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MARYLAND'S EXCHANGEABLE CHILDREN: A CRITIQUE OF MARYLAND'S SYSTEM OF PROVIDING SERVICES TO MENTALLY HANDICAPPED CHILDREN

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I. LISA'S STORY

Consider Lisa, a seriously emotionally disturbed child who might have been helped by any one of the Maryland agencies charged with responsibility for handicapped youngsters:

1. The Department of Education, which is required by state law to provide or fund special education and related services for educationally handicapped children;¹

2. The Social Services Administration, which sometimes assumes the care and custody of mentally handicapped children whose parents are unwilling or unable to care for them;²

3. The Juvenile Services Administration, which accepts responsibility for children adjudicated delinquent or in need of supervision;³ or

4. The Mental Retardation and Developmental Disabilities Ad-

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1. The case study of Lisa describes the experiences of a real child. The name of the child has been changed to protect her right to confidentiality. All her records are on file in the office of Susan Leviton.


3. A child may be considered handicapped under the Education for All Handicapped Children's Act (EHCA) and the Maryland Education Bylaws if mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multiply handicapped, or learning disabled. 34 C.F.R. § 300.5(a) (1982); Md. Admin. Code tit. 13A, § 05.01.02A (1978).


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ministration\textsuperscript{5} and the Mental Hygiene Administration,\textsuperscript{6} which are responsible for some mentally retarded and mentally ill children.

Lisa’s problems trace to her early years. She was only fifteen months old when her father left her mother, who shortly thereafter began treatment for depression at Greater Baltimore Medical Center.\textsuperscript{7} Although a staff psychiatrist there was optimistic about Lisa, describing her at four and one-half as “bright, intelligent, and attractive looking,”\textsuperscript{8} by the time she was nine, her behavioral problems were severe enough that Baltimore City Public Schools referred her to the University of Maryland Learning and Behavior Clinic.\textsuperscript{9} At eleven, Lisa found herself in the custody of Social Services,\textsuperscript{10} her mother having decided that she couldn’t cope with her.\textsuperscript{11}

Between ages eleven and fifteen, Lisa went through two foster homes, two residential institutions, and two temporary crisis centers, ending up in emergency detention at Montrose, a state training school.\textsuperscript{12} Although professionals who evaluated her during these years

\begin{itemize}
  \item 8. G.B.M.C. Progress Notes (June 3, 1968).
  \item 9. University of Maryland Hospital, Department of Social Work, Summary of Service (Aug. 6, 1973).
  \item 10. Department of Social Services (DSS) Referral of Child for Purchase of Care (Sept. 22, 1978). In May, 1974, Lisa was adjudicated “dependent.” A “dependent child” was a child deprived of adequate support or care by reason of the death, continued absence from home, or physical, mental, or emotional incapacity or disability of his parent, guardian, or other custodian. Md. Cts. & Jud. Proc. Code Ann. § 3-801(L) (1974). The term “child in need of assistance” (CINA) has replaced the term “dependent child.” See infra text accompanying note 38 for discussion of CINA.
  \item 11. Regional Institute for Children & Adolescents (RICA) Social Services Admission (SSA) Note (July 25, 1974).
  \item 12. In May of 1974 Lisa was placed at the Regional Institute for Children & Adolescents, RICA SSA Note (July 25, 1974). She adjusted well at RICA, and in February, 1975, she was placed in a foster home. After a month, the foster parent decided she could no longer handle Lisa because of Lisa's emotional problems and returned her to RICA. RICA Psychological Evaluation (Apr. 15, 1975).
\end{itemize}

In October of 1975, DSS transferred Lisa to Villa Maria, a residential treatment center for emotionally disturbed children. DSS Child Whereabouts Sheet (Oct. 28, 1975); DSS Notes (Oct. 30, 1975). Because Lisa was the oldest child at Villa Maria, DSS placed her in foster care again. DSS Transfer Dictation (July 21, 1978). When this placement failed, the Social Services’ worker placed Lisa at the Fellowship of Lights, a temporary crisis center. Letter from Fellowship of Lights to University of Maryland School of Law General
agreed that Lisa needed a group home designed to provide a structured, therapeutic environment, no state agency ever provided such a placement. In the meantime, Lisa's behavioral problems escalated to the point that she frequently had violent tantrums and even attempted to set herself on fire.

Following one of these tantrums, Social Services requested that the juvenile court adjudicate Lisa a delinquent and commit her to the custody of Juvenile Services. The juvenile court adjudicated her a delinquent and ordered that she stay at Montrose pending a permanent placement at Edgemeade or another suitable long-term therapeutic facility. Although Edgemeade accepted her, Juvenile Services refused to place her there claiming that agency policy provided that the agency fund Edgemeade only for children adjudicated "in need of supervision," not for those adjudicated "delinquent." Consequently, Lisa stayed for nearly two years at Montrose, where her emotional condition and her behavior continued to deteriorate.

At the time that Lisa was to be released, Social Services and Education both potentially had a responsibility to Lisa. The Baltimore

Practice Clinic (Feb. 12, 1981). The staff there concluded that Lisa exhibited signs of serious mental illness and asked that she be moved to a more appropriate institution. Fellowship of Lights Consultative Report (Sept. 18, 1978). DSS then placed Lisa at the Neighborhood Adolescent & Young Adult Drug Program (NAYADP). Letter from Fellowship of Lights to University of Maryland School of Law General Practice Clinic (Feb. 12, 1981). After she threw a temper tantrum at NAYADP, the police removed her and placed her in emergency detention at Montrose. DSS Reconsideration (Apr., 1979).

The RICA psychologist described Lisa as an "outgoing friendly child" who "clearly responds to affection and positive treatment," and recommended a structured group home. RICA Psychological Evaluation (Apr. 15, 1975). A psychiatrist who evaluated Lisa in October, 1978, recommended that Lisa be placed in a well supervised and structured therapeutic group home. Instead Lisa was placed at Montrose, a state training school for delinquents. MCC Psychiatric Evaluation (Oct. 13, 1978). In fact, none of the evaluators' recommendations were followed in either instance.

Letter from Fellowship of Lights to University of Maryland School of Law General Practice Clinic (Feb. 12, 1981).

In re . . ., No. 67826510 (Baltimore City Cir. Ct., Div. for Juv. Causes (1978)).

Id.

Memo from Regional Supervisor, Dep't of Juv. Services, Juv. Ct. Services Div. to Montrose Clinical Director (June 1, 1979).

The average stay for a child committed to Montrose is 6.9 months (1981) or 6.8 months (1980). JUVENILE SERVICES ADMINISTRATION (JSA) ANN. REP., 1981 Fiscal Year at 57.

Her behavior there was described as "disruptive," "disturbing," and "assaultive." Her Social Services' worker stated that she was constantly screaming, yelling, and throwing psychotic-like tantrums. The psychiatrist at Montrose explained that because Lisa seemed depressed, and said she did not want to live, he prescribed ritalin and then mellaril. Letter from Montrose Supervisor and Social Worker to Regional Supervisor, Dep't of Juv. Serv., Juv. Ct. Serv. Div. (May 24, 1979); DSS Excess Cost Summary (undated); JSA, Psychiatric Follow-ups (Jan. 17, 1980; Sept. 14, 1979; June 4, 1979).
City Department of Education concluded, however, that Lisa was not emotionally disturbed, but "socially maladjusted." Accordingly, Education claimed it had no obligation to meet her needs. Social Services tried two more residential institutions for emotionally disturbed children. Both institutions agreed that Lisa then needed more intensive services than they could provide, so Brown School in Texas was suggested. But the Department of Social Services had run out of money for such placements, and Education, which must fund on the basis of need and not on the basis of its budget, still disclaimed any responsibility for Lisa.

Finally, a full year after Lisa's release from Montrose, Social Services found the money to send her to the Brown School. Shortly afterwards, the Department of Education reversed its position, admitting that Lisa was seriously emotionally disturbed and thus entitled to special education and related services at the Department's expense. Although Education conceded that residential placement was appropriate, it refused to fund Lisa's placement at Brown because the school was not on the Department's list of approved placements.

Lisa still is at Brown. But her prognosis is poor, for she did not
receive appropriate services when she needed them. During the nine years that she was a ward of the state, her needs were not met; rather, her problem escalated.

Unfortunately, Lisa’s story is a typical one. Blame for this shameful waste of resources—financial and human—belongs to Maryland’s system for delivering services to mentally handicapped children.

II. MARYLAND’S SYSTEM FOR PROVIDING SERVICES TO MENTALLY HANDICAPPED CHILDREN

Before analyzing the system’s problems, this Article will explain how Maryland’s statutes and agency regulations allocate responsibility for these youngsters among three state departments—the Departments of Education, Human Resources, and Health and Mental Hygiene. Essentially, the Maryland scheme makes Education responsible for all educationally handicapped children, Human Resources responsible for youth whose families are unwilling or unable to care for them, and Health and Mental Hygiene responsible for delinquents as well as some emotionally disturbed and retarded children. Thus all three departments often have overlapping obligations to mentally handicapped children.

A. The Department of Education’s Responsibility

Under Maryland law, and the federal Education for All Handicapped Children’s Act (EAHCA), Maryland’s Department of Education must provide educationally handicapped children with free special education and related services. An emotionally disturbed or mentally retarded child qualifies for a special education program, designed to meet his individual needs, if his handicap adversely affects his educational performance. If his handicap is so severe that his needs cannot be met in a less restrictive environment, the Department must place him in a state-operated or non-public residential program at no cost to his parents.

Sometimes a handicapped child needs a residential placement, not


29. MD. ADMIN. CODE tit. 13A, § 05.01.02A(1)(2) (1978).

30. 34 C.F.R. § 300.302 (1982) provides:
If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child.
for educational reasons, but because of medical, social, emotional, or environmental factors segregable from the child's educational needs. If an appropriate day program is available in the child's home school district, but the child is unable to live at home and requires residential care because of a "home circumstance" problem, the local education agency may contribute an amount not to exceed the cost of an appropriate day program in the child's home school district. When children are in the custody of another agency and need residential placement because of a combination of needs, the State Department of Education may co-fund the placement with the other agencies.

B. The Department of Human Resources' Responsibility

The Social Services Administration of the Department of Human Resources is the "central coordinating and directing agency of all social services . . . activities in the state including . . . child welfare services." A local department of social services (LDSS), however, will provide residential services for a child only if the parents or guardian voluntarily surrender custody to it or if a juvenile court commits a child to it. The regulation governing voluntary placement gives the LDSS considerable latitude to decide whether to accept a child. By contrast, the LDSS must accept any child committed to it by the juvenile court.

