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Editor's Note—Winter 2006

This issue of the Michigan Child Welfare Law Journal focuses on juvenile delinquency. In "Juveniles Incarcerated for Natural Life Within Adult Prisons: Public Opinion in Michigan" (Kubiak, Allen & King) the authors survey public opinion regarding the use of adult sentencing in juvenile cases. A perception exists that the general public favors adult sentencing of juveniles due to concerns that juveniles are committing increasingly violent offenses. The authors call into question the accuracy of this perception. The authors also challenge practitioners to consider the information provided in this article when advocating for individual clients and when advocating for changes to Michigan's current laws.

In "Youth Arrested for Domestic Assault Against their Parents: A Growing Phenomena in Family Violence" (Schuurman, Smith-Colton & Selby) the authors explore the increasingly common circumstance of juveniles assaulting their parents. The authors discuss this disturbing phenomenon in the context of domestic violence in general, but they focus on the unique circumstances that underlie this particular form of domestic violence. The authors stress that practitioners must understand the particular family circumstances that often underlie this behavior.

In "Restitution in Juvenile Proceedings: A Hypothetical and Analysis" (Miller) the author presents an overview of restitution in juvenile delinquency proceedings. The author presents a hypothetical fact pattern to discuss how a court might apply restitution principles to each involved juvenile. This article is particularly timely given our courts' increased focus on the concept of restorative justice and the use of alternative dispute resolution as mechanisms for addressing cases in which restitution is an issue.

Finally, this issue includes an interview with Hon. Susan L. Reck, Chief Judge of the Livingston County Probate Court. Judge Reck has served on the probate court since 1989. In this interview she discusses her philosophy of the juvenile court, describes how her court seeks to address juvenile matters, and reflects on some trends in juvenile justice that she has observed over the years. The editorial board appreciates Judge Reck's time in granting this interview. In future editions we will continue to present interviews with judges, administrators, and social service providers to present perspectives from the persons with whom practitioners most often interact.

Our next issue will cover dependency cases, but in the meantime you should be aware that the Michigan Supreme Court has amended a number of court rules relevant to practice in this area. The rule changes are effective January 1, 2007. You can review the full text of the amendments at the following website: *http://courts.michigan.gov/supremecourt/Resources*.

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 Law Journal* is of value to you.

Editorial and Review Board

Message from the Chair

I came back from the National Association of Counsel for Children's annual training conference energized and renewed. This was my second NACC national conference, and I'm always heartened to see all of those children's advocates gathered to exchange ideas. And I came back committed to giving foster youth a voice in their own futures.

Miriam Aroni Krinsky and Leslie Heimov of the Children's Law Center in Los Angeles, California, have founded a partner organization, Home at Last, whose mission "is to support outreach and educational efforts, both nationally and in targeted states, that encourage action on the recommendations of the Pew Commission on Children in Foster Care." *http://fostercarehomeatlast.org/* As part of this mission, they collected foster youth's "experiences, their feelings, and their hopes for the future . . . in a compelling new booklet of art and writing by youth from around the country. To view "My Voice, My Life, My Future—*Mi Voz, Mi Vida, Mi Futuro*," visit *www.fostercarehomeatlast.org*." *Id.*

Our foster youth here in Michigan deserve a voice in the decisions affecting their futures. Some believe that our young people shouldn't be traumatized further by appearing in court and hearing people talk about what's happened to them. But our young people lived those events, and they should have input into what happens next.

To open the dialogue about increasing youth participation in court, the Children's Law Section has invited the directors of Home at Last to come and speak at our annual training on February 19, 2007. The training will again be held at the Thomas M. Cooley Law School in Lansing. All who work with children are invited to attend. Watch your mail and e-mail for further details, program, and registration information.

You can read both a summary of (and the full report of) the Pew Commission's recommendations at the Home at Last website: *http://fostercarehomeatlast.org/docs/?DocID=15*.

Evelyn C. Tombers, Chair
State Bar of Michigan Children's Law Section

Juveniles Incarcerated for Natural Life within Adult Prisons: Public Opinion in Michigan

by Sheryl Pimlott Kubiak, Ph.D., Michigan State University; Terrence Allen, Ph.D., Wayne State University; and Anthony King, Ph.D., Wayne State University

Abstract

Michigan is one of 19 states that allow children of any age to be tried and punished as adults. Trying youth as adults opened the door to imposing sentences of life without the possibility of parole, particularly in Michigan and 26 other states that have mandatory sentencing. More than 300 youths have been sentenced to life without parole (LWOP) in Michigan and are serving these sentences in adult facilities. Michigan ranks third in the number of youth sentenced to LWOP and is second only to Louisiana in the rate of juveniles age 14–18 serving sentences of LWOP.

To determine public opinion on the issue, questions related to the topic were included in an annual statewide survey of those 18 years or older. The survey, administered by a public university, was conducted during the spring and summer of 2005 and consists of 750 completed telephone interviews.

We found that only 5 percent of residents supported Michigan's current law regarding juveniles serving life without parole in adult facilities. The majority believed "blended" sentences that included both juvenile and adult sanctions were more acceptable. Moreover, Michigan citizens were strongly opposed to juveniles 16 and younger being housed with adults in correctional facilities and believed that juveniles were strong candidates for rehabilitation.

Michigan residents are unequivocal in their belief that youths should be held accountable for their violent crimes. But they believe that it should be in a manner that recognizes the physiologic, psychological, and emotional capabilities of the youths, understanding that these capabilities differ from that of adults. These findings seem to support alternative sentencing arrangements and changes to Michigan's current policies and legislation.

Introduction

Michigan is one of 19 states that allow children of any age to be tried and punished as adults. In Michigan, those 14 years and older will serve their sentences in adult facilities. These youths convicted as adults are subject to mandatory sentences of life without parole (LWOP)—thereby imprisoning them in adult facilities for the remainder of their natural lives. More than 300 youths (n=306) have been sentenced to LWOP and are serving their sentences in Michigan's adult prisons. Michigan is second only to Louisiana in the rate of youths 14–18 serving LWOP and third (behind Louisiana and Pennsylvania) in the number of juveniles sentenced to LWOP (Amnesty International/ Human Rights Watch, 2005).

Frequently it is believed that there is a public mandate to be "tough on crime," yet there are often conflicting messages when it comes to youths. Data is scarce on answers to specific questions such as, "Does the public agree with LWOP for juveniles?" This paper explores this issue and public sentiment in Michigan to determine if citizens agree or disagree with current state laws.

Background

Beginning in the 1980s, the United States experienced an increase in violent crime committed by both adults and adolescents (National Center for Juvenile Justice, 2004). Although the increase was greater among adults, terms such as "super predator" indicated the anxiety and concern about rising juvenile crime rates. States began committing to changes in juvenile sentencing policies that were harsher and more punitive. By 1997, all but three states (Nebraska, New York and Vermont) changed laws that made it easier to try children in adult courts (US Department of Justice, Office of Juvenile Justice Delinquency and Prevention, 1999), and by 2005, all states had the

capacity to try youths as adults (Amnesty International/Human Rights Watch, 2005).

Trying youths as adults opened the door to imposing the punishment of life without possibility of parole for children in 42 states—27 of which have mandatory sentencing policies that do not allow any judicial discretion (Amnesty International/Human Rights Watch, 2005). Many states have a minimum age at which this sentence can be given (for example, ages range from 12 years in Colorado to 16 in California); however, in 14 states, there is no minimum age at which juveniles can be tried as adults and sent to prison for natural life—Michigan is one of them (American Civil Liberties Union [ACLU]-MI, 2004).

Public Opinion

Public opinion about punishment and corrections has a tendency to be both progressive and punitive, because citizens want the justice system to be successful in its diverse missions—protecting public safety and rehabilitating the wayward (Cullen, Fisher & Applegate, 2000). Questions about public opinion regarding life without parole have to date focused on adult offenders; respondents have been asked for opinions on the possibility of LWOP as an alternative to the death penalty for those who were eligible to receive it. When asked a single question asking if they accept the death penalty for murderers, support ranged from 64 percent to 86 percent in 12 states (Bowers, Vandiver, & Dugan, 1994). But when faced with four sentencing alternatives (for example, LWOP; life with parole possible after 25 years, etc.), support for the death penalty declined substantially (Bowers, Vandiver, & Dugan, 1994).

Because the United States Supreme Court, in two separate cases, has outlawed the death penalty for those 17 and younger (*Thompson v. Oklahoma* & *Roper v. Simmons*), LWOP is the most severe punishment a juvenile can receive. Historically, public opinion favored trying youths who commit serious crimes in the adult system. When faced with the choice of more lenient punishment in a juvenile court or trying a juvenile who committed a serious crime in adult court, two-thirds of survey respondent's chose the adult court option (Maguire & Pastore, 1995).

However, similar to polling about adult offenders, when more specific questions are asked, the response is tempered. Schwartz (1992), in another national study, found that about a third of the sample agreed that a "juvenile convicted of a crime should receive the same sentence as an adult, no matter what the crime." Furthermore, respondents supported transfer to adult court for youths who were 17 and older (Schwartz, 1992).

Current data on public opinion regarding LWOP for juveniles is scarce. A recent poll in Colorado found that 74 percent of the 500 people surveyed preferred sentences other than LWOP for juveniles who were accomplices in homicides (there were no questions pertaining to public opinion for the juvenile who committed the murder) (RBI Strategy & Research, 2005). Similarly, 79 percent were in favor of giving juveniles—even those committing violent offenses—the opportunity to complete exhaustive rehabilitation and then be granted parole at 21 if successful, or be sent to adult prison if they are unsuccessful or violate parole.

In general, public opinion supports the belief that juveniles can be rehabilitated. In a national survey of attitudes toward juvenile crime, Schwartz, Guo & Kerbs (1993) found that the public does not support the punishment paradigm for youth. In their study, 78 percent of those surveyed favored a treatment and rehabilitative approach to delinquency. In addition, Steinhart (1988) found that California residents would rather youths be sentenced to specialized treatment or counseling instead of harsh punishments such as confinement. Together, their conclusions suggest that youths have not yet become hardened criminals and thus have rehabilitative capabilities.

But these previous studies suggest the public's sentiment about the processing of juveniles convicted of criminal offenses, but they do not answer the current question regarding the public's opinion of juveniles serving LWOP in adult prisons. So the current study focuses on one state (Michigan), that has the third-highest number, and the second-highest rate, of individuals sentenced to LWOP as juveniles and was the focus of a recent ACLU (2004) report highlighting the issue.

Methods

Researchers formulated questions based on the available studies and the lack of information and research on the subject. The questions elicited public sentiment on current juvenile sentencing policies and individuals' beliefs regarding youths and crime (See Appendix for exact questions). The questions were submitted to the Center for Urban Studies (CUS) at Wayne State University in a competitive process to include them in a statewide survey of Michigan citizens in spring and summer 2005.

Each year, the Center conducts a general population survey of Michigan residents, 18 and older, using random digit dialing techniques to create a representative sample of Michigan residents. This round of the survey consists of 750 completed interviews and has a response rate of 25%. The survey includes a number of individuals in each county that are in proportion to the state's population. Demographics of respondents match state demographics on race, socio-economic status, and education. But as in other surveys, females were over-represented among the respondents. Data analyses account for this over-representation by analyzing the findings as a total and then by gender and other social indicators to determine if there are differences among subgroups. The following chart (Table 1) describes the demographics of the respondents.

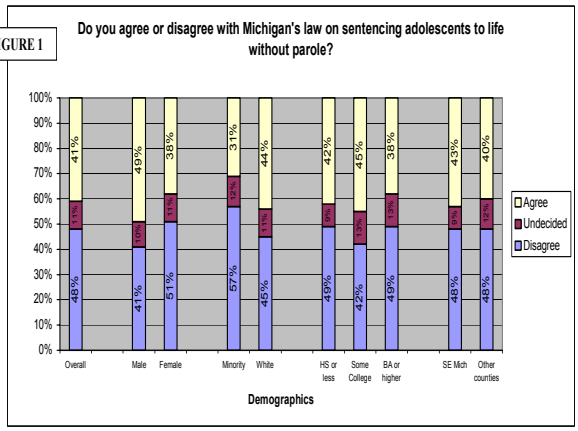
Table 1: Demographic Characteristics of Survey Respondents

Demographic Characteristic	Percent of Respondents (N=750)
Gender	
Male	36.0
Female	64.0
Race	
White	79.5
African American	16.1
Latino	1.5
Other	2.9
SES	
20,000 or less	33.3
21,000–40,000	30.0
41,000–60,000	20.1
61,000+	16.6
Education	
High school or less	44.5
Some college	20.7
BA or higher	34.8
Age (Median)	50.09 (s.d. 16.8)
18–30	13.2
31–50	38.5
51–65	29.7
65+	18.6
Marital Status	
Married/cohabitating	56.6
Never married	20.5
Formerly married	23.0

Results

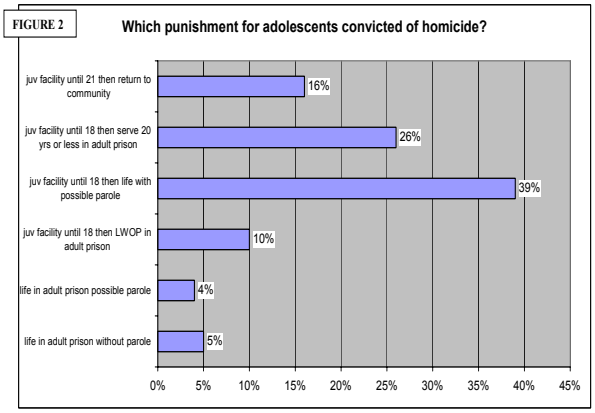
When asked, "Do you agree or disagree with Michigan's law sentencing adolescents to life without parole?", 41 percent agreed with the policy. Males (49 percent), whites (44 percent) and those with some college (but not college graduates) were more likely to agree than the general population[1] (See Figure 1 below).

