



SECOND EDITION

# SOCIAL WORK

An introduction to contemporary practice



**KATE WILSON GILLIAN RUCH MARK LYMBERY ANDREW COOPER**

with SAUL BECKER MARGARET BELL ALISON BRAMMER RACHAEL CLAWSON BRIAN LITTLECHILD IAN PAYLOR ROGER SMITH

# SOCIAL WORK

## Endorsements for the first edition:

'This is a ground breaking, exciting new textbook for students of social work and their teachers . . . The authors have achieved a beautifully written, thorough exploration of contemporary social work practice . . . As a social worker educator working with students across the spectrum, from qualifying to professional doctorate level, I wholeheartedly welcome this invigorating new social work text. I have no doubt that this completed work represents a crucial milestone in social work education . . . The level is suitable for qualifying courses at undergraduate and Master's level and for those registered for post qualifying social work awards.'

**Clare Parkinson, Senior Lecturer in Social Work, University of East London**

'This is an ambitious and very impressive book which will make a valuable and significant contribution. Kate Wilson and her colleagues have produced an exhaustive introduction for any student studying social work and preparing to become a social worker. However, it is more than this, in that we are provided with a detailed and serious book which is explicitly located in an increasingly important orientation – relationship-based reflective approaches. This is not simply an introductory summary and tour of the field, but provides students with a clear framework and foundation for locating their practice through the rest of their studies, future training and professional careers.'

**Nigel Parton, NSPCC Professor in Applied Childhood Studies, University of Huddersfield**

'I am enthusiastic about this book and very much welcome its appearance. Relationship-based social work, if not exactly out-of-fashion, has been greatly undervalued in recent years. These authors put relationships at "the heart" of practice and make a compelling case for a relationship-based approach to social work, an approach that includes developing reflective practice. The approach is then applied with great skill and expertise to the full range of social work's interests and concerns – values, assessment, communication, planning, intervention, and work with children, families, disabled children and adults, adults with mental health problems, and vulnerable older people. A key text, an excellent read, and highly recommended.'

**Professor David Howe, University of East Anglia, Norwich**

'Recent concerns about risk and accountability in social work have resulted in increasingly managerial and mechanistic practice, dominated by a proliferation of targets, tick-boxes, and assessment frameworks. In the process, the relationship between service-user and social worker has been devalued and marginalised. This book, written by a team of leading social work academics, therefore comes as a breath of fresh air – by placing relationships once more at the heart of social work practice, it provides a much-needed antidote to such reductionist trends whilst also meeting the needs of students in the context of modern social work education.'

**Professor Adrian James, Department of Sociological Studies, University of Sheffield**

'I found this text interesting and user friendly. It clearly explains the theoretical context and usefully links it to practice in a way that will enable students and newly qualified social workers to integrate theory and research to their own practice. The use of case studies and thought provokers engages the reader and helps make the topic relevant to their own experience. I will certainly use this text with social work students on placement and newly qualified social workers.'

**Dawn Maxwell, Children's Services and Learning Directorate, Southampton City Council**

'*Social Work: An Introduction to Contemporary Practice* is an important and immediately useful text for social work practitioners and learners at both pre and post qualifying stages. This book provides clear explanation and illustration of a comprehensive range of social work themes and areas of practice and is informed by a wealth of contemporary social work research and literature. Any social work learner with a limited book budget should view this text as an extremely worthwhile investment.'

**Teresa de Villiers, Social Work Tutor, Cardiff University**

'This is a useful introductory text which provides opportunity for beginning social work students to consider a range of issues that have influenced, and impact, on contemporary professional practice.'

**Judy Kerr, Teaching Fellow in Social Work, University of Stirling**

Most new legislation is introduced by the government, and is preceded by a White Paper that outlines the proposals and background to the need for reform. Elements of new laws may be traced back to election manifestos or reflect particular events or circumstances prevailing in society, e.g. greater fear of crime. There may have been a detailed consultation period prior to this, in some cases coordinated by the Law Commission, or other bodies such as the Department of Health or Home Office. As part of the consultation process a Green Paper may have been published which puts forward proposals for consultation. A recent example is the *Every Child Matters* Green Paper published in September 2003 which (followed by a further White Paper) preceded the Children Act 2004. Most government proposals for legislation in the forthcoming year of office are announced in the Queen's Speech at the state opening of Parliament in November each year. The final stage where a Bill becomes an Act is receipt of Royal Assent.