31. See infra text accompanying note 104.

32. Md. Admin. Code tit. 13A, § 05.01.06F(2)(e) (1978). Although the bylaws do not define "home circumstances," the Maryland State Department of Education's (MSDE) interpretation of the "home circumstances" provision gives the local educational agency (LEA) discretionary authority to contribute to the cost of residential placements needed for non-educational reasons. Memo from Martha J. Irvin, Asst. State Superintendent, Div. of Special Educ., at 1 (Nov. 17, 1981). The LEA may contribute such funds only if there is "evidence that demonstrates the existence of problems establishing the need for out of home placement." Id. Such verification "should be provided to the School Committee by the parents and an appropriate public agency responsible for the child's care." Id.

Before April 14, 1980, the MSDE was responsible for approving placements under the home circumstances provision. Id. at 2. Since then the local educational agencies have had final approval for such placements. Id. See Md. Educ. Code Ann. § 8-409 (1978 & Supp. 1982).

33. The amount of money each agency pays usually is determined by the maximum rate of Juvenile Services or Social Services. In most co-funded cases, Juvenile or Social Services pay their maximum rate, the local education agency pays 300% of their basic cost and MSDE pays the remaining amount. Md. Educ. Code Ann. § 8-417.3(d)(1), (2) (1978 & Supp. 1982), telephone conversation with Richard Steinke, Md. State Dep't of Educ. (May 12, 1983).


Children committed to Social Services by court order are those youngsters adjudicated "children in need of assistance," (CINA), defined as children who are abandoned, abused, dependent, neglected, or mentally handicapped with parents who are unable or unwilling to care for them.\textsuperscript{38}

Social Services' major child welfare service is arranging and paying for boarding care with foster families or in public group facilities.\textsuperscript{39} Some children eligible for foster care may have handicapping conditions, requiring them to be placed in private residential facilities. The amount that Social Services pays for care in private residential facilities is set by agency regulation, and no statute or regulation authorizes payments in excess of the established maximum.\textsuperscript{40} Social Services' practice between 1975 and April, 1981, however, was to pay rates in excess of those set in its regulations on behalf of children with special needs when: a court committed the child to the custody of an LDSS for placement in a particular residential treatment facility; the State Department of Budget and Fiscal Planning approved the contract for payment; and the social, medical, and psychological evaluations substantiated that this was the only appropriate placement for the child.\textsuperscript{41}

Because Social Services projected a deficit of $750,000 for the fiscal year 1981 and $350,000 for 1982, it revised its excess-cost policies effective April 10, 1981.\textsuperscript{42} Under the new policies, the total number of excess-cost placements is to be frozen at the April, 1981, level, but children already in excess-cost care and committed by court order to a


\textsuperscript{39} MD. ANN. CODE art. 88A, § 60 (1979 & Supp. 1982). Boarding care may include support services needed to maintain the child in the foster family or facility. MD. ADMIN. CODE tit. 07, § 02.11.02A(2) (1978). Social Services also provides emergency foster care on a temporary basis for abused and abandoned children. MD. ADMIN. CODE tit. 07, § 02.11.02B (1978).

\textsuperscript{40} MD. ANN. CODE art. 88A, § 32C (1979). The Department of Education, on the other hand, has no maximum payment for purchase of care in private residential facilities. See infra note 70 and accompanying text.

\textsuperscript{41} This policy was embodied in Department of Human Resources Circular Letter No. 80-24 (Mar. 25, 1980). This agency practice generated the term "excess-cost cases," as the Department of Human Resources (DHR) informally refers to those multiply handicapped children whose educational, treatment, and social service needs require placements in facilities that charge in excess of the maximum rate allowed by agency regulations.

\textsuperscript{42} The rising number of children needing this care, as well as the cost of such care, precipitated this funding crisis. In 1980 the average cost per child was $27,000; in 1981 it rose to $31,000. As of April 10, 1981, 62 children were in "excess-cost" placements funded by the DHR. DHR Circular Letter No. 81-25 at 2 (Apr. 10, 1981).
LDSS are to remain in their current placements. Social Services will not approve any new excess-cost placement, and will appeal any court order for such placement, unless all other options for care have been explored and rejected and the LDSS has made substantial efforts to negotiate appropriate placements with other state agencies.

C. The Department of Health & Mental Hygiene's Responsibility

The Department of Health and Mental Hygiene includes three administrations which may provide services to handicapped children: The Juvenile Services Administration, the Mental Hygiene Administration, and the Mental Retardation/Developmental Disabilities Administration.

1. Juvenile Services Administration—Juvenile Services Administration is the central administrative agency for juvenile intake, detention authorization, investigation, probation, protective supervision, and after-care services. It has statutory responsibility for developing programs to serve pre-delinquent children as well as for the state's juvenile institutions devoted to diagnosis, training, detention, and rehabilitation. Moreover, Juvenile Services is supposed to provide services as requested by the juvenile court; specifically, it is empowered to act as a custodian or guardian for children committed to it by the juvenile court; establish and maintain public facilities for children; and place children in, and purchase services from, private facilities including those outside Maryland when adequate services are not available within the state.

The statutes outlining Juvenile Services' functions do not clearly delineate the kinds of children it is required to serve. In practice, Juvenile Services deals with children adjudicated delinquent or "children in

43. Id.
44. Id.
45. The Department of Health and Mental Hygiene also includes the Medical Assistance Program and Crippled Children's Services Division of the Mental Retardation/Developmental Disabilities Administration (MR/DDA), which also are involved with handicapped children. For purposes of this Article, however, the discussion is limited to those administrations to which the juvenile court commits children.
47. Id. at § 6-109(a),(b).
48. Id. at § 6-126.
51. Id. § 6-120.
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need of supervision” (CINS). A CINS is a child who is truant, disobedient, and ungovernable, or who has committed an offense applicable only to children. A delinquent is a child who has committed an act that would be a crime if committed by an adult.

2. Mental Hygiene Administration—The services that the Mental Hygiene Administration (MHA) provides for children include funding and operating psychiatric hospitals, residential treatment centers for adolescents, and community mental health centers and outpatient clinics. The juvenile court may commit a child involuntarily to an MHA psychiatric facility if it adjudges the child a CINA, CINS, or delinquent and determines that: (1) the child has a mental disorder; (2) the child needs inpatient medical care or treatment for the protection of himself or others; (3) the child is unable to be voluntarily admitted; and (4) no less restrictive treatment alternatives are available. When the child is ready to be discharged from an MHA hospital or residential program, MHA has limited after-care planning responsibilities that do not extend to purchasing foster care placement or group home placement. Although MHA is supposed to serve children properly committed to MHA facilities by the juvenile court, if MHA has no room for such a child, it does not fund a private residential placement, for it has no authority to purchase care from private facilities.

3. Mental Retardation/Developmental Disabilities Administration—Like MHA, the Mental Retardation/Developmental Disabilities Administration (MR/DDA) provides very limited options to handicapped children needing residential placements. Although it is re-

52. Id. at § 6-109; MD. CTS. & JUD. PROC. CODE ANN. § 3-820(b)(1) (1980 & Supp. 1982); See infra text accompanying note 122.
53. Id. at § 3-801(f).
54. Id. at § 3-801(k).
57. Id. at § 3-820(f). Children may also be involuntarily admitted to an MHA psychiatric facility if the child: has a mental disorder, presents a danger to the life or safety of himself or others, is unable to be voluntarily admitted, and there is no less restrictive form of intervention available. MD. HEALTH-GEN. CODE ANN. § 10-617 (1980 & Supp. 1982).
58. Id. at § 10-809 (1982).
60. Although the Mental Retardation Administration has some purchase-of-care funds, its primary service is placement of children in state residential institutions. As of August, 1982, there were 499 persons under age 21 in state MR/DDA residential centers. By MR/DDA's own assessment, 34% or 170 of these children do not require institutional levels of care. During this same period, MR/DDA funded six children in alternative living units.
quired to place children who are mentally retarded and in need of twenty-four hour care, its only responsibility to a mentally retarded child who does not need such care is to “recommend” an appropriate program for that child.

The juvenile court may commit a child to a MR/DDA residential facility after adjudging him a CINA, CINS, or delinquent if it also determines that: the child is mentally retarded, the child needs in-residence care or treatment for the adequate care or protection of himself or others, and there is no less restrictive form of care and treatment available.

III. Problems Resulting from Maryland’s Fragmented Service Delivery System

As Lisa’s story illustrates, Maryland’s system of delivering services to handicapped children is riddled with problems including inappropriate or inadequate services, delays in service delivery, and sometimes, a denial of all services. These problems are caused by: (1) the failure to mandate services other than those provided by the Department of Education; (2) vague statutory provisions; (3) conflicting statutory and regulatory provisions; (4) the lack of coordination between agencies serving these youngsters; and (5) the lack of accountability.

A. The Failure to Mandate Services

The most glaring defect in Maryland’s statutory scheme is the failure to require the agencies that serve children to fulfill the promise of treatment implicit in both the purpose clause and the disposition section of the Juvenile Causes Act. The Act’s disposition section requires that children adjudicated delinquent, in need of assistance, or in need of supervision receive treatment. It says “the priorities in making a disposition are the public safety and a program of treatment, training, and rehabilitation best suited to the physical, mental, and moral wel-

(small group residents). T. Rose, The Need for Long-Term Care Opportunities for Developmentally Disabled Children in Maryland 4 (1982).


62. Id. at § 7-504(a)(3).

63. Md. Cts. & Jud. Proc. Code Ann. § 3-820(g) (1980 & Supp. 1982). A child also may be admitted to a state residential center or a private facility upon the application of a guardian or anyone else “having a legitimate interest in the welfare of a person” if, after a comprehensive examination, it is determined that: the person is mentally retarded; for protection or adequate care, the child needs rehabilitation services; and there is no less restrictive care and treatment available that is consistent with the person’s welfare and safety. Md. Health-Gen Code Ann. §§ 7-501, -504(a)(2) (1982).
fare of the child consistent with the public interest." The Act's purpose clause indicates that Maryland's juveniles should receive treatment in the least restrictive environment appropriate to their needs. Among the Act's purposes, it lists:

(3) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(4) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents.

Relying on this language, the Court of Special Appeals suggested that juveniles in Maryland have a statutory right to treatment in a home-like environment.

More fundamentally, the authority under which the state intrudes into the family and assumes custody of the child imposes an affirmative obligation on the state to provide adequate care. The basis for that authority is the doctrine of parens patriae; i.e., the state assumes the role of parent when it determines that the actual parents are unable to care for the child. If the state proceeds to provide inadequate care itself, it then has subverted the very basis for its action. Maryland rarely fulfills this responsibility because the state never has made the budgetary commitment to ensure that these children will receive appro-

64. MD. CTS. & JUD. PROC. CODE ANN. § 3-820(b) (1980 & Supp. 1982).
65. Id. at § 3-802(a)(3), (4).
66. Maryland courts have relied on these sections of the Juvenile Causes Act in describing the types of care and treatment to which juveniles in Maryland are entitled. Chief Judge Murphy (later Chief Judge of the Court of Appeals) explained:

[T]he Juvenile Act does not contemplate the punishment of children where they are found to be delinquent, but rather an attempt to correct and rehabilitate them in "a wholesome family environment whenever possible," although rehabilitation may have to be sought in some instances in an institution.