FIGURE 1



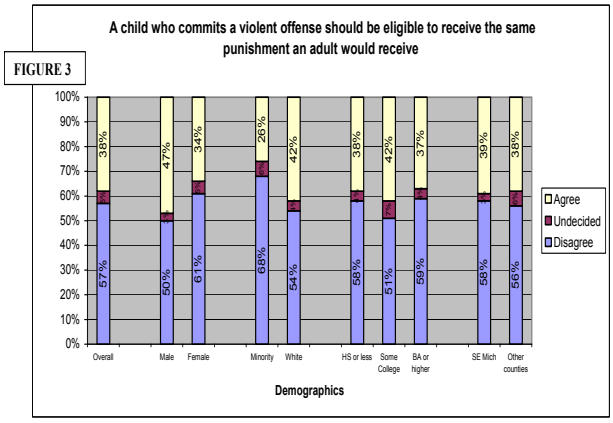
But when given a choice between various types of punishment that an adolescent convicted of a homicide should receive, only 5 percent of the sample believed that it should be life within an adult prison without the possibility of parole—Michigan's current sentencing policy—and only 4 percent believed that it should be life in adult prison with a possibility of parole (see Figure 2). Of the six choices given, the most popular response (39 percent) indicated that youths convicted of homicide should be sentenced to a juvenile facility until 18 and then serve life with the possibility of parole.

FIGURE 2



Respondents seem inclined to choose among three options that included the youths first be sentenced to a juvenile facility until 18 and then serve additional time in an adult prison (ranging from LWOP, to possible parole, to 20 years). These three options accounted for the majority (75 percent) of the respondents. A final option—youths sentenced to a juvenile facility until 21 years old and then released to the community —was supported by 16 percent of the sample.

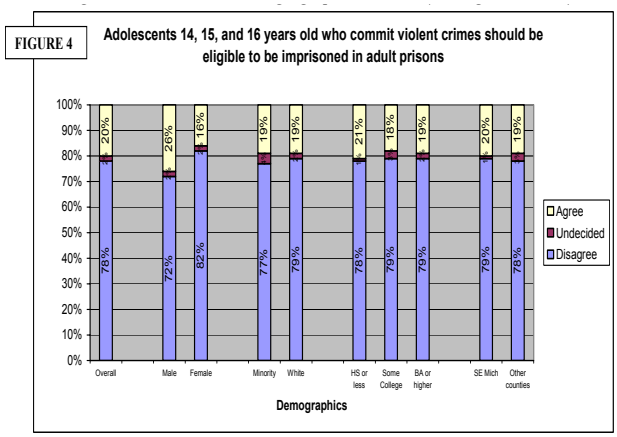
When asked their opinion of the question, "Should a child who commits a violent offense be eligible to receive the same punishment an adult would receive for committing the same offense?", 57 percent of Michigan residents disagreed. Females (61 percent) and minorities (68 percent) were most likely to disagree.[2] (See Figure 3 below).

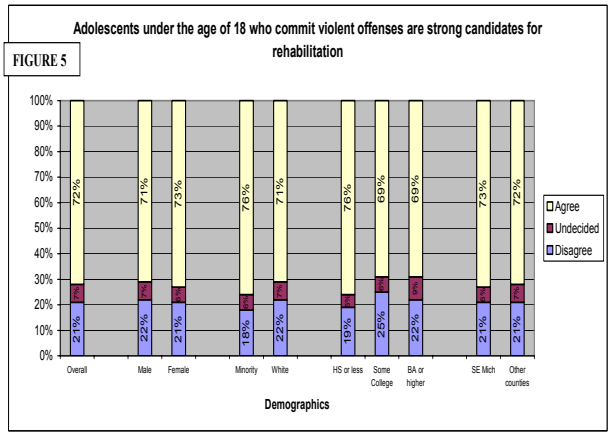


In a follow-up question, Michigan citizens believed that youths should not be sentenced to adult facilities. When asked if 14-, 15- and 16-year-olds should be sentenced to adult facilities, 78.3 percent of the respondents disagreed with little variation based on race, education or geographic location. In fact, the only statistical difference was between men and women, with women (82 percent) more likely to disagree than men (72 percent).[3] (See Figure 4).

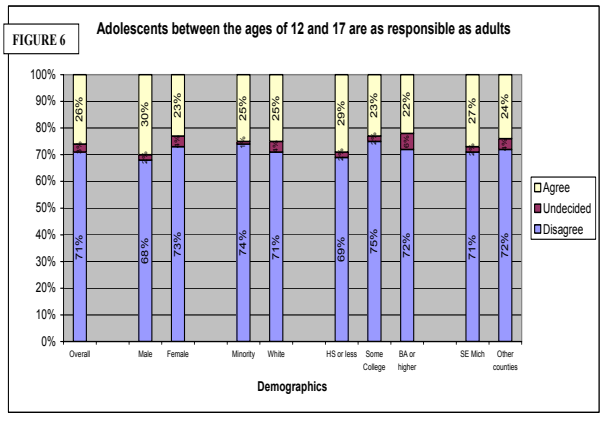
Michigan residents strongly support the possibility of rehabilitation for juveniles. Seventy-two percent of respondents agreed that adolescents under 18 years of age were strong candidates for rehabilitation. This finding did not vary across gender, race, education or geographic location. (See Figure 5).

Data also suggested that the public perceives adolescents as different from adults. First, in the area of responsibility, the majority of respondents (71 percent) felt that youths between the ages of 12 and 17





were not as responsible as adults (Figure 6 below). As above, there were no statistical differences among the various subgroups in their disagreement of an adolescent's ability to be as responsible as an adult.

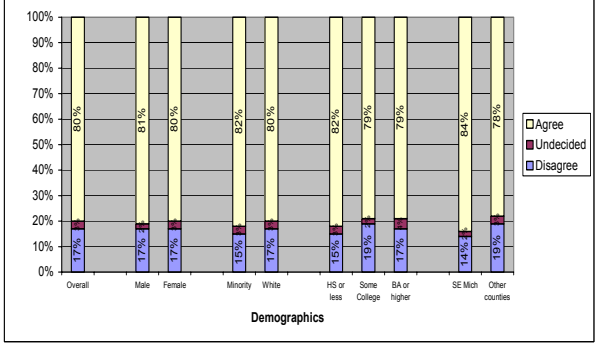


In addition, 80 percent of those surveyed agreed that youths' ability to control their impulses and understand the consequences of their actions should be taken into account when considering a punishment

for committing a violent offense (See Figure 7 below). Again, there was no statistical variability among subgroups (gender, race, education or location) in their belief regarding the importance of considering youths' developmental stage.

FIGURE 7

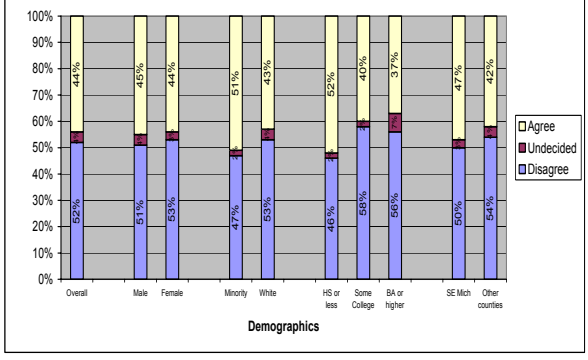
Adolescents' ability to control their impulses and understand the consequences of their actions should be taken into consideration



Michigan residents were less inclined, however, to support the notion that peer pressure should be taken into account when deciding on a punishment (Figure 8). Overall, 52 percent disagreed with taking peer pressure into account when deciding upon a sentence

FIGURE 8

Peer pressure should be taken into consideration when deciding the punishment for an adolescent



for youths. Interestingly, those with more education were less likely to believe that peer pressure should be considered[4].

Finally, Michigan residents believed that other circumstances should be considered when deciding punishment. Sixty-three percent disagreed that adolescents abused as children should receive the same sentence as an adult for committing a violent offense. Although this finding did not differ based on race, education, or location, women were more likely to disagree than were men[5] (See Figure 9).

Discussion

This study used the results of a statewide survey of 750 Michigan residents that included a series of questions on state issues, some of which were regarding their views of sentencing juveniles convicted of violent offenses. We found that the majority of those surveyed does not agree with current policy in the state of Michigan, and when given the ability to choose among several options, only 5 percent of the sample of state's residents believed that LWOP in an adult facility was an appropriate sentence.

Michigan citizens felt strongly that adolescents 16 and younger do not belong in adult correctional facilities. Nearly 80 percent of respondents believed that adolescents 14, 15, and 16 should *not* be imprisoned in adult prisons. Perhaps most important, more than 72 percent believed adolescents under the age of 18 who commit violent offenses are strong candidates for rehabilitation.

To further illuminate the views of Michigan citizens, we asked them about adolescents in general and about housing juveniles in adult facilities. We found that only 26 percent of Michigan residents believe that adolescents between the ages of 12 and 17 years old are as responsible as adults. Furthermore, only 17 percent opposed considering the adolescents' developmental ability to control impulses and understand the consequences of their actions when it comes to sentencing. Similarly, Michigan residents also thought that abuse histories should be taken into account. More specifically, only 31 percent believed that adolescents abused as children should receive the same sentence as an adult for committing a violent offense. Conversely, Michigan residents seemed somewhat divided on whether peer pressure should be considered (44 percent agree, 52 percent disagree, and 4 percent undecided).

Although it is clear that Michigan residents want some distinctions between adult and juvenile offenders, they also feel strongly that youths should be held accountable for their violent crimes. Nearly 75 percent of respondents thought that youths who commit homicide should be initially housed in a juvenile facility and then transferred to an adult facility after age 18 to serve a lengthier sentence.

Like all random-digit-dialing surveys, there is a limitation regarding the possible sample. Those without telephones, or those who choose to use cellular versus landlines, would be excluded from the possible population of those surveyed. Similarly, those who choose to respond, versus those who do not, may differ from one another. One difference was the over-representation of women among those who were interviewed. We have taken care to analyze the data for each question by gender (as well as other social indicators) as a way to compensate for this overrepresentation.

The United States Supreme Court abolished the death penalty as a legal sanction for anyone convicted of a crime as a juvenile—initially for those 15 and younger (*Thompson v. Oklahoma*) and more recently for those 16 and 17 years old (*Roper v. Simmons)*. One of the strongest arguments in support of this abolition came from the American Psychological Association (APA) in the form of an Amicus Curiae Brief submitted on behalf of Christopher Simmons (APA, 2004).

The brief summarizes recent behavioral and neuropsychological research on the developmental differences between adults and youths 17 and younger, stating, "Developmentally immature decision-making, paralleled by immature neurological development, diminishes an adolescent's blameworthiness. Regarding deterrence, adolescents often lack an adult's ability to control impulses and anticipate the consequences of their actions" (p. 2). These same findings appear to apply to the discussion of juveniles sentenced to life without parole and are reflected in the public opinion findings.

Practice Implications

Those working with juveniles or within justice settings need to understand the current empirical literature on physiological, psychological, and social development so that they can convey it to others. The rapid explosion of neuroscience research strongly supports the immature and underdeveloped pathways associated with reasoning and impulsivity in the adolescent brain. Understanding that physiologic immaturity influences adolescent decision allows us to assume that an adolescent's skills associated with decision making will improve with time and developmental maturity. It also allows practitioners to impart this information to the youth they work with and devise cognitive-behavioral interventions that might prevent or decrease impulsivity.

In addition, advocates need to participate in and inform the current policy debates around sentencing reform. Pending legislation in Michigan—in legislative committees as of the fall of 2006—would amend the current mandatory sentencing laws for those convicted as juvenile allowing for a parole review after serving a minimum of 20 years. This legislation does not 'release' those juveniles sentenced to LWOP; rather, it provides for the possibility of release after careful review. Urging legislators to consider legislative remedies could alter Michigan's current policy so that it is more analogous to the beliefs of residents of the state.

Conclusion

This statewide survey of public opinion represents a unique opportunity for citizens to convey their beliefs and feelings regarding current sentencing policies for youths convicted of violent crimes. This is particularly salient in a state that is among the top three in the nation for instituting life without parole for youths convicted of violent crimes. This data demonstrates that Michigan residents believe that youths who commit violent crimes can be rehabilitated, that they do not support the practice of juveniles being housed in adult facilities, and more importantly, that they do not support the sentence of LWOP in adult prisons for youths convicted of homicide. ◎

References

American Civil Liberties Union of Michigan (2004). Second Chances: Juveniles serving life without parole in Michigan prisons. Detroit, MI, ACLU.

American Psychological Association (2004). Amici Curiae Brief submitted on behalf of Christopher Simmons in *Roper v. Simmons*, Supreme Court of the United States, July 19th, 2004.

Amnesty International/Human Rights Watch, (2005). The rest of their lives: Life without parole for child offenders in the United States.

Bowers, W.J., Vandiver, M. & Dugan, P.H. (1994). A new look at public opinion on capital punishment: What citizens and legislators prefer. America Journal of Criminal Law; 22: 77-150.

Cullen, F.T., Fisher, B.S. & Applegate, B.K. (2000). Public opinion about punishment and corrections. In Michael Tonry (ed). Crime and justice: A review of research, Vol. 27; Chicago, IL; University of Chicago Press, p. 1-79.

Maguire, K. & Pastore, M. (1995). Sourcebook of Criminal Justice Statistics, 1994. Washington, D.C., US Department of Justice, Bureau of Justice Statistics.

National Center for Juvenile Justice. (2004). Juvenile arrest rates by offense, sex, and race (1980-2002). Retrieved from: http://ojjdp.ncjrs.org;ojstatbb/crime/excel/JAR.xls.

RBI Strategy & Research (2005). Pendulum Juvenile Justice: A telephone survey of likely voters in the state of Colorado. www.rbistrategies.com/files/pjjt.pdf.

Roper v. Simmons, 125 S. Ct. 1183 (2005).

Steinhart, D. (1988). California Opinion poll: Public attitudes on youth crime. San Francisco: National Council on Crime and Delinquency.

Schwartz, I.M., Guo, S., & Kerbs, J.J. (1993). The impact of demographic variables on public opinion regarding juvenile justice: Implications for public policy. Crime & Delinquency, 39; 5-28.

Schwartz, I. (1992). Combatting juvenile crime: What the public really wants? Ann Arbor: University of Michigan, Center for the Study of Youth Policy.

Thompson v. Okalahoma, 487 US 815 (1988).

U.S. Department of Justice, Office of Justice Programs, (1999). Juvenile offenders and victims: 1999 National Report. Washington, D.S., Office of Juvenile Delinquency Prevention. p. 86

For more information about this study contact Dr. Sheryl P. Kubiak, Michigan State University School of Social Work, 254 Baker Hall, East Lansing, MI 48824 or email *spk@msu.edu*.

