the board of family court judges cannot propound its own rules directly, but must recommend to the state supreme court and then defer to its final judgment, lessens the board’s autonomy and effectiveness. Family court judges, who spend all their time working in this area of the law, will be most aware of the problems in family court administration. There is thus strong theoretical support for the standard act’s provisions vesting full control over family court administration in the board of family court judges themselves.

**JUDGES**

Hawaii's Family Courts Act provides for appointment of district family judges by the chief justice of the state supreme court. These judges are specifically assigned to family court for a six year term. This is desirable because it allows the judge to specialize in family court cases and thus develop expertise and sensitivity to problems peculiar to family law. In practice district family judges are reappointed to family court at the end of their six year term allowing for greater continuity and expertise.

**OTHER PERSONNEL**

Hawaii's Family Courts Act specifically provides that a social
study and a report in writing be made in every case involving a
minor alleged to have violated the law, or any child who is neg-
lected, whose environment is injurious to his own or others' wel-
fare, or who is beyond the control of his parent or guardian, unless
waived by the judge.39 Such social study and report can also be
ordered by the judge in other types of family court cases.40

To effectuate this provision for social studies and reports, Ha-
waii's Family Courts Act provides that "for each family court the
judge . . . shall appoint necessary probation officers, social workers,
and marital counselors and may appoint, or make arrangements for
the services of physicians, psychologists, psychiatrists, and other pro-
fessionally competent persons, to carry on the work of the court."41
This broad and generous statutory provision allows for sufficient
auxiliary personnel to assist the court by making background in-
vestigation, recommending disposition, and providing supervision
after disposition for persons placed on probation. If sufficient
funding is available to allow the family courts to utilize the full
range of auxiliary personnel authorized by statute, effectiveness
and efficiency will be greatly increased. In a child abuse case these
auxiliary personnel can be particularly valuable both to the court
and to the parties. Social workers, psychologists and probation offi-
cers can serve the court and the family by investigating background
facts, providing therapeutic counseling, and following the family af-

Information obtained and reports prepared by these auxiliary
personnel are guaranteed confidentiality by a provision that forbids
their public inspection, or their disclosure except as ordered by the
family court judge for "pertinent research studies or [to those] hav-
ing a legitimate interest in the protection, welfare, or treatment
of the minor."42 In cases involving minors these written reports
are admissible as evidence. An exception to the hearsay rule is
established by statute, providing that these written reports can be
relied on to the extent of their probative value.43 A limited right
of confrontation is afforded to the minor by the provision in the
same statute that the maker of the written report be subject to
direct and cross-examination upon demand when the maker of the
report "is reasonably available."44 In adult criminal cases the nor-

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40. Id.
41. Id. § 571-6(b) (1968).
42. Id. § 571-84 (Supp. 1974).
43. Id. § 571-41.
44. Id.
mal rules of evidence and the "reasonable doubt" standard still apply. The Family Courts Act provides that the procedure to be applied in family court criminal trials of adults is that applicable in a criminal court trial.\textsuperscript{45}

Besides appointment of probation officers, social workers and others as detailed above to assist the court with background and follow-up, the Hawaii Family Court Act also provides that the judge of each family court shall appoint a chief administrative and executive officer called the director of the family court.\textsuperscript{46} Under the judge's supervision, this director is responsible for preparing the budget, collecting statistics and preparing the court's annual report, recommending the appointment and supervising the performance of the family court's other auxiliary personnel, and recommending to the judge procedures to facilitate the court's operation.\textsuperscript{47} Appointment of a person with direct responsibility for supervising each family court's administration frees the judge to spend more time on purely judicial matters, and should expedite achievement of the goals of efficiency, uniformity, and service to families.

\textit{Procedure in Cases Involving Minors}

Special procedural safeguards are provided in Hawaii's Family Courts Act in cases involving minors. These safeguards are similar to those found in juvenile courts in traditional court systems. The purpose of the family court in cases involving a minor is focused on the welfare and best interests of the minor.\textsuperscript{48} The act provides that cases involving minors shall be heard without a jury, and that the public shall be excluded.\textsuperscript{49} In a case involving a minor, findings of fact by the family court judge are to be based on "a preponderance of the evidence admissible under the rules applicable to the trial of civil causes."\textsuperscript{50} Records of family court proceedings are withheld from public inspection except for certain limited purposes or with the judge's consent.\textsuperscript{51} Consent of the family court judge is required for fingerprinting or photographing of minors in police

\textsuperscript{45} Id. § 571-42 (1968). \textit{See In re S.}, 66 Misc. 2d 683, 322 N.Y.S.2d 170 (1971), in which a similar distinction is drawn between admissibility of evidence for purposes of an abuse proceeding, and for purposes of criminal proceedings against the parent.

\textsuperscript{46} HAWAII REV. STAT. § 571-6(a) (1968).

\textsuperscript{47} Id.

\textsuperscript{48} Id. § 571-1.

\textsuperscript{49} Id. § 571-41 (Supp. 1974).

\textsuperscript{50} Id.

\textsuperscript{51} Id. § 571-84. \textit{See} text accompanying note 42 \textit{supra}. 
custody. Police records of minors are confidential and can be opened for inspection only by order of the family court judge.

Hawaii's Family Courts Act does not go as far as it could in providing procedural safeguards in cases involving minors. Hawaii's act makes provision of counsel for minors permissive, not mandatory. Hawaii's act provides that "prior to the start of a hearing, the parents, guardian, legal custodian, and, when appropriate, the minor shall be notified of the right to be represented by counsel." (Emphasis added.) No standards are expressed for when it would be "appropriate" to notify a minor of his right to counsel. In a child abuse case, the interests of parent and child are in conflict. Child abuse thus is certainly one area in which a child's interests could not be considered adequately represented by his parents' counsel. Several states have gone beyond the permissive "when appropriate" approach, and provide for mandatory appointment of counsel for the child whenever a parent-child conflict exists, as in abuse cases. Making appointment of counsel to represent the minor mandatory in any case where the minor's interest conflicts with that of his parent would be a valuable addition to Hawaii's Family Courts Act. This is especially true in light of the U.S. Supreme Court's increased concern with constitutional rights of minors to procedural "fundamental fairness" since In re Gault.

CONCLUSION

Institution of a unified family court with broad original jurisdiction, autonomous administration, adequate auxiliary professional staff, and procedural safeguards for minors' rights (including mandatory right to counsel when the parents' and child's interests conflict) would significantly improve judicial handling of child abuse cases. Such a unified family court would have jurisdiction over all parties involved in an abuse case in a single proceeding. The specialized family court judge, assisted by social work investigation of the family background and psychological evaluation of the parents, would be better able to make an informed and humane disposition of the case. Follow-up investigation of the case by the

53. Id.
54. Id. § 571-41.
55. 58 Cornell L. Rev. 177, 180-81 (1972).
56. Id. at 181 n.17. For Nebraska's position on right to counsel for minors in abuse proceedings, see Comment, Child Abuse—The Legal Framework in Nebraska, also published in this symposium.
court's auxiliary professional staff could be ordered to make sure that the disposition serves the child's best interests. Such a system would be a great improvement over a traditional jurisdiction's fragmented treatment of this serious problem.

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