In In re Carter, the Court of Special Appeals addressed the type of care to be given children adjudicated in need of supervision, another category of children under juvenile court jurisdiction:

[H]is [child in need of supervision] correction and rehabilitation are designed to take place in an environment—of the group home, the foster home or like unit—which duplicates as nearly as possible the intimacy, closeness and wholesomeness of the natural family environment.


priate services once the state becomes their "parent."\textsuperscript{69}

The system's funding structure in effect inhibits provision of services. Only the Department of Education is legally mandated to serve eligible handicapped children in a continuum of placements without regard to cost.\textsuperscript{70} The services of other agencies are contingent on their budgets.\textsuperscript{71} By tying services for handicapped children to agency budgets, Maryland gives each agency an incentive to deny services or to claim that a handicapped child is not its responsibility, but that of another agency. This practice makes the purpose section of the Juvenile Causes Act an empty promise. That section proclaims that the Act's primary purpose is to "provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest."\textsuperscript{72}

Lisa's story illustrates how illusory the commitment to the child's best interests can be. In her case it appears that the agencies considered their own budgetary needs, not the best interests of the child. After Lisa was placed at the Regional Institute for Children and Adolescents (RICA), a staff psychologist concluded that she needed to be placed in a structured group home and then moved to a foster home.\textsuperscript{73} This never occurred; instead she was moved to Villa Maria,\textsuperscript{74} another institution. Later when the juvenile court adjudicated Lisa a delinquent,\textsuperscript{75} evaluations from the Maryland Children's Center\textsuperscript{76} again indicated that she needed to be placed in a well supervised and structured therapeutic group home.\textsuperscript{77} Instead she went to Montrose, a training school

\textsuperscript{69} In 1975 the General Assembly passed Maryland House Joint Res. 49, 1975 Md. Laws 3866, creating a Commission on Juvenile Justice [hereinafter cited as Karwacki Comm'n] to determine among other things how the juvenile justice system can be made more responsive to the needs of children. The Commission's final report, issued in 1977, states:

The Commission is convinced that intervening in the life of a child and his family should only occur when benefits to them are likely to be realized. Necessary resources to implement these provisions must be supplied by the appropriation of adequate funds.

The Governor and General Assembly are urged to meet the challenge.


\textsuperscript{70} Education's budget shall include appropriations necessary to fund the state's contributions to special education programs. Md. Educ. Code Ann. \S 8-417.4(b) (1978).


\textsuperscript{73} RICA Psychological Evaluation (Apr. 15, 1975).

\textsuperscript{74} DSS Child's Whereabouts Sheet (Oct. 30, 1975); DSS Notes (Oct. 30, 1975).

\textsuperscript{75} In re . No. 67826510 (Baltimore City Cir. Ct., Div. for Juv. Causes (1978)).

\textsuperscript{76} Memo from Master, Baltimore City Cir. Ct., Div. for Juv. Causes (Oct. 20, 1978).

The Maryland Children's Center (MCC) was a DHMH facility that evaluated children. MCC Psychological Evaluation (Oct. 6, 1978); MCC Psychiatric Evaluation (Oct. 13, 1978).

for delinquents. Two years later, she finally received a more appropriate placement in Hannah More, a school for emotionally disturbed children. But after Hannah More accepted her, she spent six extra months in Montrose while Social Services and Juvenile Services argued about who should pay for her treatment. Lisa's best interests seemed to be of secondary importance.

Lisa's story also illustrates how Maryland's system for delivering services to handicapped children frequently does not operate in the public interest. Lisa's records indicate that she has undergone about thirty different evaluations in the last nine years. Although these evaluations yielded different labels and descriptions of Lisa's problems, nearly all of them prescribed a full-time residential placement, supportive adult guidance, and a vocational educational program. Each of these repeated evaluations was conducted at substantial public expense, and few yielded any new information or recommendations. Moreover, the recommendations rarely were followed because of the lack of available services.

Additionally, Maryland's failure to provide Lisa with appropriate services has been enormously expensive in terms of the cost of continued residential placements. Had Lisa received appropriate services in a group home at an early age, her continued institutionalization at public expense might have been avoided. Lisa is currently in an out-of-state private facility that charges the state $57,630 a year for Lisa's care. Furthermore, ten placements in eight years have left Lisa so damaged that she may now require permanent institutionalization.

78. Lisa had been committed to the care and custody of Social Services in 1974. Although she had been adjudged delinquent and committed to the care and custody of Juvenile Services in November, 1978, Juvenile Services maintained that Social Services was solely responsible for funding the placement. Letter from Supervisor of Community Programs Dep't of Juv. Serv. to Dist. Supervisor, DSS (Jan. 23, 1980). In late January, 1980, Social Services agreed to fund the placement, but Hannah More stated at that time that they were no longer processing Social Services' cases due to continual funding "foul-ups" with children that Social Services had referred. Letter from Juvenile Service Regional Supervisor, Juv. Ct. Serv. Div., to Chief of Special Serv. for Children, DSS (Jan. 29, 1980). Lisa's records do not indicate how this problem was resolved, but while these administrative issues were being worked out, Lisa spent an additional six to seven months in her "temporary" placement at Montrose.

79. See file located in office of S. Leviton.


81. See supra note 13.

82. Purchase of Care Agreement between Baltimore City DSS and Brown School (July 1, 1983 - June 30, 1984).
But the cost to the public of the state’s mismanagement of Lisa’s needs is not limited to dollars; it includes the loss of a child who was once considered “bright, intelligent, and attractive looking.”\(^8\) The state has not only wasted money; it has wasted Lisa’s life.

**B. Vague Statutes**

Budgetary considerations give agencies an incentive to disclaim responsibility for mentally handicapped children; vague statutes provide excuses for not serving these youngsters. Because Maryland’s statutes do not define clearly either the services or the populations for which the agencies are responsible, each agency can, and often does, argue that another should serve a particular child. As a result, needed services often are delayed or denied altogether. They may simply be delayed as the agencies quarrel about who is responsible for a particular child. They also may be denied altogether because no agency is required, and none chooses, to provide a particular service.

1. **Failure to Define Agency Populations**—Maryland attempts to define agency populations not by services needed but by the nature of the clients’ problems. This approach makes agency responsibility dependent on the labels attached to children’s problems and invites label manipulation. Mentally handicapped children are particularly vulnerable to label manipulation because there is no clear taxonomy of neurological, mental, and behavioral disorders.\(^8\)\(^4\) Accordingly, many experts call for de-emphasis of labeling with respect to such conditions and for a new focus on function/dysfunction and treatment and services based on need.\(^8\)\(^5\) But in Maryland many children remain victims of labeling.

For example, although Education is responsible for some of these children, no clear lines distinguish between those who are, and those who are not, eligible for Education’s services. Instead, the Education Bylaws rely on undefined and easily manipulated labels.\(^8\)\(^6\) For exam-

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83. G.B.M.C. Progress Notes (June 3, 1968).
86. When the child’s problem is neurological, mental, or behavioral, pinpointing the cause of the problem and prescribing treatment is not simple. Most of these conditions are not “either-or” problems: At what point does a child cease to be mischievous and begin to have a conduct disorder? When does a child cease to be imaginative and begin to be mentally ill? See Reynolds & Balow, *Categories and Variables in Special Education*, 38 *Except. Child.* 357, *passim* (1972). Additionally, there is considerable overlap among conditions such as mental retardation, mental illness, behavior disorders, learning disabilities, and
pie, Education can maintain that a child is not "seriously emotionally disturbed," but "socially maladjusted." The relevant Maryland and federal laws mandate special educational services for children in the former category while they refuse them to youngsters in the latter.

By not defining the difference between emotional disturbance and social maladjustment, these laws make it easy for the Department of Education to avoid responsibility to emotionally disturbed children. By not defining the difference between emotional disturbance and social maladjustment, these laws make it easy for the Department of Education to avoid responsibility to emotionally disturbed children.


Because many children do not fit into a "pure type," but instead have multiple problems, to affix a particular label or diagnosis to a child is often to suggest a uniformity about the child's make-up that does not exist. Morse, *Educational Implications of Differential Diagnosis*, in *EDUCATING THE EMOTIONALLY DISTURBED* 21, 23 (H. Hershman ed. 1969).

Another problem with federal and Maryland law's treatment of emotionally disturbed children is that they limit the right to a free appropriate education to those children whose emotional disturbance is "serious." Before the EAHCA, a significant population of students with mild to moderate emotional problems received state-funded special education and related services. Raiser & Van Nagel, *The Loophole in P.L. 94-142*, 46 EXCEPT. CHILD. 516, 518 (1980). Under EAHCA (and the Maryland Bylaws), these children have no right to special education services and thus may remain in the regular classroom without any support services. This situation may be detrimental not only to the disturbed children but also to the regular education teachers, who have neither the training nor the time to deal with these children's needs, and to the disturbed children's normal classmates, whose classes are disrupted and who receive less teacher attention.

In addition, the term "seriously" limits none of the other handicapping conditions described in the EAHCA regulations and the Maryland Bylaws. This suggests that although children with other handicapping conditions are entitled to a wide range of special education services and must be educated in the least restrictive appropriate environment, emotionally disturbed children are eligible for only the more restrictive placements and services.

Another group of youngsters requiring services are [sic] the inner city/urban type youth with social and cultural problems. Their unique problems make it difficult for these youngsters to utilize public school settings. In many cases, they are accurately referred to as "disruptive youth." Since they do not technically meet the criteria for special education and with only a few school systems having specific programs for "disruptive youth" (e.g., "alternative" schools), these youngsters are often suspended or expelled from public schools. Their subsequent referral to the juvenile court, and placement on probation/protective supervision status raises serious question [sic] when an educational program is not available for the youngster. The resolution in many cases is to remove the youth from school and assist the youngster to enter the labor market, where teenagers already represent the greatest percentage of unemployment.

JSA 1980-84 Plan at V-632 (undated).

