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Editor's Note—Spring 2009

This issue of the *Michigan Child Welfare Law Journal* once again presents a number of diverse topics. "Child Victims of Sexual Abuse & the Law" (Arcaro) provides an overview of the significant legal issues presented in the investigation and prosecution of child sexual abuse allegations. Over the course of the past three decades there has been a dramatic change in the way society views and responds to child sexual abuse. Consequently, the legal system's response to child sexual abuse has become much more enlightened and now provides important procedural, evidentiary, and substantive protections for child victims. The author describes how these protections stem from past failures to fully recognize the particular vulnerability of child victims of sexual abuse when forced to participate in court proceedings designed for adults.

In "Reasonable Efforts: They Aren't Just For Funding Anymore" (Calogero) the author notes that since 1983 states have been eligible to receive federal funding for children in foster care. One of the requirements for this funding is that the state have a federal government-approved plan in place that provides, among other things, that the state make reasonable efforts to prevent a child's removal from home, and if removed, facilitates a child's return home. The author analyzes a recent Michigan Supreme Court decision that provides guidance for the first time regarding the meaning of "reasonable efforts." This case will provide parents, attorneys, and caseworkers much needed guidance.

In "Child Welfare and Children in the Education System: Prioritizing the Need for Statewide Anti-Bullying Policies" (Day & Cross) the authors describe a study conducted to explore the responses of 380 students who had experienced bullying in high school as victims, perpetrators, and witnesses. Findings include significant predictors of bullying behavior. Students also offered recommendations for policymakers to create anti-bullying legislation with enforcement guidelines and other methods of improving school culture to reduce future bullying incidents.

Finally, in "Therapeutic Jurisprudence in Juvenile Drug Courts" (Stachowicz), the author discusses a growing trend in juvenile justice to utilize juvenile drug courts. A juvenile drug court is typically made up of a coalition of judges, prosecutors, defenders, treatment professionals, law enforcement officials and other members of the community who share an interest in curbing juvenile substance abuse. These courts use the structure of the court to provide therapeutic services in an effort to ensure that the youth will go on to live a productive life outside of the criminal justice system. The author describes the benefits and challenges involved with implementing such courts.

I hope you find this issue interesting and useful. As always, the editorial board welcomes your feedback on this and future issues to ensure that the *Child Welfare Journal* is of value to you.

Editorial and Review Board

Message from the Chair

Happy Summer Everyone! Hope you are all getting a chance to enjoy some of the nice weather.

Anyone that is familiar with me knows that I spent most of my time in private practice working as an LGAL. I worked with over 1,500 children and their families. One thing that I become very passionate about was the parents of these children. So many of them continue to have contact with me telling me how their lives are continuing to improve. I was often struck by the fact that if we, as attorneys, just showed them we had confidence in them, offered positive support, honesty and respect, these parents would respond with sincere efforts to make positive changes in their lives. During my time in private practice, I became a firm believer that attorneys could be one of the most positive and motivational influences on parents' ability to make the necessary changes to get their children back and move out of the system permanently. Little did I know at the time, but several of my personal observations have been proven by studies of several parent representation focused programs throughout the nation.

The ABA recently has started a Parent Representation project based on this national data. They have an excellent website and offer several services for attorneys, including a national list serv. The web address is *http://www.abanet.org/child/parentrepresentation/home.html*. The project hosted the first parent attorney conference for two days this May, in Washington, DC. I was able to attend due to my project at SCAO regarding improving the quality of representation in child welfare cases. The excitement created at the parent attorney conference was nothing short of awesome.

I want to share points from one presentation that really stuck out to me. The Center of Family Representation, (CFR) in City of New York represents parents in child welfare cases. During the first 60 days of a case, attorneys focus on helping the client brainstorm placement and visitation options, such as who could help with supervised visits so that visits could go beyond one hour a week at the agency? They also focus on the case service plan. The attorneys prepare clients for meetings with DHS and send the clients armed with problem solving ideas. Attorneys will discuss possible services with clients prior to the client's meeting with the agency so the client can help ensure they are receiving appropriate services. Educating clients before their meetings with the agency can be very beneficial to the development of a case service plan that the client can actually accomplish and will truly address the real issues. Clients are also more likely to fully participate in a plan they had some control in creating. CFR also has a social worker assigned to each case that is available to attend agency meetings with the client. Wouldn't that be great?!

CFR provided data that showed attorney involvement and focus on visitation, placement and services in the first 60 days resulted in a significant difference in the length of stay for children in foster care. For example, from July 2007 – December 2008 the overall length of stay in foster care in New York was 11.5 months. For children whose parents are represented by CFR, the average length of stay in foster care was three months.[1] This is a goal I think we can all say we would like to see in Michigan. What a benefit to the children.

I want to highly encourage everyone to participate in this national trend to improve the representation of our parents and help bring children home safely sooner. Start by joining the ABA national list serv and continue by attending trainings specific to parent representation. We are hoping to recreate parts of the National Conference for a SCAO training on December 8. See the website at *http://courts.michigan.gov/scao/services/cws/TrainingDevelopment.htm* if you are interested in attending.

Remember, whether you are representing children or parents – we all make a difference in a child's life every time we take one of these cases. Let's continue to work together to strive for better outcomes for children by supporting each other in our child welfare practices.

Sincerely,

Jenifer L. Pettibone, Chair

Endnotes

1 Statistical information provided during the May 2009 ABA Conference for Parent Representation, by the Center for Family Representation, Inc of New York, New York.

Child Victims of Sexual Abuse and the Law

by Timothy L. Arcaro, Professor of Law,
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Foreword

This article provides an overview of the significant legal issues presented in the investigation and prosecution of child sexual abuse allegations. Over the course of the past three decades there has been a dramatic change in the way society views and responds to child sexual abuse. Consequently, the legal system's response to child sexual abuse has become much more enlightened and now provides important procedural, evidentiary, and substantive protections for child victims. These protections stem from past failures to fully recognize the particular vulnerability of child victims of sexual abuse when forced to participate in court proceedings designed for adults. Child-sensitive practices have emerged and are now routinely employed in civil and criminal court proceedings to maintain the delicate balance between the rights of the accused and the child victim's need for safety and well-being.

Problems and Perspectives

Introduction

What was once referred to as "a hidden pediatric problem" in 1977 is now widely accepted as the pervasive problem of child sexual abuse. The threat of child sexual abuse is easily recognized in the context of identified pedophiles and other known sexual predators. Unfortunately, predators do not always fit a single stereotype. It is well recognized that child sexual abuse is often perpetrated by someone in a close relationship with the child, such as a parent, family member, or other trusted adult. Child victims of sexual abuse may also present a threat of harm to other children when their abuse has not been identified and treated. Families dealing with intrafamilial sexual abuse may recognize the problem and seek therapeutic intervention, while others may not be aware of the abuse unless legal intervention takes place.

Historically, the legal system has failed to recognize or respond appropriately to the particularized needs of child victims of sexual abuse. This frequently resulted in children being victimized by the abuse and then re-victimized by the judicial system through misguided prosecutorial efforts. Authors Dziech and Schudson have pointed out that many of the current protections afforded to child sexual abuse victims can be traced to the feminist movement, which is responsible for inducing fundamental changes in the way the judicial system and law enforcement respond to victims of sensitive crimes: "[F]eminism exposed the worst inequities and absurdities in the legal system, and in responding to the outcry of women, the courts began to lay foundations for the treatment of sexually abused children."

The general public has become incre¬¬asingly aware of child sexual abuse as a result of the media attention that often is generated by high profile cases. As our understanding of the issues presented in these complex and tragic cases has expanded over the last 30 years, so, too, have the legal remedies. New state and federal laws have been enacted to protect child victims in legal proceedings, particularly when they are called to testify in court. Innovative child-sensitive approaches to the investigation and prosecution of child sexual assault cases have been developed to protect child victims. The development of judicial, prosecutorial, and legislative sensitivity towards child victims of sexual abuse has dramatically reduced the harmful litigation practices of our recent past.

Although federal and state laws generally presume children to be competent witnesses, there is still a debate within the scientific community as to whether child victims should testify in court proceedings. This

debate centers on the psychological and emotional impact experienced by these child victims when called upon to provide in-court testimony. Some members of the mental health profession believe that children often experience additional trauma as a result of having to testify about the highly sensitive events surrounding their alleged abuse and being cross-examined about the veracity of their allegations. Other professionals believe that the act of testifying in court proceedings is actually therapeutic in that it helps to legitimize the child's recognition that the child is not to blame for the events, and it actually serves to empower the child.

Studies show that the most traumatic aspect of the legal process for child sexual abuse victims is being forced to face the perpetrator, especially when that perpetrator is a family member. The potential harm to the child must be balanced against the potential benefit to the case if a child victim is to testify in court proceedings. The child's cognitive and developmental skills are critical factors to consider when determining whether a child should testify since the ability to recall information and to communicate that information is crucial to building a case. Children who can provide an accurate and reliable account of events in court may be attractive witnesses when they also present a low risk of serious psychological impairment from the experience. Mental health experts are frequently called upon to guide the court and counsel on the threshold issue of whether a child victim would be harmed as a result of the testimonial experience. The luxury of not having to call a child as a witness depends on the sufficiency of corroborating evidence to prove the allegations without the child's testimony.

Child Sexual Assault Defined

Child sexual abuse has more than one definitional interpretation. For example, the American Academy of Child and Adolescent Psychiatry developed guidelines for forensic evaluators of child sexual abuse victims in its work, Practice Parameters for the Forensic Evaluation of Children and Adolescents Who May Have Been Physically or Sexually Abused. Within those practice parameters, child sexual assault is defined as:

> [S]exual behavior between a child and an adult or between two children when one of them is significantly older or uses coercion. The perpetrator and the victim may be of the same sex or the opposite sex. The sexual behaviors include touching breasts, buttocks, and genitals, whether the victim is dressed or undressed; exhibitionism; fellatio; cunnilingus; and penetration of the vagina or anus with sexual organs or with objects. Pornographic photography is usually included in the definition of sexual assault. It is important to consider developmental factors in assessing whether sexual behaviors between two children are abusive or normative.

The Child Abuse Prevention and Treatment and Adoption Reform Act defines sexual assault as:

> (A) The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or
>
> (B) the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prosecution, or other form of sexual exploitation of children, or incest with children.

States' statutory laws also define the conduct and acts that constitute child sexual assault; these definitions may vary from jurisdiction to jurisdiction. Generally, statutes define sexual assault with technical terms of construction, a broad range of behaviors defined in contemporary language, or by broadly prohibiting the taking of "immodest, immoral or indecent liberties" with a child. Certain conduct constitutes per se sexual assault while other acts must be considered in light of the facts and circumstances surrounding their occurrence. Robert D. Goldstein wrote in his text, Child Abuse and Neglect, that:

For evidentiary purposes, sexual acts may be divided into two kinds: acts that are presumed to be sexual and acts that the state must prove to be sexual by virtue of the actor's intent:

> [Category 1:] Acts that are per se or presumed to be sexual include the (1) insertion of a penis into another's vagina, mouth or anus, or (2) the insertion of some other object (including oral contact) into a vagina or anus, other than

> a privileged insertion for medical or child care purposes (such as an enema). . . .
>
> [Category 2:] Other acts that are sexual, by virtue of the actor's intent to satisfy his desires or arouse desire in another, include:
>
> - fondling of private areas (through touching of skin or through clothing), including the genital or anal region, thighs, or breasts of the desired person (or inducing the desired person to do the same to the actor or another)
> - other sexualized touching including frontage (rubbing of actor's genitals, often through clothing, against another)
> - kissing or French kissing
> - non-touching acts such as voyeurism and exhibitionism (including masturbation in the presence of a child)
> - explicitly sexualized speech[19]

Conduct that falls within Category One establishes a presumed act of child sexual assault and does not require proof of the actor's intent. However, intent must be proven if the actor's conduct falls within Category Two. Proving intent requires corroborating evidence which may be difficult to produce given the nature of the injuries associated with this type of assault and the fact that the abuse may have stopped well before it has been detected. As reflected in the oft-quoted case of *In re Carmen O*:

> [child] sexual assault cases traditionally have been difficult to prove because of various limitations, including the following: (1) Lack of physical evidence of sexual activity because of a time lapse in the reporting of the activity or the nature of the contact; (2) lack of corroborating eyewitnesses; (3) reluctance of family members to testify; (4) the victim's retraction of the story; and (5) lack of credibility of some child victims due to limited verbal and cognitive abilities.[20]

Reporting Obligations

Every state has passed legislation requiring mandatory reports of suspected child abuse from mental health professionals, teachers, and others who regularly come in contact with children.[21] These reporting laws statutorily abrogate underlying legal privileges to non-disclosure, such as the psychotherapist-patient privilege, in order to facilitate statutory compliance.[22] Several jurisdictions have completely abrogated the husband-wife privilege in child abuse prosecutions in order to prevent a parent from protecting the abusive spouse.[23] Reporting obligations may also exempt consensual sexual activity between sexually mature minors, boyfriends and girlfriends, and children of similar age and developmental maturity that voluntarily engage in sexual experimentation.[24]

There is substantial uniformity among state reporting statutes specifying reporting procedures, immunity for reporting, and sanctions for not reporting.[25] States also provide varying degrees of immunity to protect individuals from prosecution for reporting false allegations of child abuse.[26] Most states only provide immunity to the reporter when the allegations of abuse are made in "good faith," while a minority of states provide absolute immunity for reports of child abuse.[27] Child abuse reports generally remain confidential by law or are otherwise made available on a limited basis.[28]

Investigating Child Sexual Assault Allegations

Child maltreatment is perceived to be a community problem; no single agency, individual, or discipline possesses the necessary knowledge, skills, resources, or societal mandate to provide the assistance needed by abused and neglected children and their families.[29] This community response theme is reflected in a multidisciplinary approach which generally views child abuse as symptomatic of a dysfunctional family as opposed to the individual pathology of a single abuser.[30] Multidisciplinary centers or child protection teams (CPTs) coordinate efforts of child service providers to collaborate in diagnosing and treating child abuse.[31] These centers also work in conjunction with local law enforcement to formulate a comprehensive community response.[32] For communities that do not have specialized care centers, the American Academy of Pediatrics suggests that a hospital inpatient unit may be an appropriate place for an abused child while the initial management of the child's case is handled.[33]

The investigation of child sexual abuse allegations is critically important. Failure to detect actual abuse may expose the victim as well as other children to continued victimization. Conversely, victimization of a different nature can occur when false allegations of

child sexual abuse lead to the arrest, prosecution, and imprisonment of an innocent person.[34] In either case, the failure to obtain competent and reliable evidence of child sexual assault has a profound impact on the victim. Child sexual abuse investigations are frequently hindered because most child victims do not report the sexual abuse immediately; rather, the disclosures usually come over a period of time and sometimes over a period of years.[35] This is especially true in cases of intrafamilial sexual abuse where the child has developed a trusting relationship with the adult perpetrator.[36] This trust relationship is frequently important in explaining the child's delay in reporting the abuse. Other children do not disclose the abuse because they may have been threatened or bribed by the abuser in order to secure their silence and/or acquiescence.[37] "The youth and vulnerability of children, coupled with the power inherent in a parent's position of authority, creates a unique situation of dominance and control in which explicit threats and displays of force are not necessary to effect the abuser's purpose."[38]

When a child is physically examined for signs of sexual abuse, there must be a reasonable degree of clinical certainty on the part of the health care provider to render a diagnosis of sexual abuse.[39] The American Academy of Pediatrics concludes that "the presence of semen, sperm, or acid phosphatase; a positive culture for gonorrhea; or a positive serologic test for syphilis or human immunodeficiency virus (HIV) infection makes the diagnosis of sexual abuse medical certainty, even in the absence of a positive history, when congenital forms of gonorrhea, syphilis, and congenital or transfusion-acquired HIV (as well as needle sharing) are excluded."[40] The absence of physical evidence or injuries, however, does not mean a child was not sexually abused. Several types of sexual abuse do not leave any physical evidence beyond temporary tissue sensitivity and discoloration which tend to heal quickly.

Society places a great trust in health care professionals to accurately diagnose child sexual assault and to formulate appropriate treatment regimens. Interviewing child victims of sexual abuse, however, has taken on new legal significance with serious evidentiary implications in judicial proceedings. Multiple studies suggest that interviewing procedures can affect the validity of the information obtained from child victims. In Ann Graffam Walker's *Handbook on Questioning Children*, the author strongly suggests that the person interviewing the child victim be trained to identify the cognitive limits and linguistic differences presented by that particular child.[41] The interviewing techniques utilized by the person conducting the interview are of critical importance in eliciting reliable and accurate information. Inappropriate interviewing techniques utilized by the examiner may significantly impact certain aspects of the child's account, and that may consequently affect the reliability of the statements.[42] Furthermore, repetitive interviews of child sexual abuse victims may expose the child victim to additional trauma and also adversely affect the child's credibility.[43] Because poorly chosen interviewing techniques may seriously compromise subsequent legal proceedings, interviewers must take precaution when framing questions that are directed at child witnesses.[44]

A skilled interviewer must be flexible in tailoring the interview conditions specifically for each child based on an analysis of that child's cognitive and linguistic abilities, an understanding of the proceedings, and knowledge of that child's level of stress.[45] Children may be exposed to new, erroneous, or even misleading information through interviews with parents, child care workers, law enforcement officials, and attorneys.[46] Ann M. Haralambie suggests in her text, *Child Sexual Abuse in Civil Cases: A Guide to Custody and Tort Actions*, that all primary interviews of the child should be videotaped in their entirety in order to permit review by other investigative agencies without having to needlessly subject the child to further interviews.[47] Recorded interviews may also be used in court proceedings and enhance the reliability of the child's earlier recorded statements.[48] Videotaped statements preserve the integrity of the recorded interview, permitting others "to observe firsthand the nature and suggestiveness of the questions posed to the child; the substance and subtleties of the child's responses; and the child's demeanor in giving those responses."[49]

In *State v. Weaver*, the court cautioned that "the failure of the investigating officer in child sexual abuse cases to preserve some tangible record of the interview, in a controlled situation and absent exigent circumstances, will be viewed with distrust in the judicial assessment of the veracity of the child victims' statements."[50] Law enforcement officers and child abuse investigators who interview child victims

must appreciate the significance of recording victim interviews, especially for prosecution purposes.[51]

Criminal and Civil Court Proceedings

Child assault allegations are routinely litigated in three legal forums: 1) criminal court; 2) child protection/juvenile court; and 3) domestic relations court. These forums have different structures, purposes, and goals which reflect the focus of the litigation:

- Criminal court proceedings:
  Litigants: State vs. criminal defendant
  Goal: To punish violations of criminal statutes and protect society from further victimization
  Focus: The defendant's right to a fair and impartial trial
- Child protection court proceedings (also known as juvenile dependency proceedings):
  Litigants: State or petitioner vs. parent(s) or legal custodian
  Goal: To identify and protect children at risk of abuse and/or neglect; to ameliorate parental deficits for purposes of reunification of child and parent whenever possible
  Focus: The child's best interest
- Domestic relations court proceedings (also known as custody/visitation proceedings):
  Litigants: Parent/legal custodian vs. parent/legal custodian
  Goal: To determine which parent is best suited to meet the needs of the child; to structure court ordered relationships that provide both parents with an equal opportunity to have a meaningful relationship with their child
  Focus: The child's best interest

Law enforcement agencies, working in conjunction with state prosecutors, are primarily responsible to investigate reported child sexual assault crimes. Before a criminal indictment is issued, the prosecutor must give appropriate consideration to the nature of the offense, the availability of evidence, and the ability to identify a suspect(s) for prosecution.[52] Although there is no single factor to determine if charges will be initiated, the likelihood of successful prosecution is always a practical consideration.[53] There are substantiated cases of child sexual assault that will simply not support a conviction and are never brought to justice. Prosecutors often defer prosecution where the likelihood of success at trial is low and child protection proceedings have been initiated.[54]

Adjudication in child protection proceedings is not a determination of guilt or innocence; rather, it is "a determination of the child's status."[55] In protection proceedings, state substantive law offers a wide range of dispositional remedies and services designed to tailor individualized remedial relief for child victims and their families. In domestic relations cases, courts generally have fewer resources available to remedy underlying family dysfunction issues. Where allegations of sexual assault are proven, the court may suspend all contact between the victim and the perpetrator and order the perpetrator into treatment.

Parents that have sexually assaulted their child may face both criminal and civil sanctions. A criminal conviction may lead to imprisonment, while civil proceedings may result in the temporary removal of the child from the home and/or permanent termination of parental rights. Many jurisdictions statutorily identify child sexual abuse as a ground for terminating parental rights while others sweep the conduct into a residual category such as "egregious conduct."[56] In cases where a parent has not abused the child but failed to protect the child, reunification of parent and child may be more realistic. In his treatise *The Legal Rights of Children*, Donald Kramer writes, "[N]ot all non-abusing parents should be held legally responsible for such maltreatment; many non-abusing parents are very supportive of their abused children, want to protect them from harm, are fully cooperative with caseworkers and therapists, and honestly claim to have known nothing about the abuse before it was reported."[57] While non-offending parents may be able to reunify with their child, an unwillingness to be held accountable for parenting defects makes it impossible to address underlying issues.[58]

Natural parents have a fundamental constitutional right to "the care, custody, and control of their children."[59] The state may justifiably interfere with this fundamental right under the legal doctrine of "Parens Patriae," where it demonstrates "a compelling state interest" supporting the deprivation.[60] As the level of state interference in the parent-child relationship increases, so too does the burden of proof. While a temporary interference is satisfied by a low threshold

of proof, permanent termination requires clear and convincing evidence. A preponderance of the evidence is the proof standard that is generally required to prevail in most civil court proceedings, including child protection and domestic relations proceedings. The minimum standard of proof legally required to terminate parental rights has been set at clear and convincing evidence. This standard is higher than a preponderance of the evidence due to the permanent nature of the deprivation.[61] Termination proceedings are quasi-criminal in nature, compelling additional due process protections for parents.[62]

Child sexual assault allegations may also arise within the context of domestic relations proceedings such as child custody and visitation disputes.[63] In domestic relations court, litigants are generally responsible to prosecute their respective claims without the benefit of state representation. When an amicable solution cannot be reached, the court will adjudicate the merits of the respective claims. Allegations of sexual abuse that coincidentally arise at the time of separation or divorce are often met with skepticism and suspicion by the court.[64] In reality, the stress caused by marital breakup may in fact result in a child's being abused by one of the parents for the first time.[65] Furthermore, there are many legitimate reasons why a child would disclose allegations of sexual abuse to the non-abusive parent during a time of separation.[66] This has not diminished the judicial bias that has developed in domestic relations cases when allegations of sexual abuse exist.[67]

Substantive Legal Developments

Over the course of the past 30 years, there have been significant state and federal efforts to provide comprehensive protections for all child victims of abuse, abandonment, and neglect. These protections are written into laws known as statutes. Once promulgated into law, these statutes are interpreted by courts through legal opinions known as decisional case law. The appellate court process permits a party dissatisfied with a lower court opinion to appeal to a court of higher authority. The United States Supreme Court is the highest court in the U.S. and plays an important role in shaping modern child sexual abuse laws and litigation practices.