Endnotes

1 Differences between males and females on the question of agreement about Michigan's policy about sentencing adolescents to life without parole were statistically significant (χ^2(df1)=8.72; p=.003), as are differences between minorities and whites (χ^2(df1)=8.65, p=.003).

2 Statistically significant differences in the belief that a child should receive the same punishment as an adult for the same offense between men and women (χ^2(df1)=10.10; p=.001) and minorities and whites (χ^2(df1)=11.64, p=.001).

3 Women were more likely than men to believe that those 16 and under should not be imprisoned in adult facilities (χ^2(df1)= 10.59, p=.001).

4 Those with more education were less likely to believe that peer pressure should be taken into account when deciding punishment (χ^2(df 2) = 12.31; p=.002).

5 Women were more likely to disagree than men that adolescents abused as children should be sentenced the same as adults (χ^2(df 1) = 7.94; p=.005).

Youth Arrested for Domestic Assault Against their Parents: A Growing Phenomenon in Family Violence

by Shelley Schuurman, LMSW; Robin Smith-Colton, Ph.D., LMSW, and Melissa Selby, LLMSW

Introduction and Problem Statement

In 1998, Michigan's judicial system was reorganized, and the Family Division of the Circuit Court was born. This "Family Court" system, as described by Kozakiewicz (2002) is a model designed to treat families "holistically," by bringing before a single judge all issues that bring families under the court's broad jurisdiction, such as juvenile delinquency, child abuse and neglect, divorce, child custody, parenting time, and child support.

In keeping with this family-based model, the Kent County 17th Judicial Circuit's Family Division operates a Crisis Intervention Program (CIP), which is designed to divert youth who have committed status offenses or minor law violations from formal probation or admission to its secure detention facility. At CIP, child welfare workers, who in this paper will be referred to as counselors, work *within* the juvenile justice system to provide brief treatment (up to six weeks) to youth and their families. The counselor assists the family in resolving conflicts and addresses the issue that brought the youth into contact with law enforcement officials. Families and youth are linked with community resources and referrals are made for long-term counseling and other services when needed.

A new phenomenon bringing families to CIP for services is youth who have been arrested for domestic assault against a family member. Not much information exists on this topic because research on family violence has focused its attention on analyzing violence against and among adults, between siblings, and on child abuse and neglect; researchers have given very little attention to the growing phenomenon of youth who are violent toward their parents. Statistics reveal that 9 percent to 14 percent of parents are physically assaulted and injured by their children, and although both parents are being assaulted, the literature depicts mothers as victims of abuse at more alarming rates than fathers (Cornell & Gelles, 1982; Paulson, Coombs, & Landsverk, 1990). As we attempt to understand this complex phenomenon, it is important to look at the theoretical constructs that underpin the discussion of family violence in the research literature.

Theoretical Constructs of Violence

Although other theories are guiding approaches in understanding the pattern of violence, social learning theory, the cycle of violence theory, and the ecological perspective are important theoretical constructs for investigating the etiology of family violence from the perspective of youth arrested for assaulting their parents.

Social Learning Theory

Several theories support the assumed relationship between exposure to domestic violence, or physical abuse at the hands of a parent, and an adolescent's propensity to commit domestic assault against family members. Social learning theory, for example, suggests that physical aggression is a predictable by-product of a child's or adolescent's exposure to domestic violence because "children learn directly from observing their violent parents" (Anderson & Cramer-Benjamin, 1999, p.2). Bandura (1977) notes that "children's exposure to … [domestic assault] serves to legitimize aggressive, argumentative behavior" (in Skopp et al., 2005, p.326). So social learning theory suggests that children learn violent behavior from observing violent behavior in their household and from the communities in which they live.

Cycle of Violence

Closely related to social learning theory is what Heyman & Slep (2002) refer to as the "cycle of violence." According to the Heyman & Slep (2002), the cycle of violence theory posits that "victimized children grow up to victimize others" (p.864). Confirming the legitimacy of the theory, they found that

children and adolescents who were exposed to domestic violence were at increased risk for committing domestic assault in adulthood thus perpetuating the cycle.

Ecological Perspective

The ecological perspective is a framework that incorporates the examination of people and their transactions within their environment. Several theorists postulated that this approach is very useful and widely used when assessing child abuse (Brontenbrenner, 1979; and Belsky, 1980). Belsky (1980) termed the assessment of child abuse as "ontogenic development" when using the ecological framework because it further explains how and what the parent brings into the child-parent relationship. He further notes, "Since the parent-child system (the crucible of child maltreatment) is nested within the spousal relationship, what happens between husbands and wives—from an ecological point of view—has implications for what happens between parents and their children"(p.326).

Review of the Literature

Research literature abounds with studies examining domestic violence between adults, and a discussion has begun about the nature of the impact that witnessing domestic violence has on youth. But little has been written about youth who are arrested for assaulting a family member (domestic assault). This paper will discuss an exploratory research study conducted at the Crisis Intervention Program of the Kent County 17th Circuit Court's Family Division with minors who were arrested for domestic assault against parents. The purpose of the study was to gather demographic information on this population, as well as to examine the prevalence of domestic violence and physical discipline in the minors' families.

Youth Who Assault their Parents

According to Agnew & Huguley (1989), the issue of child-to-parent violence has gone largely ignored, despite the fact that, "parent assault is common" (p. 699). Conservative estimates indicate that each year approximately 10 percent of all adolescents assault their parents, which translates into 2.5 million cases of assault on parents (Agnew & Huguley, 1989; Ulman &Straus, 2003). Additionally, research suggests that assault on a parent is positively correlated to other forms of family violence (Straus, Gelles, Steinmetz, 1980, in Agnew & Huguley, 1989; Ulman &Straus, 2003).

Demographically, adolescents who assault their parents are disproportionately Caucasian and male. While studies have found that age is unrelated to parental assault, rates of assault tend to increase as adolescent males age and tend to decrease as adolescent females age (Cornell & Gelles, 1982, in Agnew & Huguley, 1989). Moreover, adolescents are 42 percent more likely to assault their mothers than their fathers (Ulman & Straus, 2003). As suggested by Agnew & Huguley (1989), this assault of the mother, generally directed by the male adolescent in the family, indicates that the mother-child relationship has failed and the mother's authority and role in the family has been challenged and disregarded. According to Agnew and Huguley (1989), "Attempts to explain parent assault in terms of the variables traditionally used to explain family violence have been largely unsuccessful" (p. 701).

Several potential causes of parent assault, however, have been identified. Agnew and Huguley (1989) note:

> In general, adolescents who assault parents are more likely a) to have friends who assault parents; b) to approve of delinquency, including assault, under certain conditions; c) to perceive the probability of official sanction for assault as low; [and] d) to be weakly attached to parents . . . (p. 710)

While a minimal number of studies have touched upon the effects of exposure to domestic violence and the prevalence of child-to-parent domestic assault among adolescents, none have examined the extent to which exposure to domestic violence in a variety of forms affects an adolescent's propensity to commit acts of domestic assault. Kethineni (2004) points out in one study, which examined 83 adjudicated juveniles in central Illinois charged with battery against their parents, that these juveniles had an array of personal, social, and environmental dynamics that also played a role in their potential to become violent. Some of the key domains that increased their propensity to become violent were their involvement in gangs, school problems, criminal activity, and other criminal and psychological issues.

Agnew & Huguley (1989) propose that many of the youth who assault their parents have had minimal attachment to their parents during the critical stages of development. Youth who have experienced early forms of trauma manifest feelings of hopelessness, helplessness, shame, and resentment, all which may

have many implications for attachment and affect how ego identity is further mastered. Erikson's (1968) discussion on identity development explains the process of how an individual begins to prepare for adulthood. As youth learn to negotiate the environment around them, they are creating and solidifying their unique sense of self, or identity. In this process, parents play the important role of being a "developmental object" that provides the framework for how youth view and develop relationships with them (their parents) and with others. If parents are unavailable, either physically or emotionally, during critical developmental periods, youth are at risk for developing impaired views of healthy relationships and may lack the skills needed to productively negotiate relationships. In addition to poor attachment and relationship deficits, some researchers believe witnessing parental domestic violence is associated to the phenomenon of youth assaulting their parents.

Youth Who Have Witnessed Domestic Violence

Youth who witness domestic violence are aptly referred to as the "invisible victims" of domestic violence (Horton, Cruise, Graybill & Cornett, 1999; Heeden, 1997). Estimates indicate that between three and ten million children witness domestic violence each year (Peled, Jaffe, & Edelson, 1995, in Horton, Cruise, Graybill, & Cornett, 1999). While, in recent years, an increased interest in the subject of children who witness domestic violence has surfaced (Cicchetti & Carlson, 1989, in Sternberg, Lamb, Greenbaum, Cicchetti, Dawud, Cortes, Krispin, & Lorey, 1993; Von Steen, 1997), there remains a striking lack of information about and attention to child witnesses (Fantuzzo, Boruch, Beriama, Atkins, & Marcus, 1997, in Kitzmann, Gaylord, Holt, & Kenny, 2003; Wolfe, Jaffe, Wilson, & Zak, 1986 & Margolin, John, Ghosh, & Gordis, 1996, in Anderson & Cramer-Benjamin, 1999).

Edleson (1999) notes that to determine the effects of children witnessing domestic violence, a national survey could further assess to what extent this exposure to family violence has among children or adolescents who witness the complexies of aggression, anger, and trauma in their own homes with family members. Research literature indicates that as many as three in ten women experience domestic violence during the course of their lifetime, the effects of which often include depression, anxiety, and feelings of helplessness (Davis, 1988; Jaffe, Hurley, & Wolfe, 1990, in Horton et al., 1999). Jarvis et al. (2006) and others, have postulated that a high percentage of women who are battered experience psychological trauma that results in a diagnosis of Posttraumatic Stress Disorder. Women, however, are not the only victims of domestic violence who suffer its detrimental effects.

The research literature suggests that a correlation exists between maternal victimization and a child's propensity to either internalize or externalize the abuse that they have witnessed. Consequently, children who are exposed to domestic violence are at an elevated risk of developing psychological problems including, but not limited to physical aggression (Sternberg et al., 1993; Anderson & Cramer-Benjamin, 1999; Von Steen, 1997; Skopp, McDonald, Manke, & Jouriles, 2005; Kitzmann et al., 2003). Finally, Edleson (1999) describes a phenomenon that has been referred to as the "double whammy," which contends that children who have witnessed domestic violence *and* have been physically abused are more likely to develop serious problems than children who have witnessed domestic violence alone.

Given the research findings regarding the impact witnessing domestic violence has on children, it seems imperative that research be conducted to examine a possible relationship between youth who have witnessed domestic violence and youth who have assaulted family members. Physical abuse also appeared in the research literature to as a component of family violence. This prompted an additional area of inquiry into the relationship of the experience of physical abuse or corporal punishment to youth who assault family members.

Youth Who Have Experienced Physical Abuse or Physical Discipline

According to Sternberg et al. (1993), "Direct research on the effects of observing violence . . has been hampered by the fact that [child and adolescent witnesses] have often experienced physical abuse by one or both parents" (p. 45). Whether a child is an "invisible victim" of domestic violence or a victim of domestic violence in the form of child abuse, it is clear that the consequences of exposure to domestic violence in the home are both severe and far-reaching.

The works of Straus & Mouradian (1998) provide invaluable underpinnings for understanding the impli-

cations for youth to become violent. They conducted a study with youth ranging in age from 2-14 who had experienced any type of corporal punishment and found they were at a greater risk for engaging in impulsive and antisocial behaviors. The study also indicates that when mothers used corporal punishment as a form of discipline six times or more, it increased their child's tendency for engaging in antisocial behavior.

Finally, a study conducted by Browne & Hamilton (1998) examined the relationship between youth who assault their parents and parental conflict tactics and child maltreatment. They begin with a discussion of physical punishment, noting that although extreme physical punishment is recognized as abuse, society, however, continues to sanction a parent's right to discipline their child using reasonable physical force, such as smacking and the like. Society, on the other hand, does not find a child's use of physical force against their parent acceptable.

The study surveyed 469 college students and asked them, among other things, if they had assaulted their parents, what type of conflict resolution tactics their parents used, and if they had been maltreated by their parents. Findings showed adolescents were more likely to use physical aggression against their parents if they had experienced their parent using it against them as either a conflict resolution tactic or as a form of maltreatment, illustrating the profound effect parental behavior has on children.

Youth who have been physically abused or disciplined by parents appear to be at greater risk for engaging in aggressive behaviors as they move through the life cycle of development. In some instances, these youth continue the cycle of violence they encountered in early developmental years by displaying violence towards their parents in their adolescence. The literature provides evidence of the need to further examine domestic violence in families to determine if this cycle of violence has the propensity to shape youth in such a way that they repeat the violence that they witnessed or encountered and become violent toward their first "love object"- their parents.

Implications of the Change in Michigan Domestic Violence Law

In 2000, the Michigan Domestic Violence Prevention and Treatment Act (Act 389 of 1978) was amended to include a revised definition of the term domestic violence. This revised definition now encompasses "assault of a parent or sibling by a minor child". Appendix A contains the portion of the amended law that is relevant to this study. Due to this change in the law, police officers who respond to parents' calls regarding violence committed against them by their minor child can now charge and arrest the minor for domestic assault and place them in a secure detention facility for up to twenty-four hours.

Kent County 17th Judicial Circuit Court-Family Division's Response

The Kent County 17th Judicial Circuit's Family Division operates a Crisis Intervention Program (CIP) staffed with master's level clinicians (Master's in Social Work or Psychology) who provide up to six weeks of counseling to youth and their families. When the domestic violence law was amended to include minors who commit domestic assault, the Family Court system identified CIP as the first step in the process of handling these cases. In 2005, 143 minors were charged with domestic assault and referred to this program; of those referred, only 5 returned in 2005 with a second charge of domestic assault against a family member.

CIP: The Process After An Arrest Has Been Made[1]

In Kent County, when a minor has been arrested for domestic assault, the detention staff contacts a CIP counselor. The CIP counselor then contacts the family of the minor to obtain detailed information regarding the nature of the domestic assault and to tell them of the court process and the role of the Crisis Intervention Program. The parent is told that the minor cannot be detained longer than 24 hours unless a preliminary hearing is held requesting more time to detain the minor. If the parent is averse to the idea of the minor child returning home, alternatives such as the home of a relative or a referral to the Bridge, a temporary youth shelter facility, are discussed. Typically, during this initial contact, the counselor sets a time for the parent to come in and meet with the CIP counselor and to pick up their minor child.