Health professionals generally do not agree on any particular definition of "serious
Most writers who have attempted to distinguish between these conditions have done so, not on the basis of the problem behavior’s nature, but on the basis of the problem behavior’s cause. One has defined the difference in terms of choice: The emotionally disturbed child has no control over his or her problem behavior, while the socially maladjusted child chooses to engage in his or her problem behavior. Other writers have explained the difference in terms of learning and/or environment: The emotionally disturbed child’s problem behavior is the result of a disorder of cognition or affect and seems deviant to everyone, while the socially maladjusted child’s behavior is learned and conforms to the norms of his or her subgroup but does not conform to larger societal norms. Still other writers have rejected the distinction altogether, and have argued that the conditions are not truly separable, that a socially maladjusted child is necessarily an emotionally disturbed child, or in the alternative, that modern psychiatry and psychology are not advanced enough to pinpoint the cause of such problem behavior and so are incapable of distinguishing between emotional disturbance and social maladjustment. Current psychiatric and psychological theory and practice, which de-emphasize the cause of problem emotional disturbance.” In fact, most psychiatrists and psychologists do not use the label “emotionally disturbed.” Instead, they use terms such as “conduct disorder” and “behavior disorder,” which include both “emotional disturbance” and “social maladjustment,” or they simply describe the child’s problem behavior without assigning a label. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 45-50, 299-302 (3d ed. 1980); Achenbach, Behavior Disorders of Children and Adolescents, in 1 Encyclopedia of Clinical Assessment 113, 113-27, (R. Woody ed. 1980); Behavioral and Antisocial Disorders, 2 Basic Handbook of Child Psychiatry 482-83 (J. Noshpitz ed. 1979); Raiser & Van Nagel, supra note 87, at 518. Moreover, in the federal and state definitions there are no criteria listed for determining who is a socially maladjusted child.

Accordingly, when the LEA reviews psychiatric and psychological evaluations of children suspected of having a handicapping condition, the LEA must attempt to determine whether a diagnosis of conduct or behavior disorder or a description of problem behavior translates into “serious emotional disturbance” or “social maladjustment.” If the LEA is attempting to minimize special education costs, it may consistently lean toward finding social maladjustment rather than serious emotional disturbance. “The fact is that there is no clear, unambiguous definition of emotional disturbance . . . . To enshrine an arbitrary definition of social deviance by government decree and to make that arbitrary definition the basis of a bureaucratic mandate for special education is to invite disappointment.” Kaufman, Where Special Education for Disturbed Children is Going: A Personal View, 46 Except. Child. 522, 524 (1980).


92. Kaufman, supra note 89, at 524. See also Pulfrey, Mervis, & Butler, supra note 84 (stating that EAHCA assumes a sophistication of diagnostic ability and curriculum design that does not exist).
behavior in favor of focusing on describing the behavior and the child’s needs, appear to favor these latter views.\(^9\) Because we do not understand the causes of problem behavior, the statutory differentiation between emotionally disturbed and socially maladjusted children represents the kind of “ambiguity of language and frailty of logic that keeps lawyers busy and drives decent people insane.”\(^9\)

Lisa’s case history illustrates how an education agency may take advantage of the social maladjustment loophole to avoid responsibility for an emotionally disturbed child’s educational needs. In May, 1980, a Baltimore City State Aid Screening Committee reviewed Lisa’s records to determine if Lisa was handicapped under the law.\(^9\) The reports that the Committee considered did not describe Lisa as socially maladjusted nor as emotionally disturbed. Instead, these reports described Lisa as having “definite signs of organicity as evident by emotional instability, hyper-activity, tangentiality, and verbal-performance I.Q. discrepancy,”\(^9\) as having violent episodes resulting from her “underlying depressive process;”\(^9\) as having “borderline mental retardation with hyperactivity,”\(^9\) as being an “emotionally immature child with borderline intellectual functioning;”\(^9\) and as being on drug therapy for anxiety and depression.\(^9\) The Committee determined that Lisa was socially maladjusted, therefore not handicapped under the law, and that she should attend a day program for delinquents upon her release from Montrose.\(^9\) Yet, a year later in July, 1981, a Baltimore City State Aid Screening Committee determined that Lisa was seriously emotionally disturbed, handicapped under the law, and entitled to special education and related services.\(^9\) This Committee based its decision on psychological and psychiatric reports used by the May, 1980, Committee and on more recent psychiatric reports that described Lisa’s problems in similar terms. Thus the difference between the May, 1980, and July, 1981, decisions cannot be attributed to any change in

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93. See supra note 86.
94. Kaufman, supra note 89, at 524.
97. Id.
98. Id.
100. JSA Psychiatric Follow-up (Dec. 20, 1979).
Lisa’s status or needs. Perhaps it stemmed from the presence of counsel representing Lisa at the second meeting. Although the Baltimore City Department of Education finally acknowledged its responsibility to Lisa, the social maladjustment loophole enabled the Department to deny its responsibility for more than a year.

The Maryland and federal laws that establish eligibility criteria for special education services also draw a distinction that invites the Department of Education to argue that Juvenile Services or Social Services bears the major responsibility for a mentally handicapped child. The distinction is between children needing residential placements for educational reasons and children requiring such placements because of medical, social, emotional, or environmental factors segregable from educational needs. When the child needs a residential placement to learn, the education agency is responsible for the full cost of the placement. When, however, the education agency can show that a child needs a residential placement for other reasons, the educational agency has no responsibility, or only partial responsibility, for the placement.


104 Federal and state courts have had difficulty in determining when a child needs a residential placement for educational reasons and when such a placement is necessary for non-educational reasons. In one of the first cases to deal with this issue, the United States District Court for the District of Columbia enjoined a school board from denying a sixteen-year-old, multiply handicapped child free placement in a residential academic program because it found his social, emotional, medical, and educational problems to be so intertwined that it was not possible for the court to perform the “Solomon-like task” of separating them. North v. District of Columbia Bd. of Educ., 471 F. Supp. 136 (D.D.C. 1979).


In the only federal appellate case to address this issue, the Third Circuit found that a child with cerebral palsy and profound mental retardation could learn only in a residential placement where his medical, social, and emotional problems were treated, and that the unseverability of the child's educational, medical, social, and emotional needs was "the very basis for holding that these services are an essential prerequisite for learning." Kruelle v. New Castle County School Dist., 642 F.2d 687, 694 (3d Cir. 1981).

In a related line of cases, several courts have framed the issue in terms of whether the child needs a residential placement to succeed in school; that is, whether the child is able to learn only in a residential setting where medical, emotional, and social problems are treated. See, e.g., Capello v. District of Columbia Bd. of Educ., No. 79-1006 (D.D.C. Jan. 23, 1980), reprinted in 3 EHLR (CRR) 551:500 (child’s academic progress in day programs and residential settings determines whether the child needed a residential setting); Gladys J.
In Maryland, the issue of whether a handicapped child needs a residential placement for "educational" reasons or for "non-educational" reasons often arises in situations involving the "home circumstances" provision of the Maryland Education Bylaws. If the child needs the residential placement for educational reasons, the placement will be provided at the expense of the Department of Education and at no cost to the parents. The Bylaws specially provide for a handicapped child who is enrolled in an appropriate local educational program, but needs a residential setting because of the conditions of his or her "home circumstances." In this situation, the local education agency is not responsible for the full cost of the residential placement, but only for the cost of the child's educational program, up to a maximum of the cost of the school program the child would have attended if living at home. The state or local agency responsible for the child's care, usually Social Services or Juvenile Services, then pays the remainder of the cost of the residential placement. As one might expect, this system induces Social Services and Juvenile Services to argue that a child needs a residential program for educational reasons and the Department of Education to argue that a child needs the program because of home problems or social problems.

Again, Lisa's case provides a concrete example of the overlap of a child's handicapping and home circumstance problems. Lisa's home circumstances were deplorable. Abandoned by her father, Lisa's mother was often hospitalized for depression. Lisa was placed with her grandmother while her brothers entered foster care, one of whom died at the hands of abusive foster parents. Lisa's mother eventually remarried—unsuccessfully—to a man who disliked and mistreated

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109. Id.
110. DSS Referral of Child for Purchase of Care (Sept. 22, 1978).
Lisa. In 1974, Lisa’s mother committed her to Social Services, where Lisa was shunted from placement to placement as the various agencies charged with caring for mentally handicapped children passed responsibility for her back and forth.

Lisa was evaluated and re-evaluated in the many programs and institutions she passed through between 1974 and 1981. The evaluators divided about half and half as to the source of Lisa’s problems—handicapping condition or home circumstances. For example, the University of Maryland Learning and Behavior Clinic’s pediatrician considered her “retarded with neurological dysfunction and behavior problems secondary to her socio-economic situation.” Although the RICA psychologist thought her poor verbal scores were a product of her environment, one and a half years later her teacher at Villa Maria concluded that even if Lisa’s behavior improved, she would still need a class for the educable mentally retarded. Similarly, the Maryland Children’s Center and Montrose psychiatrists laid the primary blame for Lisa’s problems at different doors—one focused on her disruptive family life; the other, on her organic problems.

Like Lisa, many children have both a handicapping condition and a home circumstances problem. Often the two are inextricably intertwined. In such situations, it may be difficult or impossible to determine if the child needs a residential placement because of his or her handicapping condition or because of his or her “home circumstances.” The home circumstances provision of the Education By-laws, however, will provide an excuse for Education to disclaim responsibility.

Mentally handicapped children who are not eligible for Education’s services must contend with the juvenile court’s labeling system. It provides other opportunities for agencies, driven by budgetary constraints, to evade responsibility for handicapped youngsters. The court uses the labels child in need of assistance (CINA), child in need of assistance.

113. Letter from University of Maryland School of Health, Physician, Learning & Behavior Problem Clinic, Dep’t of Pediatrics to Lisa’s DSS Worker (May 2, 1974).
118. See supra note 104.
supervision (CINS), and juvenile delinquent. As mentioned above, by statutory definition, a CINA is a child who is not receiving proper care or is mentally handicapped and whose parents are unable or unwilling to care for her; a CINS is a child who is truant, disobedient and ungovernable, a danger to herself or others, or who has committed an offense applicable only to children; and a delinquent is a child who has committed an act which would be a crime if committed by an adult. As a rough division of responsibility, Social Services and Juvenile Services have agreed that Juvenile Services will provide services to children whose social behavior has caused them to come to the attention of the juvenile court, (CINS and juvenile delinquents) while Social Services will provide services to children who are dependent or neglected, and in need of a healthy home environment. This distinction in service provision does not address the delineation of agency responsibility for the handicapped child whose behavior is socially unacceptable and whose home situation is less than satisfactory. Because children who pass through the juvenile court have similar needs and profiles, they often fit into more than one category.
sequently, the court's perception of a particular child and thus the services it orders for him or her may depend solely upon which agency presents the case to the court. Because similar problems can result in children being brought to the attention of different agencies, which agency presents a particular case often may be a function of chance. Furthermore, because many children fit into more than one category, a state agency easily can manipulate these labels to shift responsibility to some other agency, which in turn manipulates labels to shift respon-

children labeled "delinquents" in penal institutions and those labeled "disturbed" in hospital situations. Lewis, Shank, Cohen, Kligfeld, & Frisone, Race Bias in the Diagnosis and Disposition of Violent Adolescents, 137 AM. J. PSYCHIATRY 1211, 1215-16 (1980) [hereinafter cited as Lewis]. Lewis, supra, reported that hospitalized adolescents are as violent as incarcerated adolescents, that these groups are psychiatrically similar, and, ironically, that the incarcerated adolescents are significantly more likely to have sustained a head injury requiring psychiatric care than are hospitalized adolescents; that aggressive behavior in an adolescent boy is likely to be considered the deliberate act of a healthy youngster and to result in his incarceration, yet similar behavior in a girl is considered psychologically aberrant and more often results in hospitalization; and that violent, disturbed black adolescents tend to be incarcerated whereas violent, disturbed white adolescents tend to be hospitalized. This problem is essentially the same as the emotional disturbance-social maladjustment problem in the educational labeling system.