Legislation is not automatically implemented on receipt of the Royal Assent. Often the Act will be brought into force at a later date by a commencement order. Implementation may be delayed for a number of reasons. A delay of two years took place before the Human Rights Act 1998 came into force on 2 October 2000. One reason for this delay was the need for a major training programme to be conducted at all levels of the judiciary. Acts may come into force in sections over a period of time and some parts of legislation are never implemented. A significant example of this is the Family Law Act 1996. The provisions in the Act which would have completely reformed the basis for divorce have never been implemented.

Legislation may continue to be amended after it receives Royal Assent and has been implemented. Amendments are introduced by new legislation in related areas. This provides an opportunity to fine-tune the earlier legislation, update it and ensure consistency without having to repeal the Act and replace it in full. The Children Act 1989 has been amended on a number of occasions, most recently by the Adoption and Children Act 2002. Among other things amended, the definition of 'harm' as part of the threshold criteria for care proceedings was amended to include 'impairment suffered from seeing or hearing the ill-treatment of another'. This reflects growing understanding of the impact of domestic violence on children.

An Act of Parliament, or statute, contains headed sections, subsections and paragraphs which may be organised into parts (e.g. Mental Capacity Act 2005,

Part 1 'Persons who lack capacity', Part 2 'The Court of Protection and the Public Guardian'). The provisions in an Act are cited according to convention. Section 4(1)(a) of the Mental Capacity Act 2005 refers to section 4, subsection (1), paragraph (a) of the Act and states that in determining what is in a person's best interests, the person making the determination must not make it merely on the basis of age or appearance. Schedules at the end of an Act carry the same force of law as the main body of the Act, but often include more detailed or supplemental matters, such as procedural requirements or formalities, transitional arrangements, repeal of earlier legislation and minor amendments.

**Delegated legislation**, sometimes referred to as secondary legislation, has the same force of law as Acts of Parliament or primary legislation, e.g. Children (Leaving Care) (England) Regulations 2001 (SI 2000/2874). Most delegated legislation is made by Ministers by statutory instrument (SI) and is in the form of regulations, orders, rules and byelaws. A vast body of law is produced this way and often serves to provide the detail to an associated Act of Parliament. Since devolution, the National Assembly for Wales can make delegated legislation and guidance where the power to do so is provided by Act of Parliament. This provides the opportunity to more closely reflect priorities set by the Assembly, but it will often share similarities with equivalent provision in England. Regulations, known as subordinate or secondary legislation, are also a feature of Scottish law. They provide more detail about how legislation should be acted on, and carry the full force of law. Examples include the Children's Hearings (S) Rules 1996 and the Community Care (Direct payments) (S) Regulations 2003 (SSI 2003/243).

### **Legislation in Scotland**

The Scottish Parliament was established by the Scotland Act 1998. Prior to that, legislation for Scotland was passed by the UK Parliament at Westminster. Some Acts were applicable to the United Kingdom as a whole, while others dealt with only Scottish matters. While these Scottish Bills went through the usual decision-making processes applicable to all legislation, they were additionally debated by the Scottish Grand Committee. Such Acts had the word 'Scottish' in the title, but to make life more difficult, many provisions which applied to Scotland could be found in other UK-wide statutes as well. Since devolution, apart from those matters which are reserved to the Parliament at Westminster, all other legislative measures concerning Scotland will be dealt

with in Edinburgh. The Scottish Parliament makes laws which are known as Acts of the Scottish Parliament. Scottish statutes begin their lives as Bills of which there are four main types, namely Executive Bills (introduced by the Scottish Executive), Members Bills (introduced by any MSP), Committee Bills (which may arise following the deliberations of one of the Parliamentary Committees) and Private Bills (introduced by an individual or by an organisation).

## Duties and powers

Most social work areas of responsibility defined by legislation may be categorised as either duties or powers.