The Confrontation Clause

The Confrontation Clause of the Sixth Amendment to the United States Constitution states that, "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him"; this applies in both state and federal criminal court proceedings.[68] There is a clear preference embedded in historical and legal precedents for all witnesses to testify in the physical presence of the defendant.[69] Criminal defendants also have a fundamental right to cross-examine adverse witnesses; this ordinarily requires the witness to testify in open court and under oath or affirmation in order to impress upon the witness the vital obligation to tell the truth.[70] The right of confrontation embodies the opportunity for the defendant, as well as the trier of fact, to observe the demeanor of each witness as he testifies in order to assess that witness's credibility.[71]

In contrast to criminal court proceedings, litigants in civil cases are not entitled to the same protections afforded by the Confrontation Clause, which only applies to criminal proceedings. The right to cross-examine witnesses in civil cases flows from the Due Process Clause of the U.S. Constitution, which ensures that civil proceedings are fundamentally fair.[72] For this reason, civil court judges generally have far more latitude in protecting child victims from the harmful effects of litigation than their counterparts in criminal prosecutions.

Child Sexual Abuse Issues and The United States Supreme Court Cases

The following cases have played an important role in shaping the legal system's current response to child victims of sexual abuse.

Hearsay Admissibility: In *Ohio v. Roberts*, the United States Supreme Court identified a two-part test to determine when certain hearsay statements would be admissible in criminal proceedings.[73] The Court held that the prosecution must first demonstrate that the declarant is "unavailable" within the meaning of the law.[74] The prosecution must then establish that the out-of-court statement has "adequate indicia of reliability."[75] Statements that fall within "firmly rooted hearsay exceptions" are presumed to have sufficient reliability to be admitted into evidence.[76] Statements that do not fall within firmly rooted exceptions are presumed to be unreliable and cannot be admitted unless the prosecution can demonstrate "a particularized guarantee of trustworthiness" surrounding the statement.[77] The Court found that a witness's previous testimony was admissible into evidence as hearsay because it had sufficient indicia of reliability to safeguard

the truth-finding process.[78]

Authority to Modify Proceedings: In *Kentucky v. Stincer*, the trial court modified a pre-trial competency hearing for two minor children, ages seven and eight years old, who allegedly had been sexually abused by their father.[79] The trial court prohibited the defendant from being present at the pre-trial competency hearing in order to prevent his presence from interfering with the court's assessment of the children's competency.[80] However, the defendant's lawyer was present at the competency hearing.[81] The United States Supreme Court held that not only could the trial judge modify the proceedings to fit the needs of the minor children at the pre-trial hearing, the court could also modify the proceedings at trial.[82] The threshold question regarding the confrontation right was whether the defendant's presence, or lack thereof, would contribute to the fairness of the procedure.[83] The Court found that it was constitutional to bar the defendant from the competency hearing so long as his right to cross-examine witnesses at critical stages of the proceedings was preserved.[84]

Other Protective Measures: In *Coy v. Iowa*, the United States Supreme Court addressed the issue of protective measures for child victims of sexual abuse who testify during a defendant's criminal trial.[85] In *Coy,* the defendant was arrested and charged with the sexual abuse of two 13-year-old girls; while the girls were asleep in a camping tent, the defendant entered the tent and sexually molested them.[86]

During the defendant's trial, the prosecution used a screen to conceal the witnesses from the defendant during their testimony.[87] The screen was placed between the defendant and each child, completely blocking the child's view of the defendant while permitting the defendant only a partial view of the witness.[88] The Iowa Legislature had approved this technique in order to protect minor child victims when they provide in-court testimony.[89] The Iowa statute permitting the use of the screen was ruled unconstitutional.[90] The United States Supreme Court held that screening the witnesses violated the defendant's right of confrontation where the defendant could only hear and dimly see the witnesses.[91] The Court stated that, "[t]he Confrontation Clause does not, of course, compel the witness to fix his eyes upon the defendant; he may studiously look elsewhere, but the trier of fact will draw its own conclusions."[92]

The Iowa statute was based on the legislative presumption that all children would suffer harm if they provided in-court testimony. This presumption of generalized trauma resulting to all children did not, however, outweigh the defendant's constitutional right to confront adverse witnesses. The Court made it clear that protecting child victims was an important public policy, but there must also be an individualized determination, made on a case-by-case basis, which would demonstrate that a particular harm would result to a specific child.

In *Maryland v. Craig*, the defendant, an owner and operator of a day-care center, was charged with the sexual abuse of a six-year-old child.[93] Maryland had enacted a statute to protect child victims from testifying in the defendant's presence.[94] The statute permitted child victims to testify outside the courtroom and outside the presence of the defendant, via closed circuit television, upon a particular showing of necessity.[95] At a pre-trial hearing, the trial court in *Craig* found that it would be substantially difficult for the named victim, as well as a number of other children who were allegedly abused by Craig, to testify in the presence of the defendant, and that each child would suffer such serious emotional distress that he or she would not be able to reasonably communicate in the presence of the defendant.[96] Therefore, the children were permitted to testify via closed circuit television outside the defendant's presence.[97]

The case came before the United States Supreme Court, and the Court cited several reasons for upholding the Maryland statute. The Court acknowledged the distinct preference for live testimony, but it noted that face-to-face confrontation could be precluded where the alternative procedure advanced compelling public policy and the out-of-court testimony was trustworthy.[98] The Court found that important policy reasons exist that support the need to protect specific child victims from the trauma of in-court testimony.[99] However, before offering a child witness protective measures, a court must determine that the child's need to be protected from a particularized harm or trauma that may result from testifying in the defendant's presence outweighs the defendant's right to face his accuser during trial.[100] Therefore, a court can only offer a child protective measures after it makes a case-specific finding of need for such protection.[101] The Court in *Craig* established a three-prong test to determine whether a particular child should be protected from

testifying at trial: before abridging a defendant's confrontation rights, a trial court must determine that: 1) the accommodation is necessary to protect that particular child; 2) the child would be traumatized if he or she had to testify in the defendant's presence; and 3) the resulting trauma would be substantial.[102]

The accommodation that the trial court provided in *Craig* preserved most of the key elements of the defendant's confrontation rights in that the child witnesses were competent to testify and did testify under oath; the defendant retained complete opportunity to subject the witnesses to contemporaneous cross-examination; and the judge, jury, and defendant were able to observe [albeit by closed circuit television] the demeanor of the witnesses as they testified.[103] Furthermore, the court found that videotape or closed circuit television can be the functional equivalent of live testimony because "the presence of these other elements of confrontation—oath, cross-examination, and observation of the witness's demeanor—adequately ensures that the testimony is both reliable and subject to rigorous adversarial testing."[104] Therefore, the use of closed circuit television during trial preserves the right of the defendant to challenge the reliability of evidence but at the same time protects the needs of those child victims who would experience unnecessary harassment, intimidation, fear, anxiety, and embarrassment if they had to testify in the courtroom.

Particularized Guarantee Requirement: In *Idaho v. Wright*, a pediatrician testified in regards to out-of-court statements made by the two-year-old victim to the pediatrician.[105] The trial court had admitted the statements into evidence under Idaho's residual hearsay exception rule.[106] The United States Supreme Court ruled that this hearsay exception was not a "firmly rooted exception" and without demonstrating a "particularized guarantee of trustworthiness," those out-of-court statements were not admissible as evidence.[107]

The Court identified the following relevant factors that should be considered in establishing the particular trustworthiness of a child victim's statements: 1) the spontaneity of the statement; 2) the mental state of the child; 3) the use of terminology unexpected of children of similar age and; 3) the lack of motive to fabricate.[108] The Court also held that "[i]f the declarant's truthfulness is so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility, then the hearsay rule does not bar admission of the statement at trial."[109]

Firmly Rooted Exception: In *White v. Illinois*, the United States Supreme Court found that certain out-of-court statements made by a four-year-old child victim were admissible under the "firmly rooted exception" to the hearsay rule and could therefore be used as evidence during the trial.[110] The statements were permitted pursuant to the hearsay exceptions for excited utterances and for statements made for medical examination purposes.[111]

The child's babysitter testified that she was awakened by the child's screams in the early morning hours and went to the child's room to investigate.[112] The babysitter testified that she saw the defendant leave the child's room.[113] The child told the babysitter that the defendant touched her in the wrong places, choked her, and threatened to whip her.[114] When the babysitter asked the child where the defendant had touched her, the child pointed to her vaginal area.[115] The child's mother also testified that the child told her, shortly after making the statements to the babysitter, that the defendant had "put his mouth on her front part."[116] The statements made to both the babysitter and the mother were deemed to be admissible as excited utterances.[117] Within hours of the incident, medical personnel examined the child.[118] At that time, the child also provided them with the same account provided to the babysitter and her mother.[119] These statements were also admissible as statements made for purposes of medical diagnosis.[120]

The Court found that the circumstances surrounding the child's statements to the babysitter, her mother, and the medical personnel qualified as "firmly rooted exceptions" having "substantial guarantees of trustworthiness."[121] The Court opined that for the prosecution to have to demonstrate unavailability under these circumstances as a prerequisite to admission would add little to the "trial's truth-determining process . . . [while imposing] substantial additional burdens on the fact finding process."[122]

The Modern Approach: In *Crawford v. Washington*, the United States Supreme Court rejected the "adequate indicia of reliability" analysis which had been enshrined in *Ohio v. Roberts* and had previously been used to determine the admissibility of child victim hearsay statements.[123] The Court held that the Confrontation Clause prohibited the

introduction of testimonial evidence unless the declarant was unavailable to testify at trial and the defendant had an opportunity to cross-examine the declarant prior to trial.[124] The Court used the *Webster's Dictionary* definition of "testimony," which is "[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact."[125] The term "testimonial" applies to "prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations."[126]

Even though the Court provided some examples of testimonial evidence in *Crawford*, it did not define all the parameters of testimonial hearsay and did not explicitly discuss child victim hearsay exceptions.[127] The Court did make it clear, however, that child victim hearsay statements produced as a result of law enforcement interrogations are inadmissible unless the defendant's right of confrontation under the Sixth Amendment has been properly protected.[128] Therefore, after *Crawford*, when the State offers testimonial hearsay statements from a child victim, usually resulting from a police interrogation or its equivalent, the statements may be admissible only if the child testifies at trial or if the child victim was subject to cross-examination prior to trial.[129] Furthermore, the Court concluded that where "nontestimonial hearsay is at issue, it is wholly consistent . . . to afford the States flexibility in their development of hearsay law . . . ."[130]

In *Davis v. Washington*, the United States Supreme Court sought to narrow the application of *Crawford* by adopting the "primary purpose" test.[131] Under the new standard, if the primary purpose of the statement was to respond to interrogation by law enforcement, the statement would be testimonial and otherwise inadmissible.[132] However, if the primary purpose of law enforcement was to respond to an emergency and not conduct an interrogation, the statement would be nontestimonial and admissible.[133]

Evidentiary Considerations

Each state has developed rules for the uniform admission of evidence at trial; these rules promote reliability and fairness in judicial proceedings. The Federal Rules of Evidence are applicable in all federal courts and serve as the foundation for many state court evidence codes. Relevant federal rules will be used for discussion purposes since they closely resemble many state evidence rules. Cases cited herein are used for edification purposes and are fact-specific. For a comprehensive discussion of evidentiary matters in child sexual abuse litigation, see one of John E. B. Myers' many titles.[134]

Proving child sexual abuse allegations is often very difficult due to the lack of physical evidence and the child's reluctance or inability to testify.[135] When direct evidence of the abuse does not exist, circumstantial evidence must be relied upon to prove the allegations. Out-of-court statements uttered by child sexual abuse victims are frequently offered as evidence to support the underlying allegations.

Hearsay Defined

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."[136] Hearsay statements may be verbal or non-verbal and may exist in physical evidence, such as documents and writings, or non-physical evidence, such as testimony of witnesses.[137] The rule against the admission of hearsay evidence is an evidentiary rule of exclusion for out-of-court statements designed to prohibit out-of-court statements from being introduced or relied upon as evidence during trial. Many child sexual abuse victims make a series of disclosures regarding their abuse outside the courtroom. When those statements are being offered in court to prove that what the child said outside the courtroom regarding the abuse was true, they technically constitute hearsay and presumptively should be excluded from evidence. However, there are a number of legal exceptions to the hearsay exclusion rule that permit hearsay statements to be admitted into evidence.

Exceptions to Hearsay

Hearsay exceptions have developed over time through decisional case law and statutory promulgation. These exceptions permit certain out-of-court statements to be admitted into evidence where the statements are demonstrated to be sufficiently reliable. Certain out-of-court statements may be inherently reliable given the fact they were made prior to trial in a specific context. Many child victim hearsay statements may qualify under one of many hearsay exceptions. These exceptions are codified in Rule 803 of the Federal Rules of Evidence and center

on the inherent or presumed reliability of an out-of-court statement. Under appropriate circumstances, these statements possess circumstantial guarantees of trustworthiness sufficient to justify reliance on them during trial. The exceptions commonly utilized in child sexual abuse litigation are present sense impressions; excited utterances; then-existing mental, emotional and physical states; past recorded recollection; statements for purposes of medical diagnosis or treatment; and business records.[138] The witnesses' availability does not affect the admissibility of hearsay statements when they fall within the context of this rule.

Hearsay statements that do not fall within Federal Rule 803 do not have a presumed or inherent reliability and may not be admissible unless the declarant is unavailable to testify at trial. Many states have adopted child victim hearsay exceptions to specifically permit hearsay statements from child victims into evidence; they often require the child to be legally unavailable (as defined in Rule 804) to testify at trial. Child victim hearsay statutes have been adopted in the majority of jurisdictions. Under FRE 804, a declarant may be unavailable if the declarant:

1. can establish a legal privilege covering the statements;
2. persists in refusing to testify despite a court order to do so;
3. testifies as to a lack of memory;
4. is unavailable due to death, physical or mental infirmity; or
5. is outside the jurisdiction.[139]

Depending on the hearsay exception relied upon, the declarant's unavailability may have to be established. Even when a child victim is physically available to testify, the child may be mentally, also known as testimonially, unavailable to testify if it is found that the child cannot provide in-court testimony due to fear or psychological harm that would hinder the child from communicating in a courtroom setting.[140] Children that do take the stand to testify but then refuse or cannot continue testifying may also be considered unavailable within the context of the rule.

Present Sense Impression

Authorizes admission of "*[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter*."[141]

Generally, these statements are made at the exact moment the declarant experiences the event or shortly thereafter. The statements are deemed sufficiently reliable because they are made contemporaneously to experiencing the sensory impression. The timing of the statement minimizes the opportunity for fabrication or distortion because it is made while the sensation is experienced.

In many cases, child sexual abuse victims make statements that may qualify under this exception. However, it is likely that only the perpetrator would hear them due to the secretive nature of the child sexual abuse. In *Guam v. Ignacio*, the court ruled that a three-year-old female child's statement was admissible as a present sense impression where the child made the statement that her vaginal area hurt while she was bathing.[142] Other courts have ruled that a child's statement regarding sexual abuse is not admissible as present sense impression where the statement is not made contemporaneous to the abuse but occurs days or weeks after the abuse.[143]

Excited Utterance

Authorizes admission of "*[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition*."[144]

The statement must be spontaneous, contemporaneous, and made while the declarant is under the stress of the condition. These out-of-court statements are deemed amply reliable because the declarant does not have sufficient time to reflect upon the statement prior to making the statement.[145] The elapsed time between the event and the actual declaration often dictates admissibility. The more time that passes between the stressful event and declaration, the less likely the statement will be admissible due to the opportunity for thoughtful reflection by the declarant.[146]

It is important to note that in child sexual abuse cases, courts have extended the allowable period of time between the event and occurrence of the statement.[147] This is so because children tend to keep information about the abuse to themselves rather than disclosing it immediately after the incident.[148] In *State v. Huntington*, the Wisconsin Supreme Court found that a child's statement, which occurred two

weeks after the last incident of sexual abuse, was admissible under the hearsay exception rule, because the statement was a result of an excited condition.[149] The court specifically recognized the problems associated with latent disclosures of child sexual abuse and the compelling reasons to admit those statements into evidence.[150] Furthermore, given the special circumstances with child abuse cases, inquiry should be given to the conditions or cause of the excitement, not just the passage of time.[151]

Similarly, in *State v. Jones*, the court allowed into evidence a child's statement concerning sexual abuse made to her mother 10 hours after leaving the perpetrator's custody.[152] In *Commonweatlth v. McDonough*, the court determined a child's statement made to a police officer three months after the abuse was an excited utterance where the child was afraid of his mother.[153] In *State v. Ford*, the court held that statements made by the victim to her mother several hours after she was sexually assaulted were admissible as excited utterances.[154] The court noted that the statement "[defendant] put his pee thing" in her mouth and as a result she choked was allowed into evidence as an excited utterance.[155] Additionally, statements regarding sexual abuse made four to five days after the event have also been held as admissible.[156] In contrast, a child's statement to her mother made only four hours after the abuse did not qualify as an excited utterance where the mother had prompted the child.[157]

Then Existing Mental, Physical, Emotional State

Authorizes admission into evidence "*[a] statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health) . . .*"[158]

The out-of-court statements must describe a "then existing" state of mind but do not have to be made contemporaneously with such condition. This exception is commonly used to admit statements from children disclosing physical symptoms of sexual abuse.[159] The exception would admit a child's out-of-court statements related to fear of the abuser.[160] In *Crabtree v. Crabtree*, the court held that a child's out-of-court statements showing fear of a parent was admissible even if the fear was based on imagined mistreatment by that parent.[161]

Statements Made for Purpose of Medical Diagnosis

Authorizes admission into evidence "*[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.*"[162]

The child victim's statements to medical and/or mental health professionals can play a pivotal role in child sexual abuse litigation and are implicated in virtually every case. Once a child is suspected of having been sexually abused, the child is often taken to a medical facility for examination. During the examination, the child may be interviewed by medical and/or mental health professionals and others. Children often disclose physical or psychological sensations during the examination, as well as other relevant information regarding the abuse. These statements are routinely admitted into evidence.

Statements made during a medical diagnosis are generally thought to have sufficient reliability and trustworthiness since the patient has a compelling reason to be honest.[163] Truthful statements are consistent with the person's desire to have the condition accurately diagnosed.[164] Thus, this self-interest in the accuracy of the statements contributes to the perceived inherent reliability of the statements. Additionally, the health care expert should have sufficient qualifications to determine the accuracy of the patient's statements, which also increases the likelihood of truthful disclosures.[165] Many courts have ruled that the patient must have some recognition of the obligation to tell the truth.[166] To be admissible, the statement must be reasonably pertinent to diagnosis or treatment, and the content of the statement must be reasonably relied upon for treatment or diagnosis.[167]

However, the requirement that the child recognize that the statements are being made to a physician for purposes of treatment may be problematic due to cognitive and developmental limitations of the child.[168] In determining if the child victim was aware the statements were being made for purposes of diagnosis, courts must look to the particular child's level of sophistication and experience—not just the chronological age.[169] The court in *In re Rachel T.* focused on the cognitive development of the child, based on her chronological age, and found that a

five-year-old child understood that her statements were made for the purpose of medical diagnosis.[170] However, some courts have permitted child victim statements into evidence even where the child did not understand the statements were being used for purposes of diagnosis.[171]

Children sometimes disclose the identity of the abuse perpetrator to the treating professionals during an examination. This identification may be admissible when the statement is made to the physician for purposes of diagnosis or treatment.[172] The overriding concern for many courts is whether the child is subject to ongoing abuse at the hands of the perpetrator.[173] Those courts have ruled that the identity of the perpetrator is a basic inquiry relevant to diagnosis and treatment and admissible under the rule.[174] Other courts have ruled that the identity of the perpetrator is not admissible since it does not constitute medical treatment or diagnosis, even though it may reflect future abuse.[175]

Courts recognize that perpetrators are often related to the child victim. Thus, it is argued that the identity of the abuser is indeed pertinent to medical treatment due to the need to address psychological and emotional aspects of the treatment, especially when the abuser resides in the same household as the victim.[176] The court in *Rachel T.* ruled that where the perpetrator was a trusted and familiar figure in the child's life, it was reasonable for a physician to ascertain the identity of an abuser to prevent recurrences of abuse and to facilitate the treatment of psychological and physical injuries.[177] The physician in that case stressed that the identity of the abuser was pertinent to the treatment so that he could properly assess whether the child was exposed to venereal disease and whether she needed to be removed from the home.[178] The crucial question is whether the victim's statements identifying the abuse are "reasonably pertinent" to medical diagnosis or treatment.[179]

Past Recollections Recorded

Authorizes admission into evidence:

[a] memorandum or record concerning a matter about which a witness once had knowledge, but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.[180]

There may be a significant passage of time from the child's initial complaint of sexual abuse to the subsequent trial when the child may be called to testify. This may affect the child's ability to recall important information regarding the events. If a record of the child's statements has been made while the events were fresh in the child's memory, the record may be admissible in lieu of the child's recollection if the child's memory cannot be refreshed. Reliability of the statement is premised on the fact that the recording was made while the events were still fresh in the child's mind.

It is imperative that the adult interviewing the child take accurate notes. If the child cannot recall the information, it may be possible to move the interviewer's notes into evidence if the proper foundation can be established. In *United States v. Gans*, the court permitted notes taken from an interview with a child victim of sexual abuse to be read into evidence almost two and a half years after the victim's initial statement to police, because the child could not recall the events.[181] Accurate notes do not guarantee admission of the statements.[182] Some children keep daily diaries, which may also qualify under the rule.[183] Audio and video recordings of the child's statements may be admissible as well.

Business Records Exception

Authorizes the admission of "*[a] memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business activity . . . .*"[184]

Part of the evidentiary foundation for this exception requires a showing that the record was made in the course of a regularly conducted business activity and that it was a regular practice of the business to make the record.[185] Since the records are kept by someone who is charged with their accuracy and who has personal knowledge at or near the time the information was generated, the records are presumed reliable.[186] The term "business" has been interpreted to include hospitals, clinics, nonprofit and for-profit organizations, and is not limited to commercial enterprises.[187]

The business records exception has specific implications for mental health professionals and others that work with sexually abused children in their professional lives. Health care professionals, as well as others, are often called upon to produce their records or files in court proceedings. There is no requirement that the person producing the records have an independent recollection of the events.[188] As a practical matter, these records can serve as important corroborating evidence of child sexual assault cases. Legal privileges covering the records may be abrogated by court order permitting content disclosure.[189] If there was a legal obligation to keep the records, they may also qualify as public records and would be admissible for other reasons.[190]

Residual Exception

Authorizes admission into evidence:

> *[a] statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness…if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.*[191]

The residual exception functions as a catchall for hearsay evidence that does not fall into any other enumerated category but does have equivalent guarantees of trustworthiness.[192] Residual hearsay exceptions are relied upon in cases where a traditional exception does not apply to admit a child victim's out-of-court statements.[193] However, the residual exception only applies in exceptional circumstances, such as those generally presented in child abuse cases.[194] This exception is commonly relied upon to admit child victim hearsay in jurisdictions that have not yet adopted a child victim hearsay exception.[195] The more spontaneous a child's statement is, the more likely the statement is reliable for purposes of the residual exception.[196]

This exception requires the proponent to establish the reliability of the statement and the unavailability of the child. The reliability of the statement may be established through corroborating evidence surrounding the statement. "[T]he relevant circumstances include only those that surround the making of the statement and that render the declarant particularly worthy of belief."[197] In criminal cases, the court is sometimes required to consider corroborating evidence such as medical or physical evidence of abuse, the defendant's opportunity to commit the offense, or the testimony of another witness identifying the defendant as the perpetrator.[198]

In *United States v. Cabral*, the court permitted a videotaped interview with a child victim of sexual abuse to be admitted into evidence under the residual exception.[199] The child was unavailable due to her reluctance to testify at trial.[200] The videotaped interview did not portray rehearsed answers, suggested answers, or inappropriate leading questions and was deemed relevant, material, and contributive to the interests of justice.[201] The court noted that the language used was consistent with a child of her age, and the sexual acts she described were not in the common experience of a child of her age.[202]

Child Victim Hearsay Statutes

The modern trend has been for states to adopt specific child victim hearsay statutes. These statutes generally permit the out-of-court statements of child victims of abuse and neglect to be admitted into evidence when the child is unavailable to testify. Most require a showing of reliability of the child's statements as a condition precedent for admission.