Studies have also shown strong correlation between a child's experiencing or witnessing abuse and subsequent delinquent behavior. See, e.g., Lewis, Shanock, Pincus, & Glaser, Violent Juvenile Delinquent in J. AM. ACAD. CHILD PSYCHIATRY 307, 315-16 (1979) (suggesting that some children adjudged delinquent are abused or neglected children and therefore could be adjudged CINA's and committed to Social Services for placement in a foster home or group facility rather than incarcerated). Other studies have shown that abused and neglected children usually have serious mental health problems. These findings suggest that many children adjudged as CINA and placed in foster or group home care might need mental health services or placement in a mental health facility. Kinard, Emotional Development in Physically Abused Children, 50 AM. J. ORTHOPSYCHIATRY 686, 693-95 (1980); Kinard, Mental Health Needs ofAbused Children, 50 CHILD WELFARE 451, 460-61 (1980).

126. The procedures for filing a juvenile court petition are described in MD. CTS & JUD. PROC. CODE ANN. §§ 3-810 to -820 (1980 & Supp. 1982).

127. Education also may be the first agency to become aware of the child's problems. See infra text accompanying notes 158-68.

128. Many children who run away from home or are ungovernable (CINS) have family problems and thus could be labeled as CINA. JSA states:

Another problem facing JSA relates to the type of juvenile this Administration is beginning to receive. Current experience indicates that Juvenile Services is getting more disturbed youth referred for community based placement than in the past. Because these youngsters are aggressive and assaultive, cannot function in a public school setting, and run away, they are more difficult to maintain in the community and require treatment services beyond the scope of many of the facilities within the State of Maryland. These youngsters could more appropriately be labeled as children in need of assistance (CINA), but because of the scarcity of resources and their technical involvement with delinquent type behavior, they are being adjudicated to be CINS or delinquent. The problem is that there is no single agency that is capable of providing the services that this group of youngsters need [sic].

JSA 1980-84 Plan at V-638 (undated) (emphasis in original).
sibility to still some other agency, and so on.129

Lisa's case is illustrative. In 1974, the juvenile court adjudged Lisa "dependent" ("dependent" was the 1974 equivalent of CINA) and committed her to Social Services' custody.130 During the next several years, Lisa evidenced serious mental health problems, but received little treatment for these problems.131 Later, Lisa had violent episodes and at one point destroyed someone else's property. Because the destruction would have been criminal had she been an adult, Lisa then fit the definition of a delinquent. Social Services, in fact, requested that the juvenile court adjudicate her delinquent, which the court did before committing her to Juvenile Services' custody.132 But Lisa also was neglected, mentally ill, and possibly mentally retarded, and so she qualified as a CINA.133 According to experts' recommendations, Lisa needed a therapeutic residential placement; Social Services could and should have asked the court to authorize such a placement and then should have funded Lisa with excess-cost money.134 By instead requesting the court to find Lisa delinquent, Social Services shifted responsibility for her to Juvenile Services. Thus Social Services' motivation appears to have been not Lisa's treatment needs and the "best interests of the child," but the best interests of the agency.

Because Lisa could have been considered ungovernable, she also fit the definition of a CINS.135 Had Lisa been labeled a CINS, Juvenile Services would have been responsible for funding Lisa's placement at Edgemeade, the private residential facility recommended by the Juvenile Court.136 Because Lisa was labeled a delinquent and Juvenile


131. For example, after Lisa was in foster care for a month, her foster parent decided that she no longer could handle Lisa because of Lisa's emotional and behavioral problems. DSS Notes (April 16, 1975). Social Services does not provide needed supportive services either to the child or to the foster parent. Nor does it ensure that the foster parent is trained to deal with the child's emotional problems. Finally, there is no cooperative agreement between MHA and DSS to supply psychological services to children in the care of Social Services even though MHA has acknowledged that this is necessary. See infra note 181.

132. In Re..., No. 67826510 (Baltimore City Cir. Ct., Div. for Juv. Causes (1978)).


134. See supra text accompanying note 41.


136. The Master recommended committing Lisa to JSA for placement at Montrose pending permanent placement at Edgemeade or a suitable therapeutic long-term facility. In Re..., No. 67826510 (Baltimore City Cir. Ct., Div. for Juv. Causes (1978)).
Services maintained that only CINS should be placed at Edgemeade, the agency was able to avoid the cost of a private placement and to “dump” Lisa in a state training school for nearly two years. Had Juvenile Services chosen to do so, it could have asked the juvenile court to change Lisa’s label from delinquent to CINS, and then funded Lisa’s placement at Edgemeade. Juvenile Services chose instead to maintain Lisa in a state facility for juvenile delinquents, a placement that was glaringly inappropriate and that proved detrimental to Lisa’s physical and mental health.

Additionally, the labeling system is not all inclusive and therefore allows the agencies to completely avoid responsibility for certain children. The most vulnerable of all mentally handicapped children are CINAs who do not qualify as CINS or delinquents but need long term care. Although Social Services used to accept responsibility for these youngsters, it recently decided to provide only short term foster or group care. Thus, these children truly are Maryland’s stepchildren. No statute mandates services for them and no agency acknowledges an obligation to them.

137. See supra note 17. This refusal to place Lisa at Edgemeade was ironic because Lisa fit into the definition of a CINA or CINS as well or better than she fit into the definition of a delinquent.


139. MD. R.P. 916(a).

140. See supra note 19.

141. During its 1982 session, the Maryland General Assembly amended Article 88A § 61. Act of May 20, 1982, ch. 293, 1982 Md. Laws 2612. The purpose of the amendment was to change Maryland’s foster care system from one in which children remained in foster care on a long-term basis to a system in which foster care becomes a temporary situation with the goal of reuniting the family. Because handicapped children whose parents are unable or unwilling to provide care for them are children who usually will require long-term care, Social Services does not see them as appropriate for foster care services. Speech of Joy Duva, Director, Child Welfare Dep’t, Maryland State Dep’t of Human Resources, to the meeting of the State Office to Coordinate Serv. to the Handicapped (Mar. 31, 1983).

142. MD. ANN. CODE art. 88A § 61(b)(3) (1979 & Supp. 1982) provides that in exceptional situations as defined by regulation, foster care may be long-term and thus appropriate for some handicapped children needing this service. The Department of Human Resources, however, has never issued regulations to define what constitutes an “exceptional situation.”

143. The Mental Hygiene Administration believes that Juvenile Services and Social Services are responsible for providing and arranging group care for these children and that
Maryland's Exchangeable Children

The case of Linda G. provides an example of how the agencies avoid responsibility for these children. Linda was a teen-aged child with serious emotional problems. After her parents were unsuccessful in obtaining help from the local education agency, they placed Linda at Taylor Manor, a private residential facility. When Linda's parents were no longer able to pay for her care at Taylor Manor, their attorney filed a CINA petition seeking funding from the state.

At the subsequent hearings, the agencies scrambled to avoid responsibility for Linda. The attorney for the Prince Georges County Department of Social Services stated that although she believed that Linda was a child in need of assistance, she did not believe that the LDSS was the proper agency to serve as custodian because Linda did not need any service that it could provide. Instead, she argued, the Department of Mental Health and Hygiene (DHMH) should be responsible for all children who are mentally handicapped, including Linda. On the other hand, the Board of Education argued that the juvenile court does not have authority to join the Board of Education as a party to juvenile court proceedings and that federal and state statutes do not permit a local education agency to become a custodian of children. DHMH maintained that, although the court had authority


On the other hand, Juvenile Services and Social Services believe that these children should be the responsibility of the Mental Retardation Administration and the Mental Hygiene Administration. See excerpt from JSA 1980-84 Plan infra note 155.

Because the Mental Retardation Administration has only six community placements for minors and limited purchase-of-care funds, and Mental Hygiene has no purchase-of-care funds and no group homes for minors, children's advocates are loath to ask for commitment to MRA or MHA for these children.


145. Linda G. was an adopted child who spent the first six years of her life with a neglecting, alcoholic parent. At eight, she was placed with and adopted by her present parents. Brief of Appellees at 6-7, Department of Health and Mental Hygiene v. Prince George's Co., 47 Md. App. 436, 423 A.2d 589 (1980). At the time of the hearing, Linda was at Taylor Manor because she was extremely self-destructive. Brief of Appellant at E-147, Department of Health and Mental Hygiene v. Prince George's Co., 47 Md. App. 436, 423 A.2d 589 (1980).


149. Id. at E-180-89.
under the Juvenile Causes Act to order the child committed to DHMH, it did not have the authority to order that she be placed in a specific facility.\textsuperscript{150}

The court eventually adjudged Linda a CINA and ordered DHMH to pay for her treatment in a private residential facility. But on appeal, the Court of Special Appeals held that the juvenile court had no authority to order the mental hygiene administration to fund a private residential placement.\textsuperscript{151}

As Linda G. illustrates, the juvenile court often becomes a marketplace where various agencies squabble to prevent the court from holding them responsible. The child, meanwhile, is mislabeled, relabeled, or left with no services while the various agencies state policy reasons why they should not be responsible. Thus, the Maryland system often is not a service delivery system at all, but a forum which enables agencies to avoid responsibility for handicapped children in need of services.

