

**Child Abuse in Israel:**  
**Legislation and Court Practice**

by Judge Philip Marcus, Judge, Jerusalem Family Court

**Book Chapter published in “Child and Domestic Abuse”**  
**by Daniel Eidensohn & Baruch Shulem,**  
**Emunah Press, Jerusalem – New York, 2010**

As in all civilized countries, Israel has enacted legislation with the aim of dealing with child abuse.

**Criminal and care proceedings**

The Penal Law, which is the main legislation defining criminal offences and setting the maximum (and in a few cases minimum) punishment for a person found to have committed a crime, was amended about twenty years ago to define a new series of offences, of abuse against dependant persons, including children, and increasing, and in some cases doubling, the maximum prison sentence for offenders. In addition, for the first time it was made an offence for any person to fail to report suspected child abuse or neglect, with doubled penalties for professionals involved with the child who fail to report.

In addition, the Youth (Care and Treatment) Law 5720-1960 contains wide powers to remove an abused child from the home of the abuser, and the Adoption of Children Law 5741-1981 provides that a child may be declared adoptable – that is, freed for adoption if the parent has abused or neglected his child and there is no reasonable prospect that the parent’s ability to raise the child will improve to a satisfactory level.

So the legislative scheme regarding the powers of the state is fairly comprehensive; but the practicalities are rather different, as I shall show briefly in this survey. The problem is not unwillingness of the courts to utilize their powers, but lack of resources to employ manpower in sufficient numbers, particularly police and social service providers. This leads to difficulties in getting the cases before the court and providing care for the victims, and there are legal limitations whose task is to strike a balance between the duty to punish wrongdoers and the duty to avoid punishing the innocent.

For example, the rules of evidence, which provide that a person cannot, without corroboration, be convicted of a crime where the only evidence is that of a child, mean that many complaints never get as far as a charge being filed in court: a prosecutor will not file if there is no reasonable chance of a conviction.

And while the Youth Welfare Officers are empowered to act where there are reasonable grounds to suspect abuse or neglect, they are desperately understaffed, and as a result they can only deal speedily, if at all, with the cases which appear to be exceptionally serious, meaning that the “ordinarily” serious cases will be dealt with, if at all, after a substantial delay. This is, of course, no criticism of the highly important and

professional work done by the Welfare Officers; but it is unreasonable to expect a Social Worker with three or more times the recommended case load to function fully.

However, the police and welfare authorities can only get involved if they are informed about allegations of abuse or neglect. The citizen cannot complain that the law enforcement or treatment agencies are failing to deal with a problem if that same citizen is unwilling to report his suspicions to those same relevant authorities.

Having said all that, it must also be noted that not all reports of abuse are found to be valid. The complainant may be completely honest in his suspicions, but there may be some reasonable explanation for the matter about which he complained; but there are also cases where the complaint is without basis in fact and is motivated by a desire to damage the person against whom the complaint is made.

### **Civil Proceedings**

As distinct from the Penal Law, the Youth (Care and Protection) Law and the Adoption Law, which empower the state to act when a complaint is filed, there is legislation which provides for the citizen to apply for relief directly to the court.

For example, the Civil Wrongs Ordinance and the laws relating to Maintenance permit the citizen to apply for an injunction, ordering the person alleged to have committed an act of abuse to refrain from doing so, and may also order removal of the alleged perpetrator from the home of the alleged victim. The Legal Capacity and Guardianship Law 5722-1962 empowers the court, on the application of a family member or the state, to restrict the parental guardianship of an abuser.

But these processes take time and resources, and for this reason the legislature enacted the Prevention of Family Violence Law 5751-1991 which provides that a Court may issue an order excluding a person accused of abuse against a family member from the victim's home, and give ancillary orders relating, *inter alia*, to contact between the alleged offender and the alleged victim. Opening an application for an Order under this law is simple – merely filling in a form, which does not require assistance of a lawyer – and the law provides that the application is brought before a judge and the applicant appears before the judge on the same day – usually within less than an hour – after the application is filed. The judge may make an order *ex parte* (before summoning the respondent) and if he does so must order a hearing in the presence of the respondent within 7 days of making the order.

Where there is an allegation of violence (including a sexual offence) against a minor, the court may order restrictions on contact between the respondent and the child, as well as excluding the respondent from the child's usual residence. The court may also order the welfare authorities to investigate and report to the court within a short time.

Of course, like the criminal proceedings and care proceedings, the civil proceedings are not immune from incorrect, and sometimes malicious, complaints.

### **Reporting is mandated by law**

The abused or neglected child is usually unable to report by himself what is happening to him. He may be too young – infants are also abused and neglected: he may

be unaware that he can complain: and he may be unaware that what is happening to him is wrong, particularly if he has grown up in a family where abuse or neglect are common.

For this reason, the legislation described above is of no value unless adults report abuse and neglect.

The reporting adult may be a neighbor, a family member, a teacher or kindergarten helper, a medical doctor or nurse: every person who is aware of suspected child abuse or neglect must report. There are, of course many reasons not to report: embarrassment, reluctance to expose the family to investigation, not being sure if the conduct is in fact abuse or neglect, fear of damaging or losing valuable relationships - the list is endless. But we must remember that failure to report may cause continuation of the abuse or neglect, and escalation of the level of abuse with sometimes fatal consequences.

Nobody is exempt, because nobody should have on his conscience the permanent, or even temporary, disablement, physical or psychological, of any child.

It may be nothing. But what if it is something? Let the competent people decide.

Philip Marcus  
Judge, Jerusalem Family Court  
Kislev 5770 December 2009