The State of Washington is credited with adopting the first child victim hearsay statute in 1982, which has served as a model for many other states. The Washington statute provides:

> A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, describing any attempted act of sexual contact with or on the child by another, or describing any act of physical abuse of the child by another that results in substantial bodily harm . . . not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings . . . and criminal proceedings, including juvenile offense adjudications, in the courts of the state of Washington if:
>
> 1. The court finds, in a hearing conducted outside the presence of the jury, that

the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

2. The child either:

a. Testifies at the proceedings; or

b. Is unavailable as a witness, provided that when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.[203]

Consistent with due process considerations, notice must be given when a party plans to use a child's hearsay statement.[204] The statements must have "particularized guarantees of trustworthiness" in order to be admissible.[205] Courts must examine the facts and circumstances surrounding the statement to determine reliability and often consider the following factors:

- the spontaneity of the statement;
- the child's age and maturity;
- the child's mental and physical condition at the time the statement was made;
- the age-appropriate language used by the child in describing the abuse;
- the circumstances surrounding the disclosure;
- the propriety of the interview techniques used when the statement was made;
- any bias against the defendant or any motive for lying;
- the elapsed time between the statement and the alleged abuse;
- other events which could account for the contents of the statement;
- whether more than one person heard the statement;
- the child's behavior when disclosing the abuse; and
- the nature and duration of the abuse.[206]

These factors are not exclusive, but they do provide insight into the court's focus.[207] Reliability must be established for the statements to qualify under this exception.[208]

Recognizing the value of child victim hearsay statements in protection proceedings as well as other matters, California has taken a liberal approach to the admission of children's out-of-court statements. California now recognizes six explicit hearsay exceptions to admit the out-of-court statements of child abuse victims:

1. a medical diagnosis or treatment exception for criminal and civil child abuse litigation;
2. a child hearsay exception in criminal cases when the declarant is under the age of 12;
3. a child hearsay exception for juvenile court dependency proceedings;
4. a hearsay exception for reports of social workers in juvenile court dependency proceedings;
5. a child hearsay exception to the admissibility at preliminary hearings; and
6. an exception for the admissibility of confessions of a person accused of violating a criminal sex statute.[209]

Many states have established child victim hearsay exceptions as a means of admitting child hearsay.[210] Statements that are not admissible as evidence under a child victim hearsay exception are not barred from evidence if they fall under another hearsay exception.[211]

Child Witness Competency

Competency refers to the ability of the child witness to provide in-court testimony in a reliable and meaningful manner.[212] There is no per se age at which a court automatically deems a child to be competent to testify. In fact, federal law presumes children to be competent to testify: "*every person is competent to be a witness* . . . ."[213] Many states have adopted the federal approach, doing away with common law presumptions that children were deemed automatically competent at age 14.[214] The legal requirement of competency for child victims is directly related to the child's ability to perceive the occurrence of the event at the time that it happens and to receive an accurate impression of it.[215]

The court may only conduct a hearing to determine witness competency when presented

with a compelling reason to do so.[216] Competency examinations are not conducted in the presence of the jury; the judge must take into consideration the individual child's age, cognitive abilities, linguistic skills, emotional and other developmental factors, and the complexity of testimony to be elicited.[217] The questions presented to a child during a competency examination should be appropriate to the age and developmental level of that child and not related to the issues at trial. Rather, the questioning should focus on determining the child's ability to understand and answer simple questions.[218]

McCormick on Evidence suggests that the Federal Rules of Evidence relating to this subject can be interpreted as requiring that the witness (a) have the physical and mental capacity to perceive, record, and recollect the facts; (b) have personal knowledge of the facts that he is disclosing; (c) affirm that he will tell the truth by taking an oath; and (d) be capable of understanding the questions asked and intelligently answer such questions.[219]

It is the duty of the trial court to observe the child witness and determine if the child has the ability to testify truthfully, intelligently, and *accurately*.[220] The real inquiry is whether the child can differentiate truth from falsehood and not the child's ability to understand the oath.[221] It is sufficient that the child have an adequate sense of the impropriety of falsehood, sufficient intelligence, and a proper appreciation of the obligation of an oath.[222]

In *State v. Ford*, a four-year-old victim was held to be competent to testify after the court observed the child's responses during questioning by the attorneys.[223] In *State v. Hicks*, a seven-year-old was competent to testify and, although the child did not "understand the obligation to tell the truth from a religious point of view, and although she had no fear of certain retribution for mendacity, she knew the difference between the truth and a lie."[224] Even where a child is found to be incompetent for testimonial purposes, that should not be a categorical bar to the admission of a child's out-of-court statements.[225]

Child Witness Credibility

Since the child victim is often the only witness to the abuse, the victim's credibility will always be a focal point in litigation. Credibility is based on the witness's truthful and accurate articulation of the underlying facts.[226] The credibility of each witness must be determined by the trier of fact in order to determine the weight of the testimony. Although the child's credibility must be established, it is well-known that experts are strictly prohibited from rendering an opinion on whether a particular child is credible or the overall credibility of child victims of sexual abuse in general.[227]

> Factors that are thought to enhance credibility of the child witness in sexual abuse cases are:
>
> "[W]hether the child uses his or her own vocabulary rather than adult terms and tells the story from his or her own point of view; the child reenacts the trauma in spontaneous play; sexual themes are present in play and drawings; the affect is consonant with the accusations; the child's behavior is seductive, precocious, or regressive; there is good recall of details, including sensory motor and idiosyncratic details, and the child has a history of telling the truth."[228]

The following factors are thought to be consistent with allegations that are false or unreliable: "The child's statements become increasingly inconsistent over time; the statement is often dramatic or implausible, such as relating the presence of multiple perpetrators or situations in which the perpetrator has not taken ordinary steps against discovery; and statements progress from relatively innocuous behavior to increasingly intrusive, abusive, aggressive activities."[229]

Neither set of factors is exclusive; their presence or absence does not conclusively establish abuse.

In assessing credibility of a child victim, jurors will naturally consider the age of the child.[230] There is some evidence to suggest that jurors may actually perceive child victims of sexual assault as being more credible than teenage and adult victims.[231] Corroboration of the underlying allegations does not appear to have any marked impact on the perceived credibility of minor children up to the age of 13, since children under that age appear as credible as they can be.[232] Younger children may be perceived by jurors as being less deceitful than adults are, especially when it comes to allegations of sexual abuse.[233]

Expert Testimony

The secretive nature of child sexual abuse makes it difficult to detect and prosecute. Frequently there is a lack of direct physical evidence of the abuse, which requires the introduction of indirect evidence to support the allegations. In this regard, healthcare experts play an important role when called to testify in child sexual abuse cases. They may testify in criminal or civil cases as lay witnesses to prove facts in dispute, or more likely, as expert witnesses to prove legal theories.[234]

Experts may be called to testify when the testimony would assist the trier of fact in "understanding [complex] scientific, technical, or clinical issues."[235] This determination is made on a case-by-case basis. To qualify an as an expert, the court must be satisfied the witness has the requisite "knowledge, skill, experience, training, or education."[236] Importantly, properly qualified expert witnesses are permitted to testify in the form of an opinion.[237] The basis of the opinion may reflect its reliability and can be used to corroborate the victim's allegations.[238] The expert opinion must be based on a reasonable degree of certainty; the expert cannot guess or speculate as to the answer.[239]

Courts frequently place significant weight on the substance of experts' testimonies, since they are being relied upon for their expertise in the matter. The probative value of expert testimony describing behaviors observed in young sexually abused children is highest when: (1) a central core of strongly associated sexual behaviors is present; (2) non-sexual behaviors commonly observed in sexually abused children are present; and (3) medical evidence of sexual abuse is present.[240]

In *Frye v. United States*, the Court of Appeals of the District of Columbia established the "general acceptance test" to determine admissibility of expert testimony.[241] That test is based on whether the expert's methodology had achieved general acceptance in the relevant scientific community in which it belongs.[242] *Frye* is still the law in many jurisdictions, even though a new standard has been adopted in federal courts.[243] In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the Court established the following considerations in assessing the scientific validity of an expert's methodology by considering several general observations, including: (1) the "generally accepted" basis in *Frye*; (2) the falsifiability of the expert's theory; (3) the scientific technique's rate of error; (4) whether the theory has been subject to peer review and publication; and (5) whether the standards exist by which to evaluate the proffered technique.[244]

Basis for Expert Testimony

Experts may base their testimony and opinions on a number of different factors. Federal Rule of Evidence 703 states that: "*[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing.*"[245]

An expert opinion may be based on firsthand knowledge obtained by interviewing a child victim of sexual abuse. Experts also may rely on material that would be otherwise inadmissible so long as the information is "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject."[246] Experts may reasonably rely on inadmissible evidence in formulating an opinion if other experts in the field would also rely on that evidence in formulating an opinion.[247] In child sexual abuse cases, this means experts may rely on child victim hearsay statements or evaluative reports in formulating opinions even where the hearsay statements or reports may not be independently admissible as evidence.[248] The underlying basis of the expert's opinion should only affect the weight of the opinion and not the admissibility of the opinion. Experts may also testify as to hypothetical scenarios posed by the examining attorney.[249] While experts are prohibited from rendering an opinion on the ultimate legal issue in controversy, an expert may provide testimony that a child demonstrates inappropriate sexual knowledge or symptoms and/or behaviors consistent with child sexual abuse.[250]

Expert Qualification Requirements

To render expert testimony, the witness must possess the requisite "knowledge, skill, expertise, training or education" in the area of inquiry.[251] The party offering the expert witness has the burden to establish the witness's qualifications and credentials.[252] Testimony is elicited from the witness regarding his educational background, specialized training or skill, and professional experiences.[253] The judge then determines if the court will accept the proffered witness as an expert within the identified scope of

expertise.[254] Fertile ground for inquiry in establishing the foundational requirement for expertise in the field of child sexual abuse, diagnosis, and/or treatment includes:

1. educational attainments and degrees;
2. specialization in a particular area of practice;
3. specialized training in child sexual abuse;
4. extent of experience with sexually abused and non-sexually abused children;
5. familiarity with relevant professional literature;
6. membership in professional societies and organizations focused on child abuse;
7. publications regarding child sexual abuse; and
8. whether the person has been qualified as an expert on child sexual abuse in prior court proceedings.[255]

Not every witness will be accepted as an expert, especially if the expert is offered on the relatively narrow and highly specialized subject of child sexual abuse.[256] Although some limitations exist on the use of mental health professionals as expert witnesses, it is clear that courts routinely permit this type of testimony in appropriate cases.[257] Much attention has been paid to the growing reliance on the use of expert testimony, especially in domestic relations litigation. These emotionally charged cases may be reduced to a battle of the experts. The use of psychological and psychiatric expert testimony in child sexual abuse cases has been the focus of serious criticism.[258]

Michigan's Approach to Child Sexual Abuse[259]

Defining Child Sexual Abuse

In 1975, Michigan enacted the Child Protection Law, which was designed to prevent child abuse and neglect and to provide for the protection, care, and defense of children who have suffered abuse or neglect.[260] The act currently defines "sexual abuse" to mean "engaging in sexual contact or sexual penetration . . . with a child."[261] "Sexual contact" includes:

> the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for purposes such as revenge, to cause humiliation, or out of anger. [262]

"Sexual penetration" is defined as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required."[263] For purposes of this Act, if a child younger than 12 years of age is pregnant, or a child over the age of one month but less than 12 years of age is infected with a venereal disease, that is reasonable cause to suspect that the child has been abused.[264] Under the Michigan Penal Code, criminal sexual conduct with a minor is a crime punishable in four different degrees, with punishment ranging from imprisonment for life for criminal sexual conduct in the first degree to a misdemeanor charge for criminal sexual conduct in the fourth degree.[265]

State Intervention

The Child Protection Law provides a list of persons who are required to report incidents of child abuse and neglect to the Michigan Department of Human Services ("Department"), including doctors, nurses, psychologists, law enforcement officers, teachers, social workers, and a host of other individuals.[266] Schools are required to cooperate with the Department during an investigation of suspected child abuse.[267] That cooperation "includes allowing access to the child without parental consent if access is determined by the [D]epartment to be necessary to complete the investigation or to prevent abuse or neglect of the child."[268]

Within 24 hours of receiving a written report of suspected child sexual abuse, the Department must give copies of the report to the prosecuting attorney and local law enforcement and shall commence an investigation of the reportedly abused child.[269] Once law enforcement receives the report, whether from a reporting person or the Department, they must begin an investigation of the child suspected of being abused.[270] During its investigation, the Department takes on the role to determine if a child is abused but must cooperate with law enforcement, courts,

and appropriate state agencies and must enlist their services when necessary.[271]

Effective April 1, 2009, the Michigan Legislature has enacted the Children's Advocacy Center Act.[272] One of the purposes of the Act is to establish a children's advocacy center fund within the state treasury.[273] The fund is being created to provide, among other things, "investigative, assessment, counseling, support, and educational services to victims of child sexual abuse and their families; . . . training related to child sexual abuse for personnel employed or otherwise retained by the children's advocacy centers; [and]. . . [t]o improve public awareness of child sexual abuse through the use of children's advocacy centers.[274]

Evidentiary Considerations

In regards to out-of-court statements made by child victims, Michigan state law provides that:

> [a]ny statement made by a child under 10 years of age . . . regarding an act of child abuse, child neglect, sexual abuse . . . performed with or on the child by another person may be admitted into evidence through the testimony of a person who heard the child make the statement . . . .
>
> (a) A statement describing such conduct may be admitted regardless of whether the child is available to testify or not, and is substantive evidence of the act or omission if the court has found, in a hearing held before trial, that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness. This statement may be received by the court in lieu of or in addition to the child's testimony.[275]

Michigan's criminal sexual conduct statutes and the Child Protection Law enacted by the Michigan Legislature have been upheld as constitutional and expanded on by Michigan case law.[276] For example, in *People v. Bayer*, the Michigan Court of Appeals held that consent is not an element of criminal sexual conduct to be proven by the prosecution, and the fact that it is absent from the statutory language does not render the criminal sexual conduct statute vague in violation of the First Amendment.[277] In *People v. Garrison*, the Michigan Court of Appeals further expanded on the criminal sexual conduct statute by stating that its purpose is to increase punishment where sexual penetration occurs within a household.[278] The Supreme Court of Michigan held in *People v. Sabin* that first-degree criminal sexual conduct—which includes sexual penetration with a minor under the age of 13 or, under certain circumstances, sexual penetration with a minor at least 13 years of age but younger than 16 years of age[279]—is a general intent crime and, therefore, no showing of intent is required other than that which is evidenced by engaging in the acts constituting the crime.[280]

The Michigan judiciary has also been faced with the issue of a defendant's right to confrontation during trial versus the State's interest in protecting child witnesses in a courtroom setting.[281] In *People v. Pesquera*, the Michigan Court of Appeals held that in order for a trial court to dispose of a defendant's right to face-to-face confrontation, the court must make a "case-specific finding of necessity . . . that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant."[282] In Michigan, the protection offered by the court is that it will order a videotaped deposition of a witness to be taken instead of live testimony of the witness if "the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness"[283] such as "the use of dolls or mannequins, the presence of a support person, the exclusion from the courtroom of all unnecessary persons, and the placement of the defendant as far from the witness stand as is reasonable under the circumstances."[284] The requirement that the child be unable to testify in the presence of the defendant is interpreted to mean that if the child were put on the stand, he "would not be able to truthfully and understandably relate the witness' relevant knowledge and perceptions of the circumstances of the crime."[285] The court held that even with videotaped testimony, the defendant still has a right to cross-examine the child witness and to hear the testimony and consult with his attorney, the child witness must still be competent to testify and testify under oath, and the trier of fact must be able to observe the demeanor and appearance of the child.[286]

Expert Testimony

In *People v. Beckley*, the Supreme Court of Michigan considered the issue of expert testimony

in child sexual abuse cases.[287] The Court found that expert testimony in such cases can be helpful in assisting the jury due to the misconceptions that exist regarding child sexual abuse, the frequent lack of physical evidence to corroborate the child's allegations, and the general lack of knowledge in regards to the emotional trauma associated with sexual abuse.[288] The Court held, however, that in cases involving child sexual abuse, a qualified expert is limited to testifying that: (1) the particular behavior of the alleged child victim was characteristic of child sexual abuse victims generally; (2) this testimony is only allowed in order to rebut an inference that a child victim's behavior following the incident was contradictory to that of a child who was abused; (3) an expert is not allowed to testify that the child's allegations are in fact truthful or not; (4) child sexual abuse accommodation syndrome is not a reliable sign of abuse and only those aspects of the syndrome that are specifically linked to behaviors which are at issue in the case will be admissible; and (5) the *Frye-Davis* test—which restricts admissibility of relevant evidence based on novel scientific principle or technique unless the expert can show that the principle or technique has gained general acceptance within the relevant scientific community—is inapplicable to expert witnesses in the behavioral sciences.[289]

Accomodating Children in the Courtroom

Testimony of Child Victims

Not all child sexual abuse victims perform well in the courtroom. They may be so traumatized by their experiences that they cannot testify effectively in the perpetrator's presence.[290] Intimidation and fear, as well as other emotional and psychological factors, can render a child non-communicative in the courtroom setting.[291] Behavioral studies have examined the impact of testifying for child victims and have learned much about the effect of the experience. It has become clear from the empirical data and practical experience that children have special needs in the courtroom.[292] Many states have now enacted special statutory provisions specifically designed to meet the particularized needs of child victims in the court system.[293]

Nonetheless, it is well-accepted that in appropriate circumstances, children can be effective witnesses when called to testify in court proceedings.[294] However, there are also situations in which children may be particularly poor witnesses.[295] In order for the child to testify effectively, the child must be questioned in a way that takes into consideration the child's chronological and developmental age.[296] The child must first understand the question in order to be able to recall the answer. Generally, a child's ability to recall specific information tends to be limited to the ability to recall the substance of the event rather than peripheral details.[297]

The child victim is often the most important witness to her own abuse and, in fact, may be the only the source of direct evidence of the abuse.[298] Given the critical importance of the child's testimony, it is incumbent on the questioner to possess and utilize the requisite communication skills to facilitate this testimony.[299] The value and admissibility of a child victim's testimony may depend on the skill of the interrogator.[300] A skilled examiner is able to establish a context in which accurate recall is fostered and the possibilities of distortion are minimized.[301] However, even when children are reasonably comfortable in the courtroom setting, they must be questioned in a way that permits them to communicate with the examiner given their specific linguistic and cognitive abilities.[302] Many states statutorily permit child witnesses to use anatomically correct dolls, drawings, or other demonstrative aids when testifying in an effort to facilitate communication.[303]

Lawyers and judges do not ordinarily receive formal training in the nuances of child testimonial issues. Indeed, lawyers, unfamiliar with the dynamics of child testimony, often rely on the expertise of mental health experts in preparing the child for trial.[304] The use of proper questioning techniques and appropriately drafted questions contributes to enhanced communication with child victims.[305] There are a number of empirically based strategies that can increase the likelihood of effective communication between the examiner and the child.[306] Dr. Walker suggests the following issues should be considered in structuring questions to interview children:

1. Length of questions: The question should be short and not complicated—no more than four or five simple words per sentence.
2. Avoid temporal issues: Children lack the developmental capacity to grasp

3. abstract concepts such as time. Rote memory is not indicative of the cognitive ability to correctly utilize the underlying concepts.
4. Avoid the use of negatives: Children often lack the cognitive ability to understand concepts in negative form.
5. Use of language: Use simple words and preferably words used by the child.
6. Recognize comprehension difficulty: Children are not likely to tell the adult examiner that they do not understand the question being asked and, in fact, are likely to indicate they may understand a question even when they do not.[307]

If the child victim will be called upon to provide live in-court testimony, the child should be well-prepared for what lies ahead. The child must be provided with every opportunity for success in the courtroom. Preparation should also include familiarizing the child with the courtroom or testimonial room prior to the time that the child will testify, which most judges will happily oblige.[308]

Child victims of sexual abuse become intimidated and traumatized when called to testify in the presence of the person that abused them.[309] The distress experienced by child victims can affect the child's ability to testify accurately and completely.[310] A child victim's credibility may be implicated where the child performs poorly on the witness stand. Studies have shown that reasonable accommodations to facilitate child testimony in the courtroom may enhance the reliability of the child's statements while minimizing the traumatic effect on the child.[311] Since the individual needs of each child victim are unique, the necessary protections should be tailored to the child.