2. \textit{The Failure to Define Agency Services}—Just as Maryland's failure to define agency responsibility for various populations of handicapped children has created problems, so has its failure clearly to delineate the services each agency should provide. Because the agencies' statutes are overly broad—allowing, but not requiring the agencies to provide almost all services—the agencies have been free to decide what services they will offer and to define their responsibilities in terms of those services. As a result, the agencies have not offered a continuum of services for mentally handicapped youngsters; instead there are large gaps in the services available.\textsuperscript{152} One of the most noticeable is the lack

\begin{itemize}
\item \textsuperscript{150} \textit{Id.} at E-171.
\item \textsuperscript{151} Department of Health and Mental Hygiene v. Prince George's Co., 47 Md. App. at 452, 423 A.2d at 597.
\item \textsuperscript{152} For the disturbed adolescent in Maryland there are almost no alternatives to institutionalization. \textit{See} Plaintiffs' Post-Trial Memorandum at 25-40, Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979). \textit{See also} the Karwacki Comm'n Report:
\end{itemize}

\textit{RESOLVED; THAT THE MENTAL HEALTH ADMINISTRATION, THE MENTAL RETARDATION ADMINISTRATION, AND THE DEPARTMENT OF HUMAN RESOURCES, THE DEPARTMENT OF EDUCATION, AND THE JUVENILE SERVICES ADMINISTRATION COORDINATE EFFORTS TO PROVIDE IN-STATE SERVICES TO CHILDREN; AND THAT IT IS NOT DESIRABLE TO PLACE CHILDREN IN OUT-OF-STATE CARE.}

\textit{Karwacki Comm'n Report, supra} note 69, at 45-46.

Some examples from North Carolina of the components that should be present to provide a continuum of child and adolescent mental health services are case management
of group homes for mentally handicapped youngsters. Although such children may need group homes, no one offers these placements to them.153

For example, although the Mental Hygiene Administration is authorized to provide group homes, it has decided to use its money for other purposes.154 In fact, the Mental Hygiene Administration has no purchase-of-care funds and thus, if a child needing residential placement is committed to the custody of the Mental Hygiene Administration, the services available to this child are extremely limited. Consequently, children with mental problems have been committed to either Social Services or the Juvenile Services Administration which placed them in foster or group homes without sufficient therapeutic services or in institutions for delinquents.155 Nor under the present sys-

services, respite care, crisis stabilization/residential specialized foster care, supervised independent living for older children, residential group living (moderate to extensive supervision), transitional group living, summer programs for school children, family support services, and advocacy services. J. KNITZER, UNCLAIMED CHILDREN — THE FAILURE OF PUBLIC RESPONSIBILITY TO CHILDREN AND ADOLESCENTS IN NEED OF MENTAL HEALTH SERVICES 140-43 (1982).

153. See supra note 143. Although MHA states that it is concerned with the development of services to children and adolescents, in its 1980-84 plan it proposes to fund only five group homes for minors by fiscal year 1985. Moreover, this goal is tenth on its list of priorities and to date no group homes have been developed. MHA Summary of the 1980/1984 Plan at 5, 24 (May 10, 1978). In fact since 1979, instead of providing group homes, Mental Hygiene has built expensive residential treatment centers (e.g. RICA II; RICA I - additional beds; Cheltenhan (RICA III)). LAFFERTY, A RESEARCH SURVEY, MARYLAND ASSOCIATION OF RESIDENTIAL FACILITIES FOR YOUTH 7,8 (Feb. 3, 1983 & amends. Apr. 12, 1983).

The Department of Health & Mental Hygiene requested $200,000 for the purchase of care in group homes for 15-20 youths in fiscal year 1984. DEPT HEALTH & MENTAL HYGIENE, FY 1984 PLANNED PRIORITIES 9 (Sept. 28, 1982). This request, however, was 32nd on its list of priorities. In the past three fiscal years, the Health Department has been granted, at most, only its top 5 priorities. Thus, there was no chance that this request would be funded. Telephone conversation with Richard Bandelin (Aug. 26, 1983).

As of August, 1982, there were 499 persons under age 21 in state MR/DDA residential centers. By MR/DDA's own assessment, 34% or 170 of these children do not require institutional levels of care. During this same period, MR/DDA funded 6 children in alternative living units (small group residence). T. ROSE, supra note 60, at 4.

154. In fiscal year 1982, the Mental Hygiene Administration spent $125,423,107. Eighty-six point two percent (86.2%) or $108,171,821 of this money was spent on institutional care while one point one percent (1.1%) or $1,430,290 was spent on community residential and day programs. For children under age 18, $0 was spent on community residential programs. Letter from J. Bowen, Administrative Officer, Mental Hygiene Admin. to L. Weinberg (July 1, 1983). Telephone conversation between L. Weinberg and J. Bowen (July 13, 1983).

155. Juvenile Services states:

The institutional facilities at any one time house certain youth with special needs for intensive specialized services. These youth are most often youngsters with multi social, educational and psychological problems and are often referred to as emotionally disturbed, borderline retarded, socially maladjusted, etc. These children enter the Juvenile Services system because of a delinquent offense whose commission is often
tem is there any incentive for the Mental Hygiene Administration to develop therapeutic group homes. Agency personnel know that if they do not have the services the children need, the children will then become the responsibility of another agency.

In addition to not having group homes for mentally handicapped children, Maryland also lacks the home services that would enable children to be maintained in their own home or in home-like environments. Social Services has no comprehensive program of specialized foster care that would pay particularly qualified or specifically trained foster parents to provide care and supervision to emotionally disturbed juveniles. Similarly, Maryland does not offer sufficient community support services to allow the child to remain in his own home; daycare from three to seven p.m.; respite care that would help prevent family crisis; programs similar to community detention where the child would remain home under intensive supervision; community-based facilities such as structured programs for the non-delinquent who requires close monitoring; and halfway houses, both to prevent hospitalization and to provide a transition for children being released from the hospital.\textsuperscript{156}

It is estimated that between five and twenty percent of the population falls within the category of needing services which could be provided better by the Mental Health Administration or the Mental Retardation Administration. Yet, sufficient specialized clinical resources and programs are not available to meet the treatment needs of this type of youngster.

**JSA 1980-84 Plan at V-650 (undated).** See also the Karwacki Comm'n Report, supra note 69, which states:

**Mental Health: Aftercare**

The Mental Health Administration lacks aftercare services to provide support when a child returns to the community following residential treatment. Lack of development of community programs and purchase of care often results in the Juvenile Services Administration carrying out the responsibility for aftercare services. **RESOLVED:** THAT FUNDS ARE NEEDED TO DEVELOP AFTERCARE PROGRAMS FOR CHILDREN RETURNING TO THE COMMUNITY FOLLOWING RESIDENTIAL TREATMENT AND THAT THESE FUNDS BE APPROPRIATED TO THE MENTAL HEALTH ADMINISTRATION.

156. See supra note 152. The present rate structure of Social Services and Juvenile Services does not encourage the development of group homes or a continuum of alternative services for handicapped youngsters. The maximum rate of payment available to group homes and child care institutions is not sufficient to pay for the individual cost of care and treatment of emotionally disturbed juveniles. A system of paying for the actual cost of care would encourage development of these programs. See Plaintiff's Post Trial Memorandum at 38, Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979). See also JSA 1980/84 Plan at V-637 (undated) (stating that one obstacle to providing group homes is inadequate reimbursement for services).

Juvenile Services purchases some psychological and other supportive services for youngsters in their homes. Although they acknowledge the value of purchasing these serv-
Although theorists generally agree that government agencies can function most effectively when they receive broad grants of power along with the authority to fill in the details through administrative regulations informed by agency expertise, that model obviously has broken down in Maryland. The agencies have failed to fill in important "details"—notably a comprehensive program for mentally handicapped children. The need for legislative intervention is thus apparent.

Society simply cannot afford to allow gaps in services to persist. They lead inexorably to penal and mental health institutions filled with people whose needs might have been answered by less intrusive and ultimately less expensive services had they been offered earlier. The cost in wasted financial and human resources is too high.

3. Discrimination Against Children from Needy Families—Finally, an unfortunate consequence of this system is that its defects disproportionately affect the poor. Maryland's failure to define clearly the various agencies' responsibilities to mentally handicapped children has caused the nature and quality of services a child receives to be determined, not by the child's needs, but by which agency serves her. Which agency serves a child often is determined, in turn, not by the ability of a particular agency to meet a child's needs, but by which agency first becomes aware of the child. If the state's first awareness of the child's problems stems from difficulties in school, the child probably will be served by the Department of Education; if the state's first awareness of the child's problems stems from parental abuse, neglect, or inability to care for the child, the child probably will be served by Social Services; and, if the state's first awareness of the child's problems stems from a delinquent or pre-delinquent act, the child probably will be served by Juvenile Services.

Which agency first becomes aware of a child is often a function of the child's family situation, including his or her financial status. Because the Department of Education implements the very complicated

ices for youths placed in foster care, they are limited in the number of children for whom they can provide this service because of fiscal restrictions. Interview with Rex Smith, Director, JSA (June 28, 1983).

The Department of Human Resources does not provide sufficient support services to maintain children in their homes. For example, respite care is limited to 7 days plus 24 hours per family per year while in-home aid care is limited to those who are "on brink of institutionalization or in life threatening circumstances." T. Rose, supra note 60, at 3.


158. See supra note 125 and accompanying text.

159. Id. Of course, many handicapped children have problems in school, at home, and in society.
federal and state special education laws and procedures, obtaining a private residential placement through the Department of Education requires a legally sophisticated parent or a lawyer.\(^{160}\) Moreover, obtaining a special education placement may take as long as six months or more,\(^ {161}\) and the only emergency procedures set out in the Education Bylaws do not substantially shorten the process.\(^ {162}\) For poor families who have no insurance and have children in crisis, the only way of getting immediate services for their children is through the Juvenile Court.\(^ {163}\) Consequently, the Department of Education tends to serve handicapped children from intact middle-class families while juvenile services and social services, pursuant to court orders, serve poor children and those who do not have legally sophisticated parents.\(^ {164}\) The upshot of this situation is that middle-class children generally receive the superior services provided by the better-funded Department of Education, while poor children generally are served by the agencies with fewer funds.\(^ {165}\)

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160. The regulations governing special education placements may be found at Md. Admin. Code tit. 13A, § 05.01 (1978).

161. The timelines set out in the bylaws are as follows: The LEA must provide a comprehensive screening within 30 days of the parent's or guardian's request, Md. Admin. Code tit. 13A, § 05.01.05B(3) (1978); provide an assessment within 45 days of referral, id. at § 05.01.05B(5); receive referrals within 30 days of the assessment, id. at § 05.01.06C(3)(a)(i); designate the individuals responsible for developing the IEP, within 30 days, id. at § 05.01.06C(3)(b)(iii); and implement the IEP within 30 days of development, id. at § 05.01.06D(3).

In Lisa's case, although Baltimore City was aware of her since at least December, 1980, it did not complete the screening process until July, 1981. See infra note 178.


In contrast, of the 62 excess cost placements funded by Social Services, 49 are from Baltimore City. See Draft Memo from Secretary of Dept't of Human Resources, Kalman R. Hettleman to Governor Harry Hughes 3 (undated).