### Duties

Where a duty is imposed by law, social services are obliged to carry it out; it is a mandatory obligation to carry out a particular function. There is no discretion or allowance for shortfall of resources. Breach of a duty could found an action for judicial review. An example is the duty to carry out an assessment for community care services under s. 47 of the National Health Service and Community Care Act 1990 or s. 12A of the Social Work (Scotland) Act where the wording is the same. The section reads:

#### s. 47

- (1) where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority –
  - (a) shall carry out an assessment of his needs for those services; . . . (DoH, 1990b)

The important word is *shall*, which suggests an imperative. As a general rule, where ‘shall’ appears, a duty is imposed.

### Powers

Where a power is provided, there is an element of discretion. Power provides the authority to act in a particular way but there is scope to decide how to act. An example is the power in para. s. 4. (2) of the Adoption and Children Act 2002 in respect of adoption support services:

- s. 4. (2) A local authority may, at the request of any person, carry out an assessment of that person’s needs for adoption support services.

The important word is *may*. The authority may act in a particular way; they have a discretion but are not under

an obligation. Guidance may be issued, which assists the interpretation of powers.

S. 12 of the Social Work (Scotland) Act 1968 provides a neat example of the inclusion of both duties and powers within the one section. S. 12 states that

‘It shall be the duty of every local authority to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area and in that behalf to make arrangements and to provide or secure the provision of such facilities (including the provision or arranging for the provision of residential and other establishments) as they may consider suitable and adequate . . .’

## Guidance documents

There are a variety of types of guidance documents, which provide guidance on putting legislation into practice. Guidance relating to social services matters is frequently contained in a circular, issued by the Department of Health or other departments, such as the DfES. Within the general term ‘guidance’, documents are issued of differing status, commonly referred to as formal policy guidance and general practice guidance. Local authorities are under a stronger obligation to follow the former.

It is often clear that guidance is in fact formal policy guidance because it will be identified as issued under the Local Authority Social Services Act 1970, s. 7(1), which states that local authorities shall ‘act under the general guidance of the Secretary of State’. Examples of this type of policy guidance include *No Secrets: Guidance on developing and implementing multiagency policies and procedures to protect vulnerable adults from abuse* (Department of Health, 2000f) and *Working Together to Safeguard Children* (Department of Health, 2006c, 2010). The status of this type of guidance was explained in the case of *R. v. Islington, ex parte Rixon* [1997] 1 ELR 477 High Court:

‘If this statutory guidance is to be departed from it must be with good reason, articulated in the course of some identifiable decision-making process . . . In the absence of any such considered decision, the deviation from statutory guidance is in my judgement a breach of law.’

Guidance that is not issued under LASSA 1970, s. 7(1) can be regarded as general guidance and of a lower legal status. It can be described as advice rather than as a directive. Practice guidance can be quite detailed and give particular examples of ways in which a local authority

might demonstrate good practice in implementing its responsibilities. For example, the Department of Health published Practice Guidance on *Assessing Children in Need and their Families* (2000a).

Guidance is issued in a similar way in Scotland. For example, the Guidance documents for the Children (S) Act 1995 explain how the legislation is intended to work, discuss its implications for policy and practice and identify areas where particular attention may need to be paid.

### Codes of practice

Sometimes legislation is supported by a Code of Practice. Recent examples include Codes of Practice issued alongside the Mental Capacity Act 2005 and the Mental Health Act 2007. The legal status of Codes of Practice is different to guidance. Neither of the Acts mentioned impose a legal duty to comply with its Code but in each case certain professionals must have regard to the Code in carrying out duties under the Act. The Codes are also intended to be helpful to others such as family members who are supporting people affected by provisions of the legislation.

### Additional documents

In addition to regulations and guidance above, local authorities and voluntary agencies may have their own policy and procedures which staff are required to follow. These may be based on statute, regulations and guidance and must fall within what has been laid down by law. They may reflect the particular ethos and practices of

the agency and while they do not have the force of law employees of the agency would ignore such procedures at their peril! In addition to the above, there are an increasing number of policy initiatives in Scotland which cover all service user groups. Examples of these in Scotland include the *Youth Justice Strategy* (Scottish Executive, 2002) and *Better Outcomes for Older People: Framework for Joint Services* (Scottish Executive, 2005). In England and Wales, National Service Frameworks apply to various service user groups and set quality requirements for care in the context of long-term strategy e.g. the NSF for Older People and the NSF for Child Health and Maternity.