All states have now adopted at least one means to accommodate children in state and federal court proceedings. Those modifications include:

> (a) providing a guardian *ad litem* (GAL), (b) providing a support person or child advocate, (c) protecting the child's identity, (d) closing the courtroom, (e) allowing the use of leading questions, (f) encouraging the use of developmentally appropriate questioning, (g) permitting the use of demonstrative aids and evidence, (h) limiting the length of child testimony, (i) limiting the number of child interviews, (j) encouraging expeditious disposition, (k) using remote testimony (CCTV), (l) using videotaped testimony, (m) using videotaped investigative interviews, (n) allowing a child hearsay exception, and (o) permitting courtroom design changes.[312]

Many of these protective measures are now specifically promulgated by statute.[313]

Federal Protections for Child Victims

Congress enacted the Victims of Child Abuse Act of 1990 which provides meaningful alternatives to live, in-court testimony for child victims.[314] The Act authorizes the government, the child's attorney, or a guardian ad litem to apply for an order permitting the child victim's testimony to be taken by two-way closed circuit television.[315] Pursuant to subchapter IV, Federal Victim's Protection and Rights, a trial court may authorize this protection for any of the following reasons:

> (i) The child is unable to testify because of fear.
>
> (ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.
>
> (iii) The child suffers a mental or other infirmity.
>
> (iv) Conduct by the defendant or defense counsel causes the child to be unable to continue testifying.[316]

If the court should determine that the minor child is not able to provide live, in-court testimony, the court may then proceed to take the child's testimony in chambers, or "at some other comfortable place."[317] This is conducted "on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present."[318] The court must support the determination of the child's ability to testify on the record with specific findings.[319] When the court orders the taking of the child's testimony by television, the defendant cannot be present in the room even when the defendant is appearing pro se.[320] While the child is testifying, the only persons who may be permitted in the room with the child are the child's attorney or

guardian ad litem, personnel needed to operate the closed-circuit television equipment, a judicial officer appointed by the court, and "[o]ther persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant."[321] The defendant must be provided with the means to have "private, contemporaneous communication with counsel during the testimony, as would be the case with live, in-court testimony."[322]

The Victims of Child Abuse Act of 1990 also provided similar protections for the taking of the child's deposition.[323] If the court makes a preliminary finding of inability, the court may order the defendant to be excluded from the deposition room in order to protect the child victim.[324] If the child is subsequently unable to testify at the time of trial, the court may admit into evidence the videotaped deposition of the child in lieu of the child's testifying at the trial.[325] The videotape must be kept as part of the court record and must preserve the child's right to privacy.[326]

The Act further provides that in federal court:

> A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult to remain in close proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the adult attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.[327]

A "support person" is an individual who is permitted by law to accompany the child into the courtroom or hearing room to minimize the child's stress and trauma.[328] Children who have testified in court proceedings have reported that having a trusted person with them while they testified was helpful to minimize feelings of powerlessness.[329] The support person may not assist the child in answering questions and may not speak, prompt the witness, or in any manner attempt to disrupt or influence the trial.[330] The trial judge may also permit an adult support person to be in close proximity to a minor child while the minor testifies.[331] The Act was ruled constitutional in United States v. Grooms.[332]

Court Appointed Advocates

A guardian ad litem (GAL) is a neutral advocate appointed by the court to represent "the child's best interests."[333] GALs are frequently appointed to represent child victims of crime or children that have witnessed a crime involving abuse or exploitation.[334] The Child Abuse Prevention and Treatment Act of 1974 requires states to appoint a GAL to represent the interest of the child in abuse and neglect proceedings in order to receive funds authorized by the Act.[335] All states now have legislation requiring the appointment of a GAL in abuse and neglect proceedings.[336]

Depending on the jurisdiction, the GAL may be a licensed attorney or trained volunteer with a background in, and "familiarity with, the judicial process, social service programs, and child abuse issues."[337] The GAL usually has party status in the litigation and accordingly has the right to attend all depositions, hearings, and trial proceedings involving the child and to receive all notices and other legal pleadings in the action.[338]

GALs can be an excellent source of factual information regarding the child's history and current needs due to their ability to access reports, evaluations, and records.[339] GALs have an influential role in most cases since they advocate for the best interest of the child.[340] They are often privy to information that is otherwise deemed confidential by law.[341] The guardian's role, power, duties, and authority are dictated by state statute.[342]

An attorney ad litem (AAL) is a court-appointed attorney who, if possible, directly represents the child's position in the litigation.[343] The AAL is often thought to represent the child's wishes and protect the child's rights as opposed to a GAL who represents the child's best interest.[344] An AAL is better suited for an older, mature child who deserves to have his or her voice heard and advocated, whether or not the child's view of his best interest is consistent with the lawyer's view.[345]

The American Bar Association (ABA) has articulated standards for AALs and has adopted practice standards for lawyers who represent children in abuse and neglect cases.[346] The ABA has specifically recognized ethical issues common to this type

of representation which practicing lawyers must take into consideration when representing minor clients.[347] Under the ABA model, an attorney ad litem representing a minor child should, to the extent possible, fulfill the role of a traditional lawyer.[348] In this model, the child client and the child's wishes provide the focus and direction of the lawyer's efforts.[349] Where the child is very young or non-communicative, the lawyer may have a difficult time in ascertaining the child's desires.[350] Also, a child's desires may be inconsistent with the lawyer's ethical obligation, such as when that child has been sexually molested by a parent and wants to return to the parent's custody.[351] However, the client-directed models retain a considerable amount of attorney discretion in identifying the interest of an infant, a toddler, or a very young child.[352]

GALs or AALs can be instrumental advocates in child sexual abuse litigation because they are often free from the taint of false motivation and have the opportunity to present evidence to the court. In dependency proceedings, the GAL or AAL often relies on evidence uncovered by Child Protective Services.[353] In domestic relations matters, the GAL or AAL has an even greater role in representing the child because there is no state agency involvement.[354] Although the guardian ad litem and the attorney ad litem are both appointed advocates for the child, they may not necessarily agree on some issues in the litigation and do not have to adopt similar positions.[355] Courts often rely quite heavily on input from these court-appointed advocates, as they are said to be the "eyes and ears of the court." ◎

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Endnotes

1 The terms child sexual assault and child sexual abuse are used interchangeably throughout this document in reference to the cited authority; both terms are used to describe the sexualized maltreatment of children.

2 C. Henry Kempe, *Sexual Assault, Another Hidden Pediatric Problem: The 1977 C. Anderson Aldrich Lecture*, 62 Pediatrics 382, 382 (1978).

3 Susan R. Hall & Bruce D. Sales, Courtroom Modifications for Child Witnesses 6 (2008).

4 Billie Wright Dziech & Charles B. Schudson, On Trial: America's Courts and Their Treatment of Sexually Abused Children 24 (1991).

5 Hall & Sales, *supra* note 4, at 5.

6 L. Christine Brannon, *The Trauma of Testifying in Court for Child Victims of Sexual Assault v. The Accused's Right to Confrontation*, 18 Law & Psychol. Rev. 439, 439 (1994).

7 *See* Hall & Sales, *supra* note 4, at 8–10.

8 *Id.* at 8.

9 *Id.* at 69–71.

10 *Id.* at 72.

11 Brannon, *supra* note 7, at 440.

12 *Id.* at 441.

13 Hall & Sales, *supra* note 4, at 4.

14 Jessica Liebergott Hamblen & Murray Levine, *The Legal Implication and Emotional Consequences of Sexually Abused Children Testifying as Victim-Witnesses*, 21 Law & Psychol. Rev. 139, 141 (1997).

15 See generally William Bernet et al., *Practice Parameters for the Forensic Evaluation of Children and Adolescents Who May Have Been Physically or Sexually Assaulted*, 36 J. Am. Acad. Child Adolesc. Psychiatry 423 (1997).

16 *Id.*

17 The Child Abuse Prevention and Treatment and Adoption Reform Act, 42 U.S.C. § 5106g (2006).

18 Charles A. Phipps, *Children, Adults, Sex and the Criminal Law: In Search of Reason*, 22 Seton Hall Legis. J. 1, 47 (1997).

19 Robert D. Goldstein, Child Abuse and Neglect: Cases and Materials 176 (1999).

20 *In re Carmen O.*, 33 Cal. Rptr. 2d 848, 854 (Cal. 4th. Dist. Ct. App. 1994).

21 John E.B. Myers, Legal Issues in Child Abuse and Neglect Practice 82-83 (2d ed. 1998) [hereinafter Myers, Legal Issues].

22 *Id.* at 96-97.

23 *See* John E.B. Myers, Legal Issues in Child Abuse and Neglect 104 (1992) [hereinafter Myers, Child Abuse].

24 See, e.g., *People v. Stockton Pregnancy Control Med. Clinic, Inc.,* 249 Cal. Rptr. 762, 765 (Cal. 3rd Dist. Ct. App. 1988).

25 Myers, Child Abuse, *supra* note 24, at 101-02

26 *Id.* at 102.

27 Caroline Trost, *Chilling Child Assault Reporting: Rethinking the CAPTA Amendments*, 51 Vand. L. Rev. 183, 196 (1998).

28 Myers, Child Abuse, *supra* note 24, at 87-88.

29 See *id.* at 1.

30 See Hall & Sales, *supra* note 4, at 29.

31 *Id.*

32 *Id.*

33 American Academy of Pediatrics Committee on Hospital Care &Committee on Child Assault and Neglect, *Medical Necessity for the Hospitalization of Assaulted and Neglected Child(ren)*, 101 Pediatrics 715, 715 (1998).

34 See Hall & Sales, *supra* note 4, at 7.

35 Myers, Child Abuse, *supra* note 24, at 134.

36 *Id.*

37 *Id.*

38 *State v. Etheridge*, 352 S.E.2d 673, 681 (N.C. 1987).

39 Jeff L. Lewin, *The Genesis and Evolution of Legal Uncertainty About "Reasonable Medical Certainty,"* 57 Md. L. Rev. 380, 382 (1998).

40 American Academy of Pediatrics Committee on Child Assault and Neglect, *Guidelines for the Evaluation of Sexual Assault of Children*, 87 Pediatrics 254, 257 (1991).

41 See generally Anne Graffam Walker, Handbook on Questioning Children: A Linguistic Perspective (2d ed. 1999).

42 Hall & Sales, *supra* note 4, at 120.

43 Brannon, *supra* note 7, at 441–42.

44 See Angela Dunn, *Questioning the Reliability of Children's Testimony: An Examination of the Problematic Elements*, 19 Law. & Psychol. Rev. 203, 205–06 (1995).

45 Hall & Sales, *supra* note 4, at 121.

46 See *id.* at 120.

47 See generally Ann M. Haralambie, Child Sexual Assault in Civil Cases: A Guide to Custody and Tort Actions (1999).

48 *Idaho v. Wright*, 497 U.S. 805, 813 (1990).

49 *People v. Bowen*, 699 N.E.2d 577, 583 (Ill. 1998); see also *People v. Cookson*, 830 N.E.2d 484, 494 (Ill. 2005) (acknowledging the importance of videotape, when available, during the pretrial interviews of child witnesses or for purposes of not losing evidence due to children's susceptibility to memory loss).

50 *State v. Weaver*, 964 P.2d 713, 723 (Mont. 1998).

51 *People v. Simpkins*, 697 N.E.2d 302, 308 (Ill. 4th App. Ct. 1998); see also *People v. Miles* 815 N.E.2d 37, 45 (Ill. 4th App. Ct. 2004).

52 Myers, Legal Issues, *supra* note 22, at 55.

53 *Id.*

54 *Id.*

55 Foundations of Child Advocacy: Legal Representation of the Maltreated Child 102 (Donald C. Bross & Laura Freeman Michaels eds., 1987).

56 Colo. Rev. Stat. Ann. § 19-3-604 (West 2009); Conn. Gen. Stat. Ann. § 17a-111a (West 2009).

57 Robert M. Horowitz & Howard A. Davidson, 2 Legal Rights of Children 34 (Donald T. Kramer ed., 2d ed. 1994).

58 *In re A.C.*, 597 A.2d 920, 923 (D.C. 1991); see also *In re C.M.*, 916 A.2d 169, 177 (D.C. 2007).

59 *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); see also *Troxel v. Granville*, 530 U.S. 57 (2000).

60 Lynn Marie Kohm & Maria E. Lawrence, *Sex at Six: The Victimization of Innocence and Other Concerns Over Children's "Rights,"* 36 Brandeis J. Fam. L. 361, 393 (1997–98).

61 *Santosky v. Kramer*, 455 U.S. 745, 747–48, 758 (1982).

62 Colleen McMahon, *Due Process: Constitutional Rights and the Stigma of Sexual Abuse Allegations in Child Custody Proceedings*, 39 Cath. Law. 153, 185 (1999).

63 See Myers, Legal Issues, *supra* note 22, at 33.

64 *Id.* at 34.

65 *Id.*

66 *Id.*

67 See *id.*

68 *Harrington v. California*, 395 U.S. 250, 252 (1969).

69 *Ohio v. Roberts*, 448 U.S. 56, 63 (1980).

70 *California v. Green*, 399 U.S. 149, 158 (1970).

71 *Maryland v. Craig*, 497 U.S. 836, 846 (1990).

72 *Jolly v. Wright*, 265 S.E.2d 135, 143 (N.C. 1980).

73 See generally *Roberts*, 448 U.S. at 56.

74 *Id.* at 65.

75 *Id.* at 65–66.

76 *Id.* at 66.

77 *Id.*

78 *Id.* at 73.

79 *Kentucky v. Stincer*, 482 U.S. 730, 732–33 (1987).

80 *Id.*at 733.

81 *Id.*

82 *Id.* at 743.

83 *Id.* at 745.

84 *Stincer*, 482 U.S. at 745.

85 See generally *Coy v. Iowa*, 487 U.S. 1012 (1988).

86 *Id.* at 1014.

87 *Id.*

88 *Id.* at 1014–15.

89 *Id.* at 1023 (O'Connor, J. & White, J., concurring).

90 *Id.* at 1020–21 (majority opinion).

91 *Id.* at 1020.

92 *Id.* at 1019.

93 *Maryland v. Craig*, 497 U.S. 836, 840 (1990).

94 *Id.* at 840.

95 *Id.* at 840–41.

96 *Id.* at 842–43.

97 *Id.*

98 *Id.* at 849–50.

99 *Id.* at 855.

100 *Id.* at 854.

101 *Id.* at 855.

102 *Id.* at 855–56.

103 *Id.* at 851, 857.

104 *Id.* at 851.

105 *Idaho*, 497 U.S. at 809–10.

106 *Id.* at 811–12.

107 *Id.* at 817.

108 *Id.* at 822–23.

109 *Id.* at 820.

110 *White v. Illinois*, 502 U.S. 346, 349, 356 (1992).

111 *Id.* at 356.

112 *Id.* at 349.

113 *Id.*

114 *Id.*

115 *White*, 502 U.S. at 349.

116 *Id.*

117 *Id.* at 356–57.

118 *Id.* at 350.

119 *Id.*

120 *White*, 502 U.S. at 356–57.

121 *Id.*

122 *Id.* at 354–55.

123 *Crawford v. Washington*, 541 U.S. 36, 68–69 (2004).

124 *Id.* at 59.

125 *Id.* at 51.

126 *Id.* at 68.

127 See generally *id.* at 36.

128 *Id.* at 53.

129 *Id.* at 53–54.

130 *Id.* at 68.

131 *Davis v. Washington*, 547 U.S. 813, 822 (2006).

132 *Id.*

133 *Id.*

134 See generally, e.g., John E.B. Myers, Evidence in Child Abuse and Neglect Cases (3rd Ed. 2002) [hereinafter Myers, Evidence]; Myers, Legal Issues, *supra* note 22; Myers, Child Abuse, *supra* note 24.

135 See *State v. Budis*, 593 A.2d 784, 788 (N.J. 1991). See generally *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987).

136 Fed. R. Evid. 801(c).

137 Krista MacNevin Jee, *Hearsay Exceptions in Child Abuse Cases: Have the Courts and Legislatures Really Considered the Child?*, 19 Whittier L. Rev. 559, 563 (1998).

138 Fed. R. Evid. 803.

139 Fed. R. Evid. 804.

140 Myers, Evidence, *supra* note 135, at 367–68.

141 Fed. R. Evid. 803(1).

142 *Guam v. Ignacio*, 10 F.3d 608, 614 (9th Cir. 1993).

143 E.g., *In re C.B.*, 574 So. 2d 1369, 1373 (Miss. 1990).

144 Fed. R. Evid. 803(2).

145 *Idaho*, 497 U.S. at 820.

146 *Lieberenz v. State*, 717 N.E.2d 1242, 1245 (Ind. Ct. App. 1999).

147 Myers, Child Abuse, *supra* note 24, at 74–75.

148 See eg., *Brown v. Commonwealth*, 37 Va. 169, 554 S.E. 2d 711, 712 (2001).

149 *State v. Huntington*, 575 N.W.2d 268, 272–73 (Wis. 1998).

150 *Id.* at 273.

151 *Id.*

152 See generally *State v. Jones*, 625 So. 2d 821 (Fla. 1993).

153 See generally *Commonwealth v. McDonough*, 511 N.E.2d 551 (Mass. 1987).

154 See generally *State v. Ford*, 525 S.E.2d 218 (N.C. Ct. App. 2000).

155 *Id.* at 220.

156 See generally *State v. Thomas*, 460 S.E.2d 349 (N.C. Ct. App. 1995).

157 See generally *State v. Griffith*, 727 P.2d 694 (Or. 1986).

158 Fed. R. Evid. 803(3).

159 E.g., *In re Kailee B.*, 22 Cal. Rptr. 2d 485 (Cal. 2d Ct. App. 1993).

160 E.g., *State v. Thompson*, 533 S.E.2d 834, 838–39 (N.C. Ct. App. 2000).

161 See generally *Crabtree v. Crabtree*, 716 S.W.2d 923 (Tenn. Ct. App. 1986).

162 Fed. R. Evid. 803(4).

163 Myers, Legal Issues, *supra* note 22, at 162.

164 *Id.*

165 See *id.* at 163.

166 E.g., *State v. Hinnant*, 523 S.E.2d 663, 668–69 (N.C. 2000).

167 See generally *United States. v. Renville*, 779 F.2d 430 (8th Cir. 1985).

168 See generally *Ring v. Erikson*, 983 F.2d 818 (8th Cir. 1993); *State v. McLeod*, 937 S.W.2d 867 (Tenn. 1997).

169 See Myers, Evidence, *supra* note 135, at 330-31.

170 See generally *In re Rachel T.*, 549 A.2d 27 (Md. Ct. Spec. App. 1988).

171 See generally *Doe v. Doe*, 644 So. 2d 1199 (Miss. 1994).

172 E.g., *United States v. Balfany*, 965 F.2d 575 (8th Cir. 1992).

173 See generally *Hennington v. State*, 702 So. 2d 403 (Miss. 1997).

174 See generally *United States v. Iron Shell*, 633 F.2d 77 (8th Cir. 1980).

175 See generally *Commonwealth v. Smith*, 681 A.2d 1288 (Pa. 1996).

176 See generally *Galindo v. United States*, 630 A.2d 202 (D.C. 1993); *In re Esperanza M.*, 955 P2d 204 (N.M. Ct. App. 1998).

177 *In re Rachel T.*, 549 A.2d 27, 33-34 (Md. Ct. Spec. App. 1988).

178 *Id.* at 35.

179 *United States v. Longie*, 984 F.2d 955, 959 (8th Cir. 1993).

180 Fed. R. Evid. 803(5).

181 *United States v. Gans*, 32 M.J. 412, 414–15 (C.M.A. 1991).

182 See *Sandlin v. State*, 542 S.E.2d 496, 497 (2001).

183 See Richard O. Lempert et al., A Modern Approach to Evidence: Text, Problems, Transcripts, and Cases 600-02 (West Group 3rd ed. 2000).

184 Fed. R. Evid. 803(6).

185 Lempert Et Al., *supra* note 184, at 604-06.

186 *Id.* at 604.

187 *Id.* at 609.

188 See Fed. R. Evid. 803(6).

189 Goldstein, *supra* note 20, at 656.

190 See generally *Prater v. Cabinet for Human Res.*, 954 S.W.2d 954 (Ky. 1997).

191 Fed. R. Evid. 807.

192 Myers, Legal Issues, supra note 22, at 164–66.

193 Cynthia J. Hennings, *Accommodating Child Abuse Victims: Special Hearsay Exceptions in Sexual Offense Prosecutions*, 16 Ohio N.U. L. Rev. 663, 668 (1989).

194 See generally *United States v. Shaw*, 824 F.2d 601 (8th Cir. 1987).

195 Myers, Legal Issues, *supra* note 22, at 164.

196 *Id.*

197 *Idaho*, 497 U.S. at 819.

198 Hennings, *supra* note 194, at 685–86.

199 *United States v. Cabral*, 47 M.J. 268, 270 (C.A.A.F 1997).

200 See *id.* at 270.

201 *Id.*

202 *Id.*

203 Wash Rev. Code Ann. § 9A.44.120 (West 2009).

204 Hall & Sales, *supra* note 4, at 49.

205 *Id.* at 51.

206 Myers, Child Abuse, *supra* note 24, at 45–51.

207 *Id.* at 46.

208 *Id.* at 45.

209 Myers, Evidence, *supra* note 135, at 365-66.

210 Myers, Child Abuse, *supra* note 24, at 45.

211 *Id.*

212 See *id.* at 53–54.

213 Fed. R. Evid. 601.

214 Hall & Sales, *supra* note 4, at 20.

215 *In re Dependency of A.E.P.*, 956 P.2d 297, 304 (Wash. 1998).

216 *U.S. v. Norman T.*, 129 F.3d 1099, 1104–05. (10th Cir. 1997).

217 *People v. Roberto V.*, 113 Cal. Rptr. 2d 804, 818 (Cal. 2d Ct. App. 2001).

218 18 U.S.C. § 3509 (2006).

219 Kenneth Broun et al., McCormick on Evidence 308 (6th ed. 2006).

220 *United States v. Wheeler*, 159 U.S. 523, 524–25 (1895).

221 *Barnes v. State*, 328 S.E.2d 583, 584 (Ga. Ct. App. 1985).

222 *State v. Earl*, 560 N.W.2d 491, 495 (Neb. 1997).

223 *State v. Ford*, 626 So. 2d 1338, 1343 (Fla. 1993).

224 *State v. Hicks*, 352 S.E.2d 424, 426 (N.C. 1987).

225 *Perez v. State*, 536 So. 2d 206, 208 (Fla. 1988).

226 See Myers, Legal Issues, *supra* note 22, at 267.

227 Lisa R. Askowitz, *Restricting the Admissibility of Expert Testimony in Child Sexual Abuse Prosecution: Pennsylvania Takes it to the Extreme*, 47. U Miami L. Rev. 201, 213–14 (1992).

228 Elissa P. Benedek & Diane H. Schetky, *Problems in Validating Allegations of Sexual Abuse*: *Part 1: Factors Affecting Perception and Recall of Events*, 26 J. Am. Acad. Child & Adolesc. Psychiatry 912, 916 (1987).

229 Martha L. Rogers, Coping with Alleged False Sexual Molestation: Examination and Statement Analysis Procedures, 2 Issues of Child Abuse Accusations 57 (1990)).

230 Hamblen & Levine, *supra* note 15, at 144–46.

231 *Id.*

232 *Id*. at 147–48.

233 *Id.* at 149–50.

234 Myers, Legal Issues, *supra* note 22, at 231, 235.

235 *Id.* at 231.

236 Fed. R. Evid. 702.

237 Myers, Legal Issues, *supra* note 22, at 235.

238 See *id.*

239 *Id.* at 236.

240 See Myers, Evidence, *supra* note 135, at 200-02.

241 *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).

242 *Id.*

243 See Myers, Legal Issues, *supra* note 24, at 241.

244 *Daubert v. Merrell Dow Pharmaceuticals*, *Inc.*, 509 U.S. 579, 593–94 (1993).

245 Fed. R. Evid. 703.

246 *Id.*

247 See *id.*

248 Myers, Evidence, *supra* note 135, at 179.

249 Myers, Legal Issues, *supra* note 22, at 237.

250 Myers, Child Abuse, *supra* note 24, at 116.

251 Fed. R. Evid. 702.

252 Myers, Evidence, *supra* note 135, at 178.

253 Myers, Legal Issues, *supra* note 22, at 234.

254 *Id.* at 235.

255 John E.B. Myers et al., *Expert Testimony in Child Sexual Abuse Litigation*, 68 Neb. L. Rev. 1, 10 (1989).

256 See Myers, Child Abuse, *supra* note 24, at 109.

257 Myers, Legal Issues, *supra* note 22, at 252–53.

258 *Id.* at 252.

259 This section of the article has been written by Jennie G. Farshchian, J.D. Candidate 2010, Nova Southeastern University, Shepard Broad Law Center; B.A. in English 2005, Florida International University.

260 See generally Mich. Comp. Laws Ann. § 722.621–638 (West 2009). For purposes of this Act, "child abuse" is defined as:

> harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.

Id. § 722.622(f). The Act states that individuals who are responsible for the child's heath or welfare include his or her "parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides . . . nonparent adult; or an owner, operator, volunteer, or employee of . . . [a] licensed or registered child care organization." *Id.* § 722.622(u).

261 *Id.* § 722.622(w).

262 *Id.* § 750.520a(q).

263 Mich. Comp. Laws Ann. § 750.520a(r).

264 *Id.* § 722.623(b)(8).

265 *Id.* § 750.520b–.520e.

266 *Id.* § 722.623(a). Failure by these individuals to report suspected child abuse or neglect will result in civil liability for the "damages proximately caused by the failure." *Id.* § 722.633(1). If the individual who is required under this Act to report the abuse "knowingly" fails to do so, he is guilty of a misdemeanor. Mich. Comp. Laws Ann. § 722.633(2). Individuals who may report but are not required to so are any other person, "including a child, who has reasonable cause to suspect child abuse." *Id.* § 722.624. If a person reports an incident of child abuse, the identity of that individual is confidential information and subject to disclosure only if that person consents or if the judicial process so requires. *Id.* § 722.625. The individual who acts in good faith when making such a report is immune from any liability that may arise as a result of providing the report. *Id.*

267 *Id.* § 722.628(8).