165. The Department of Education in fiscal year 1982 spent $6,941,211 on the most expensive residential placements. Interview with Howard L. Linaburg, Branch Chief, Federal Projects Branch, Div. of Special Educ., M.S.D.E. (June 22, 1983). During that same year, Juvenile Services had only $531,008 to spend on similar placements while Social Services had $2,017,917 (Villa Maria contract $1,293,614; all other excess cost placements $724,303). Telephone interview with James Casey, Asst. Att. Gen., Juv. Serv. Admin. (June 22, 1983); Dept. of Budget & Fiscal Planning; Bud. Form #DBFP-DA6; Budget Estimates Fiscal Year 1984 at 43, 162.
Lisa for example, grew up in a relatively poor one-parent family. When Lisa's mother felt unable to deal with Lisa's problems any longer, she volunteered Lisa into Social Services boarding care. When Social Services had difficulty in arranging a placement for Lisa, they filed a petition to have Lisa adjudged delinquent and committed to Juvenile Services. It was only in 1981, after Lisa's mother obtained counsel, that the Baltimore City Department of Education acknowledged any responsibility for Lisa's special needs.

C. Conflicting Statutory and Regulatory Provisions

Just as legislative intervention will be required to mandate services and to address problems stemming from statutory vagueness, such intervention also will be necessary to correct conflicts in the statutes providing for handicapped children. For example, although the Juvenile Causes Act apparently gives the juvenile court authority to commit a child to the custody or guardianship of any public agency, the Education Article states that the exclusive means by which the Department of Education may place a handicapped child in a non-public educational program is through the procedures outlined in the education statute. Can the court order the Department of Education, which has the most resources for these children, to take responsibility for a handicapped child, or is the court confined to the other agencies, whose services all are limited by their appropriations? The statutes do not answer this question.

An even more troubling conflict exists between the Juvenile Causes Act on the one hand, and the statutes and regulations outlining Social Services' and Juvenile Services' authority to provide residential care on the other. One of the stated purposes of the Maryland Juvenile Causes Act is: "To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety." Yet Maryland's current system of delivering services to handicapped children often requires parents to give up custody to obtain services, primarily because Social Services and Juvenile Services provide residential programs only for children who are committed by the court to agency custody. Thus if a parent

166. A wealthier family might have been able to purchase supportive psychological services which would have enabled Lisa to stay with her mother.
167. See supra text accompanying note 15.
168. See supra text accompanying note 25.
171. MD. CTS. & JUD. PROC. CODE ANN. § 3-802(a)(3) (1980).
172. Juvenile Services always has maintained a policy of not serving children in residen-
cannot pay for an appropriate treatment program for the child, and can afford neither the expense nor the delay of the lengthy process for seeking special education, the only way to obtain state funding for the program is to surrender the child as a CINA or CINS. Then the Juvenile Court can commit the child to Social Services or Juvenile Services, which may pay for the program. If the child needs an excess-cost placement, the only way to obtain funding is for the parents to surrender custody and to have the child committed by court order to the custody of Social Services or to Juvenile Services. This means that concerned parents who might want and be able to retain custody of their child must give up custody to obtain services.

The policies of the Department of Education also sometimes work against the state’s goal of keeping families intact. For example, local Departments of Education currently contribute to the cost of residential placements under the home circumstances provision or in co-funded cases only when the child has been committed to some other state agency. Thus, if a child has a home circumstances problem

The Administration may:

1. Designate, as its agent for the purposes of this subtitle, any public or private agency or organization in this State; and

2. Spend funds:
   i. to aid that agent or to buy services from it; or
   ii. if adequate services are not available in this State, to buy services from any agency or organization outside this State.

In the past, Social Services served children pursuant to voluntary agreements with their parents. Recent changes in the law, however, now provide that voluntary placements can last only for a period of 6 months. This federal policy encourages Social Services to seek court commitment of children.

Requiring commitment to obtain services was ruled to be unconstitutional in Kruse v. Campbell, 431 F. Supp. 180 (E.D. Va.), vacated and remanded on appeal 434 U.S. 808 (1977). The court held that the local welfare department’s practice of accepting legal custody of handicapped children and placing them in foster care primarily for the purpose of receiving funds which would enable those children to receive special education services in private facilities violated plaintiffs’ fundamental right to family integrity. The court further stated that this kind of practice conditioned the provision of government service—special education—upon the relinquishment of a constitutional right. See also Joyner v. Dumpson, 533 F. Supp. 233 (S.D.N.Y. 1982).

The Federal government contributes to the cost of foster care only when such care is pursuant to court order. AFDC program 45 C.F.R. § 233.110(a) (1982). This federal policy encourages Social Services to seek court commitment of children.

173. See supra note 41 and accompanying text.

174. See supra text accompanying note 33. See also Memo from Martha J. Irvin to Hearing Review Board (Nov. 17, 1981). This policy seems to be based on language in the regulation that the Department of Education may approve home circumstances funding upon the
that necessitates residential placement, the parent must give up custody of the child to get the Department of Education funds for the educational component of the child's program. This might make sense if the home circumstances provision were employed only in abuse and neglect situations, but such is not the case. The home circumstances provision also is used in cases where the parents prefer to keep the child at home, but the nature of the child's handicap makes it difficult or impossible for the parents to care for the child at home. To require parents in such situations to give up custody of the child to obtain education funding is draconian. It discourages family involvement with the handicapped child and is directly contrary to the purpose section of the Juvenile Causes Act.

D. Lack of Co-Ordination

Perhaps the most glaring cause of problems in Maryland's current system for delivering services to handicapped children is the lack of inter-agency coordination. Different agencies' policies and procedures may conflict in such a way as to deprive a child of needed services. For example, Social Services and the Department of Education maintain different lists of private residential placements where they will fund services. Consequently, even if both agencies acknowledge responsibility, a placement in a facility approved by one but not the other may preclude a joint funding arrangement. For example, when Social Services placed Lisa at the Brown School, which is not on the Department of Education's list of approved private placements, Education refused to contribute to the cost of her placement even after it conceded that Lisa was handicapped under the law and that she needed a private residential placement in order to learn. Social Services therefore is paying for the entire cost of the care, treatment, and education of a child who also needs a residential placement in order to learn. Con-
sequently, those funds are unavailable for other children, who might need Social Services funding because they don't qualify for Education's services.

Lisa's case exemplifies an even more troublesome result of the failure to co-ordinate agency services. Axiomatically children with multiple needs require services that provide for the whole child. But under the present system, Maryland provides only compartmentalized services, which are ineffective in meeting the needs of children.\textsuperscript{179} For example, Education does not provide alternative educational programs for socially maladjusted youths, although programs for these youngsters would enable Juvenile Services more effectively to program for CINS and delinquents in the community.\textsuperscript{180} Nor does the Mental Hygiene Administration provide sufficient community psychological services for children in their homes or in foster care.\textsuperscript{181} Finally, no agency provides community residential resources for mentally handicapped children because all agencies assume they are the responsibility of

\begin{itemize}
  \item The responsibility for the provision of services is fragmented along agency, institution or levels of government lines across the State and within regions, resulting in service overlaps and gaps.
  \item Agencies and government administrations maintain individual administrative policies and procedures which results in the lack of comprehensive planning for children's services.
  \item Service providers maintain distinct and categorical service definitions which are frequently rigid and arbitrary. As a result it is difficult to match needs with resources, especially in cases of the multi-need child.
\end{itemize}

\textsuperscript{179} The Karwacki Comm'n Report states:

\textit{Coordination of Children's Services}

1. The responsibility for the provision of services is fragmented along agency, institution or levels of government lines across the State and within regions, resulting in service overlaps and gaps.
2. Agencies and government administrations maintain individual administrative policies and procedures which results in the lack of comprehensive planning for children's services.
3. Service providers maintain distinct and categorical service definitions which are frequently rigid and arbitrary. As a result it is difficult to match needs with resources, especially in cases of the multi-need child.

The Karwacki Comm'n Report, supra note 69, at 41-42.

\textsuperscript{180} JSA 1980-84 Plan states:

Unfortunately, many of the youngsters under care are unsuitable for a regular formal educational program. In addition, many of these youngsters are classified as disruptive youth and have been suspended or expelled from schools. The difficulty in placing a youngster in an educational program has made it difficult to maintain the youngster in a community-based facility.

\textit{Id.} at V-639.

\textsuperscript{181} MHA acknowledges the need for a mechanism to ensure that children who are the responsibility of Social Services and Juvenile Services have adequate access to and care from the Mental Hygiene Program by 1982. MHA Summary of the 1980/84 Plan at 18 (May 10, 1978). To date, however, they have not provided these psychological support services. Interview with Rex Smith, Director, JSA (June 28, 1983).
someone else.182

Although the Maryland General Assembly has acknowledged that these problems do exist, its response has been ineffective. It has established an Office for Children and Youth183 and an Office for the Coordination of Services to the Handicapped184 but neither of these departments has any authority other than to make recommendations to other agencies.185 Nor are the problems such that they can be resolved by the agencies themselves.186 Because each agency feels that it does not have adequate fiscal resources to meet the needs of the multi-problem child, only the Legislature or Governor can insure that this problem is resolved.187

E. Lack of Accountability

In Maryland no single agency has the responsibility for ensuring that a child receives necessary services. In the past, the juvenile courts tried to fill this void, but their ability to do so has been limited. For example, courts often committed mentally handicapped children to the joint custody of Social Services and Juvenile Services, thus pyramiding the resources available for residential placements that did not fall within either agency's rate structure. The State Department of Budget and Fiscal Planning disapproved this practice in 1974,188 thus cutting

182. See supra note 143 and accompanying text.
184. Id. at art. 41, §§ 159-160 (1978).
186. Through 1976, personnel from the Maryland State Department of Education, Human Resources, and Health and Mental Hygiene attempted to formulate a memorandum of collaboration to develop a mechanism for delivering services to handicapped children. After the memorandum went through a series of drafts, Education finally determined that legislation would be necessary to bring about the transfer of responsibility among the departments which would more accurately and effectively reflect each department's actual ability to provide needed services. Because the memorandum itself was not capable of making the necessary changes, all the parties recommended mandatory legislation. Memo of Collaboration, from F.X. McIntyre to Marion Monk, Ted Lucas, Ben White, and J. Kohn. This legislation has not yet appeared.
187. See Draft Memo from Secretary of Dep't of Human Resources, Kalman R. Hettleman, to Governor Harry Hughes 3 (undated).
188. Letter from Richard Bandelin to Dep't of Human Resources Secretary David T. Mason (May 15, 1974). This action by the Department of Budget and Fiscal Planning (DBFP) appears to be in violation of the Maryland Administrative Procedure Act (APA). Md. Ann. Code art. 41, §§ 244-256A (1978 & Supp. 1982). Provisions of that Act specifically direct state agencies to "publish notice" of their intention to change previously adopted procedures and rules. Md. Ann. Code art. 41, § 245(c) (1978) (current version at Md. Ann. Code art. 41, § 256F(i) (Supp. 1982)). The result of DBFP's letter was to change both Social Services' and Juvenile Services' system of providing services to children without publishing
off this avenue for matching needs to services.