Next, the CIP counselor goes to the detention facility and meets with the minor to explain the court process, the role of CIP, and to discuss the incident of domestic assault. When the parent arrives, the CIP staff facilitates a meeting between the parent and the minor child assessing the level of danger, appropriate-

ness for counseling, and whether formal probation may be required. In most cases, further counseling is indicated, and sessions are scheduled with the CIP counselor. If the family is already working with a counselor in the community, the CIP counselor can function in an adjunct capacity by supporting the efforts of the current counselor to improve family relationships. This exploratory study was conducted to provide a demographic overview of minors arrested for domestic assault and to measure the prevalence of domestic violence and physical discipline in the families of these minors.

Methodology

Participants

The population studied included minors in Kent County, Michigan, who were referred to the 17th Circuit Court's Family Division Crisis Intervention Program between August 2005 and March 2006 on a charge of domestic assault. All minors who met the criteria, and who received parental permission to participate, took part in the study. Appendix B contains the Parental Guardian Permission to Participate in Research Form. A total of fifty-one minors participated.

Survey

A short questionnaire was used to obtain demographic information and ask whether the participants had witnessed domestic violence or if they had ever been physically disciplined. Appendix C contains the survey used to obtain the quantitative data. Though the measurement instrument selected was not standardized, all efforts were made to ensure that it was a valid and reliable instrument. For the purposes of this study, "domestic violence/domestic assault" is operationally defined as causing physical harm to a family or household member. The term "physical discipline" is operationally defined as spanking, hitting, slapping or kicking a minor child as a form of punishment. Finally, the term "minor child" is operationally defined as any person between the ages of 10 and 16 who was referred to the Kent County 17th Circuit Court's Family Division Crisis Intervention Program between August 2005 and March 2006 on a domestic assault charge.

Data Collection

Per protocol, before the release of a minor child who has been brought into the Kent County Juvenile Detention Facility on a charge of domestic assault, the CIP counselor scheduled an appointment with the minor and the parent or guardian. During this meeting the assigned counselor requested parental permission for the minor to participate in the study. The parent or guardian was not in the room while the minor child completed the survey so as to maximize confidentiality and minimize distraction.

Data Analysis

Due to the small sample size, several categories from the survey were combined to create a single variable. SPSS (Statistical Packet for the Social Sciences) software was used to calculate statistical demographic information in the form of Frequency Tables. Cross Tabulation Comparisons were conducted between the variables "witnessed domestic violence" and "did not witness domestic violence." The sample size was not large enough to perform a Chi- squared data analysis.

Discussion of Findings

All research findings are displayed in Frequency Tables in Appendix D on pages 29-31; this discussion of the findings will not refer to each specific table. Collected demographic data indicated that the average age of a youth referred to the Crisis Intervention Program on the charge of domestic assault was 14.7 years. The majority of the youth, 57 percent, or 29 of 51 surveyed youth, were male. This finding supports existing research which indicates that the majority of adolescent perpetrators of domestic violence are male (Cornell and Gelles, 1982, in Agnew and Huguley, 1989. But note that 43 percent, or 22 of 51 surveyed youth, were female. This large number supports Gabranio's (2006) conclusion that girls in our society are becoming increasingly more aggressive and violent in their interpersonal relationships.

The racial composition of the participants was as follows: 21 of the 51 youth or 41 percent were Caucasian; 11 youth or 22 percent, were African-American; and 7 or 14 percent of the surveyed youth, were Latino. This finding supports the work of Cazenave and Straus (1979) and Charles (1986), who state that Caucasian youth are more likely to commit acts of domestic assault than youth of any other race (in Agnew and Huguley, 1989). Note that while Caucasian youth are more likely to commit acts of domestic assault than their African-American and Latino counterparts, African-American and Latino youth are

often disproportionably represented. Currently, 83 percent of the population of Kent County is Caucasian, 9 percent is African-American and 7 percent is Latino (U.S. Census Bureau, 2006). Results of the data collected indicated that African-American and Latino youth committed a disproportionate number of acts of domestic assault. Additionally, a number of participants indicated that they were multi-racial; 12 of 51 surveyed or 23 percent.

Results reveal that approximately 51 percent, or 26 of 51 surveyed youth, were referred to the Crisis Intervention Program for having committed an act of domestic assault against their mother and in one case step-mother. Only 10 of 51, or 20 percent, of surveyed youth assaulted their father, step father, or mother's boyfriend. This finding supports the previous studies that also found mothers to be the most frequent target of their children's aggression (Ulman & Straus, 2003; Agnew & Huguley, 1989).

As such, one must consider the reasons why youth choose to assault their mothers at more than twice the rate at which they choose to assault their fathers or father figures. One possible explanation is that a large number the youth surveyed, 45 percent, lived with their mothers only. Information was not collected regarding frequency of contact with the parent with whom the youth does not reside. Additional findings indicate that a majority of the youth, 72.5 percent, reported committing prior acts of violence. And when asked about their siblings, 76.5 percent reported that their siblings had also committed acts of violence against a family member.

Contrary to what the literature seems to suggest, the findings show only slightly more than half, 55 percent, or 28 of 51 of the youth, reported witnessing domestic violence between their parents, while 45 percent, or 23 of 51, reported not ever having witnessed domestic violence in their homes. Equally surprising was the large number of youth who reported being physically disciplined by parents. Eighty-four percent, or 43 of 51 of the youth who were arrested for domestic assault, reported being physically disciplined by their parents, while only 16 percent, or 8 of 51, reported that their parents did not use physical discipline as a form of punishment. This supports the notion that youth who experience physical aggression at the hands of a parent, whether as a form of discipline or as maltreatment, are more likely to develop aggressive tendencies (Strauss & Mouradian, 1998; Browne & Hamilton, 1999).

Cross Tabulation Correlations Between Witnessing Domestic Violence and Not Witnessing Domestic Violence

Due to the surprising finding that only slightly more than half, 55 percent, of the youth reported witnessing domestic violence, Cross Tabulation Correlations were performed between the youth who reported witnessing and the youth who did not, in hopes of understanding the differences between these two groups. Results show that gender did not appear to be a significant factor in either group, and race was not a significant factor in reported witnessing or not witnessing domestic violence by the Caucasian, African American, or Latino youth. But with youth who described themselves as Multi-Racial, 75 percent, or 9 of 12, reported they had witnessed domestic violence between parents while only 25 percent, or 3 of 12, reported not witnessing domestic violence.

Witnessing domestic violence also was more likely in the younger youth who had committed domestic assault, with 66 percent, or 2 of 3, of the twelve year olds and 75 percent, or 3 of 4, of the thirteen year olds reporting having witnessed domestic violence at home. Given the small number of youth arrested who fall into these age ranges, this finding's significance is questionable. Additionally, relationship appears to exist between living with father only and witnessing domestic violence, with 75 percent, or 3 of 4, of the youth who live with their father only reporting witnessing domestic violence. And a relationship exists between witnessing domestic violence and person the youth assaulted. Eighty percent, or 8 of 10, of youth who were arrested for assaulting their father, stepfather, or their mother's boyfriend report having witnessed domestic violence.

Finally, 58 percent, or 25 of 43, of the youth who report being physically disciplined by a parent also report witnessing domestic violence in their home, while only 42 percent, or 18 of 43, of those who were physically disciplined did not witness domestic violence. Although this study examined physical discipline and not physical abuse, this finding appears to confirm the phenomenon that Edleson (1999) describes as the "double whammy," which contends that children who have witnessed domestic violence *and* have been physically abused are more likely to develop serious problems than children who have witnessed domestic violence alone.

Limitations of the Study

The greatest limitation of the study is that it is taken from a convenience sample which consists only of minors arrested for domestic assault who had been referred to the Kent County 17th Circuit Court's Family Division Crisis Intervention Program. This markedly limits the generalizability of the research findings to the larger population of all minors arrested for domestic assault. Additionally, the limited time frame in which the data was collected affected the small sample size (n=51), which prevented the researchers from performing more statistically meaningful analysis.

Implications for Child Welfare Practice

These significant findings have broad implications for child welfare practice today. Possibly the most significant finding is the fact that 84 percent, or 43 of 51, of the youth arrested for assaulting a family member reported that their parents use physical punishment as a form of discipline. As a result of this finding, it appears that the cycle of violence *does* continue; youth who were previously treated in an aggressive manner by a parent frequently respond with aggressive behavior towards family members. Given this confirmation of the cycle of family violence, child welfare practioners must be proactive and advocate for policies and funding that would create and support parent education programs where alternatives to physical discipline could be taught. Juvenile probation officers, if made aware of the consequences of physical discipline as a form of punishment, could more intentionally discuss discipline styles with parents and refer parents and youth to counseling if parents indicate that they are using physical punishment as a form of discipline. Additionally, all those working in the field of child welfare, including the legal system, must be sensitive to the multiple stressors families are facing as they struggle with a variety of social, cultural, and economic issues that may be affecting their ability to parent effectively.

Finally, this research confirms the notion that aggression by youth against a family member is most frequently a behavior that is learned in their family environment. This reaffirms and supports the importance of working with families in the judicial system in the holistic way prescribed by the Family Court system. Furthermore, it reinforces the need for programs such as Kent County 17th Judicial Circuit's Family Division's Crisis Intervention Program which works with youth in the context of their family system, offering counseling and support before formally involving them in the legal system whenever possible.

Implications for Further Research

As addressed in this research, this exploratory study examined youth arrested for domestic assault and assessed the extent to which the prevalence of witnessing domestic violence and having been physically disciplined was present. The finding that only slightly more than half, 28 of 51, of the youth reported witnessing domestic violence reveals that other factors play a significant role in why youth assault family members. Further research into this area could uncover valuable information that would assist child welfare practioners in developing prevention and intervention strategies.

Additionally, possibly as a result of the stressors in families today, an alarming number of youth, 43 of 51, are being physically disciplined by parents. This further confirms that youth who have encountered traumatic experiences (being hit, slapped, or kicked as a form of discipline) are also beginning to engage in this cycle of family violence through their own abusive interactions toward their parents. Most would agree that parenting preteens and teenagers is a stressful undertaking; studies that examine what differentiates parents who use physical punishment as a form of discipline from parents who have found alternative forms of effective discipline could provide valuable insight into this area.

Furthermore, the low recidivism rate of the Crisis Intervention Program—in 2005, only 5 youth out of 143 who were charged with domestic assault returned with another charge of domestic assault, would suggest that the counselors are using effective interventions. Further study into what these interventions are and how they are implemented could provide useful information for program development. Finally, longitudinal studies from a qualitative approach would provide a more in depth look at the phenomenon of family violence and offer a richer appreciation of the stories and meanings that are projected through acts of aggression committed by youth against their parents.

Conclusion

Children and Families Are the Future

The family-based community treatment model is an integral part and fundamental aspect of social work practice in which many child welfare workers are employed. This model embraces the person–in-environment framework and incorporates all three levels of social work practice when working with youth and their families: on the micro level, individual youth, on the mezzo level, youth and their families, and on the macro level, youth, their families, and their community. The Family Court system and the Kent County 17th Judicial Circuit's Family Division's Crisis Intervention Program embrace this model. And this research demonstrates that the families they serve have clearly benefited. By working collaboratively with the multiple systems involved in the lives of youth and their families, by advocating for funding to develop programs and to further research in the area of family violence, and by speaking out against the systemic barriers that play a role in the continued the oppression of vulnerable populations, we can all do our part to assist the families who are trapped in this intergenerational cycle of violence. ◎

Endnote

1 What follows is a description of the typical process that takes place after a minor has been arrested on a charge of domestic assault. It is not indicative of all cases, but it is meant to provide the reader with an inside look at what typically goes on behind the scenes.

References

Agnew, R. & Hugley, S. (1989). Adolescent Violence toward Parents. *Journal of Marriage and the Family, 51 (3),* 699-711.

Anderson, S.A., & Cramer-Benjamin, D.B. (1999). The Impact of Couple Violence on Parenting and Children: An Overview and Clinical Implications. *The American Journal of Family Therapy*, 27, 1-19.

Belsky, J. (1980). Child Maltreatment: An Ecological Integration. *American Psychologist, 35,* 320-335.

Brotenbrenner, U. (1979). *The Ecology of Human Development.* Harvard University Press: Cambridge, MA.

Browne, K. and Hamilton, C. (1998). Physical Violence Between young Adults and Their Parents: Associations with a History of Child Maltreatment. *Journal of Family Violence,* 13 (1) 59-79.

Buka, S.L., Stichick, T.L., Bindthistle, T., & Earls, F.J. (2001). Youth Exposure to Violence: Prevalence, Risks, and Consequences. *American Journal of Orthopsychiatry, 71 (3).*

Cornell, C.P. & Gelles, R.J. (1982). Adolescent to Parent Violence. *Urban and Social Change Review,* 15, 8-14.

Edleson, J.L. (1999). Children's Witnessing of Adult Domestic Violence. *Journal of Interpersonal Violence, 14 (8),* 839-870.

Erikson, E. (1968). *Identity: Youth and Crisis*. New York: WW. Norton.

Garbarino, J. (2006) *See Jane hit: Why girls are growing more violent and what can be done about it.* Penguin Press.

Hanbin, K.M. (1992). *Why kids kill parents: Child abuse and adolescent homicide.* Columbus: Ohio State University Press.

Heeden, F. (1997). The Legacy of Domestic Violence: Effects on the Children. *Women and Therapy*, 20, 111-119.

Heyman, R.E., & Slep, A.M.S. (2002). Do Child Abuse and Interparental Violence Lead to Adulthood Family Violence? *Journal of Marriage and Family*, 64, 864-871.

Horton, C. B., Cruise, T.K., Graybill, D., & Cornett, J.Y. (1999). For Children's Sake: Training Students in the Treatment of Child Witnesses of Domestic Violence. *Professional Psychology*, 30, 88-91.

Jarvis, K.L. & Novaco, R.W. (2006). Post Shelter Adjustment of Children from Violent Families. *Journal of Interpersonal Violence, 21 (6),* 1046-1062.

Kethineni, S. (2004). Youth-on-Parent Violence in a Central Illinois County. *Youth Violence and Juvenile Justice, 2 (4),* 374-344.