268 Mich. Comp. Laws Ann. § 722.628(8).

269 *Id.* § 722.628(1), (3)(b).

270 *Id.* § 722.628(1).

271 *Id.* § 722.628(2). The Department is also responsible to "take necessary action to prevent further abuses, to safeguard and enhance the child's welfare, and to preserve family life where possible." *Id.* All Department employees involved in investigating child abuse cases must be "trained in the legal duties to protect the state and federal constitution and statutory rights of children and families from the initial contact of an investigation through the times services are provided." Mich. Comp. Laws Ann. § 722.628(2). The Act also creates five categories of how the Department should respond to a report of suspected child abuse ranging from Category I, where a court petition is required after a finding of child abuse, to Category V, where services are not needed because a field investigation by the Department has lead to the determination that there is no evidence of child abuse. *Id.* § 722.628d(1). Furthermore, the Department must offer multidisciplinary services in order to carry out its responsibilities under this Act, including such services as that of a pediatrician, psychologist, public health nurse, social worker, or attorney. *Id.* § 722.629(1).

272 *Id.* § 722.1041.

273 *Id.* § 722.1043(1).

274 Mich. Comp. Laws Ann. § 722.1044. The Children's Center Advocacy Act states that money shall be expended from the fund beginning two years after the effective date of the Act. *Id.*

275 Mich. Ct. R. 3.972(C)(2).

276 See e.g., *Hack v. Elo*, 38 F. App'x 189, 192–93 (6th Cir. 2002); *People v. Baisden*,756 N.W.2d 73, 73 (Mich. 2008); *Becker-Witt v. Bd. of Exam'rs of Soc. Workers* 663 N.W.2d 514, 518 (Mich. Ct. App. 2003) ("[T]he purpose of the Child Protection Law is to protect abused and neglected children").

277 *People v. Bayer*, 756 N.W.2d 242, 252 (Mich. Ct. App. 2008).

278 *People v. Garrison*, 341 N.W.2d 170, 172 (Mich. Ct. App. 1983).

279 Mich. Comp. Laws Ann. § 750.520b(a), (b).

280 *People v. Sabin*, 614 N.W.2d 888, 902 (Mich. 2008).

281 See generally, e.g., *People v. Pesquera*, 625 N.W.2d 407 (Mich. Ct. App. 2001).

282 *Id.* at 411–12 (citing *Maryland v. Craig*, 497 U.S. 836, 855–56, 860 (1990)).

283 Mich. Comp. Laws Ann. § 600.2163a(13); see also *id.* § 600.2163a(14).

284 *Pesquera*, 626 N.W.2d at 412.

285 *Id.*

286 *Id.* at 412–13; see also *People v. Krueger*, 643 N.W.2d 223 (Mich. 2002); *People v. Kline*, 494 N.W.2d 756 (Mich. Ct. App. 1992). In *People v. Krueger*, the Supreme Court of Michigan held that even if a child is found to be unable to testify in a defendant's presence, that does not allow the court to remove the defendant from the courtroom because in that situation, the defendant is unable to communicate with his attorney and he is denied the opportunity to "make the subtle statement by his presence and demeanor in court that he [is] innocent of the charges." *Krueger*, 643 N.W.2d at 224–26. In *People v. Kline*, the Michigan Court of Appeals recognized that the government has a compelling interest in protecting child witnesses who are called to testify in cases involving child sexual abuse allegations, and therefore, in such cases, the trial court can close or partially close off the courtroom from the public after taking into consideration such factors as "the age of the alleged victim, nature of the alleged offense, and potential for harm to victim." *Kline*, 494 N.W.2d at 760.

287 *People v. Beckley*, 456 N.W.2d 391 (Mich. 1990).

288 *Id.* at 401–02.

289 *Id.* at 399, 403, 406–07.

290 Hall & Sales, *supra* note 4, at 7.

291 *Id.* at 3.

292 *Id.* at 8.

293 Diane B. Lathi, *Sex Abuse, Accusations of Lies, and Videotaped Testimony: A Proposal for a Federal Hearsay Exception in Child Sexual Abuse Cases*, 68 U. Colo. L. Rev. 507, 508 (1997).

294 See Myers, Legal Issues, *supra* note 22, at 104.

295 See Hall & Sales, *supra* note 4, at 3–4.

296 Nancy E. Walker & Matthew Nguyen, *Interviewing the Child Witness: The Do's and Don't's, The How's and the Why's*, 29 Creighton L. Rev. 1587, 1590, 1605 (1996).

297 See Hall & Sales, *supra* note 4, at 7.

298 Myers, Legal Issues, *supra* note 22, at 104.

299 See *id.*

300 Walker & Nguyen, *supra* note 297, at 1588.

301 *Id.*

302 *Id.* at 1592.

303 Myers, Evidence, *supra* note 135, at 21–22.

304 See Hall & Sales, *supra* note 4, at 14, 233.

305 Walker & Nguyen, *supra* note 297, at 1588.

306 *Id.* at 1590.

307 *Id.* at 1592.

308 See Myers, Evidence, *supra* note 135, at 241.

309 Hall & Sales, *supra* note 4, at 7.

310 Brannon, *supra* note 7, at 443.

311 Hall & Sales, *supra* note 4, at 8–9.

312 *Id.* at 21.

313 *Id.*

314 18 U.S.C. § 3509 (2006).

315 *Id.* § 3509(b)(1)(A).

316 *Id.* § 3509(b)(1)(B).

317 *Id.* § 3509(b)(1)(C).

318 *Id.*

319 *Id.*

320 See *id.* § 3509(b)(1)(D).

321 *Id.*

322 *Id.*

323 *Id.* § 3509 (b)(2)(A).

324 18 U.S.C. § 3509(b)(2)(B).

325 *Id.* § 3509(b)(2)(C).

326 *Id.* § 3509(b)(2)(E), (F).

327 *Id.* § 3509(i).

328 See *id.* § 3509(a)(1), (i).

329 Myers, Evidence, *supra* note 135, at 253.

330 18 U.S.C. § 3509(i).

331 *Id.*

332 *United States v Grooms*, 978 F.2d 425, 429 (8th Cir. 1992).

333 Hall & Sales, *supra* note 4, at 22.

334 18 U.S.C. § 3509(h)(1).

335 42 U.S.C. § 5106c (2009).

336 Goldstein, *supra* note 20, at 946.

337 18 U.S.C. § 3509(h)(1).

338 *Id.* § 3509(h)(2).

339 See *id.*

340 Hall & Sales, *supra* note 4, at 22.

341 See 18 U.S.C. § 3509(h)(2).

342 See Goldstein, *supra* note 20, at 946–48.

343 *Id.* at 946.

344 Hall & Sales, *supra* note 4, at 22–23.

345 Donald N. Duquette, *Legal Representation for Children in Protection Proceedings: Two Distinct Lawyer Roles are Required*, 34 Fam. L.Q. 441, 447 (2000).

346 Goldstein, *supra* note 20, at 945.

347 Duquette, *supra* note 346, at 450.

348 *Id.* at 449.

349 *Id.*

350 *Id.* at 448.

351 Merril Sobie, *The Child Client: Representing Children in Child Protection Proceedings*, 22 Touro L. Rev. 745, 784–85 (2006).

352 Duquette, *supra* note 346, at 449.

353 See Goldstein, *supra* note 20, at 324.

354 See *id.* at 947–48.

355 See *id.*

Reasonable Efforts: They Aren't Just For Funding Anymore

In re Rood, 763 N.W.2d 587 (Mich. 2009)

by Evelyn K. Calogero

Introduction

Since 1983, states have been eligible to receive federal funding for children in foster care.[1] One of the requirements for this funding (commonly referred to as Title IV-E funding) is that the state have a federal-government-approved plan in place that provides, among other things, that the state make reasonable efforts to prevent a child's removal from home, and if removed, facilitates a child's return home.[2]

In 1992, the United States Supreme Court held in *Suter v Artist M*,[3] that a parent could not bring a separate civil rights claim against a state for not making reasonable efforts to reunify parent and child.[4] According to the Court, Title IV-E made states eligible for federal monies; it did not grant parents or children rights independent of the funding provisions.[5]

Title IV-E still does not create independent rights to enforce its reasonable efforts provisions. But parents in Michigan who claim that the State did not make reasonable efforts to reunite them with their children now know what the State Department of Human Services (the State) must do to make reasonable efforts when the parent claims the State's lack of reasonable efforts as a defense in a termination of parental rights proceeding.[6]

The Michigan Supreme Court has answered a question many parents have asked since 1983: When are the State's efforts to reunite them with their children reasonable? The answer? The State's efforts to reunify child and family are reasonable if the State fulfills its duties under federal statutes and regulations, state statutes and court rules, and the State's own internal child protective and foster care procedures.[7] If it does not, a parent may challenge its failure to follow these procedures when the State seeks to terminate the parent's rights to his or her child.[8]

In answering the question the way it did, the Michigan Supreme Court has now provided much-needed guidance to the State, the bench, and the bar. And it has put the State on notice: in the future, parents, attorneys, and judges will be examining its efforts to reunify parent and child through a more powerful lens.

Reasonable Efforts: The State Must Comply With Statutes, Regulations, Court Rules, and Its Own Procedures.

Until the court's decision in *In re Rood,* a parent challenging the termination of his or her parental rights because the State did not make reasonable efforts to reunify the family faced uncertainty about the reasonable efforts requirements. Did the State need to do more than just adopt a service plan to make reasonable efforts?[9] Was the reasonable efforts requirement merely a predicate to federal funding of a state's foster care costs?[10] The uncertainty has now been alleviated.

A parent may "claim procedural error in an action brought by the state to terminate [his or her parental rights] if the state fails to comply with the required procedures and its failure may be said to have affected the outcome of the case."[11] Thus, the court has made it clear that the State must follow federal statutes and regulations, state statutes and court rules, and the State's own internal procedures in making its efforts to reunify families.[12] If the State has not followed these procedures, it has not made reasonable efforts to reunify the family, and a parent may raise that failure as a defense to termination of his or her parental rights, as long as the failure affected the outcome of the case.[13]

Rood: *The Facts*

The respondent in *Rood,* Darroll Donald Rood, the child's father, challenged the State's efforts to reunite him with his daughter claiming that the State had not done enough before it filed a petition to terminate his rights.[14] The child, A., had been removed from her mother's care due to neglect.[15] Even though the state knew that Rood was her father,[16] and even though the State protective services worker, foster care worker, and the court had a correct address and telephone number for him,[17] the court sent notices of hearings to an outdated address,[18] and the foster care worker tried to call him – only once – at an outdated telephone number.[19]

Rood himself made the initial contact with the State's protective services worker.[20] She never told Rood that he could be considered as a placement for his daughter.[21] In fact, she told him that the State would seek to reunite A. "back with her mother, not the father."[22] She never told him that services were available, if he needed them, to help him reunify with his daughter.[23] Most importantly, neither the State nor the court told Rood that his parental rights could be at stake in a case against A.'s *mother*.[24]

While three of the court's justices would have held that the State's failures violated Rood's procedural due process rights,[25] five of the six justices who participated in the decision agreed that the state statutes obligated the State to do more than it did.[26] And four justices agreed that child welfare proceedings in Michigan must comply with federal statutes and regulations, state statutes and court rules, and the state's own processes set out in its foster care manual.[27] As Justice Michael Cavanagh stated in his concurring opinion, "Reasonable efforts require that the DHS and the trial court, at a minimum, make the active efforts towards reunification provided for in statutes and court rules . . . ."[28]

The Required Procedures – State Statutes and Court Rules.

Which state statutes and court rules must the State comply with before a court may say that the State made "reasonable efforts" with a noncustodial parent or any parent? The court specifically mentioned the following:

- "Reasonable efforts to reunify the child and family must be made in all cases."[29]
- When a child is removed from a parent's home, both parents are entitled to notice of proceedings.[30]
- A parent who is not named as a respondent must be notified of and allowed to participate in all proceedings.[31]
- At the preliminary hearing, the court must determine if the child's parents have been notified and can adjourn the hearing until both parents can be present.[32]
- The court must ask the parent from whom the child was taken for the identity and location of relatives to see if one is a fit and appropriate alternative to foster care.[33]
- DHS must provide an initial service plan before the court may enter an order of disposition.[34]
- The initial service plan must report the efforts the State made or services the State provided to prevent the child's removal from home, or it must detail the services the State provided to rectify conditions that caused the child's removal.[35]
- The initial service plan must also detail efforts *to be made* and services *to be provided* to facilitate the child's return home or to facilitate some other permanent placement, and the plan must provide a parenting time schedule.[36]
- The State must update the service plan every 90 days.[37]
- The court must hold a review hearing within 182 days after child was first removed from home, then every 91 days during the first year of placement.[38]
- At the review hearing the Court must review a parent's compliance with the plan and progress made toward reunification.[39]
- The court can order the State to provide and the parent to participate in additional services necessary to rectify the conditions that brought the child into placement.[40]
- If the child is still in foster care after one year, the court must hold a permanency planning hearing.[41]
- At the permanency planning hearing, the court must review the progress the parties have made toward returning child home, or the State must show why the child should not be returned home.[42]
- If at the permanency planning hearing the court determines that the child would be safe

at home, it must order child to be returned to the parent.[43]
- If parent hasn't substantially complied with the case service plan, the court may use that as evidence that it is not safe to send child home.[44]

The court did not note that the Michigan Court Rule that governs dispositional review hearings states that the court must also review "the services provided or offered to the child and parent, guardian, or legal custodian of the child . . . ."[45] Thus, the reviewing court must not only assess the progress that a parent has made, it must also assess the State's actions taken toward facilitating reunification. In addition, because the case service plan must state which services the state plans to offer, the court's review should, at a minimum, include reviewing the State's compliance with the plan.[46]

The court also did not note that the Michigan court rule governing the procedure at the permanency planning hearing requires more than the statute requires. It mandates that the court determine if the State has "made reasonable efforts to finalize the permanency plan. . . . ."[47] Thus, under the statutes and court rules that the court agreed govern procedure in the child protective proceeding, the court must look not only at the parent's effort to comply with the plan, but also at the state's effort to provide the child with a permanent placement, either back to the child's home or in some other long-term placement.[48]

The Required Procedures – Federal Statutes and Regulations

As noted, four justices agreed that the state's child welfare procedures must comply with federal statutes and regulations.[49] The court mentioned the following federal statutes and regulations regarding mandatory services with which the State and courts in a child protective proceeding must also comply. Calling them "most applicable,"[50] the court stated:
- The State must make reasonable efforts to prevent removal of a child from home and to return that child to his or her family. In other words, the State must make "'reasonable efforts . . . to preserve and unify families.'" [51]
- The State's service plan must include services to both of the parents to facilitate the child's return to the family.[52]
- The State must develop the service plan together with the child's parents or guardian. The plan must include a description of services already offered to prevent the removal of the child from the family and of services to be offered to reunify the family.[53]
- Most significantly, according to the court, The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured [and] to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child) . . .[54]

Required Procedures – The State's Children's Foster Care Manual

The Michigan and federal statutes require the State to develop regulations and policies regarding children in foster care.[55] Those policies and regulations also require the State to perform certain acts.[56] The policies and procedures for Children's Protective Services and Foster Care are available on the Internet.[57] According to the Children's Foster Care Manual:
- The State must involve the family, including both parents, in devising a case service plan.[58]
- The case service plan must outline what the parents must do to reunify the family and what the State must do to support the parents' goals.[59]
- The foster care worker must meet with each parent in the parent's home.[60]
- The foster care worker must keep regular phone contact with the parents.[61]
- The foster care worker must use parenting time to strengthen parent/child bond and must provide parenting time for each parent.[62]
- The state may direct its initial reunification efforts to the home from which the child was removed – that of the custodial parent.[63]
- The state may, however, shift its efforts to reunify from the custodial to the non-custodial parent where the situation warrants.[64]
- No matter which household the State initially focuses its reunification efforts on, the State must complete a family assessment of needs

> and strengths for each household with a legal right to the child, unless the State cannot locate a parent, unless the parent will be incarcerated for more than two years, or unless the parent refuses to participate.[65]

The State Did Not Comply With The Required Procedures

As the court stated, "compliance with the relevant laws and regulations was sorely lacking with regard to respondent."[66] That is understatement.

From the moment that the State took his daughter into custody, Darroll Donald Rood did not receive the services the statutes mandated. The child's mother told him that his daughter was in State custody; the State's child protective services worker did not. [67] Even though he gave the State's child protective services worker his cellular telephone number, his girlfriend's cellular telephone number, and his address,[68] the court and the State used that address to notify him of only *one* of the *six* hearings in his daughter's case.[69] For all of the other hearings, the court used an outdated address, even when it knew that mail to that address had been returned undeliverable.[70]

The statutory, regulatory, and procedural violations continued. When Mr. Rood spoke with the State's child protective services worker to tell her that he wanted his daughter placed with him, she actively discouraged him stating that the State would seek to reunify his daughter with her mother, not her father.[71] She never told him that the State would assess his home as a viable placement for his daughter.[72] She never told him that services were available to help him to become a viable placement for his daughter.[73] She never told him that the State would create a case service plan and that he should be involved in that process.[74]

At the preliminary hearing, which Mr. Rood did not attend (notice had been sent to an incorrect address), the trial court compounded the violations. The court did not order the State "to identify and consult with relatives . . . ."[75] The court did not expressly determine if Mr. Rood had been notified, or if anyone had attempted to notify him.[76]

In preparing the Initial Service Plan and Updated Service Plans, the foster care worker added to the growing list of violations. She never contacted Mr. Rood before preparing the initial plan,[77] yet the plan stated that Mr. Rood was not willing to participate in the service plan.[78] Later Updated Service Plans still indicated that Mr. Rood was not willing to participate.[79] The Kinship Resources and Placement section of the Updated Service Plans indicated that the State was not considering placing Rood's daughter with a relative because "'[t]here are no appropriate relatives.'"[80] And even though the foster care worker had Mr. Rood's correct address and telephone number, her only attempts to contact him were calls to the child's mother to see if she knew where Mr. Rood was.[81]

The child protective services worker did offer parenting time to Mr. Rood.[82] She told him to contact the foster care worker to schedule it.[83] Mr. Rood did not take advantage of the offer because he did not want to reenter his daughter's life only to have to leave it again once his daughter and her mother were reunited.[84]

The Trial Court Erred When It Terminated Mr. Rood's Parental Rights, And The Error Affected Mr. Rood's Substantial Rights.

Perhaps the worst violation of statutes, court rules, regulations, and procedures came when nobody ever notified Mr. Rood that his parental rights were at stake in a case against the child's mother.[85] The court terminated Mr. Rood's rights under Mich. Comp. Laws Ann. § 712A.19b(3)(g) (West Supp. 2009)[86] and under Mich. Comp. Laws Ann. § 712A.19b(3)(j) (West Supp. 2009),[87] in part because Mr. Rood had not participated in services or in any of the proceedings (save one) before the termination of his parental rights trial.[88] And when Mr. Rood's counsel asked to adjourn the termination trial so that Mr. Rood could begin participating in services, the trial court denied his request.[89]

Because Mr. Rood had been denied the opportunity to participate in services, the trial court did not have all of the information it needed to support its decision that the State had proven both of the grounds for termination of his rights by clear and convincing evidence.[90] Stated otherwise, the court did not have enough information to conclude, without speculating, that Mr. Rood would not be "able to provide proper care and custody within a reasonable time considering the child's age."[91] And because the court had virtually no information about Mr. Rood,

information it would have had had the State followed the statutes, regulations, court rules, and internal procedures, the court could only speculate about whether Mr. Rood presented a danger to his daughter were she to be placed in his custody.[92]

As the court noted, even if Mr. Rood had chosen not to participate in the proceeding against the child's mother, he did not give up his constitutional parental rights[93] to his child in a later proceeding against him to terminate his rights.[94] Mr. Rood deserved the opportunity to meaningfully participate in services and in proceedings against him before a court terminated his parental rights.[95]

The Next Steps For Children's and Parents' Advocates

The court's extensive analysis of codified law and the State's procedures should not be limited to only those situations where a noncustodial parent seeks custody of a child who has been removed from the custodial parent. If the federal statutes and regulations, the state statutes and court rules, and the State's own procedures provide the minimum due process protections for the parents in a child protective proceeding, those procedures should apply in every child protective proceeding, not only in proceedings where a child has been removed from a parent. Furthermore, because the court emphasized the importance of complying with the statutes, regulations, court rules, and procedures, even those the court did not specifically mention will apply in all child protective proceedings. Child protective services workers and foster care workers should abide by them; courts should enforce them; and advocates should bring violations to the courts' attention.

Children's advocates and parents' advocates should already have familiarized themselves with state and federal law in child protective proceedings. Now it is even more important for those advocates to familiarize themselves with the Children's Protective Services Manual (the CFP)[96] and with the Children's Foster Care Manual (the CFF).[97] These two manuals contain the State's interpretation of the statutes and rules applicable in child protective proceedings and instruct child protective services workers and children's foster care workers in how to comply with the statutes.

Children's advocates and parents' advocates should be referring to these manuals to ensure that child protective services and foster care workers are fulfilling their responsibilities to children and parents during the course of the child protective proceedings. Advocates should not wait until the trial to terminate the parent's rights to argue a failure to make reasonable efforts. In addition to advising their clients to participate in the case service planning and execution, advocates should monitor their clients' and the State's progress toward those plans' goals.

Child Protective Services (CPS) workers are responsible for making reasonable efforts to keep children safe in their homes.[98] If a preponderance of the evidence shows that the child was abused or neglected, CPS workers must provide services to the family to prevent that child from being removed from the family if the child can be protected in his or her own home.[99] But "protective services is primarily a crisis intervention service and cannot effectively provide long-term treatment."[100]

The Child Protective Services Manual contains chapters on, among other things, intake (or investigating complaints),[101] post-investigative services (which includes information on involving families in services in their homes),[102] and removal of children from their homes.[103] For advocates whose clients are working with CPS in their homes, these chapters provide the State's view of what their employees should be doing at each stage of the process. As such, they provide the advocate with a guide to helping their clients navigate the process.