### Case law

Decisions of the courts on matters brought before them are known collectively as case law and 'weighted' according to the doctrine of precedent. To understand precedent it is necessary to appreciate that there is a hierarchy of courts. The doctrine of precedent is the principle that decisions of cases made at the higher level of the court hierarchy are binding on other (lower) courts contemplating a decision, e.g. decisions made in the High Court, Family Division, should be followed by magistrates in the Family Proceedings Court. The highest UK court is the Supreme Court (formerly the House of Lords) and its decisions are binding on lower courts. Application of the doctrine of precedent promotes certainty and consistency. It provides an opportunity for the courts to develop, interpret and expand the law,

## A closer look



### Law in Northern Ireland

The political history of N. Ireland has played an important part in the development of primary and secondary legislation. Uniquely, post 1921 Acts of the Westminster Parliament were extended to Northern Ireland and until 1972 N. Ireland had the responsibility to enact its own legislation. As there was no legislative body in Northern Ireland in 1972 and between 1974 and 1999, primary legislation was enacted in the form of Orders in Council under arrangements for government by 'direct rule' by the Secretary of State. In 1999, the Northern Ireland Act 1998 created a new Northern Ireland Assembly which assumed power to enact primary legislation and introduce 'Acts'.

However, during periods of suspension of the N. Ireland assembly, notably in 2000 between February and June and again in October 2002, primary legislation for N. Ireland was once again made under the control and direction of the Secretary of State for Northern Ireland. Like England and Scotland, there are regulations accompanying primary legislation which set out the detail of how the law will work in practice. Such 'subordinate or secondary legislation' has the full force of the law. In addition, there are also volumes of guidance associated with legislation which define how statutory duties will be carried out by social work staff. The N. Ireland Children Order 1995 which comprises primary legislation of 200 Articles and 10 schedules plus 24 subordinate regulations is an example of this.

adding detail that would not be practical to include in legislation. Disadvantages of precedent are that it can seem unnecessarily restrictive and inflexible and that a 'poor' decision can stand for a long time. The courts are also limited to determination of the issues that people choose to litigate.

Case law decisions are published in law reports which contain the full text of a legal judgment and further details about the case.

Law reports are collected together according to the court that decided the case, e.g. Appeal Cases (**AC**) for cases in the Court of Appeal and Supreme Court, and Family Division (**Fam**) for cases heard in the Family division of the High Court. There are also two 'general' series, which include major cases covering a wide range of issues, known as the All England Law Reports (**All ER**) and the Weekly Law Reports (**WLR**).

Where a short summary of a case is required, it is useful to look in *The Times* newspaper, which provides up-to-date reports of cases decided, sometimes as recently as the previous day. A further option is to look at case-note sections in certain journals, which have the advantage of incorporating some commentary on the implications of a decision as well as a summary of the facts and judgment, e.g. *Family Law*. Major cases will also be reported more widely and may be subject to media scrutiny on television and in broadsheet and tabloid press.

Case names are written according to convention and follow a logical pattern. For example, in the case *X (Minors) v. Bedfordshire County Council* [1995] 3 All ER 353, an action is brought by X (the letter is used to anonymise the party and 'Minors' tells us it is a case concerning children); 'v.' means 'against', followed by the name of the other party, Bedfordshire County Council. The date in square brackets refers to the year in which the case is reported, '3' refers to the volume of the law report for that year, 'All ER' is an abbreviation for the series of law reports, here the All England Law Reports, and '353' is the page. Sometimes the title of the case will also include a reference to the level of court where it was heard, e.g. SC refers to the House of Lords.

It is now possible to access many case reports on the internet. The system for accessing cases this way is known as 'neutral citation', because it is not linked to any particular law report. The citation begins with the year then follows with UKSC, EWCA Civ or Crim or EWHC Admin or Fam and refers respectively to a decision made by the Supreme Court or in England and Wales made by the Court of Appeal Civil or Criminal Division or the High Court Administrative or Family court. The number

following gives the case position for that court, i.e. whether it was the first or thirty-first case heard by the court in that year.

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### An example of neutral citation

*Re MJ (A Child) (Adoption Order or Special Guardianship Order)* [2007] EWCA Civ 55.