Kitzmann, K.M., Gaylord, N.K., Holt, A.R., & Kenny, E.D. (2003). Child Witnesses to Domestic Violence: A Meta-Analytic Review. *Journal of Consulting and Clinical Psychology*, 71, 339-352.

Kozakiewicz, J. (2002). Welfare Workers and Michigan's Family Court Legislation: The Relationship between Policy and Practice. *Michigan Child Welfare Law Journal*, VI (1) 3-14.

Paulson, M.J., Coombs, R.H., & Landsvenk, J. (1990). Youth who Physically Assault their Parents. *Journal of Family Violence, 5 (2),* 121-133.

Richtens, J.E. & Martinez, P. (1993a). The NIMH Community Project: Children as Victims of and Witness to Violence. *Psychiatry, 56,* 7-21.

Skopp, N.A., McDonald, R., Manke, B., & Jouriles, E.N. (2005). Siblings in Domestically Violent Families: Experiences of Interparent Conflict and Adjustment Problems. *Journal of Psychology*, 19, 324-333.

Straus, M.A. & Mouradian, V.E. (1998). Impulsive Corporal Punishment by Mothers and Antisocial Behavior and Impulsiveness of Children. *Behavioral Sciences and the Law, 16,* 353-374.

Sternberg, K.J., Lamb, M.E., Greenbaum, C., Cicchetti, D., Dawud, S., Cortes, R.M., Krispin, O., & Lorey, F. (1993). Effects of Domestic Violence on Children's Behavior Problems and Depression. *Developmental Psychology*, 29, 44-52

Ulman, A., & Straus, M.A. (2003). Violence by Children Against Mothers in Relation to Violence Between Parents and Corporal Punishment by Parents. *Journal of Comparative Family Studies*, 34, 41-55.

U.S. Census Bureau. (2006). Kent County, Michigan. In *U.S. Census Bureau: State and County Quick Facts*.

Von Steen, P. (1997). Adults with Witnessing Histories: The Overlooked Victims of Domestic Violence. *Psychotherapy: Theory, Research, Practice, Training*, 34, 478-484.

Appendix A

Mich. Comp. Laws Ann. § 400.1501 (West 1997 & Supp. 2006)

(d) "Domestic Violence" means the occurrence of any of the following acts by a person that is not an act of self-defense:

1) Causing or attempting to cause physical or mental harm to a family or household member,
2) Placing a family or household member in fear of physical or mental harm,
3) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force,
4) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

e) "Family member or household member" includes any of the following:

1) a spouse or former spouse,
2) an individual with whom the person resides or has resided,
3) an individual with whom the person has or has had a dating relationship,
4) an individual with whom the person is or has engaged in a sexual relationship,
5) an individual with whom the person is related or was formerly related by marriage
6) an individual with whom the person has a child in common and
7) a minor child of an individual described in (1)–(6).

Appendix B

Parent/Guardian Permission to Participate in Research: *Adolescents under the Age 17*

Introduction

Your son/daughter has been selected to participate in a research study conducted by Melissa C. Selby, Master of Social Work student at Grand Valley State University. Your son/daughter was selected as a participant because he/she has been identified as an adolescent between the ages of 10 and 17 who was referred to the Kent County 17th Circuit Court Crisis Intervention Program for the commission of a domestic assault during 2005. It is anticipated that approximately 30-50 adolescents will participate in the study.

Purpose of the Study

The purpose of this study is to gain insight into the lives, relationships, and home environments of adolescents who have been referred to the Crisis Intervention Program for the charge of domestic assault.

Procedures

If you agree to allow your son/daughter to participate, he/she will be given a brief survey. The survey will take no longer than five minutes to complete. In order to ensure confidentiality, all parents and guardians will be asked to step out of the room briefly while the survey is administered. Parents and guardians will not have access to the survey before, during, or after the administration of the survey.

Potential Risks and Discomforts

Participation in the research study poses no foreseeable physical or emotional risks.

Potential Benefits to participants and/or Socieity

By allowing your son/daughter to participate in the research study, you will help to increase awareness of adolescent domestic assault. Moreover, you will help contribute to the general understanding of adolescent domestic violence. Your son's/daughter's participation may transform the way in which Crisis Intervention Program counselors serve adolescent domestic violence offenders and their families in the future. Your son/daughter will not receive any money for his/her participation

Confidentiality

Every attempt will be made to ensure your and your son's/daughter's confidentiality. The following conditions will be met:

1) Any information obtained in connection with this study will remain confidential
2) Your son's/daughter's identity will not be traceable to his/her survey in any way
3) Surveys will be destroyed after data collection and analysis is complete

Participation and Withdrawl

You can choose whether or not your son/daughter will participate in this study. If you and your child agree to participate, you may withdraw him/her at any time without penalty. Your son/daughter may refuse to answer any question that he/she does not wish to answer and still remain in the study.

The investigator may withdraw your son/daughter from this research study if circumstances arise which warrant doing so - for example, if it is found that your son/daughter is not between the ages of 10 and 17 or if it is found that your son/daughter has not been referred to the Crisis Intervention Program for the commission of a domestic assault.

Identification of Investigators and Review Board

If you have any questions or concerns, please feel free to contact the principal researcher, Melissa C. Selby.

Melissa C. Selby
17th Circuit Court-Family Division Crisis Intervention Program
1501 Cedar St.
Grand Rapids, MI 49503 616-336-3749

Questions or concerns may also be directed to Paul Huizenga, Chair of the Human Subjects Review Committee, Grand Valley State University.

Paul Huizenga
Grand Valley State University Human Subjects Review Committee 616-331-2472

Appendix C

SURVEY

Please mark your answers as clearly as possible by writing an "X" or a "✓" in the space provided. To help make sure that your answers remain COMPLETELY CONFIDENTIAL, please DO NOT write your name anywhere on the survey. Thank you for your time and honesty.

1. Have you ever witnessed violence (hitting, slapping, kicking, etc.) between your…

1. Mother and father	_____ Yes _____ No _____ Does not apply to me
2. Mother and step-father	_____ Yes _____ No _____ Does not apply to me
3. Mother and boyfriend/partner	_____ Yes _____ No _____ Does not apply to me
4. Father and step-mother	_____ Yes _____ No _____ Does not apply to me
5. Father and girlfriend/partner	_____ Yes _____ No _____ Does not apply to me
6. Legal guardian and spouse/partner	_____ Yes _____ No _____ Does not apply to me

2. Has a parent, step-parent, or guardian ever used physical discipline (spanking, hitting, slapping, kicking, etc.) to punish you?
_____ Yes _____ No

IF YES, how often has that parent, step-parent, or guardian used physical discipline to punish you?
_____ 1 time
_____ 2-5 times
_____ 5 or more times

3. Has a parent, step-parent, or guardian ever used physical discipline (spanking, hitting, slapping, kicking, etc.) to punish one of your siblings?
_____ Yes
_____ No
_____ I do not have siblings

4. If you have siblings, have you ever seen one or more of your siblings use violence (hitting, slapping, kicking, etc.) against a parent, step-parent, or guardian?
_____ Yes
_____ No
_____ I do not have siblings

If you have siblings, have you ever used violence (hitting, slapping, kicking, etc.) when in a fight with one of your siblings?
_____ Yes
_____ No
_____ I do not have siblings

If you have siblings, have you ever seen one of your siblings use violence (hitting, slapping, kicking, etc.) when in a fight with another sibling?
_____ Yes
_____ No
_____ I do not have siblings

5. Aside from the most recent incident, have you ever been violent with (hit, slapped, kicked, etc.) a parent, step-parent, guardian, or sibling?
_____ Yes
_____ No

6. Demographic Information
   1. Whom were you brought in for assaulting?
   _____ Mother
   _____ Father
   _____ Step-mother
   _____ Step-father
   _____ Live-in boyfriend, girlfriend, or partner of mother or father
   _____ Guardian
   _____ Sibling or step-sibling
   _____ Other →_____

   2. Age: _____
   3. Gender: _____ Male
   _____ Female

   4. Racial Identification: _____ White/Caucasian
   _____ Black/African-American
   _____ Hispanic/Latino
   _____ Asian-American/Pacific-Islander
   _____ Native-American/Indian
   _____ Other→_____
   * If bi-racial, please check all that apply

   5. With whom do you live?
   _____ Mother and father
   _____ Mother only
   _____ Mother and boyfriend/partner
   _____ Mother and step-father
   _____ Father only
   _____ Father and girlfriend/partner
   _____ Father and step-mother
   _____ Legal guardian/legal custodian
   _____ Other →_____

Appendix D:

Frequency Tables: Demographic Results

Table 1

Gender	Frequency	Percent
Males	29	56.9
Females	22	43.1
Total	51	100

Table 2

Race	Frequency	Percent
Caucasian	21	41.2
African American	11	21.6
Hispanic	7	13.7
Multi-racial	12	23.5
Total	51	100

Table 3

Age	Frequency	Percent
11	1	2.0
12	3	5.9
13	4	7.8
14	10	19.6
15	18	35.3
16	15	29.4
Total	51	100

Table 4

Adult Adolescent Resides With	Frequency	Percent
Bio Mother & Bio Father	6	11.8
Mother Only	23	45.1
Mother & boyfriend or stepfather	14	27.5
Father Only	4	7.8
Legal Guardian	4	7.8
Total	51	100

Table 5

Person Adolescent Assaulted	Frequency	Percent
Mother, step-mother	26	51
Father, step-father or mother's boyfriend	10	19.6
Both parents	2	3.8
Sibling Only	10	19.6
Guardian	3	5.9
Total	51	100

Table 6

Witnessed Domestic Violence Between Parents	Frequency	Percent
Yes	28	54.9
No	23	45.1
Total	51	100

Table 7

Physically Disciplined by Parents	Frequency	Percent
Yes	43	84.3
No	8	15.7
Total	51	100

Table 8

Committed a Prior Act of Violence	Frequency	Percent
Yes	37	72.5
No	14	27.5
Total	51	100

Table 9

Siblings also Physically Disciplined By Parents	Frequency	Percent
Yes	37	72.5
No	13	25.5
No Siblings	1	2
Total	51	100

Table 10

Sibling also Committed Violence Against Family Members	Frequency	Percent
Yes	39	76.5
No	11	21.6
No Siblings	1	2
Total	51	100

Cross Tabulation Correlations Witnessed or Did NOT Witness Domestic Violence

Table 1 Gender

Did NOT Witness DV	Male	Female	Total
	14	**9**	**23**
Witnessed DV	**15**	**13**	**28**
	29	**22**	**51**

Table 2 Race

Did NOT Witness DV	Caucasian	African American	Hispanic	Multi-racial	Total
	12	5	3	3	23
Witnessed DV	9	6	4	9	28
	21	11	7	12	51

Table 3 Age

Did NOT Witness DV	11	12	13	14	15	16	Total
	1	1	1	5	9	6	23
Witnessed DV	0	2	3	5	9	9	28
	1	3	4	10	18	15	51

Table 4 Adult Adolescent Resides With

Did NOT Witness DV	Bio Mother & Father	Mother Only	Mother & boyfriend or Stepfather	Father Only	Legal Guardian	Total
	3	12	7	1	0	23
Witnessed DV	3	11	7	3	4	28
	6	23	14	4	4	51

Table 5 Person Adolescent Assaulted

Did NOT Witness DV	Mother or Stepmother	Father Stepfather Mom's Boyfriend	Both Parents	Sibling Only	Guardian	Total
	12	2	1	5	3	23
Witnessed DV	14	8	1	5	0	28
	26	10	2	10	3	51

Table 6 Physically Disciplined by Parents

Did NOT Witness DV	Physically Disciplined by a Parent	NOT Physically Disciplined by a Parent	Total
	18	5	23
Witnessed DV	25	3	28
	43	8	51

Table 7 Committed Prior Acts of Violence

Did NOT Witness DV	Prior Acts of Violence	NO Prior Acts of Violence	Total
	15	8	23
Witnessed DV	22	6	28
	37	14	51

Table 8 Sibling Also Committed Violence against Family Members

Did NOT Witness DV	Sibling Committed Violence Against Family Member	Sibling Did NOT Commit Violence Against Family Member	No Siblings	Total
	19	3	1	23
Witnessed DV	20	8	0	28
	39	11	1	51

About the Authors

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Restitution in Juvenile Proceedings: A Hypothetical and Analysis

by Tobin L. Miller

This article contains a brief hypothetical fact pattern and analysis of the law applicable to that fact pattern. The intent is to provide an overview of restitution in informal and formal juvenile delinquency proceedings and designated case proceedings, highlighting recurring issues and ambiguities. This article does not purport to be an exhaustive discussion of restitution in juvenile proceedings,[1] and readers are encouraged to spot issues not discussed. The author apologizes for the lack of verisimilitude in the fact pattern.

The Hypothetical *The Offenses*

Late one afternoon, four juveniles decided to break into a house. The juveniles were:

Albert, a 10-year-old male. Albert lives at home with his parents, both of whom are psychologists. The family income is $150,000 per year.

Becky, a 16-year-old female. Becky's parents are divorced: her mother has custody, and Becky was living with her mother at the time of the incidents. Becky and her mother live in a county adjoining the county where the incidents occurred. Becky's mother is a waitress ($10,000 per year), her father an attorney ($85,000 per year).

Chris, a 15-year-old male. Chris lives with his mother; his father abandoned his family several years ago. Chris's mother is a registered nurse with an income of $42,000 per year. Chris has had three prior contacts with the juvenile court, including an adjudication for assault.

Donald, a 13-year-old male. Donald lives at home with his parents in an upscale suburb. Donald's parents are both stockbrokers whose combined annual income is $475,000.

The four unsuccessfully tried to break into the Miller family's home. They did, however, damage a rear window, which cost $200 to fix. Next, they unsuccessfully attempted to break into the Jones family's home. They caused $150 damage to the Joneses' back door.

Becky said that she knew a family who had gone on vacation, so the four moved on to the Smith family's home. The Smith family consists of a father, mother, a son (age 12), and a daughter (age 7). Mr. Smith is an attorney, Mrs. Smith a librarian. The juveniles entered the house by breaking out a rear window. Once inside, they made themselves at home: they ate all of the food in the refrigerator and cupboards, drank much of the liquor in the liquor cabinet, watched television, and engaged in horseplay. After a few hours, they became bored and began damaging the family's belongings. They spray painted walls, urinated in various parts of the house, tore draperies, and broke furniture. They also damaged several heirloom photographs of the Smiths' ancestors. When Albert protested against damaging the photographs, Chris beat him, causing minor injuries. Donald attempted to protect Albert, and, at that point, Donald and Albert decided to go home. Becky and Chris later fell asleep inside the Smiths' home.