As the process relates to reasonable efforts to keep children in their homes, the Children's Protective Services Manual provides a list of examples of what reasonable efforts to prevent removal includes.[104] Reasonable efforts to prevent removal may include: "24-hour emergency caretaker, homemaker, day care, crisis or family counseling, emergency shelter, emergency financial assistance, respite care, parent aid services, home-based family services, self-help groups, mental health services, drug and alcohol abuse counseling, and vocational training."[105]

If a child must be removed from an unsafe home, responsibility for that child and family transfers to the State's foster care workers.[106] Permanent placement is the ultimate goal for all children removed from their homes.[107] Permanent placement may be achieved

though reunification with the family, a guardianship, an adoption, placement with a fit and willing relative, or "some other planned permanent living arrangement.[108]

Like the Children's Protective Services Manual, the Children's Foster Care Manual specifically details the foster care worker's responsibilities to the child and his or her parents. For example, the foster care workers must develop a service plan with a permanent placement in mind and must provide casework services to help resolve the conditions that brought the child into foster care.[109] The foster care workers must seek input from the child's parents – both of them – and must seek input from the child's extended family and relative network in developing the case services plan.[110] The Children's Foster Care Manual provides detailed instructions on how to develop the plan.[111]

The Manual also provides detailed instructions to foster care workers on the number of contacts they must make with parents while the case is pending.[112] For example, during the first month of the case, the foster care worker must make two face-to-face contacts with each parent, one of which must occur in the home.[113] During that month, the worker must also make two phone contacts, if the parent has a telephone.[114]

The Manual also acknowledges that the court must make a reasonable efforts finding for the case to be eligible for Title IV-E funding.[115] The foster care worker is responsible for reviewing court orders to ensure that the court has made a reasonable efforts finding and to ensure that the court included the evidence it relied on to make the reasonable efforts finding.[116]

The services the foster care worker provides or arranges for are the reasonable efforts the State makes to reunite the child and family and may include:

- Search for absent parent or other relatives.
- 24 hour emergency caretaker.
- Homemaker.
- Day care.
- Crisis or family counseling.
- Emergency shelter.
- Emergency financial assistance.
- Respite care.
- Families First of Michigan.
- Home-based family services.
- Self-help groups.
- Parenting classes.
- Services to unmarried parents.
- Mental health services.
- Drug and alcohol abuse counseling.
- Vocational/job training reports.[117]

This brief overview of the *Children's Protective Services Manual* and the *Children's Foster Care Manual* shows why advocates must become familiar with them. Failing to do so can be detrimental to the child and his or her family, no matter who the advocate represents.

Conclusion

The court's decision in *Rood* has clarified Michigan's reasonable efforts requirements. The standard the court set – comply with federal statutes and regulations, comply with state statutes and court rules, and comply with the procedures set out in the Children's Protective Services Manual and the Children's Foster Care Manual – now provide reference sources for advocates, judges, child protective services workers, and foster care workers to determine if the State has made the required reasonable efforts for the children who come into Michigan's child protection system.

Knowing what all must do will help all involved in child protective proceedings to work together to further the wellbeing and safety of the children.

About the Author

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Endnotes

1 Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272 (codified as amended at 42 U.S.C. § 671 (2006)). At that time, 42 U.S.C. § 671(a)(15) provided: "effective October 1, 1983, provides that, in each case, reasonable efforts will be made

(A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and

(B) to make it possible for the child to return to his home . . . ."

2 42 U.S.C. § 671(a)(15) (2006). The current statute provides as follows:

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement) and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code[181], if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

(i) a permanency hearing (as described in section 475(5)(C)), which considers in-State and out-of-State permanent placement options for the child, shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements may be made concurrently with reasonable efforts of the type described in subparagraph (B); . . . .

3 503 U.S. 347 (1992).

4 *Id.* at 350.

5 *Id.*

6 In re Rood, 763 N.W.2d 587 (Mich. 2009).

7 *Id.* at 598 (per Corrigan, J., Kelly, J., and Markman, J.), 615 (per Cavanagh, J. concurring in part). Justice Maura D. Corrigan wrote the lead opinion, with Chief Justice Marilyn J. Kelly and Justice Stephen J. Markman concurring. Justice Michael F. Cavanagh wrote an opinion concurring in part with the lead opinion. Justice Robert P. Young, Jr. wrote an opinion concurring in part with the lead opinion. Justice Elizabeth A. Weaver concurred only in the lead opinion's result, and concurred in part with Justice Young.

8 *Id.* at 606, 615 n.2 (Cavanagh, J. concurring in part).

9 In re Fried, 702 N.W.2d 192, 197 (Mich. Ct. App. 2005) (the State "is required to make reasonable efforts to rectify the conditions that caused the child's removal by *adopting a service plan*.").

10 That counter-argument isn't exactly accurate. While the United States Supreme Court in Suter v Artist M,

503 U.S. 347, 350 (1992), held that a parent could not bring a later, separate civil rights claim against a state for not making reasonable efforts to reunify parent and child, the Court said nothing about a challenge to the state's efforts brought in the termination proceedings themselves. Justice Young made this argument in his separate concurring opinion. Rood, 763 N.W.2d at 617 (Young, J. concurring in part).

11 Rood, 763 N.W.2d at 606, 615 n.2 (Cavanagh, J., concurring in part).

12 *Id.* at 598, 615 (Cavanagh, J., concurring in part).

13 *See id.* at 606, 616 n.2 (Cavanagh, J., concurring in part).

14 The Michigan Court of Appeals agreed, and it reversed the order terminating Donald Rood's parental rights. In re Rood, No. 280597 (Mich. Ct. App. June 12, 2008), available at http://coa.courts.mi.gov/documents/OPINIONS/FINAL/COA/20080612_C280597_36_280597.OPN.PDF last visited April 29, 2009. The State appealed to the Michigan Supreme Court, and the Michigan Supreme Court affirmed.

15 Rood, 763 N.W.2d at 590.

16 *Id.* at 590.

17 *Id.* at 591.

18 *Id.*

19 *Id.* at 606-607.

20 *Id.* at 590.

21 *Id.* at 591.

22 *Id.* at 590.

23 *Id.* at 591.

24 *Id.* at 609.

25 *Id.* at 589, 607-08.

26 *Id.* at 598-600, 601-03, 614, 615 (Cavanagh, J., concurring in part), 616 (Young, J., concurring in part) ("As a result of the lack of adequate notice, respondent was clearly deprived of *numerous statutorily required services* to ensure that he could properly parent his child." (emphasis added)). Justice Weaver agreed only with the result. *Id.* at 615 (Weaver, J., concurring in part.)

27 *Id.* at 606, 614, 615 (Cavanagh, J., concurring in part) ("I also agree that, in Michigan, the statutes, the court rules, DHS policy, and federal laws all set forth procedures that help ensure adequate due process protection for parents.')

28 *Id.* at 614 (Cavanagh, J. concurring in part).

29 *Id.* at 602 (citing Mich. Comp. Laws Ann. § 712A.19a(2) (West Supp. 2009)).

30 *Id.* at 599 (citing Mich. Comp. Laws Ann. § 712A.2(b)(1) (West Supp. 2009).

31 *Id.* (citing Mich. Comp. Laws Ann. § 712A.19(5)(c) (West Supp. 2009); Mich. Comp. Laws Ann. § 712A.19a(4)(c) (West Supp. 2009); Mich. Comp. Laws Ann. § 712A.19b(2)(c) (West Supp. 2009); Mich. Ct. R. 3.921(B)(1)(a) and (d); Mich. Ct. R. 3.921(2)(c); Mich. Ct. R. 3.921(3)).

32 *Id.* (citing Mich. Ct. R. 3.965(B)(1)).

33 *Id.* (citing Mich. Comp. Laws Ann. § 722.954a(2) (West 2002); Mich. Ct. R. 3.965(E); Mich. Ct. R. 3.965(B)(13).

34 *Id.* at 600 (citing Mich. Comp. Laws Ann. § 712A.13a(B)(a) (West Supp. 2009); Mich. Comp. Laws Ann. § 712A.18f(2) and (4) (West 2002); Mich. Ct. R. 3.965(E)(1)).

35 *Id.* (citing Mich. Comp. Laws Ann. § 712A.18f(1) (West 2002); Mich. Ct. R 3.965(D)(1)).

36 *Id.* (citing Mich. Comp. Laws Ann. § 712A.18f(3) and (4) (West 2002)} (emphasis added).

37 *Id.* at 601(citing Mich. Comp. Laws Ann. § 712A.18f(5) (West 2002)).

38 *Id.* at 601-02 (citing Mich. Comp. Laws Ann. § 712A.19(3) (West Supp. 2009)); Mich. Ct. R. 3.966(A)(2); Mich. Ct. R. 3.975(C)).

39 *Id.* at 601 (citing Mich. Comp. Laws Ann. § 712A.19(6) and (7) (West Supp. 2009)).

40 *Id.* at 602 (citing Mich. Comp. Laws Ann. § 712A.19a(7)(a)(West Supp. 2009); Mich. Ct. R. 3.973(F); Mich. Ct. R. 3.975(A), (F), and (G).

41 *Id.* (citing Mich. Comp. Laws Ann. § 712A.19a(1) (West Supp. 2009), Mich. Ct. R. 3.976(B)(2)).

42 *Id.* (citing Mich. Comp. Laws Ann. § 712A.19a(3) (West Supp. 2009)).

43 *Id.* (citing Mich. Comp. Laws Ann. § 712A.19a(5) (West Supp. 2009)).

44 *Id.* (citing Mich. Comp. Laws Ann. § 712A.19a(5)(West Supp. 2009)).

45 Mich. Ct. R. 3.975 (F)(1)(a). Even though the court did not specifically mention this court rule, its holding is broad enough to include all of the court rules that apply in child protective proceedings.

46 *See* Mich. Ct. R 3.965(D)(1)

47 Mich. Ct. R. 3.976(A).

48 Mich. Ct. R. 3.976 (E).

49 *See supra* n. 99 and accompanying text.

50 *Id.* at 604.

51 *Id.* (quoting 42 U.S.C. § 671(a)(15)(b) (2006)).

52 *Id.* (citing 42 U.S.C. § 675(1)(B) (2006 & Supp 2009); 42 U.S.C. § 671(a)(16)(2006)).

53 *Id.* at 605 (citing 45 C.F.R. § 1356.21(g)(1), (4) (2008)).

54 *Id.* (citing 45 CFR § 1356.21(b)(2008).

55 *Id.* (citing 45 CFR § 1356.21(g) (2008); Mich. Comp. Laws Ann. §§ 722.111 to 711.128 (West 2002 & West Supp. 2009); cf. Mich. Comp. Laws Ann. § 712A.13a(8) (West Supp. 2009)).

56 While Justice Cavanagh did not expressly state that the State must follow its policies set out in these manuals, Justice Cavanagh agreed that the DHS policies, along with Michigan statutes and court rules, and federal statutes and regulations set forth procedures "that help ensure adequate due process protection for parents." Rood, 763 N.W.2d at 615 (Cavanagh, J., concurring in part). If the DHS policies help ensure adequate due process, the State should be complying with them.

57 State of Michigan, Department of Human Services, Children's Foster Care Manual [cited as CFF], available at http://www.mfia.state.mi.us/olmweb/ex/cff/cff.pdf, last accessed April 30, 2009. State of Michigan, Department of Human Services, Children's Protective Services Manual [cited as CFP], available at http://www.mfia.state.mi.us/olmweb/ex/cfp/cfp.pdf , last accessed April 30, 2009.

58 Rood, 763 N.W.2d at 600 (citing CFF 722-6 at 1).

59 *Id.* at 600-01 (citing CFF 722-6 at 2-3).

60 *Id.* at 601 (citing CFF 722-6 at 5-6).

61 *Id.* (citing CFF 722-6 at 5-6).

62 *Id.* (citing CFF 722-6 at 7).

63 *Id.* at 602 (citing CFF 722-7 at 2).

64 *Id.* (citing CFF 722-7 at 2).

65 *Id.* (citing CFF 722.8a at 1).

66 *Id.* at 606.

67 *Id.* at 590.

68 *Id.* at 591.

69 *Id.* at 606. This violated Mich. Comp. Laws Ann. § 712A.19a(2) (West Supp. 2009).

70 *Id.* This violated Mich. Comp. Laws Ann. § 712A.19(5)(c) (West Supp. 2009); Mich. Comp. Laws Ann. § 712A.19a(4)(c) (West Supp. 2009); Mich. Comp. Laws Ann. § 712A.19b(2)(c) (West Supp. 2009); Mich. Ct. R. 3.921(B)(1)(a) and (d); Mich. Ct. R. 3.921(2)(c); Mich. Ct. R. 3.921(3).

71 *Id.* at 590.

72 In fact, the foster care worker testified at the termination trial that she would have ordered a home study had she had earlier contact with Mr. Rood. *Id.* at 607, n.49. This violated CFF 722.8a at 1.

73 *Id.* at 591. This violated CFF 722-6 at 1-3.

74 *Id.* at 606. This violated Mich. Comp. Laws Ann. § 722.954a(2) (West 2002), Mich. Ct. R. 3.965(E), and CFF 722-6 at 1.

75 *Id.* at 591. This violated Mich. Ct. R. 3.965(E).

76 *Id.* at 606. This violated Mich. Ct. R. 3.965(B)(1).

77 *Id.* at 591. This violated 42 U.S.C. § 675(1)(B) (2006 & Supp. 2009); 42 U.S.C. § 671(a)(16) (2006), 45 CFR § 1356.21(g)(1), (4) (2008), and CFF 722-6 at 1.

78 *Id.* at 606-07.

79 *Id.* at 607.

80 *Id.*.

81 *Id.* This violated CFF 722-6 at 5-6.

82 *Id.* at 590.

83 *Id.*

84 *Id.* at 591.

85 *Id.* at 609.

86 "The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Mich. Comp. Laws Ann. § 712A.19b(3)(g)(West Supp. 2009).

87 "There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Mich. Comp. Laws Ann. § 712A.19b(3)(j)(West Supp. 2009).

88 Rood, 763 N.W.2d at 609.

89 *Id.*

90 *Id.* at 610.

91 Mich. Comp. Laws Ann. § 712A.19b(3)(g)(West Supp. 2009).

92 "There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Mich. Comp. Laws Ann. § 712A.19b(3)(j)(West Supp. 2009). Rood, 763 N.W.2d at 609, 612 n. 55.

93 Santosky v. Kramer, 455 U.S. 745, 753 (1982).

94 Rood, 763 N.W.2d at 609.

95 *Id.* at 612.

96 State of Michigan, Department of Human Services, Children's Protective Services Manual (2009), available at http://www.mfia.state.mi.us/olmweb/ex/cfp/cfp.pdf, last visited May 3, 2009.

97 State of Michigan, Department of Human Services, Children's Foster Care Manual (2009), available at http://www.mfia.state.mi.us/olmweb/ex/cff/cff.pdf , last visited May 3, 2009.

98 CFP 714-2; 715-2 at 1-2.

99 CFP 715-2 at 2. CPS workers must document the services they provided to prevent the child's removal from home. *Id.*

100 CFP 714-3 at 1.

101 CFP 711-6; CFP 712-1 to 712-9; CFP 713-1 to 713-13.

102 CFP 714-1 to 714-4.

103 CFP 715-2.

104 CFP 714-2 at 1.

105 *Id.*

106 CFP 715-4 at 1.

107 CFP 722-7 at 1.

108 CFF 722-7 at 1.

109 CFF 722-6 at 1.

110 *Id.* at 1, 3.

111 CFP 722-6; CFP 722-8. A sample copy of a Parent-Agency Treatment Plan and Service Agreement is available at http://www.mfia.state.mi.us/olmweb/ex/rff/67.pdf, last visited May 3, 2009.

112 CFP 722-6 at 5.

113 *Id.*

114 *Id*

115 *Id.* at 12.

116 *Id.* at 13.

117 *Id.* at 13.

Child Welfare and Children in the Education System:

Prioritizing the Need for Statewide Anti-bullying Policies

by Angelique Day, MSW and Suzanne Cross, PhD, ACSW, LMSW

"...I was bullied a lot, and often cried and hated going to school."
Undergraduate Student, Michigan State University
[a reflection on her experience in high school]

Abstract

This study was conducted to explore the responses of 380 students enrolled at Michigan State University who had experienced bullying in high school as victims, perpetrators, and witnesses. Findings included significant predictors of bullying behavior. For example, male students were more likely to bully than their female counterparts; and bystanders who witnessed bullying incidents were more likely to become both victims and/or perpetrators of bullying. The MSU students offered recommendations for policymakers to create anti-bullying legislation with enforcement guidelines and other methods of improving school culture to reduce future bullying incidents.

Introduction/Background

Across the State of Michigan, considerable academic, social and political attention has turned to the development of policies that promote human rights. Prevention of bullying and being harassed in school is one of the most important rights for children. The experience of being bullied has important psychosocial, behavioral, and health consequences with an immediate impact on school achievement and social development. There is also a potential for long-term negative effects that persist into adulthood (Fitzpatrick, Dulin & Piko, 2007). Bullying creates a climate of fear and disrespect for youth who are bullied. They are more likely to be depressed, lonely, anxious, experience low self-esteem, feel ill, and have suicidal ideations or, in some cases, commit suicide (HRSA, 2005). Previous researchers have reported that victimization does the most damage to those who felt isolated during high school (Newman, Holden, & Delville, 2004). The perpetrators of bullying behaviors are more likely than others to get into frequent fights, vandalize or steal property, drink alcohol, smoke, be truant from school, drop out of school, and carry a weapon (HRSA, 2005). Other characteristics of bullies include impulsiveness, lack of empathy, lack of conformity to rules, and positive attitudes toward violence (HRSA, 2005). The bystanders, both directly and indirectly involved, may suffer from emotional turmoil related to the bullying incidents they observed or heard about from their peers (Center for Mental Health in Schools at UCLA, 2008; NASW, 2003)

In Michigan, during the past four consecutive legislative cycles, bullying legislation has been introduced and received limited action in various committees, with all efforts ending in dead bills. In 2003, The Michigan Child Death Review Team investigated the deaths of three adolescents who were residents in the State of Michigan and had committed suicide as a direct result of significant struggles with bullying at their schools (MDHS, 2005). It is most unfortunate that the deaths of these young people were unable to have an impact and to prompt meaningful legislative action. Regrettably, bullying has not gained support for legislative action as has other

legislation targeted to increase the safety of Michigan's children. As of June 2007, 35 states have enacted laws that address harassment, intimidation and bullying at school. It is estimated 77 percent of the 38 million students enrolled in public schools across the county are protected under the jurisdiction of these state laws (Srabstein, Berkman, Pyntikova, 2008; Sutton, 2007). The question to be addressed is, "How prevalent does the occurrence of bullying have to be to warrant legislative attention in Michigan?"

This retrospective study was conducted to investigate the prevalence of bullying during high school among a select group of undergraduate students enrolled at Michigan State University. Also, the extent of implementation of anti-bullying policies and perceived deterrent of bullying behavior as a result of these policies were explored. The responses from students included earnest recommendations for policymakers as well as administrators and other school personnel as to how to decrease bullying behaviors in high schools.

Methods

Sample

The sample for the study included 380 undergraduate college students recruited from nine social science general education courses offered at Michigan State University (MSU). Not all students who participated in the study may have graduated from high schools located in Michigan, and it is likely some would be described as out-of-state students. The MSU institutional review board approved the study for the academic year of 2007-2008. The data were collected at the beginning of the class period for each participating course within a three-week timeframe in the fall semester of the 2007. Consent forms and the survey instruments were disseminated at the time of data collection. The students participated in the study voluntarily, and informed consent was assumed by the return of the surveys. Of the subject sample, 66 percent were female, and 78 percent were White. The racial/ethnic breakdown of the non-white students included African American (10%), Latino (5%), Asian (3%), American Indian (2%), and other (2%). Sixty-three percent of the students who participated in the study had graduated from high school less than two years prior to participation in the study. See Tables 1 and 3 for more detailed information on sample characteristics of victims and perpetrators of bullying behavior.

Measures

The survey instrument contained 19 questions designed to elicit both quantitative (multiple choice) and qualitative (open-ended) responses. The survey was self-administered, with a timeframe of ten to fifteen minutes for completion. The instrument was designed to assess each student's experiences as a victim of bullying, as a witness to a bullying incident, and/or in the role of the perpetrator of bullying in high school. Prior to completion of the survey questions, the request was made for students to first consider the definition of bullying. Bullying was defined as "the attempt of one individual to gain power and control over the life of another. A person is being bullied when they are exposed, repeatedly, and over time, to negative actions on the part of one or more persons" (Solberg & Olweus, 2003). The responses were primarily categorical, and the questions were taken from standardized instruments that were implemented in prior studies to assess bullying and victimization among adolescent populations (Solberg & Olweus, 2003). The questions required the participants to respond to the frequency and types of bullying they experienced and/or witnessed. Also, they were asked where bullying most frequently occurred during the school day and if they told anyone of the bullying incidents. Next, they were asked if action was taken as a result of informing another individual of the incidents. Lastly, the students were asked if the high schools they attended had adopted any formal anti-bullying policies.

Analysis

SPSS statistical software was used to analyze the data. Frequencies and descriptive statistics were collected for each of the major groups of students impacted by bullying – the victims, the perpetrators, and the bystanders. Due to inconsistent patterns of responses in the dataset around the questions, "Did you experience bullying in high school?" and "What kinds of bullying did you experience in high school?" the first question was dismissed from the analysis, and the responses from the second question were used to determine which participants were victims of bullying in high school. Because the responses were nominal in nature, Pearson's Chi Square tests were used to explore relationships between participant characteristics on

victimization, perpetration, and the witnessing of bullying incidents. Effect sizes were calculated using Cramer's V to give a more concrete impression of the statistically significant results (Cohen, 1994).

Qualitative data from the surveys were entered verbatim into a Microsoft Word program. A team of researchers independently reviewed the collective set of responses and coded the document for themes. The team then met to utilize the constant comparative method for consensus on the emergence of themes. This method improved the integrity of the data by increasing internal reliability of the findings (Barbour, 2008).

Limitations of the Study Design

One limitation of the present data is the retrospective reporting of the experiences of victimization, perpetration, and witnessing of bullying incidents. As such, the report may reflect differences in perceptions rather than actual differences in bullying experiences. Newman et al. (2004) argue, however, that autobiographical memories may be reasonably accurate and stable. Future research may include those students currently in high school who are experiencing victimization, or students who are in the role of perpetrators or bystanders.

Results

In addition to collecting information on sample demographics, two major research questions were explored: (1) How prevalent is bullying among high school students? (2) What actions have high schools taken to combat bullying behavior during the school day?

Quantitative Findings

Table 1 presents the descriptive statistics for the sample, including gender, race/ethnicity, and the type and size of the high schools each student attended. Thirty-three percent of students in the study reported being victims of bullying during their high school years. This number is much larger than anticipated, as the literature review indicated bullying wanes in high school, with only nine percent reporting (Solberg & Olweus, 2003; Newman et al., 2005).

Those participants who indicated they were not bullied reported being impacted by bullying behavior in their high school environments. Eighty-seven percent of the students indicated that they witnessed one or more bullying incidents. When cross tabulations were run on the character data, none were significant. No particular demographic was associated with a student's increased risk of being a target for bullying in high school. This finding is contrary to the literature, which states minority students are more likely to be victimized (Fitzpatrick et al., 2007).

Table 2 depicts the relationship between witnessing a bullying incident and having the experience of being bullied. Those who were witnesses of bullying behavior were significantly more likely to be targets of bullying (X^2 (2) = 10.32; P< .01). The effect is small (V= .165) and explains only slightly more than 1 percent of the total variance.

Table 1. Sample Characteristics of Victims of Bullying Behavior

Characteristics	Total	Victims	X^2(df)	V	P <
	N (%)	N (%)			
Gender			5.26 (4) =	.083	.262
Male	126 (33)	47 (37)			
Females	252 (66)	76 (30)			
Race/Ethnicity			2.88 (2) =	.087	.237
White (non-Hispanic origin)	303 (78)	104 (34)			
Non-white	84 (22)	26 (31)			
Type of High School			2.53 (6) =	.058	.865
Public	335 (91)	108 (32)			
Private	35 (9)	12 (34)			
Size of High School			3.93 (6) =	.072	.686
Small (< 250)	25 (7)	11 (44)			
Medium (250-750)	104 (28)	36 (35)			
Large (> 750)	248 (66)	77 (31)			

Table 2. The Relationship between Bystanders and Victimization

Bystander/ Witness	Victim	
	Yes	No
Yes	118 (36)	213 (64)
No	6 (13)	42 (88)

X^2 (2) = 10.32; V = .165, P < .01

Table 3 presents the descriptive statistics (frequencies and percentages) for the sample of students who reported that they were perpetrators of bullying behavior in high school. Cross tabulations were run on the character data to find there were certain characteristics that were associated with being a perpetrator of bullying behavior. Males were more likely to bully than females (X^2 (2) = 53.02; P< .001), and students attending private schools were more likely to bully their peers than their counterparts attending public schools (X^2(3) =11.92; P< .01). The effect size of gender on perpetrating bullying behavior is medium (V= .374), accounting for more than 9 percent of the total variance. The effect size of the type of school students attend on perpetrating bullying behavior is small (V= .117), accounting for slightly more than 1 percent of the total variance.