[2007] – This case was heard in 2007

EWCA Civ – a decision of the Court of Appeal, civil division

55 – the 55th case heard by the Court of Appeal in that year

*Re MJ (A Child)* – the case has been anonymised as it concerned a child

*(Adoption Order or Special Guardianship Order)* – the substantial issue for the court to consider

As well as giving judgments in decided cases, the courts also issue Practice Directions from time to time intended to give guidance on how to conduct particular cases, e.g. *Practice direction (Crown Court: trial of children and young persons)* (2000) 2 All ER 285 was issued following the trial in the Jamie Bulger case and stated, among other things, that young defendants should be able to sit next to their family in court.

## Civil and criminal law

There are two principal categories of law: civil and criminal. There are a number of ways in which the distinction between civil and criminal law can be drawn.

In a criminal case the dispute is between the state and an individual or 'body'. The parties are referred to as the prosecution and the defence or the accused. The substance of the case is an allegation of behaviour, which falls within the definition of a criminal offence (in statute or common law, e.g. theft or rape). It will be a matter over which society as a whole is taken to have an interest in expressing at least its disapproval and ultimately, if proved, may consider it necessary to sentence the perpetrator of the offence.

In a civil case the dispute is between individuals, referred to as the claimant or applicant and the defendant, or in divorce cases, the petitioner and the respondent.



Civil disputes may be further classified as private or public matters. In a public matter a body may act on behalf of the state in a civil case. An obvious example of this is where a local authority issues care proceedings in respect of a child in its area. This is a civil matter, but could also be described as an aspect of public rather than private law because it involves a public body exercising a public function. A civil matter, which is 'private' as opposed to 'public', would include a divorce between two individuals, or could be a contract dispute between an individual and a company or public body.

## Remedies

The outcome or remedy in a case will differ according to whether it is a civil or criminal matter. In a criminal case the object is to determine the question of guilt and then to make an appropriate disposal, which includes imprisonment, community orders, fines and compensation orders.

In civil cases an order will be made giving judgment to either party (crudely speaking, the winner). The most frequent order in civil cases is for compensation or damages to be paid by one party to the other to compensate for loss or damage but could also include an injunction, e.g. non-molestation injunction in a domestic violence case.

The standard of proof is different in civil and criminal cases. In a civil case the standard of proof is known as 'balance of probabilities'. This means that the point to be proven has to be more probable than not. In percentage terms this might be understood as a 49:51 per cent balance, i.e. the scales only just have to tip. In a criminal case the standard of proof is higher and is known as 'beyond reasonable doubt'. Again, to conceptualise this in percentage terms, it might equate to approximately 97 per cent, a high level but still allowing for a slight degree of doubt.

The court structure also reflects the civil and criminal divide. Civil cases may be heard in the Supreme Court, the Court of Appeal (Civil Division), and the High Court. These are known as the superior courts. The inferior courts dealing with civil cases are the county court, which deals with the majority of civil cases, including cases concerning family and child issues and personal injury cases, and the magistrates' court, which, although dealing mainly with criminal matters, hears civil claims relating to family and child matters in its Family Proceedings court. The majority of civil disputes fall into three categories: personal-injury action seeking compensation following an injury; actions for breach of contract; and debt. Some civil cases also involve circumstances where the permission of the courts is required before a particular action can be taken, e.g. a High Court

## A closer look



### Criminal and civil law

The same circumstances may lead to criminal and civil cases and illustrate the application of the different standards of proof, for example harm caused to a child may constitute a criminal offence and may give rise to care proceedings. In the criminal case the evidence focuses on whether the court is satisfied 'beyond reasonable doubt' that the defendant caused the harm and should be convicted. In care proceedings the court must be satisfied on a balance of probabilities that the threshold of 'significant harm' is reached and that the child should be made subject of a care order. It is less concerned with precisely attributing blame for injuries caused. A statement from *Re U (A Child) (Serious Injury: Standard of Proof)* [2004] EWCA Civ 567 reminds us that, 'it by no means follows that an acquittal on a criminal charge or a successful appeal would lead to

the absolution of the parent or carer in family or civil proceedings'.