Early next morning, the Smiths returned from their vacation. The Smiths all entered the house and, upon seeing the damage, Mr. Smith began searching the house. He confronted Becky in his daughter's bedroom. Becky broke out a window, jumped out, and ran away. When Mr. Smith discovered Chris, Chris began to beat Mr. Smith with a baseball bat he had found in the garage and had kept with him as he slept. Mr. Smith tried unsuccessfully to defend himself. Eventually, Mr. Smith became unconscious, and Chris ran out the front door of the house, carrying the baseball bat past the other members of the Smith family.

Victim Impact

Mr. Smith was taken to the hospital, where he was diagnosed with a fractured skull, a broken arm, and numerous bruises and contusions. He required ongo-

ing medical treatment following his release from the hospital. Mr. and Mrs. Smith both missed work going to the hospital, the police lineup, doctor and counseling appointments, and court (both in the county where they lived and in the county where Becky lived). Mrs. Smith called a cleaning service to come and restore their home. While the cleaning crew was working, the Smiths stayed with a relative who lived nearby. That relative also provided free child care services for the Smiths' seven-year-old daughter while the Smiths were at the hospital, at the police station, or in court.

Victim advocates contacted the victims and took impact statements, including descriptions of their losses. The Smiths incurred $15,000 in medical bills up to the time of disposition. The Smith family doctor estimated that Mr. Smith would require another 10 visits for outpatient treatment at $100 per visit. The Smith children attended 10 counseling sessions, which totaled $2,500. Due to the time it took to repair their home and attend hearings and appointments, Mr. Smith lost $12,500in income, and Mrs. Smith lost $5,000 in income. It took a week to clean and repair the damage to the house and cost $4,500. The total amount of damage to home furnishings came to $1,250. The Smiths were uncertain of the value of the food, liquor, and heirloom photographs. The Smiths' insurance companies told them that their policies would cover $30,000 of all of their claims, but as of the date of the offenders' disposition hearings, the Smiths hadn't received any money from their insurance companies. The Smiths paid $500 in deductibles.

Court Proceedings

The juveniles were not charged with the attempted break-ins of the Miller and Jones residences. The prosecuting attorney said that there was insufficient evidence. The prosecuting attorney did, however, file separate petitions charging Albert, Becky, and Donald with second-degree home invasion, malicious destruction of a house, and malicious destruction of personal property. Chris was charged with first-degree home invasion, assault (for his beating of Albert), and assault with intent to do great bodily harm (for his beating of Mr. Smith). Because of Chris's history of delinquency and the assaultive nature of his offenses, the prosecutor designated Chris's case for criminal trial in the Family Division of Circuit Court. After the petition was filed regarding Becky, the court transferred her case to the county in which her mother lives.

Albert and his parents agreed to have their case placed on the consent calendar. A caseworker created a case plan requiring Albert to report regularly and participate in a local victim-offender reconciliation program. The Court took Donald's plea of admission to second-degree home invasion under advisement, ordering him and his parents to complete family therapy within a year. In exchange for dismissal of the other charges, Becky entered a plea of admission to second-degree home invasion and was placed on probation in her mother's home. Becky was ordered to seek paid employment. Chris was found guilty of all counts, and the court delayed imposition of adult sentence and committed him to the Department of Human Services (DHS) for placement in a residential facility.

In addition to fines, fees, costs, and assessments, all four juveniles and all of their parents were ordered to pay restitution to the Millers, the Joneses, and the Smiths. Becky's attorney objected to her being ordered to pay restitution for damage to the Miller or Jones homes and Mr. Smith's medical bills. Becky's father objected to paying restitution, saying that he "didn't have anything to do with it." Chris's attorney objected to paying restitution to the Millers, Joneses, or Albert. Donald's family hired an attorney, who objected to his paying any restitution to anybody.

After being on probation for a year, during which she turned 17, Becky had failed to find a job. Her probation officer then filed a petition for revocation of probation and commitment to the DHS. In response, Becky's attorney moved to modify her restitution obligation. At a hearing, Becky testified that she had looked for a job during the first few months of her probation period but became discouraged and stopped looking.

While her son has been placed in a juvenile facility, Chris's mother has sent him an "allowance" of $70 each month. At Christmas each year, she sends him a "gift" of $100. Just before he turned 21 years old, Chris was discharged by the court and released by DHS. He and his mother had paid some, but not all of the restitution. Chris now shows little interest in paying the remainder of the restitution owed.

Analysis *A Victim's Constitutional and Statutory Rights to Restitution*

Restitution denotes restoration of the status quo. Restitution is "[a]n equitable remedy under which a person is restored to his or her original position prior

to loss or injury. . . ."[2] In criminal and juvenile delinquency proceedings, restitution is intended to compensate the crime victim for losses rather than punish the offender.[3]

The Michigan Constitution guarantees the right of crime victims to restitution from their offenders.[4] The William Van Regenmorter Crime Victim's Rights Act[5] contains the statutory rights of crime victims, and Article 2 of that act applies to juvenile delinquency and designated case proceedings.[6] Restitution is required for all criminal offenses committed by juveniles.[7]

For purposes of restitution, "victim" is defined as "an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of an offense." In relevant subsections of the restitution statutes, the definition of "victim" also includes "a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of an offense."[8] In the hypothetical, individuals who suffered direct or threatened harm are the Millers, the Joneses, and each member of the Smith family.

Individuals charged with offenses arising out of the same transaction as the charge against the juvenile arose cannot exercise the rights of a crime victim, including the right to restitution.[9] In the hypothetical, Albert is ineligible for restitution from Chris because he has been charged with a criminal offense arising from the same transaction as the charge against Chris arose.

In all cases, the court must order restitution to any victim of the course of conduct that gave rise to the juvenile's disposition or conviction. Effective January 1, 2006, Mich. Comp. Laws Ann. § 780.794(2) states in part as follows:

> [A]t the dispositional hearing or sentencing for an offense, the court shall order, in addition to or in lieu of any other disposition or penalty authorized by law, that the juvenile make full restitution to any victim of the juvenile's course of conduct that gives rise to the disposition or conviction . . . . For an offense that is resolved informally by means of a consent calendar diversion or by another informal method that does not result in a dispositional hearing, by assignment to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order the restitution required under this section.

Unless the court orders restitution to be paid within a specified period or in installments, restitution must be paid immediately.[10]

Offender Liability for All Losses Arising From a Course of Conduct

Although the juveniles were not charged with attempting to break into their homes, the Millers and Joneses are entitled to restitution for the damage to their property. The Michigan Supreme Court has held that the phrase "any victim of the juvenile's course of conduct" should be interpreted broadly.[11] A juvenile "should compensate for all the losses attributable to the illegal scheme that culminated in his [or her adjudication or] conviction, even though some of the losses were not the factual foundation of the charge that resulted in [adjudication or] conviction."[12]

Before *Gahan*, the Michigan Court of Appeals required offenders to compensate victims for all losses attributable to the criminal conduct of all members of a group. In *People v Letts,* 207 Mich App 479, 481 (1994), the defendant, who pleaded guilty to breaking and entering an occupied dwelling with intent to commit larceny, was properly ordered to pay restitution for damage caused by a fire that was set by one of his accomplices after the defendant had left the dwelling. The defendant was neither charged with nor convicted of arson. The Court of Appeals stated that "[t]here is persuasive support on the record for the trial court's conclusion that the losses for which restitution was ordered were caused in part by the criminal conduct of the defendant." Thus, in the hypothetical, all of the juveniles may be liable for Mr. Smith's bodily injuries even though Albert, Becky, and Donald were not present at the time that Chris inflicted those injuries.

Offenses that are similar in nature, occur over a limited time span, and arise from the same criminal transaction and that are dismissed as part of a plea agreement may also serve as a basis for restitution.[13] Becky's and Donald's pleas provide further support for ordering them to pay restitution for all property losses arising from the group's criminal conduct. Crime victims have constitutional and statutory rights to restitution; thus, the offender and prosecutor cannot exclude restitution from a plea agreement.[14]

Victim Rights in Informal Delinquency Cases

The Millers, Joneses, and Smiths would have several rights—including a right to restitution—in conjunction with the informal disposition of Albert's and Donald's cases. Unless it finds on the record that the evidence is insufficient to support taking jurisdiction under Mich. Comp. Laws Ann. § 712A.2(a)(1), a court must "accept" a petition if it alleges that the juvenile has committed a criminal offense that falls under Article 2 of the CVRA.[15] If such an offense is alleged, a court must not dismiss a petition unless it finds on the record that the petition and supporting facts do not provide the court with jurisdiction under Mich. Comp. Laws Ann. § 712A.2(a)(1).[16] Here, all juveniles were charged with a felony, which brings each of their cases under Article 2 of the CVRA.

Mich. Ct. R. 3.932(B) requires the court to follow procedures set forth in the CVRA before removing a case from the adjudicative process. If a well-pleaded petition alleges that the juvenile committed a criminal offense that brings the case under the juvenile article of the CVRA, the court must give written notice to the prosecuting attorney and allow him or her to address the court on the issue before removing the case from the adjudicative process. The prosecuting attorney, in turn, must notify the victim of the time and place of a hearing on the issue. Neither formal nor informal procedures may be used until the prosecutor notifies the victim. The victim has the right to attend a hearing and address the court on the issue. A crime victim also has a right to attend a consent calendar conference.[17] If the requirements of Mich. Comp. Laws Ann. § 780.794 are met, the court must order restitution in conjunction with the use of any informal procedure.[18]

Benefits of a Victim-Offender Reconciliation Program.[19]

Albert has agreed to participate in a victim-offender reconciliation program. Most frequently used in less serious property damage cases, victim-offender reconciliation programs exemplify a "restorative justice" approach to the juvenile justice system. Whereas the traditional "adversarial approach" to justice views a criminal act primarily as an offense against the state and secondarily as an offense against the victim, restorative justice principles and practices represent means by which the harm done to the victim may be more clearly recognized and repaired to the extent possible, and the victim's role in juvenile proceedings may be enhanced.[20]

Victim-offender reconciliation entails a face-to-face meeting between victim and offender, facilitated by a trained mediator. Both crime victim and offender must voluntarily agree to participate, and the offender must acknowledge responsibility for the offense. In the meeting, victims have an opportunity to get the facts surrounding the offense, express how the offense has affected their lives, and have direct input into how they will be compensated for their losses.[21] Victim-offender reconciliation may increase the amount of restitution paid, speed payment of that restitution, increase victim satisfaction, increase offenders' understanding of the impact of their actions, and allow offenders to take responsibility for those actions.[22]

Restitution to Insurance Companies, Service Providers, and Minor Victims' Parents

In addition to ordering restitution to "direct" victims of juvenile offenses, a court must order restitution to individuals or entities (including insurance companies and the Crime Victims Services Commission[23]) that have compensated the victim for losses to the extent of the compensation paid for those losses, and to individuals or entities that have provided services to the victim. The court must order restitution to be paid to the "direct" victim first; however, if an individual or entity has compensated or will compensate the victim for losses resulting from the juvenile's course of conduct, the court shall not order restitution to the victim and shall state on the record why it is not doing so.[24] An individual or entity that has compensated a victim need not file a claim to receive restitution.[25]

When a court orders restitution to an insurance company that has reimbursed a "direct" crime victim, the amount ordered must be based upon the "direct" victim's actual losses, not upon the amount that the insurance company paid to that victim under the insurance policy.[26] Under Mich. Comp. Laws Ann. §780.794(8) (West etc), a court must order restitution to an insurance company that has compensated a "direct" victim for his or her losses "to the extent of the compensation paid for that loss." "That loss" refers to the "direct" victim's loss, not the insurance company's "loss" due to its obligation to compensate the insured.[27]

In the hypothetical, the Smiths' insurance companies are entitled to restitution of the amount they compensated the Smiths for the Smiths' losses. The insurance companies will pay the Smiths $30,000 under the insurance policies. The court must still order restitution to be paid to the Smiths for the $500 in deductibles and any losses not reimbursed by the insurance companies, and the Smiths must be paid that restitution before the insurance companies receive restitution.[28] The court must state on the record that it is ordering less than full restitution to the Smiths because their insurance companies will compensate them.

Persons or entities that provide services to "direct" crime victims, such as "shelter, food, clothing, and transportation," are also eligible for restitution under Mich. Comp. Laws Ann. § 780.794(8). This includes victim advocate offices and shelters. In the hypothetical, the Smiths' relatives who provided housing and child care are entitled to restitution. As discussed below, the amount ordered for those services will be based on rates charged in the geographic area for comparable services.

If the victim of a juvenile's offense is a minor, the court must order the juvenile to pay restitution to the victim's parent. The court must order the juvenile to pay the minor victim's parent a reasonable amount for any of the following expenses that the parent has incurred or is reasonably expected to incur as a result of the crime:

- Homemaking and child care expenses.
- Income loss not ordered to be paid under Mich. Comp. Laws Ann. § 780.794(4)(h).
- Mileage.
- Lodging or housing.
- Meals.
- Any other cost incurred in exercising the rights of the victim or a parent under this act.[29]

In the hypothetical, the Smith children suffered direct and threatened harm as a result of the juveniles' offenses; thus, they are "victims" of those offenses. Under Mich. Comp. Laws Ann. § 780.794(24), however, it appears that a parent is entitled to restitution for expenses incurred as a result of a minor child's victimization, not expenses incurred solely as a result of the parent's victimization. Here, Mr. and Mrs. Smith seem entitled to restitution in a reasonable amount for mileage to the police lineup, court proceedings, and counseling sessions (but not for Mr. Smith's travel to his doctor's appointments); any meals purchased during the course of this travel; and any other expense incurred in exercising their children's rights as crime victims. As discussed below, the Smiths are also entitled to restitution for their lost income.