Table 4 depicts the relationship between witnessing a bullying incident and subsequent perpetration of a bullying incident. Those who were witnesses of bullying behavior were significantly more likely to be perpetrators (X^2 (1) = 5.70; P< .02). The effect is small (V= .112) and explains only slightly more than 1 percent of the total variance.

Table 4. The Relationship between Bystanders and Perpetrators

Bystander/Witness	Perpetrator	
	Yes	No
Yes	87 (26)	245 (74)
No	5 (10)	43 (90)

X^2 (1) = 5.70; V= .112; P< .02

Forty-one percent of the students reported their high schools had formal anti-bullying policies in place, 17 percent had no such policies in place, and an additional 41 percent were unaware as to whether their schools had a policy or not. When students were asked if they told anyone at school about either witnessing or experiencing a bullying incident that occurred in the school environment, 43 percent reported they told friends, followed by a parent or guardian (20%), and/or siblings (12%). Only five percent reported that they were comfortable talking to an adult at school about an incident they witnessed or experienced. Twenty percent of students chose not to report an incident. When the students were asked if anything was done as a result of telling someone about the bullying incident, in 11 percent of cases, an action was taken to stop the bullying; in 14 percent of the cases, an action was taken, but the bullying persisted; in six percent of the cases, the intervention used caused the bullying to worsen, and in 41 percent of cases no action was taken to stop the bullying.

Table 3. Sample Characteristics of Perpetrators of Bullying Behavior

Characteristics	Total	Bully	X^2(df)	V	P <
	N (%)	N (%)			
Gender			53.02 (2) =	.374	.000*
Male	126 (33)	58 (46)			
Females	253 (66)	33 (13)			
Race/Ethnicity			.198 (1) =	.023	.656
White (non-Hispanic origin)	304 (77)	75 (25)			
Non-white	93 (23)	23 (25)			
Type of High School			11.92 (3) =	.117	.008*
Public	336 (91)	77 (23)			
Private	35 (9)	9 (26)			
Size of High School			4.43 (3) =	.108	.219
Small (< 250)	25 (7)	10 (40)			
Medium (250-750)	104 (28)	24 (23)			
Large (> 250)	249 (66)	57 (23)			

Qualitative Findings

Students responded to the following open-ended question, "What could your school have done to prevent/reduce bullying in your high school?" Three main themes emerged. (1) The need for the development of new anti-bullying policies and/or the enforcement of existing policies. (2) The development of innovative programs to prevent bullying. (3) Other types of interventions to be utilized while legally mandated anti-bullying policies are in development.

The need for the development of new anti-bullying policies and/or the enforcement of existing ones

Students offered the following suggestions related to policy development:

> "Create an anti-teasing policy [including anti-discrimination & anti-bullying policies] because the bullying I witnessed usually wasn't physical – it was mostly verbal – jokes about people, etc."

> "[For schools that had policies, they could have] been more assertive with [the implementation of] the policies."

> "I guess they could have punished the bullies more. Our school did not have an official anti-bully policy… If you want[ed] the bullying to stop, [you had to] fight back [yourself]."

The development of innovative programs to prevent bullying

Students offered the following recommendations on programs they believed would have an impact on bullying.

> "My school implemented a peer mediation program that I believed helped take the edge off bullying."

> "Get even more people involved in the Safe School Ambassador Program, which was a program that contributed to decreasing the amount of bullying in high schools. If you don't already know about the program, I highly suggest checking it out, it's nationally used."

> "Positive Peer Intervention [similar to peer mediation and restorative justice program models]."

> "There was really no program or form of advocacy about bullying when I was there [in high school]. So the implementation of some sort of program, assembly probably would've made a difference because I know there were others that had it far worse than me."

Other types of interventions to be utilized while legally mandated anti-bullying policies are in development

"Other" student recommendations included the following:

> "Created a pressure free environment. Often when I witnessed bullying it was a chain [reaction], kids trying to act tough to impress or make friends [by] laugh[ing] at another's expense."

> "They could have made a more positive experience by promoting diversity."

> "Since my school was so large they could have placed more adult administrators throughout the building during busy times, like breaks between classes [having hall monitors], and lunch [including presence in the cafeteria]."

> "Actually paying more attention to what was going on – they seemed too preoccupied giving out disciplinary action for other things like dress code or tardiness and ignored bullying."

> "Maybe make us wear uniforms so people weren't teased about their clothes."

> "Teachers should be encouraged to step in and take whatever action is necessary to stop and prevent bulling in schools."

Discussion

Based on this retrospective study, a significant proportion of adolescents are victims, perpetrators, and bystanders of bullying incidents at some point in high school. This subject sample presented no gender differences in one's likelihood to become a target of bullying. This null effect is consistent with prior research (Newman et al., 2004). Also consistent with the literature reviewed, this study found that males were more likely to be perpetrators of bullying behavior than their female counterparts (HRSA, 2005). Unique to this study were the findings that bystanders who witnessed bullying incidents were more likely to become both victims and perpetrators of bullying behavior then students who never witnessed a bullying incident.

Based on the findings of this study, it is clear that the development of anti-bullying policies is warranted not only for the state of Michigan, but across the nation. It is critical to pay attention not only to the victims of bullying behavior, but also to the needs of adolescents who abuse others to gain attention and power. The vast majority of students in school who are not victims or perpetrators of bullying, but stand on the sidelines as bystanders, need direction as to how they should react as they witness these incidents. The programs specifically identified by the students in this study as critical to the reduction of bullying in their schools included peer mediation[1]/restorative justice programs (Morrison, 2002) and the Safe School Ambassador Program.[2] They also recommended policies be implemented in their schools that include counseling services for the victims of bullying. All these programs have one commonality: the emphasis on the need to build a sense of community among students and school personnel. This community would enhance positive connections at school – shifting the school climate toward respect and consideration and away from peer to peer abuse. In addition, it would foster a rich environment to build relationships for the students to feel comfortable with school personnel. Examples of student responses which highlight their concerns in the reporting of incidences include:

> "Nothing can be done if no one speaks out about the bullying situation. As much as we may want action to take place. It all starts with the student and whether or not they are willing to talk or speak out about it."

> "If the bullying isn't reported then they can't do anything about it. Kids aren't going to report bullying if they don't want to or feel uncomfortable doing so."

> "[Reporting should] be more confidential. [It's] easier to say what happened without being named."

It is imperative that school officials react promptly to reported incidents of bullying. If actions are not taken by school personnel, students will have no incentive to report, and may be inclined to take the matter into their own hands. Student actions may include participating in physical confrontations, avoiding school attendance, or self-harm. The following quotes depict the concerns and experiences students have faced with bullying in high school:

> "…I believe often time[s], school officials turned their heads to bullying."

> "…Our school did not have an official anti-bully policy… If you want[ed] the bullying to stop, [you had to] fight back [yourself]."

> "…I did however go to a private catholic middle school and I was bullied a lot, and often cried and hated going to school."

Lessons learned: What hasn't worked?

Policies that have defined who victims are have caused several problems for lawmakers in the past, dividing political parties that argue over which victims get special rights over other victims. This issue specifically impacted the anti-bullying bills that were stalled in the State of Michigan Senate during the 2007-2008 legislative cycle. Schools that have struggled to implement anti-bullying policies in other states shared the following pitfalls: lack of time, lack of administrative support at both the school and district levels, and inadequate training (Brewster & Railsback, 2001).

Best practices: What can we learn from other states?

Of the 35 states with anti-bullying policies cited by Srabstein et al. (2008), only 16 of the statutes were perceived to have been effective in reducing bullying in their respective states. These sixteen exemplary policies, including two that have been implemented in the Midwestern states of Ohio and Indiana, share the following essential components: They were written in a comprehensive manner (Riese, 2007; Bully Police, 2008). The term "bullying" was used in the text of the policy, and included definitions of bullying and harassment. The laws were clearly cited as anti-bullying laws, not as school safety laws. There was not any major emphasis on defining victims. The statutes include recommendations for school districts in regard to what is required for a model policy. The laws all required prevention programs as well as anti-bullying training and education for students and staff, and legislators earmarked funds that schools drew down to implement them. All of the laws included a due date for the model policy, when the schools needed to have their policies in place, and when the anti-bullying programs were mandated to go into effect. The policies included protections against reprisal, retaliation or false accusations. They included protections for school districts against lawsuits upon compliance with policies. Many of the policies included accountability reporting measures that the districts made to either lawmakers or the State Education Superintendent, and consequences were assigned to schools/districts that did not comply with the law. Superior statutes required mandatory posting and/or notification of policies and reporting procedures for students and parents at the district level.[3] It is recommended that Michigan policymakers review these exemplary policies and incorporate the valuable and effective aspects into the developed of anti-bullying policies to become law. Two new bullying bills have been recently introduced in the Michigan state legislature, one in each respective chamber. SB 275, "Matt's safe school law," was introduced in the Senate on March 3, 2009 and is now sitting in the Senate Education Committee, and HB 4580 was introduced in the House on March 12, 2009 and was referred to the House Education Committee. Both bills are written in identical language and share bipartisan support. In their current form, neither bill includes comprehensive language as suggested by the literature. For example, these policies do not include language that would protect districts against reprisal, retaliation or false accusations; nor do they protect the districts from lawsuits that may be brought as a result of a school's compliance to the policies.

Conclusion

Schools in Michigan have typically approached the bullying problem by utilizing zero tolerance policies, which were specifically developed to address the physical safety of students inside school walls. Issues of bullying are broader than the limited definition of physical safety. The results of this study substantiate the need for the State of Michigan to give serious consideration to a more effective approach to this serious social phenomenon. The focus of anti-bullying policies ought to incorporate not only consequences for those who bully but prevention of all types of incidents. Michigan should strive to eliminate the need to maintain preventable deaths associated with bullying and harassment as categories depicted in the Child Death Review Index (MDHS, 2005). If students are expected to learn and achieve high standards, they must be afforded opportunities to attend school in a safe learning environment without the threat of physical danger or emotional abuse. ◎

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References

Barbour, R. (2008). *Introducing Qualitative research*. Thousand Oaks, CA: Sage Publications.

Brewster, C. & Railsback, J. (2001). *School Wide Prevention of Bullying.* Northwest Regional Education Laboratory.

Center for Mental Health in Schools at UCLA (2008). *Conduct and behavior problems related to school aged youth*. Los Angeles, CA: Author. Retrieved 1/8/09 from smhp.psych.ucla.edu

Cohen, J. (1994). The earth is round (P<.05). *American Psychologist, 49* (12). 997-1003.

Fitzpatrick, K.M., Dulin, A.J., & Piko, B.F. (2007). Not just pushing and shoving: School bullying among African American Adolescents. *Journal of School Health, 77* (1). 16-22.

Health Resources and Services Administration (2005). What we know About Bullying. *Stop Bullying Now*. Retrieved 8/22/07 from www.stopbullyingnow.hrsa.gov

Michigan Department of Human Services (2005) Child Death Review Report. Retrieved 12/29/08 from http://www.michigan.gov/documents/dhs/DHS-Child-Death-Report-Fifth-Annual-Sec6-10_176865_7.pdf

Morrison, B. (2002). Restorative Justice and School Violence: Building Theory and Practice. Restorative Practices E Forum. Retrieved 1/1/09 at http://www.iirp.org/pdf/morrison_bullying.pdf.

Neuman, M.L., Holden, J.W., & Delville, Y. (2005). Isolation and the stress of being bullied. *Journal of Adolescence, 28* (3). 343-357.

Riese, J. (2007, Summer). Pennsylvania takes a stand against bullying. *The New Social Worker*. 26-28.

Solberg, M.E. & Olweus, D. (2003). Prevalence estimation of school bullying with the Olweus Bully/Victim Questionnaire. *Aggressive Behavior, 29*. 239-268.

Sutton, A. (2007). Clearer antibullying policies needed to address children's health. Retrieved 12/29/08 from http://www.cfah.org/hbns/getDocument.cfm?documentID=1626

Srabstein JC, Berkman BE, & Pyntikova E. (2008). Antibullying legislation: A public health perspective. *Journal of Adolescent Health, 42* (1), 11-20.

Endnotes

1 http://www.studygs.net/peermed.htm

2 http://www.safeschoolambassadors.org/

3 http://www.bullypolice.org/grade.html

Therapeutic Jurisprudence in Juvenile Drug Courts

by Emily Stachowicz

Juvenile drug courts address substance abuse problems among the youth population by combining intensive treatment with judicial authority. A juvenile drug court (JDC) is made up of a coalition of judges, prosecutors, defenders, treatment professionals, law enforcement officials and other members of the community who share an interest in curbing juvenile substance abuse.[1] JDCs use the structure of the court to provide positive therapeutic outcomes in juvenile drug offenders in an effort to ensure that the youth will go on to live a productive, substance abuse free, and meaningful life outside of the criminal justice system. In successfully treating a young person through the judicial system, it is important to understand how the system can provide therapeutic or anti-therapeutic outcomes. For a JDC to assess the needs of an individual, it is important to have a well informed, multidisciplinary team that can collaboratively work toward the goal of positive therapeutic outcomes. Two important members of a JDC team are the lawyer and the social worker. The lawyer advocates on behalf of the juvenile and works to ensure individual rights, while the social worker advocates for the juvenile's best interests and social justice. Specifically, the role of the social worker is important in the success of a JDC because she can utilize her discipline in providing research, resources, and education in forming a successful JDC. Accordingly, an attorney must expand her role to understand which methods and procedures produce positive therapeutic results for juveniles and their families.

Need for Change

The National War on Drugs began in 1971 in an effort by President Nixon to combat illegal drug use. The drug policies of the 1980s became increasingly severe due to the emergence of crack cocaine, resulting in high rates of arrest and prosecution of drug offenders.[2] In 1989, while the number of arrests for all crimes was increasing by twenty-eight percent, the number of arrests for drug offenses rose 126 percent.[3] The arrest, prosecution, and incarceration of drug offenders flooded the court and prison systems. Not only did increased substance abuse affect the criminal justice system, it also disrupted lives; broke up families; and devastated schools, neighborhoods, and communities.[4] Because drug offenders received no rehabilitative treatment, once re-released into society they would continue to abuse drugs and be arrested, resulting in higher recidivism rates among drug offenders. The traditional judicial model produced a "revolving door" syndrome for drug offenders because it addressed the symptoms, but not the underlying problem.[5]

In 1989, a Dale county court in Florida court developed a drug treatment court in an effort to reduce recidivism rates among drug offenders.[6] The goal of the drug court "was to reduce substance abuse and the criminal behavior that often accompanies substance abuse; to give participants the necessary tools to reclaim and rebuild their lives; and to become productive members of society."[7] The drug court offered a non-traditional approach to combat the "revolving door" syndrome by combining judicial authority with intensive treatment. As a result, the drug court movement swept the country and soon began receiving federal support.[8] Although these courts vary from jurisdiction to jurisdiction, the courts seek to engage drug offenders in comprehensive, enduring programs that integrate adjudication, substance abuse treatment, close supervision, and accountability of individuals. Drug court participants return regularly to the court room and receive direct interaction with the judge,

participate in individual and group counseling, receive sanctions and prizes and have access to educational and employment recourses, among other treatment and services.[9] Participants agree to participate in drug courts with the promise that successful completion will result in dropped or lowered charges, or an expunged record of arrest.[10]

Studies indicate that drug courts work; recidivism rates are lower among drug offenders and there are cost benefits of drug court programs. For example, a 2003 National Institute of Justice study indicated that drug court graduates had a 16.4 percent recidivism rate after one year, compared to a 43.5 percent recidivism rate for drug offending cases processed by traditional court methods.[11] Incarceration of drug using offenders costs between $20,000 and $50,000 per person, per year, while drug court programs costs, on average, between $1,500 and $11,000 annually for each participant.[12]

The success of drug court programs sparked the development of other problem solving courts, including mental health, domestic violence, and community courts.[13] The court systems began receiving cases that were social and psychological in nature, instead of more traditional cases, which include dispute resolution issues such as tort, property, and contract cases.[14] Problem solving courts apply an innovative approach that "seeks to use the authority of courts to address the underlying problems of individual litigants, the structural problems of the justice system, and the social problems of the communities."[15] Approaches include treatment services, judicial case monitoring, multi-disciplinary involvement and collaboration with community based and government organizations.[16]

As problem solving courts evolved, so too did the theory of therapeutic jurisprudence. The theory emerged in the 1980s in mental health law as a way in which to assess the effect of the legal system on the individual, family, and community.[17] The theory recognized that "[l]egal rules and the way they are applied are social forces that produce inevitable, and sometimes negative, consequences for the psychological well-being of those affected."[18] This perspective suggests that the psychological and mental health aspects of a law or legal process be examined in assessing its potential for success in achieving a certain goal.[19] Therapeutic jurisprudence encourages existing laws and procedures be examined for their actual effects as compared to their desired affects and proposes the consideration of social sciences before enacting laws to see how those fields have attained the results it purports to achieve.[20] This perspective also examines the extent to which rules, legal procedures, and the roles of lawyers and judges produce therapeutic or anti-therapeutic consequences for individuals involved in the legal process.[21] As a result of this theory, the country experienced a shift from a solely punitive and adversarial criminal justice system to one in which the court became a therapeutic agent with judicial goals of positive therapeutic outcomes.[22] The court system began to address the underlying problems and not simply the symptoms of problems. Therapeutic Jurisprudence has been recognized has the underlying theory behind the principles and methods utilized in problem solving courts today.[23]

Need for Juvenile Drug Courts

As adult drug courts emerged in the 1990s, the juvenile justice system recognized the need for juvenile drug treatment. The number of juvenile drug offense cases in 1995 was 145 percent greater than it was in 1991.[24] The success adult drug courts experienced in lowering recidivism rates encouraged juvenile justice policy makers to apply the practice of drug courts to combat the flooding of drug and alcohol offenses in juvenile court dockets.[25] Problem solving courts have similarities already inherent to traditional juvenile courts. The nature of the juvenile justice system is to rehabilitate the juvenile, protect the community from juvenile delinquents and to strengthen the family.[26] However, juvenile courts were unable to effectively meet the needs of juvenile substance abuse offenders. There were long treatment waiting lists, disjointed service delivery, lack of family engagement, and no offender input into the nature and extent of treatment.[27] Since the emergence of JDCs in the mid 1990s, there are approximately 475 juvenile drug court programs in existence today.[28]

Congressional Support

In 1994, Congress supported the drug court movement by enacting Title V of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-332, 108 Stat. 1796 (September 13, 1994). The purpose of the Act was to aid in the rehabilitation of

offenders, while holding them accountable for their crimes. In the Act, Congress authorized the Office of Justice Program (OJP) to award grants to states, state and local courts, units of local government, and Indian tribal governments to establish drug courts.[29] The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the OJP, which currently handles federal funding for JDCs. In 2007, the OJJDP entered into a partnership to implement the *Juvenile Drug Court/Reclaiming Futures Program*.[30] The goal of the program is to build the capacity of states, state and local courts, units of local government, and Indian tribal governments to develop and establish JDCs as adopted in the *Reclaiming Futures Model* for juvenile drug offenders. Applicants present descriptions of current or planned JDC programs in accordance with the guidelines offered in the Bureau of Justice Assistance's publication, *Juvenile Drug Courts: Strategies in Practices.* Applicants must also demonstrate how the *Reclaiming Futures Model* would enhance those goals.

The 2003 U.S. Department of Justice's publication, *Juvenile Drug Courts: Strategies in Practice* was prepared by the National Drug Court Institute and the National Council of Juvenile and Family Court Judges and outlines a framework for the planning, implementation, and operation of a JDC.[31] It includes sixteen strategies accompanied by recommendations for execution based on the results and experiences of JDCs. The strategies and recommendations are not regulatory, nor are they research based benchmarks; rather they are practices that guide juvenile drug courts and allow for flexibility as JDCs evolve.[32]

The *Reclaiming Futures Model* embodies three essential elements in forming JDCs: 1) design a system of care that coordinates services, 2) involve the community in creating new opportunities, and 3) improve treatment services for drug and alcohol use.[33] The model emphasizes the practice of screening and assessments of juvenile drug users and seeks to implement such practice by providing training and technical assistance juvenile drug court administers. The OJJDP believes the integration of JDCs and the *Reclaiming Futures Model* will enable communities to identify substance abusing youth, match them with appropriate treatment options, and deliver services through a coalition of providers working under the guidance of the court.[34]

What is a Juvenile Drug Court?

A juvenile drug court is a separate docket within the juvenile jurisdiction in which selected cases are handled by a designated judge. There is no uniform model and JDCs will vary from jurisdiction to jurisdiction. Most JDCs accept non-violent substance or substance related juvenile offenders if they are determined to have a substance abuse problem. An early and comprehensive intake assessment determines the eligibility of a possible participant. Juveniles can be recommended for the program by prosecutors, defenders, probation and any other treatment providers who believe the juvenile will be a good candidate. JDCs impose sanctions for noncompliance and provide incentives to recognized and encourage progress. JDCs also conduct regular drug testing in order to monitor the participants' adherence to the program.[35] JDCs use a post adjudicated approach to encourage the juvenile to successfully complete the program. After a juvenile is adjudicated, the JDC suspends the sentence while the offender completes the program. If the youth fails to complete the program, his or her punishment will be swift and certain since the sentence has been held.[36] Participants move at their own pace and assume greater responsibility and enjoy less restrictive requirements as the possibility of graduation approaches. If a participant violates, the judge will hold a hearing in which the offender's noncompliance is addressed and sanctioned. Sanctions include detention, stricter curfew, community service and increased drug testing. If a participant is doing well, the judge will award him or her with incentives. Such incentives include gift certificates, tokens, and praise in open court in front of other JDC participants.[37]

The juvenile court judge maintains a close oversight of each case through frequent status hearings with all parties involved. These status hearings consists of a team that includes representatives from treatment services, juvenile justice services, school and vocational programs, law enforcement, probation, prosecution and the defense. Together, this multidisciplinary team determines how best to address the substance abuse related problems of each individual youth and his or her family.[38] The number of JDC participants depends upon the resources available in the jurisdiction, which includes funding, staff, time and treatment options. The national average for the maximum participants

in a JDC is twenty, however, many JDC operate with lower participation rates.[39] The average time it takes to graduate from a program is nine to eighteen months.[40]

The goal of the juvenile drug court is to provide immediate intervention, treatment, and structure through ongoing, active oversight and monitoring by the juvenile drug court. It seeks to promote accountability of both juveniles and those who provide services to them. The juvenile court should provide juveniles with skills that will aid them in leading productive substance free and crime free lives, including skills that relate to their educational development, sense of self worth, and capacity to develop positive relationships in the community.[41]

Strengthening families is another goal the JDC should strive to achieve by improving the family's capacity to provide structure and guidance to their children.[42] Youth are still developing the cognitive, social and emotional skills necessary to lead productive lives. Their development is heavily influenced by family members, peers, schools, and community relationships. In order to effectively rehabilitate juvenile drug offenders, the drug court must shift its focus from a single participant to the entire family and provide expansive services and care.[43]

How to Operate a Juvenile Drug Court: Some Strategies from the Department of Justice

Collaborative Planning: Engage all stakeholders in creating an interdisciplinary, coordinated, and systematic approach to working with youth and their families.