The criminal law has been amended recently following a number of cases where injuries to children have been caused, care proceedings have been taken, but it has not been possible to convict the perpetrator because of evidential difficulties and the higher standard of proof, e.g. *Re O and N (Children) (Non-accidental Injury: Burden of Proof)*, *Re B (Children)* [2003] UKHL 18. The new criminal law is contained in the Domestic Violence, Crime and Victims Act 2004 which introduced the new offence of 'familial homicide' in section 5. The offence applies where a child (or vulnerable adult) dies as a result of an unlawful act of a person of the same household, who either caused the death, or, aware of the risk, failed to protect the child. In such a case more than one adult can be charged with the offence and it is not necessary to precisely establish who caused the death and who failed to protect.

declaration authorising sterilisation of a woman with a learning disability, or approval to remove a child from the jurisdiction. Tribunals also exercise civil jurisdiction.

Courts that deal with criminal cases are: the magistrates' court, which has both an adult and a youth crime jurisdiction; the Crown Court; the Queen's Bench Division of the High Court; the Criminal Division of the Court of Appeal; and the Supreme Court. The starting point in a consideration of a criminal case is the classification of the crime. There are three groups of offences recognised by the criminal law:

1. *Summary offences*: the less serious criminal offences, including numerous motoring and traffic offences, and drunkenness offences, which are tried by magistrates.
2. *Indictable offences*: the most serious offences, which are tried 'on indictment' in the Crown Court, including murder, rape, arson and robbery.
3. *Either way offences*: as the name suggests, may be tried in the magistrates' court or the Crown Court depending on the seriousness of the offence and the preference of the defendant. Either way offences include criminal acts where there is a possible range of seriousness, such as theft, which may be charged in a petty shoplifting case or a major theft of property worth millions of pounds.

Offences may also be classified according to the type of harm done. This is often reflected in the legislation which establishes particular offences, e.g. the Theft Act 1968 or the Sexual Offences Act 2003. Crimes may be committed: against property, e.g. burglary; physical integrity of the person, e.g. rape or assaults; or general public rights of citizenship, e.g. public order offences.

The court structure has been supplemented by a system of tribunals commonly associated with the rise of the welfare state and exercising administrative and judicial functions. Some of the more important tribunals in social work terms were: the Care Standards Tribunal; Employment Tribunal; Mental Health Review Tribunal; Asylum and Immigration Tribunal; Criminal Injuries Compensation Appeals Panel; and Social Security Tribunal. A new statutory framework for tribunals is provided by the Tribunals, Courts and Enforcement Act 2007. There are now two tribunals, First Tier and Upper Tier, the Upper Tier dealing with appeals from the First Tier. Within the First Tier, areas of tribunal jurisdiction are grouped into Chambers. Of particular relevance to social work, the Health, Education and Social Care

Chamber includes care standards; mental health reviews, special educational needs and disability.

As a general principle, court (and tribunal) proceedings should normally be held in public, in open court. In a number of circumstances, however, the public and the press will be excluded and a case will be heard privately or *in camera*. The majority of cases relating to children are heard *in camera*; however, recent reforms to provide greater transparency in the court system are likely to result in increased media access to family proceedings.

## Working in the law

Alongside social workers, various professionals work in the court system. Some of the most significant are: the advocates or lawyers, who may be barristers or solicitors; the Crown Prosecution Service deals with prosecution of criminal cases and lawyers may be provided to defend individuals charged with an offence by the Criminal Defence Service; cases are heard by magistrates (unpaid volunteers) or judges; in the magistrates' court a justices' clerk provides advice to the magistrates on points of law and procedure.

There is the potential for social workers to be involved professionally with cases at all levels of the court structure. Involvement may be as applicant to the court or witness or in giving support to a service user. Table 8.1 outlines key areas of social work involvement.

Key social work roles in court include appearing as an applicant, a witness and a report writer.

As representative of the local authority, a social worker may be the applicant in court in a range of proceedings. Usually a solicitor or barrister will conduct the case and the social worker then becomes the key witness in the application. Where a social worker appears as a witness she owes a duty to the court to tell the truth, even if in exceptional circumstances this may mean expressing a personal view which conflicts with the agency stance. Examples of such cases include: Emergency Protection Orders; Care and Supervision Orders; application to displace the nearest relative under the Mental Health Act 1983; placement orders in adoption cases. A report from the social worker will often be required by the court. The type of report varies according to the case. Sometimes the content is prescribed by regulations or national standards, e.g. pre-sentence reports, permanence reports in adoption cases. Reports may be requested by the court exercising a general discretion or by a specific