More recently, the Maryland Court of Special Appeals has prohibited juvenile courts from using another tactic to assure that the agencies meet handicapped children's needs—committing a child to a specific placement or program at specified costs despite the agencies' fiscal restrictions. In Linda G., the Court of Special Appeals held a juvenile court "was without jurisdiction to direct the Department of Health and Mental Hygiene to shoulder the responsibility for Linda's care and treatment at Taylor Manor." The statute spelling out the juvenile court's disposition powers allows the court to give custody or guardianship to a person "under terms the court deems appropriate" or to commit a child to the custody or guardianship of a public or private agency. Because the language "under terms the court deems appropriate" does not appear in the section authorizing commitment to an agency, the Court of Special Appeals reasoned that the legislature intended the agencies to have absolute discretion in managing their budgets and devising programs for children committed to their care. This decision seems to envision the Juvenile Court acting primarily as a sorter, with little more authority than the right to assign children to one agency or another.

A recent federal court decision similarly dashed any hope that the court might have authority to order particular services for handicapped children as a constitutional matter. In Johnson v. Solomon, the federal

either the change itself or "notice of its intended action." Hence, the agencies failed to give interested persons the opportunity to challenge the change in agency procedure, a direct violation of the APA.

190. Id. at 445, 423 A.2d at 593.
191. Id.
192. Although the juvenile court cannot, under Maryland's present legal structure, assure that the state meets handicapped children's needs, the Maryland Education Article delegates considerable authority to Special Education Hearing Boards. The Hearing Officers have broad, discretionary powers over a particular handicapped child's placement. Specifically, they may:

(1) Require a complete and independent diagnosis, evaluation and prescription of educational programs. . . .
(2) . . . Confirm, modify or reject any diagnosis, evaluation, educational program, or exclusion or exemption of the child from school privileges and require alternate special educational programs for the child.


The Department of Education, through its State Hearing Board, thus has wide ranging and detailed authority over the residential placement of a handicapped child, as well as the components of that placement. As noted earlier, however, usually children whose families have the financial resources to hire lawyers to insist on their rights benefit from the Board's powers.
district court for the District of Maryland determined that the state did not have a constitutional obligation to provide a continuum of services ranging from foster care to residential treatment centers for mentally handicapped children confined in mental hospitals. With regard to the need to develop or to purchase less restrictive alternatives, the court concluded that many of these concerns were more suitably addressed to the state legislature rather than the federal court. Based on these determinations the court stated that:

While this court feels that Defendants have a duty to “explore and provide the least stringent practicable alternatives” to the civil commitment of juveniles, . . . this duty does not require a State to create the best mental health system imaginable any more than a State must create the best corrections system imaginable. . . . Even one of the earliest advocates of the right to treatment has recognized that public opinion must be relied upon to prod legislators to pass sufficient appropriations. . . .

Moreover, there is no mandatory review of placements while a child is under the custody of Juvenile Services. Instead, Maryland law leaves it to the child’s attorney or the court to initiate formal review of these placements. In most cases formal review does not occur.

IV. CONCLUSION

The problems discussed in this Article have been apparent for some time. Numerous commissions, committees, and task forces have been formed to address them. In late 1977, the Governor’s Commission on Funding the Education of Handicapped Children (the

194. Id. at 305 (citations omitted).
196. MD. R.P. 916b.
197. Lisa, for example, was “temporarily” placed at Montrose pending the arrangement of an appropriate placement. During the nearly two years that Lisa spent at Montrose there was no court review of her continued placement there. In fact, the only review of Lisa’s placement was instigated by Lisa herself. After one and a half years at Montrose, her “temporary placement,” she wrote the following letter to the Juvenile Court Master who had presided at her delinquency hearing and had recommended that she be temporarily placed at Montrose:

“Dear Mr.
I hate your . . . gutes [sic] Because you Will Not get me out of this . . . place
and this Do Not Mack [sic] . . . sence [sic] I Been in Montrose 1 year - 1 mothe [sic]
From the girl that you will not get out of this . . . place”

Schifter Commission) published its report recommending that the legislature mandate a full spectrum of services, instead of just educational services, for handicapped youngsters. It also proposed the establishment of a coordinated statewide approach to providing programs for these children.\footnote{200}

In keeping with that proposal, Acting Governor Blair Lee III created the State Coordinating Committee on Services to Handicapped Children.\footnote{201} The Committee's responsibility was to recommend interagency procedures to coordinate services to children who require programs in non-public facilities and to design administrative procedures to implement other recommendations of the Schifter Commission.\footnote{202}

Thus far the State Coordinating Committee has concentrated on formulating a program to coordinate agency responses to children who require expensive residential treatment programs in non-public facilities.\footnote{203} This is an admirable project, but it ignores the reality that once a child needs this level of services, the damage is severe and the prognosis is poor.\footnote{204} Lisa is a case in point. If the state wants to ensure that we do not continue to create Lisas, it must change the present system more radically. This will require legislative intervention.

The legislature should focus on four areas. First, it should explic-

\footnote{200. *Id.* at 3, 15.}
\footnote{202. *Id.*}
\footnote{203. The State Coordinating Committee entered into a contract with the Education Turnkey System, Inc., to analyze the issues involved in interagency coordination. In September, 1981, Turnkey issued a two-volume report which made recommendations concerning the establishment of local coordinating councils and a state coordinating council, the creation of a common funding pool to be used for purchase of care in all non-public residential care placements and delineation of case management responsibility. *Education Turnkey, Inc., Program Policy and Financial Analysis for Improved Services to Handicapped Children* (Sept. 16, 1981). By Executive Order 01.01.1982.09, the Governor has since created the State Coordinating Council for Residential Placement of Handicapped Children. This Counsel is to plan and supervise the multiple agency provision of services to handicapped children requiring residential programs. *See* 9 Md. Admin. Reg. 1502 (1982).
\footnote{204. As long as Maryland's system is reaction-oriented rather than prevention-oriented, we always will be dealing with cases at their most difficult stages.}

As Marian Wright Edelman, Director, Children's Defense Fund has stated:

The mentality reflected by some conservatives in Congress who . . . viewed a maximum of $266 million authorization to keep children from being unnecessarily removed from their homes and to help them gain a new family through adoption as an "uncontrollable" entitlement must be turned around. We must find ways to convince the public that such thinking not only hurts children but also burdens taxpayers, who bear the cost of expensive remediation strategies when we fail to invest in children when it matters most: before they get sick, drop out of school, or get into trouble.

itly acknowledge that a child has a right to treatment keyed to her needs whenever the state intervenes in her life, particularly if it takes her from her family. Second, it should make this right a reality by mandating home (social) and health services as well as educational services. Making a statutory commitment to providing children the services they need would entail, of course, a greater financial commitment to youngsters. But children are a society's most precious resource. To turn our backs on them is to sabotage our future. Furthermore, if we require the agencies to provide services when they are needed, we can expect to save money—spending a little for a child to live in a group home for a short time instead of spending much more for her to be institutionalized for her entire life.

Third, the legislature should define agency responsibility in terms of the services a child needs and not according to the child's label. Dividing a complete spectrum of discrete services among the respective agencies would eliminate the present wasteful duplication of services and would permit the system better to mobilize agency expertise. Moreover, such a reform would bring the system closer to fulfilling children's right to have their needs met by ensuring that the appropriate service both exists and is provided where needed. Thus, Social Services could be responsible for providing all family services, including specialized foster care, and coordinating counseling services for

206. Id.; see supra note 204.
207. An alternative to legislative reallocation of agency responsibility is to create a cabinet level Department for Children. The advantage is that there would be one central spokesperson for children with direct access to the Governor. If one agency was ultimately responsible for the most costly and restrictive forms of treatment there would be a greater incentive within that agency to ensure that there are less restrictive forms of intervention available.

The disadvantage to creating a Department for Children is that there is no guarantee that creating a super-agency for children would ensure better services. For example, at present under the Department of Health and Mental Hygiene there are the Juvenile Services Administration, the Mental Retardation Administration, and the Mental Hygiene Administration. Experience has shown that there is no more cooperation between these three administrations than between the Departments of Education and Human Resources, which are separate departments. Moreover, it is politically unlikely that a Department for Children would be created because it would entail taking authority away from three strong departments.

208. Presently agency responsibility is defined in terms of the child's label or diagnosis. But, as discussed previously, the label a child receives may be based on circumstances unrelated to the child's needs and invariably leads to inter-agency conflict and shirking of responsibility. See supra notes 125, 144-51 and accompanying text. Of course, reform would be incomplete if it failed to provide for a more rational, need-based intervention system. Wholesale revision of the current intervention system, however, raises numerous and complex issues that are beyond the scope of this Article.
families and support services such as respite care, daycare, and intense home supervision services. Social Services as opposed to Juvenile Services would serve children who are now labeled as CINS because these ungodernable, unmanageable kids usually live in troubled families. Under the proposed system, the emphasis would be transferred from the child to the family that needs supportive services. Juvenile Services would provide all nonspecialized group care for children unable to remain in their home or to live in foster homes. The Mental Hygiene and Mental Retardation Administrations could be required to provide therapeutic group homes and public residential programs for all handicapped children needing those services. The Department of Education would fund all private residential programs.

Finally, the legislature should augment the powers of the juvenile court so that it could enforce a child's right to treatment. The court must be able to order an agency to provide a specific program or service; otherwise, the right to treatment based on need would again become illusory. If Marylanders truly believe that children are our most precious resource and if we hope to teach children to respect our legal system, we must show these children that the system is just. Our present system is not, and "[i]n the little world in which children have their existence, whosoever brings them up, there is nothing so finely

209. Because Social Services would be responsible for home and family services does not mean that it would have to provide these services directly. Rather, it could contract with private non-profit providers in the community who have extensive experience working with handicapped children and their families.

210. See JSA Planning Policy for CINS at 3.

211. Mental Retardation and Mental Hygiene are responsible for funding and supervising group homes for the over-21 population. Because of their expertise, they should also be responsible for handicapped children needing this service.

212. If there were group homes and supportive services for children in the community, then the only children needing private residential programs would be those children who, because of their handicap, need 24-hour special education programming and personal care. Education is required to provide services for these children and thus should supply full funding for these placements. Md. Admin. Code tit. 13A, § 05.01.06.E(3)(f) (1978). Moreover, for those children needing residential services because of intertwining needs, courts have consistently held Education responsible for funding. See supra note 104.


214. As the late President John F. Kennedy once stated:

Children are the world's most valuable resource and its best hope for the future. It is a real tragedy that in an era of vast technological progress and scientific achievement millions of children should still suffer from lack of medical care, proper nutrition, adequate education and be subjected to the handicaps and uncertainties of a low income, substandard environment.

felt, as injustice."215