The Department of Justice recommends the planning team to include the judge, court administrator, prosecutor, defense, the evaluator or specialist in management information systems, and representatives from probation, schools, social services, law enforcement, treatment providers, and other community based organizations. These members are essential in planning a juvenile drug court because they represent the interests of the youth, their families and community resources available for the success of the JDC. Also, the complexity of issues surrounding juvenile substance abuse requires a multidisciplinary approach so that all of the youth's needs are met. The planning team should be responsible for developing the policy and procedures of the program.[44]

Teamwork: develop and maintain an interdisciplinary, non-adversarial work team.

Teamwork is an essential strategy that should be adapted in developing and maintaining an interdisciplinary, non-adversarial work team in order to provide a seamless continuum of services.[45] Recommendations to achieve this include making teams that consist of a diverse and broad based group of community stakeholders and agencies and to encourage them to take a proactive position in representing their agency or organization's goals. The team members need to be available to dedicate their time and services to the JDC on a daily basis. The team members should also be flexible in delegating responsibilities among team members. The judge can assist in facilitating non-adversarial relationships by engaging all team members to actively be involved in the planning and operation of the juvenile drug court.[46]

Another recommendation to assist in building teamwork is for the court to provide interdisciplinary training among team members. Such training ensures that members share an understanding of the JDC's goals and each member's role in achieving those goals. Team members should be oriented to the philosophy, policies, and procedures of both the treatment and justice system components of the program. Some of the training topics included in the Department of Justice's publication are those of ethical duties, legal procedure, adolescent development, and treatment approaches. Team members are encouraged to attend local and national educational conferences in order to facilitate a broader understanding of the role of JDCs and of those who operate JDCs.[47]

Comprehensive Treatment Planning: tailor interventions to the complex and varied needs of youth and their families

Many juvenile drug court participants have additional problems such as mental health disorders and many lack the basic social and life skills necessary to function well at school and home.[48] Individual treatment should be narrowly tailored and include case management. A comprehensive assessment should take place at the beginning of each case in order to identify the youth's needs and gather information that will help in determining the best plan of action. This individualized, holistic

approach enhances the participant's performance and maximizes the effectiveness of the JDC. The team members and youth should understand that the plan may change as the case develops and there should be periodic reviews held at least every ninety days.[49]

Community Partnerships: build partnerships with community organizations to expand the range of opportunities available to youth and their families

Community Partnerships is another strategy important in developing a JDC. In many jurisdictions, community organizations offer an array of support services, recreational opportunities, and treatment and educational programs for youth and their families.[50] By incorporating these resources into individual interventions, JDCs are able to meet the vary needs of youths and families. Some resources include substance abuse assessments, treatment referral and monitoring, specialized treatment for gender and developmental levels, case management, faith based practices, and family and social services.[51] Indentifying and locating possible resources should be an ongoing task to ensure juveniles and their families are receiving the best available treatment.

The Continuing Need for Juvenile Drug Courts

In 2006, 2.2 million youths under the age of eighteen were arrested.[52] 196,700, or approximately nine percent of young persons arrested were arrested for drug abuse violations. The arrest rate of juveniles has declined since 1990, however the number of youths arrested for drug related crimes is nearly double the rate in 1990.[53] Although nine percent may not seem like a large portion of juveniles arrested for drug related crimes, the FBI's report can be misleading.[54] The FBI uses arrest statistics from across the country, but includes only the most serious charge for each arrest. This means that of the nine percent of young people arrested for drug related crimes, drug abuse was the most serious charge. There is an unknown number of additional arrests in 2006 that included a lesser offense of a drug related crime. The National Center on Addiction and Substance Abuse at Columbia University (CASA) suggest that four out of five teens in the juvenile justice system committed their crimes while under the influence of drugs or alcohol.[55] Juveniles who are drug offenders are also more likely to be repeat offenders.[56]

Youths engaged in substance abuse and those in the juvenile justice system are more likely than other youths to come from broken and troubled families; have been involved in child abuse and neglect; live in poor and crime and drug infested neighborhoods; and have dropped out of school.[57] This is evidence that there exists a need to provide better and more abundant treatment to juveniles. By the time a juvenile is arrested, the other systems – family, community, school, and government have failed them.[58] In 2000, of the 1.9 million juveniles with substance abuse related arrests, only 24,500 were given substance abuse treatment. Of those treated, 4,500 were treated through JDCs. Nearly eighty-five percent of youths treated for substance abuse problems also have a mental health disorder. Research shows that teens who received coordinated comprehensive services are more likely to stay out of trouble and abstain from drug and alcohol use. Studies show that treatment works; it can cut drug abuse in half, drastically decrease criminal activity, and significantly reduce arrests, particularly for young people.[59]

Are Juvenile Drug Courts Working?

Because JDCs are relatively new, there have been no comprehensive studies examining their efforts. Based on limited program data currently available, most JDCs report some success in achieving the principle goals of decreasing substance abuse and recidivism of drug offenders.[60] Combined studies for juvenile and adult drug courts suggest that recidivism rates for participants while in the program are substantially lower than would be anticipated if they had never entered the drug court.[61] Drug court programs are also proving to be cost effective. In September 2006, Northwest Professional Consortium, Inc. (NPC) conducted adult drug court outcome and cost evaluations in Barry and Kalamazoo Counties in Michigan. The studies showed a combined savings of almost one million dollars over a twenty-four month period.[62]

In 2003, a Montana study found that JDC graduates had fewer encounters with law enforcement compared to youth expelled from the program.[63] Some comparison can be made using the national percentage for adult drug court successful graduation rates, which ranges between twenty-seven percent and sixty-six percent.[64]

In 2005, Michigan reported the operation of fifteen JDCs; with a total of 503 juveniles, averaging fifteen or sixteen years of age.[65] After twelve months, 68.7 percent of juvenile participants were still in a JDC program.[66] Eighty-seven percent of juveniles reported an improvement in their educational level, suggesting they were able to stay in school and continue to the next grade.[67] Michigan's *Annual Report and Evaluation Summary* reported that 52.4 percent of discharged juvenile participants successfully graduated the program in 2006 and 2007.

Although JDC programs have seen some success in treating youths, there is evidence that JDC are not developing at a rate they once used to. Of the approximately 475 existing JDCs, less than ten percent were developed in the past two years.[68] As of December 2008, approximately one hundred JDC programs had reportedly suspended operation or planning efforts.[69] Because JDC strategies have not been thoroughly researched, it is hard to pinpoint any reason for the decline in JDC operation.[70] It is apparent, however, that juveniles are still engaging in drug use and abuse.

Juvenile Drug Courts as Therapeutic Agents

Applying a therapeutic jurisprudence theory, legal practitioners and scholars must determine if laws and legal procedures have a therapeutic or anti-therapeutic effect on individuals. This analysis requires a comprehensive study of both social sciences and the law. However, this multi-disciplinary approach requires that each profession have a better understanding of one another's roles and resources. Specifically, social workers have the ability to provide needed behavioral theory and community resources in developing positive therapeutic outcomes through JDCs. Legal professionals must also expand their traditional practice methods and embrace social science theories and practices in order participate in JDCs. The facilitation of practice development in both fields will improve JDCs and their ability to provide positive therapeutic outcomes.

Social Work Professionals

The theory of therapeutic jurisprudence "relies on the social sciences to guide its analysis of law."[71] As a social science, the study of social work can help guide JDCs in a successful path. The social work profession can assist in planning strategies that produce positive therapeutic outcomes on many levels, including planning, educating and researching. Social workers promote social justice and social change with and on behalf of clients.[72] "Clients" refers not only to individuals, but to families, groups, organizations, and communities.[73] It is important to understand that the social work profession expands beyond direct practice with a client. As a profession, social work includes community organizing, supervision, consultation, administration, advocacy, social and political action, policy development and implementation, education, and research evaluation. [74]

In treating individual youths in a JDC, it is important to understand the complex nature of substance abuse and addiction. One way in which to achieve this is to understand the system in which an individual survives. Human beings live within a variety of interrelated systems, including an individual's immediate family, extended family, peers, and community.[75] By examining the broad perspective of the system in which an individual survives, the social worker can determine treatment that would best address the problem. Social workers are in a position to advocate legal resolutions for the individual juvenile in fashioning positive therapeutic outcomes.[76]

Sociologically, social workers have a better understanding of how drug problems affect the community. With this understanding, social workers can pinpoint a target population in need of the assistance of a drug court program. "Fundamental to social work is attention to the environmental forces that create, contribute to, and address problems in living."[77] If social workers can identify that the community in which they work suffers from a high amount of substance abuse among juveniles, the social worker is in the position to bring the issue to the community. The social worker can advocate on behalf of the community to chance local policy to include implementation of a JDC or any other method that might serve to solve the problem. Social workers' understanding of the community and the specific problem also enables a social worker to recommend and recruit community resources that will aid in treating juveniles and their families. Forming community partnerships is important to a successful drug court program.

If a JDC produces anti-therapeutic outcomes, the social worker should adopt the position of advocating

for policy change by acting "as a voice for individuals who are likely to have negative experiences with the law."[78] If a JDC is not serving its purpose of treating those with substance abuse problems and reducing recidivism rates, the social worker should advocate changing the structure and policy of the drug court program. By conducting social science research that reflects the disparity between the goals of the JDC and the actual negative outcomes being produced, the social worker can bring the harmful effects of the law to the attention of policy makers and those who hold a stake in JDCs.

The future of JDCs will benefit from the role of the social worker as a researcher. The profession has long been involved in working with people who have substance abuse problems,[79] With their expansive knowledge of the nature of the problem and which methods work in solving the problem, social workers can help determine the best policies for JDCs. Because JDCs are a relatively new phenomenon, research is important in its evolution. Developing research will enable drug court teams to use evidence based practices that have been proven effective. The NASW encourages social work professionals and social work schools to put more focus on researching substance abuse, including its effects, methods of prevention and treatment, and the future of research in the area.[80]

Legal Professionals

Using the criminal justice system as a therapeutic agent in problem solving courts adjusts the roles of legal professionals in the courtroom. The judge, prosecution, and defense must shed their traditional roles and take on the task of facilitating the offender's recovery.[81] A judge must set aside his or her traditional role and become a mentor and advisor to individual participants and drug court team members.[82] The judge must become the leader of the treatment team and ensure that the program's goals are met. The judge must maintain close oversight of each case by holding frequent status meetings, often times on a weekly basis.[83] Traditional courtroom procedure is also adjusted in JDCs. Often judges will speak directly to participants in open drug court hearings and will award and admonish participants. The judge must form a personal relationship with the participant and demonstrate interest in each juvenile's accomplishments and sensitivity to his or her unique issues.[84] Because the JDC judge will become a constant in the juvenile's life, it is important that one particular judge is given oversight of the JDC and assumes the role for long periods of time. Without this constant parent-like figure, the juvenile may not receive proper motivation and fall behind in treatment. As an important figure in a JDC, the judge can play a major role in delivering positive therapeutic outcomes. However, if a judge is not qualified or does not receive recommendations from those qualified in therapeutic practices, he or she is capable of producing negative therapeutic responses from participants and their families.[85]

The prosecution and defense must put aside the adversarial nature of their relationship and focus on implementing procedures that will best suit the participant as therapeutic team members. These traditionally adversarial professionals must communicate and participate in status hearings, in which the specific facts of each individual is presented and discussed in a team setting. Another challenge defending lawyers must face is ensuring due process for their clients. In 1967, the Supreme Court guaranteed children the constitutional right to counsel in delinquency proceedings.[86] Thus, defenders have a duty to advocate for their client, but this can be lost in open drug court proceedings where evidence, privacy, and confidentiality may be lost. Enrollment in a drug court program may also waive procedural rights for juvenile delinquents.[87] So, while a treatment through a drug court program may be in the best interest of the youth, the youth may forgo some rights of due process.

Because legal actors in JDCs can influence therapeutic outcomes for participants, it is important that they have the capacity to do so. Judges and lawyers should understand the underlying theories used to treat participants. Lawyers must become familiar with how social service professions operate. Specifically, the training and theories that social workers rely on in their profession should be part of the JDC legal professional's training. In their capacity, social workers learn skills that are invaluable in their professional relationships with clients. For example, they learn empathetic interviewing, listening, and counseling skills.[88] Being able to communicate with a troubled youth will encourage the youth to be an honest and willing participant, providing positive therapeutic contact with legal authorities. Social work professionals also rely on social theories, such as the system theory, to assess an individual's issue.[89] Social

workers take into account the individual and his or her family and community, and also social, economic, racial, ethnic and religious factors affecting the client's life.[90] These factors lend understanding to the nature of substance abuse and how treatment should be formed. By adopting aspects of the social worker's broad, flexible, and multi-faceted profession role, a legal professional can become a competent member of the therapeutic team.

Not only should legal professionals receive training, but so should all members of the treatment team. The reasoning behind multidisciplinary teams is that no one member or profession has the expertise to solve a problem. Collaboration and team work in producing positive therapeutic outcomes relies on interactions among disciplines.[91] Having knowledge of each discipline and which role each play in the treatment process serves to strengthen effective decision making. Legal professionals should ensure that all team members understand the role of the court and how it serves as a treatment service, but that the court is also there to protect individual rights and ensure due process. As the overseer of the JDC, the judge has the responsibility and power to effectuate the multidisciplinary team. The judge can encourage positive interaction and proactive impute by all members and provide training opportunities. Interdisciplinary training topics can include ethics, legal processes, adolescent involvement, substance abuse, educational resources and due process.[92]

Conclusion

Although there may be little research on the success of JDCs, the national trend is to continue to use and implement JDC programs as adult drug courts have experienced success in the legal system. It is important to research and monitor existing programs in order for JDCs to practice evidence based methods. To become therapeutic agents, JDCs must strive to provide the best care and treatment for substance involved juveniles. Informed multidisciplinary teams must have an understanding of the problem and methods of effective treatment. Social workers can help form therapeutic legal methods by being proactive in the planning and monitoring of JDCs because they have a greater understanding of the sociology behind a community's substance abuse problem. A social worker's knowledge of substance abuse and youth behavior is also essential in fashioning appropriate treatment. As a social researcher, social workers can also work to develop successful treatment strategies as JDCs expand. Legal actors must assume non-traditional roles in participating in JDCs, but must be sure not to distract from the legal rights a juvenile has under the juvenile justice system. Legal actors can expand their roles to include methods by which social workers practice and should embrace social theories that provide understanding and insight behind the problem. By using all the resources available in a multidisciplinary team, JDCs will be able to produce positive therapeutic outcomes for juveniles and families involved in the legal system. ◎

Endnotes

1 U.S. Dept. of Justice, Office of Justice Programs, *Juvenile Drug Courts: Strategies in Practice.* Available at http://www.ncjrs.gov/pdffiles1/bja/197866.pdf (Last visited April 19, 2009) at 7. Hereinafter "Strategies."

2 Hon. Peggy Fulton & Hon. William G. Schma & Hon. John T.A. Rosenthal, *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 Notre Dame L. Rev. 101, 108 (Dec. 1988). Hereinafter "Fulton."

3 Lester Grinspoon & James B. Bakalar, *The War on Drugs – A Peaceful Proposal*. 330 The New Engl. J. Med. 357, 357-360 (1994).

4 Hon. Mary Muehlen Maring, *North Dakota Juvenile Drug Courts*. 82 N.D.L. Rev. 1397, 1398 (2006). Hereinafter "Maring."

5 Bruce J. Winick, *Therapeutic Jurisprudence and Problem Solving Courts.* 10 Fordham Urb. L.J. 1055, 1060 (2003). Hereinafter "Winick."

6 See Maring, *supra,* note 4, at 1398.

7 *Id.*

8 By 1995, seventy five drugs courts were established; by 2006 there was a reported 1,597 established drug courts, with an additional 438 being planned. *Id. at* 1401

Early studies indicated the success of drug courts in reducing recidivism rates. For example, early evaluations in Dale County, Florida revealed that drug court graduates had a 33 percent re-arrest rate, compared to a 48 percent re-arrest rate among the control group. *Id. at* 1400.

9 James L. Nolan, Jr., *Redefining Criminal Courts: Problem Solving and the Meaning of Justice.* 40 American L. Rev. 1541, 1542-1543 (Fall 2003). Hereinafter "Problem Solving."

10 *Id.*

11 *See* Maring, *supra,* note 4, at 1400.

12 Nat'l Ass'n of Drug Court Prof'l, *Facts of Drug Courts*, available at http://www.nadcp.org/whatis/ (last visited April 19, 2009).

13 *See* Problem Solving, *supra,* note 9 at 1542.

14 *See* Winick, *supra* note 5, at 1055.

15 *Id.*at 1545.

16 *Id.* at 1542.

17 Robert G. Madden & Raymie H. Wayne, *Social Work and the Law: A Therapeutic Jurisprudence Perspective*. 48 Soc. Work -July 338, 339 (2003). Hereinafter "Madden."

18 *See* Winick, *supra* note 5, at 1062-1063.

19 Fulton, *supra*, note 2 at 335

20 *Id.*

21 *See* Fulton, *supra*, note 2, at 4.

22 *Id.* at 5.

23 "As defined in a 2000 joint resolution by the Conference of Chief Justices and the Conference of State Court Administrators, problem solving courts "involve principles and methods grounded in Therapeutic Jurisprudence, including integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multi-disciplinary involvement, and collaboration with community based, and government organizations." *See* Problem Solving, *supra,* note 8 at 1542.

24 *See* Strategies, *supra*, note 1, at 6.

25 Caroline S. Cooper, *Adolescent Drug Users: the Justice System is Missing an Important Opportunity*. 47 Fam. Ct. Rev. 239, 245 (April 2009). Hereinafter "Cooper."

26 *See* Strategies, *supra*, note 1, at 6.

27 *Id.*

28 *See* Cooper, *supra,* note 25, at 245.

29 U.S. Dept. Of Justice. *Drug Court Discretionary Grant Program: FY 2009 Resource Guide for Drug Court Applicants.* Available at http://www.ojp.usdoj.gov/BJA/grant/09DCResource.pdf (Last visited April 19, 2009).

30 Partnership with the Department of Health and Human Services' Center for Substance Abuse Treatment (CSAT), and the Robert Wood Johnson Foundation. Hereinafter "Partnership."

31 *See* Strategies, *supra,* note 1.

32 *Id.*

33 http://www.ojjdp.ncjrs.gov/Programs/ProgSummary.asp?pi=44

34 *Id.*

35 The National Center on Addiction and Substance Abuse at Columbia University. *Criminal Neglect: Substance Abuse, Juvenile Justice and the Children Left Behind*. Available at http://www.casacolumbia.org/absolutenm/articlefiles/379-Criminal%20Neglect.pdf. (Last visited, April 19, 2009). Hereinafter "CASA."

36 *Id.* at 64.

37 *Id*. at 65

38 *See* Strategies, *supra* note 1, at 7.

39 *See* Cooper, *supra* note 25, at 245.

40 *See* Strategies, *supra* note 1, at 29.

41 *Id.* at 7.

42 *Id.*

43 *Id.* at 8.

44 *Id.* at 11.

45 *Id.* at 14.

46 *Id.*

47 *Id* at 14-16.

48 *Id* at 29.

49 *Id* at 29-31

50 *Id* at 26.

51 *Id* at 27.

52 Federal Bureau of Investigation. *Crime in the United States 2006*, [Table 38]. Available at http://www.fbi.gov/ucr/cius2006/data/table_38.html. (Last visited April 19, 2000). Hereinafter "FBI."

53 Between 1990 and 1997, the juvenile arrest rate increased 145%. That rate declined by 21% between 1997 and 2006, however, the 2006 arrest rate for drug abuse violations was almost double 1990 rate for drug abuse violations. (1990: 300 per 100,000 arrested; 2006: 600 per 100,000 arrested; ages 10-17). *See* FBI, *supra,* note 49.

54 *See* CASA, *supra,* note 35, at 15.

55 Four out of five juveniles were under the influence of alcohol or drugs while committing their crimes, test positive for drugs, are arrested for committing an alcohol or drug offense, admit having substance abuse problems or share some combination of these characteristics. *Id.*

56 *Id* at 23.

57 *Id.*

58 *Id* at *iii*.

59 *See* generally CASA, *supra,* note 35.

60 *Id* at 69.

61 *Id.*

62 *Specialized Court Programs*. Available at http://courts.michigan.gov/scao/services/tcs/spec.htm (Last visited April 19, 2009).

63 *See* CASA, *supra,* note 35 at 70.

64 United States Government Accountability Office, Report to Congressional Committees. *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes.* (February, 2005) Available at www.gao.gov/new/items/d05219.pdf. (Last visited April 19, 2009).

65 *See* note 62, *supra.*

66 *Id.*

67 *Id.*

68 *See* Cooper, *supra* note 25 at 245.

69 *Id.*

70 *Id.*

71 *See* Fulton, *supra* note 2, at 446.

72 National Association of Social Workers. *Code of Ethics*. Available at

http://www.socialworkers.org/pubs/code/code.asp. (Last visited April 19, 2009). Hereinafter "Code of Ethics."

73 *Id.*

74 *Id.*

75 One social theory that has shaped the social work profession is the General Systems theory developed by Ludwig Von Bertalanffy in the 1950s. As applied to social work, it is Social work came to the realization that one could not expect an individual to change his or her behavior if the individual's immediate and most intimate system, the family, remained static. Joseph Kozakiewicz, *Child Welfare Workers and Michigan's Family Court Legislation: The Relationship Between Policy and Practice,* Juvenile & Fam. Ct. J., Winter 2001, at 15.

76 See Madden, *supra,* note 17, at 342.

77 *See* Code of Ethics, *supra* note 72.

78 *See* Madden, *supra* note 17 at 342.

79 For example, social workers have helped to develop programs such as Alcoholics Anonymous; have helped to design inpatient detoxification programs; and apply youth oriented prevention and education programs in their practice. *See* National Association of Social Workers, *Substance Abuse*. Available at http://www.socialworkers.org/research/naswResearch/substanceAbuse/default.asp. (Last visited April 19, 2008).

80 The Southwest Interdisciplinary Research Consortium (SIRC) is to conduct multi-disciplinary community-based social work research on family and youth drug use prevention and services. *Id*.

81 *See* Fulton, *supra* note 2 at 27.

82 Nicole A. Kozdron, *Midwestern Juvenile Drug Courts: Analysis & Recommendations.* 84 Ind. L.J. 373, 389. (Winter 2009). Hereinafter "Kozdron."

83 *See* Strategies, supra note 1 at 7.

84 *Id.* at 20.

85 *See* Kozdron, *supra,* note 82, at 389.

86 *In re Gault*, 387 U.S. 1 (1967).

87 *See* Kozdron, *supra,* note 82, at 391

88 Jane Aiken & Stephen Wizner, *Law as Social Work*, 1 Wash. U. J.L & Pol'y 63-82 (2003).

89 *See* note 75 and accompanying text.

90 *See* Code of Ethics, *supra* note 72.

91 *See* Madden, *supra,* note 17, at 341.

92 *See* Strategies, *supra* note 1 at 21


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