Types of Losses for Which Restitution May Be Ordered

Property damage or loss. If an offense results in property damage, loss, destruction, seizure, or impoundment, a court must order the juvenile to return the property to the victim or the victim's designee. If return of the property is impossible, impractical, or inadequate, the court may order the juvenile to pay the value of the property on the day it was damaged, lost, or destroyed (if the value of the property has depreciated or remained the same) or the value of the property at sentencing or disposition (if the property has appreciated in value), less the value of any property returned to the victim. In addition, the court may order the juvenile to pay the costs of seizure, impoundment, or both.[30]

Here, as noted above, the Millers and Joneses are entitled to restitution for their property damage. The Millers are entitled to $200, and the Joneses are entitled to $150. In addition, Mr. and Mrs. Smith are entitled to $4,500 in restitution for home clean-up costs and $1,250 to replace damaged furnishings. If the Smiths can establish a reasonable value for their food, liquor, and heirloom photographs, they would be entitled to restitution for those items as well.

Expenses related to physical and psychological injury. If an offense results in physical or psychological injury to a victim, the court must order the juvenile to pay restitution as follows:

(a) Pay an amount equal to the reasonably determined cost of medical and related professional services and devices actually incurred and reasonably expected to be incurred relating to physical and psychological care.

(b) Pay an amount equal to the reasonably determined cost of physical and occupational therapy and rehabilitation actually incurred and reasonably expected to be incurred.

(c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the offense.

(d) Pay an amount equal to the reasonably determined cost of psychological and medical treatment for members of the victim's family actually incurred or reasonably expected to be incurred as a result of the offense.

(e) Pay an amount equal to the reasonably determined costs of homemaking and child care expenses actually incurred or reasonably expected to be incurred as a result of the offense or, if homemaking or child care is provided without compensation by a relative, friend, or any other person, an amount equal to the costs that would reasonably be incurred as a result of the offense for that homemaking and child care, based on the rates in the area for comparable services.

* * *

(h) Pay an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury."[31]

Mr. Smith is entitled to restitution of $15,000 for actually incurred medical expenses and $1,000 for medical expenses reasonably expected to be incurred. The court must also order $2,500 for the Smith family members' psychological counseling. Mr. and Mrs. Smith are both entitled to lost income of $17,500 under subparagraph (c), above. The Smiths' relatives who provided free lodging and child care are entitled to a reasonable amount of restitution for those services, based on rates in the geographic area for comparable services.

Triple restitution for serious bodily impairment. If an offense causing bodily injury to the victim also results in the serious impairment of a body function or the death of that victim, the court may order up to three times the amount of restitution otherwise allowed under the CVRA.[32] A court may order up to triple the amount of any other restitution allowed under the CVRA, including restitution payable to insurance companies that have compensated the direct victim for losses incurred as a result of the offense. The victim need not suffer any out-of-pocket losses.[33]

Because Mr. Smith's skull fracture and broken bone qualify as "serious bodily impairments," the court may order up to three times the total amount of restitution otherwise allowed under the CVRA—including the amount of restitution ordered to be paid to the Smiths' insurance companies.

Parental Liability for Restitution

In juvenile delinquency cases and designated cases, the court may order a juvenile's parent or parents who had "supervisory responsibility" at the time of the offense to pay some or all of the restitution owed to a victim.[34]

If the court determines that a juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent or parents and an opportunity for the parent or parents to be heard the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding. An order under this subsection does not relieve the juvenile of his or her obligation to pay restitution as ordered, but the amount owed by the juvenile shall be offset by any amount paid by his or her parent. As used in this subsection, 'parent' does not include a foster parent."[35]

No limit exists on the amount of restitution for which a supervisory parent may be held liable.[36] However, the court must "take into account the parent's financial resources and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations that parent may have." If a parent is required to pay restitution, the court must order payment to be made in specified installments and within a specified period of time.[37]

Albert's parents, Becky's mother, Chris's mother, and Donald's parents are liable for any amount of restitution that their children are or will be unable to pay. Because he was not supervising his child at the time of the offenses, Becky's father may not be ordered to pay restitution. The juveniles nonetheless remain obligated to pay the full amount of restitution, but the amounts paid by the parents will be deducted from their child's obligation. Because the court must consider a parent's ability to pay the restitution when setting the amount, each parent's obligation in the hypothetical will vary widely.

A parent who has been ordered to pay restitution may petition the court for a modification of the

amount of restitution owed by that parent or for a cancellation of any unpaid portion of that parent's obligation. The court must "cancel all or part of the parent's obligation due if the court determines that payment of the amount due will impose a manifest hardship on the parent and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim."[38]

Restitution Hearings

To determine a proper amount of restitution to order, a court may apply the following principles. "In determining the amount of restitution to order. . . , the court shall consider the amount of the loss sustained by any victim as a result of the offense."[39] "Restitution ordered by a sentencing court is not a substitute for civil damages, but encompasses only those losses which are easily ascertained and measured and are a direct result of a [juvenile's] criminal acts."[40] When determining the amount of restitution to order, the court must not consider the juvenile's ability to pay the restitution.[41]

When ordering a juvenile to pay restitution, a court is not required to hold a hearing to determine the type or amount of restitution. "Only an actual dispute, properly raised at the [dispositional or] sentencing hearing in respect to the type or amount of restitution, triggers the need to resolve the dispute by a preponderance of the evidence."[42] The judge is entitled to rely on the information in a dispositional or presentence report, which is presumed to be accurate unless the juvenile effectively challenges that information.[43] If an evidentiary hearing is held, the rules of evidence do not apply, other than those with respect to privileges.[44] Because the attorneys for Becky, Chris, and Donald objected to various aspects of the restitution orders, the courts involved in these cases are required to hold restitution hearings.

"[A]ny dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence."[45] The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney.[46] The prosecuting attorney must show "with some precision" the amount of loss resulting from uncharged offenses related to the adjudication or conviction offense.[47] In cases involving juveniles, the burden of demonstrating the financial resources of the juvenile's supervisory parent and any other moral or legal financial obligation of the parent shall be on the supervisory parent.[48] This may be done through submission of a financial statement to the court.

The amount of loss for which restitution is ordered must be based on evidence.[49] The amount of loss may be shown by facts in a dispositional or presentence report, in a victim impact statement, or adduced at the dispositional or sentencing hearing.[50] In the hypothetical, the victims all submitted impact statements to the victim advocate, and these statements may be used to establish the types and amounts of losses.

On motion by a prosecuting attorney, victim, or juvenile, a court may amend an existing restitution order "based upon new information related to the injury, damages, or loss for which the restitution was ordered."[51]

Codefendants and coconspirators may be held jointly and severally liable for the entire amount of loss.[52] In the context of a tort action, joint and several liability allows a plaintiff to recover all damages from one of two or more persons found liable; a defendant who pays more than his or her share of damages has the burden of seeking contribution from other defendants.[53] Thus, in the hypothetical, each offender may be ordered to pay the full amount of restitution to each victim, and the offenders would then be responsible for recovering from their accomplices any amount paid that exceeds a proportional share of the restitution. This method better ensures that a crime victim will be fully compensated for his or her losses.

Restitution as a Probation Condition

In the hypothetical, the court placed Becky on probation in her mother's home and ordered her to seek paid employment. If a juvenile is placed on probation, any restitution ordered by the court must be a condition of that probation.[54] If the court imposes restitution as a condition of probation, it may order a juvenile to seek and maintain paid employment and pay restitution from his or her earnings.[55] Moreover, the court must order an employed juvenile to make regularly scheduled restitution payments. If the juvenile misses two or more such payments, the court is required to order the juvenile to execute a wage assignment to pay the restitution.[56]

Becky asserts that she is unable to find employment and is therefore unable to pay restitution. Her attorney

seeks modification of her restitution obligation. Her probation officer, on the other hand, has petitioned the court for probation violation. The CVRA does not contain a provision authorizing a court to modify or cancel *the amount* owed by a defendant or juvenile.[57] But a court may modify *the method of payment* of restitution imposed on a juvenile by, for example, reducing the amount of installment payments. Mich. Comp. Laws Ann. §780.794(12) states as follows:

> [A] juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim, the court may modify the method of payment.

A court may revoke a juvenile's probation if he or she fails to comply with a restitution order and has not made a good-faith effort to comply with the order.[58] In deciding whether to revoke probation for noncompliance with a restitution order, the court must consider the juvenile's "employment status, earning ability, and financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on a juvenile's ability to pay."[59]

"[A] juvenile shall not be detained or imprisoned for a violation of probation or parole or otherwise for failure to pay restitution as ordered . . . unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good faith effort to do so."[60] This finding is necessary to avoid an equal protection violation when a juvenile is incarcerated for failing to pay restitution.[61] A sentence that exposes an offender to incarceration unless he or she pays restitution violates the equal protection clauses of the state and federal constitutions because it results in unequal punishments based on ability to pay the restitution.[62]

In the hypothetical, the court should first determine whether Becky's failure to pay the restitution is willful. If the court finds that her failure is willful, it must deny her motion to modify the method of payment of restitution, and it may commit her to DHS. The court may evaluate the willfulness of her failure based upon the statutory factors. Becky's refusal to continue seeking employment may be evidence of willfulness. If the court determines that Becky's failure to pay restitution is not willful, it may modify her method of payment. Before modifying her method of payment, however, the court must determine that the current order imposes a manifest hardship on Becky or Becky's immediate family, and that modifying the current order will not impose a manifest hardship on the Smiths, Millers, or Joneses.

Withdrawing Money From a Juvenile's Institutional Account

Chris has been placed in a DHS facility. If a juvenile has been ordered to pay restitution and is placed in a juvenile facility, "and if the juvenile receives more than $50 in a month, the department of human services or the county juvenile agency [CJA], as applicable, shall deduct 50% of the amount over $50 received by the juvenile for payment of the restitution."[63] When the amount deducted exceeds $100, or when the juvenile is released from the facility, the DHS or CJA must promptly send the money collected to the victim.[64]

The DHS or CJA must notify the juvenile in writing of deductions and restitution payments, and they must not alter the above statutory requirements through an agreement with the juvenile.[65]

In the hypothetical, DHS is required to deduct $20 from Chris's "allowance" each month and $50 from his annual gift. Whenever the amount collected exceeds $100, DHS must send the money to the victim for payment of restitution. Any amount collected at the time of discharge must also be promptly sent to the victim.

Civil Enforcement of Restitution Orders

An order of restitution remains in effect until it is satisfied in full. Mich. Comp. Laws Ann. § 780.794(13) states:

> An order of restitution . . . remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the individual ordered to pay restitution for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien.

A person entitled to restitution may not seek to enforce a restitution order in the same manner as a civil judgment until the person ordered to pay restitution fails to comply with the order. When the defendant or juvenile fails to comply with the order, proceedings to enforce the restitution order, which is a judgment against the person(s) ordered to pay, may be instituted. In such cases, the restitution order is enforced in the same manner as a civil judgment, not by filing a new civil action.[66] At the end of an offender's probationary period, the court may order that a victim may seek to enforce the order in the same manner as a civil judgment. [67]

In the hypothetical, if any juvenile or his or her parent fails to pay the restitution each owes, a person or entity entitled to restitution may enforce a restitution order against the person who fails to pay. A person or entity entitled to restitution may seek to enforce the judgment by recording it at the register of deeds office in a county where the person owns real property and satisfying the judgment out of the proceeds from the property's sale, and by garnishing the person's wages or other income or assets.

Endnotes

1 For further discussion, see Miller, *Crime Victim Rights Manual (Rev. Ed.)* ch. 10 (Michigan Judicial Institute 2005).

2 *Black's Law Dictionary* 1313 (7th ed. 1999). *See also People v. Law,* 459 Mich. 419, 424, 591 N.W.2d 20, 22 (1999) (the term "restitution" as used in the Crime Victim's Rights Act [CVRA] has the same meaning as used in civil actions).

3 *People v. Grant,* 455 Mich. 221, 230 n 10, 565 N.W.2d 389, 394 (1997); *People v. Carroll,* 134 Mich. App. 445, 446, 786 (1984).

4 Const. 1963, art. 1, § 24(1).

5 Pub. Act No. 2005-184, effective January 1, 2006, contains substantial amendments to the act, including changing the name of the act to reflect its author. Mich. Comp. Laws Ann § 780.751 (West 1999 & Supp. 2006). Many of those amendments are discussed in this article, but the acronym "CVRA" will be retained. A restitution order is governed by the statute in effect at the time of sentencing, not at the time of the offense. *People v. Lueth,* 253 Mich. App. 670, 693, 660 N.W.2d 322, 337 (2002).

6 Mich. Comp. Laws Ann. § 780.781(1)(d), (f) (West 1998 & Supp. 2006). Article 2 of the act encompasses Mich. Comp. Laws Ann. §§ 780.781-.802.

7 Mich. Comp. Laws Ann. § 780.794(1)(a) (West 1998 & Supp. 2006).

8 Mich. Comp. Laws Ann. § 780.794(1)(b) (West 1998 & Supp. 2006).

9 Mich. Comp. Laws Ann. § 780.781(3) (West 1998 & Supp. 2006).

10 Mich. Comp. Laws Ann. § 780.794(10) (West 1998 & Supp. 2006). Mich. Ct. R. 1.110 requires "financial obligations imposed by the court" to be paid when assessed unless the court allows otherwise for good cause shown.

11 *People v. Gahan,* 456 Mich. 264, 272, 571 N.W.2d 503, 507 (1997).

12 *Id.*

13 *People v. Persails,* 192 Mich. App .380, 383, 481 N.W.2d 747, 749 (1991).

14 *People v. Ronowski,* 222 Mich. App. 58, 61, 564 N.W.2d 466, 467 (1997).

15 Mich. Comp. Laws Ann. § 780.786(1) (West 1998 & Supp. 2006).

16 Mich. Comp. Laws Ann. § 780.786b(1) (West 1998 & Supp. 2006).

17 Mich. Ct, R. 3.932(C).

18 Mich. Comp. Laws Ann. § 780.786b(1)-(2) (West 1998 & Supp. 2006).

19 The process described here may also be called "victim-offender mediation" or "victim-offender dialogue."

20 Seymour, "Restorative Justice/Community Justice," National Victim Assistance Academy, *Academy Text* (Alexandria, VA: Author, 2002), ch 4.

21 See Zehr, *Changing Lenses: A New Focus for Crime and Justice* ch. 9 (1990); Umbreit & Greenwood, *Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue* (2000).

22 Hon. Frederick R. Mulhauser, "Victim Offender Reconciliation Programs," Michigan Judicial Institute seminar and webcast, available on line at *http://ustools.you-niversity.com/youtools/companies/mji/archivesLayout2.html#family.*

23 The Crime Victims Services Commission (CVSC) is a state administrative agency that reimburses eligible crime victims for their out-of-pocket expenses resulting from personal physical injury. Compensation from the CVSC is more limited in scope and amount than restitution. See Mich. Comp. Laws Ann. § 18.351 (West 2004).

24 Mich. Comp. Laws Ann. § 780.794(8) (West 1998 & Supp. 2006).

25 *People v. Byard,* 265 Mich. App. 510, 513-14, 696 N.W.2d 783, 785 (2005).

26 *In re McEvoy,* 267 Mich. App. 55, 76-78, 704 N.W.2d 78, 91-92 (2005).

27 *Id.* at 77-78, 704 N.W.2d at 91-92.

28 See Mich. Comp. Laws Ann. § 780.794a (West 1998 & Supp. 2006), which reflects the "direct victim's" priority in allocating payments made to the court.

29 Mich. Comp. Laws Ann. § 780.794(24) (West 1998 & Supp. 2006), effective January 1, 2006. A parent, guardian, or custodian of a minor victim may choose to exercise the minor's rights under the CVRA. Mich. Comp. Laws Ann. §780.781(1)(i)(*iii*) .

30 Mich. Comp. Laws Ann. § 780.794(3) (West 1998 & Supp. 2006).

31 Mich. Comp. Laws Ann. § 780.794(4) (West 1998 & Supp. 2006), effective January 1, 2006.

32 Mich. Comp. Laws Ann. § 780.794(5) (West 1998 & Supp. 2006) . "Serious impairment of a body function" includes but is not limited to the following:

(a) Loss of a limb or use of a limb.

(b) Loss of a hand or foot or use of a hand or foot.

(c) Loss of an eye or use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain damage or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of a body organ.

Mich. Comp. Laws Ann. § 780.794(5)(a)–(j) (West 1998 & Supp. 2006).

33 *People v. Byard,* 265 Mich. App. 510, 512, 696 N.W.2d 783, 784 (2005).

34 Mich. Comp. Laws Ann. § 780.766(15)(a) (West 1998 & Supp. 2006); Mich. Comp. Laws Ann. § 780.794(15) (West 1998 & Supp. 2006).

35 Mich. Comp. Laws Ann. § 780.794(15) (West 1998 & Supp. 2006).

36 *In re McEvoy,* 267 Mich. App. 55, 66-67, 704 N.W.2d 78, 86-87 (2005).The parents also argued that because MCL 712A.30(15), which is substantially similar to Mich. Comp. Laws Ann. § 780.794(15) (West 1998 & Supp. 2006), allows the court to impose unlimited restitution without a showing of fault on the part of the supervisory parent, it unconstitutionally deprives the parents of substantive due process. Applying a "rational basis" standard of review, the Court of Appeals disagreed. The Court first noted that although the Juvenile Code does not contain a limit on the amount a parent may be ordered to pay, it does limit imposition of liability to a parent having supervisory responsibility of the juvenile at the time of the criminal acts. In addition, a court must consider a parent's ability to pay and may cancel all or part of the parent's obligation if payment will impose a manifest hardship. Thus, parental liability may not be imposed solely based on a familial relationship.

> The Legislature has clearly sought to link liability with responsibility in a reasonable, but purposeful manner, rather than burdening society generally or the victim, in particular, for the costs of a juvenile's illegal acts. The statute reasonably imposes liability on the parent responsible for supervising the child.

McEvoy, 267 Mich. App. at 70, 704 N.W.2d at 88.

The Court concluded that the provisions for restitution by a supervisory parent bear a reasonable relationship to a permissible legislative objective; therefore, there is no violation of the parents' due process rights.

37 Mich. Comp. Laws Ann. § 780.766(16) (West 1998 & Supp. 2006); Mich. Comp. Laws Ann. § 780.794(16) (West 1998 & Supp. 2006).

38 Mich. Comp. Laws Ann. § 780.766(17) (West 1998 & Supp. 2006); Mich. Comp. Laws Ann. § 780.794(17) (West 1998 & Supp. 2006).

39 Mich. Comp. Laws Ann. § 780.795(1) (West 1998 & Supp. 2006).

40 *People v. Tyler,* 188 Mich. App. 83, 89–90, 468 N.W.2d 537, 539-40 (1991).

41 See Pub. Act No. 1996-562 (eliminating the possibility that the court order partial restitution because of the offender's inability to pay full restitution).

42 *People v. Grant,* 455 Mich. 221, 243, 565 N.W.2d 389, 400 (1997).

43 *Id.* at 233–34, 565 N.W.2d at 395.

44 Mich. R. Evid. 1101(b)(3).

45 Mich. Comp. Laws Ann. § 780.795(4) (West 1998 & Supp. 2006).

46 *Id.*

47 *People v. Alvarado,* 142 Mich. App. 151, 164–65, 369 N.W.2d 462, 468 (1984), overruled on other grounds, *People v. Music,* 428 Mich. 356, 363 n 7, 408 N.W.2d 795, 798 (1987).

48 Mich. Comp. Laws Ann. § 780.795(4) (West 1998 & Supp. 2006).

49 *People v. Guajardo,* 213 Mich. App. 198, 200, 539 N.W.2d 570, 571 (1995).

50 *People v. Hart,* 211 Mich. App. 703, 706, 536 N.W.2d 605, 606 (1995) (the amount of loss was adequately shown by the presentence report and victim impact statement), *People v. Sickles,* 162 Mich. App. 344, 363–65, 412 N.W.2d 734, 743-44 (1987) (the amount embezzled by the defendant was adequately shown by the presentence report and a consent judgment in a

related civil suit), *People v. Tyler,* 188 Mich. App. 83, 89–90, 468 N.W.2d 537, 539-40 (1991) (where the presentence report was not included in the record on appeal, there was no means of determining whether the trial court arbitrarily ordered an amount of restitution to the victim of a sexual assault), and *People v. White,* 212 Mich. App. 298, 316, 536 N.W.2d 876, 886 (1995) (where the stalking victim's statement that her financial losses "equaled hundreds or thousands of dollars" was unsubstantiated by other evidence, remand to the trial court for an evidentiary hearing was necessary).

51 Mich. Comp. Laws Ann. § 780.794(22) (West 1998 & Supp. 2006), effective January 1, 2006.

52 *People v. Peterson,* 62 Mich. App. 258, 267–68, 233 N.W.2d 250, 255-56 (1975); *People v. Grant,* 455 Mich. 221, 236, 565 N.W.2d 389, 396 (1997).

53 Joint and several liability has been abolished in most tort actions. Mich. Comp. Laws Ann. § 600.2956 (West 2000). For a general discussion of joint and several liability, see *Bell v. Ren-Pharm, Inc.*, 269 Mich. App. 464, 713 N.W.2d 285 (2006).

54 Mich. Comp. Laws Ann. § 780.794(11) (West 1998 & Supp. 2006).

55 Mich. Comp. Laws Ann. § 712A.18(8)(b) (West 2002 & Supp. 2006).

56 Mich. Comp. Laws Ann. § 780.794(18) (West 1998 & Supp. 2006), effective January 1, 2006.

57 *See* Mich. Comp. Laws Ann. § 780.794(13) (West 1998 & Supp. 2006) (restitution orders remain in effect until they are satisfied in full).

58 Mich. Comp. Laws Ann. § 780.794(11) (West 1998 & Supp. 2006).

59 *Id.*

60 Mich. Comp. Laws Ann. § 780.794(14) (West 1998 & Supp. 2006).

61 See, generally, *People v. Gahan,* 456 Mich. 264, 277, 571 N.W.2d 503, 509 (1997).

62 *Tate v. Short,* 401 U.S. 395, 397–400 (1971); *People v. Baker,* 120 Mich. App. 89, 99, 327 N.W.2d 403, 408 (1982).

63 Mich. Comp. Laws Ann. § 780.796b(3) (West 1998 & Supp. 2006), effective January 1, 2006.

64 *Id.*

65 Mich. Comp. Laws Ann. § 780.796b(4) (West 1998 & Supp. 2006), effective January 1, 2006.

66 *Indesco Products, Inc v. Novak,* 735 N.E. 2d 1082, 1085–86 (Ill. App. Ct., 2000).

67 *People v. McLean-Lane,* No. 203282, 2001 WL 1568425 (Mich. Ct. App. 2001).

Conversation With a Judge

Joseph Kozakiewicz, Editor of *The Michigan Child Welfare Law Journal*, conducted this interview with the Hon. Susan L. Reck, Chief Judge of the Livingston County Probate Court. Judge Reck has served on the probate court since 1989. In this interview she discusses her philosophy of the juvenile court, describes how her court seeks to address juvenile matters, and reflects on some trends in juvenile justice that she has observed over the years. The editorial board appreciates Judge Reck's time in granting this interview.

When did you first begin serving on the bench in Livingston County?

I ran for probate judge in the summer of 1988 and began serving January 1, 1989. My reason for running was really to help children. I enjoy the cases involving estates and guardianships, but I really have a special place in my heart for children. I was a teacher by training before I went to law school, so it was logical to move in that direction. I had served as a Guardian Ad Litem in many cases, I represented people in court, and I really liked that work.

So you were not running just to be a judge, but rather a judge working with children.

I think it is a good thing to run for a position in an area that you are trained for and suitable for. None of us can know everything about all the areas of law.

What types of cases do your hear?

That changed during my time on the bench. The family court legislation took effect January 1, 1998. We had 1997 to write our plan and redistribute the caseload. With the creation of the family court, the juvenile division cases were moved to the circuit court. We did not have enough circuit judges to handle this new caseload, so we assigned the probate judge to help. So I now share all the family court cases with our circuit judge. We each do fifty percent of the cases that came from the juvenile court and fifty percent of the divorce cases involving children. We have a unique situation where the district judges handle the divorces cases without children. That helps us better handle the volume of cases that involve children. So I now handle domestic relations, abuse/neglect, juvenile delinquency, and traditional probate court cases—adoptions, guardianships, mental health commitments.

Was the mandated creation of a family division a challenge to your court?

Originally the legislation promoted the policy to have one judge for one family. The idea was that if the family had a delinquency case, a divorce case, or an abuse case, there would be one single judge assigned to handle everything. We have made a real effort in this county to implement this policy as written. Our clerks check when a case is filed to see whether the family already has case. If that is so, then the new case is assigned to that judge regardless of the blind draw. The strange thing is that this was never a problem for us. We are a small county. When families would tell us that there was another case already going on, the judges would informally talk to each other. Usually one judge would defer to the other and allow both cases to be heard by the same judge. So it was not really a problem for us to put into effect this part of the legislation.

How did the formal implementation of the family division affect you personally?

If anything, what it did was brought my love for working with children to the divorce side. I had nine years of private practice in the divorce area and really did not want to do that anymore as a judge. But when the family court came about it was my choice to take this on. Really I was just responding to the numbers. There was no way to keep up with all the cases unless I did take on the divorce cases.

And I think it is working well, and now I am putting my energy into starting programs to benefit the family court. We are helping with the S.M.I.L.E. program, though that was in place before I became involved. I am a strong proponent of getting GALs involved in custody cases right at the beginning when there is a major dispute or if I sense there is a problem, such as kids being put in the middle. In these high

maintenance cases, I will appoint a GAL. The parties share the cost according to their incomes just like they share uninsured medical expenses. And then I just let the GAL run with it. The order appointing them gives them broad authority to access all records relevant to the child. GALs usually come up with custody arrangements that work for the child.

Do the GALs replace the Friend of the Court investigation?

No. The FOC will still do an investigation when the case is referred for one. But the investigators end up with a lengthy report and recommendation, and their involvement ends there. They do not advocate for the child. I expect the GALs to look out for the child and be involved in every aspect of the case. They actively advocate for the child's best interest. They file appearances in the case and are treated as a party. I do not go forward with doing anything regarding the child without input from the GAL. They are not in every case, only the cases where there are particularly hard problems. But that's a lot of cases. And I have been very pleased with how the attorneys handle these appointments. They really enjoy being able to advocate for what they believe to be best for the children.

Do they ever resolve the matters?

Often the GAL can work as a mediator. The truth of the matter is that I would rather not see these kinds of matters resolved in court in an adversarial situation. But ultimately sometimes someone needs to make a decision when the parties won't be reasonable. My whole job is to get people to be reasonable one way or another whether through GALs or through our referee processes. And most of the cases are resolved in these ways. Very few of the cases end up on my docket and when they do, every effort has already been made to resolve the matter.

Are you aware of any other courts using GALs in these cases?

No. And it really is useful. The GALs work behind the scenes and often are able to resolve these cases in a way that everyone feels good about. The attorneys are paid by the hour, and I take that seriously. I will show cause parties who fail to pay. When people really can't pay we have used FOC funds to pay the attorneys but we are reluctant to do that.

Over your years on the bench, have you recognized any trends in the juvenile cases you have seen?

I would say there are more girls in the system. More serious drugs are now a problem--cocaine, pills. I have not seen a lot of meth but I suspect it is coming since we are rural. We have had a drug court for the juveniles for a number of years. Our court administration has been very instrumental in getting grant funding for this. Like anything it is not 100 percent successful, but it is very beneficial to many kids.

Was it difficult to convince decision makers that a drug court could provide a benefit to the kids in your court system?

I have always taken the position that we need as many tools as possible to work with juveniles. I have spent a great deal of time working with others to develop programs. We offer a variety of community-based services, counseling services, substance abuse treatment, and out-of-home placement. Right now, our day treatment program is limited to boys, and I want to expand that program to include girls. The point of all our services is to get the kids back into the schools and their community. They have often been expelled from schools for behavioral problems and we need to get them back.

How do you try to balance treatment and punishment?

Punishment is a part of treatment, an essential part. Most youth accept responsibility when punished appropriately. Treatment services overall are essential to hopefully change behavior and get to return the youth to the school and community. The whole point of the juvenile court is rehabilitation. If you want to give up on kids, just put them in prison, just punish. But most of these kids are going to age out so we need to work to change their behavior and if they don't then we have failed.

Along these lines, how does waiver or the designation of juvenile cases fit into your concept of what a juvenile court should be?

There are some cases where you see cold eyes, kids who have been through every service and yet just keep escalating through worse behavior. But these are few kids. Most of the time you see something good, some interest

or talents that we need to find and pull out. The key is to find out things early on. You don't want to work for 6 months with a youth only to find out he or she has a learning disability. You need to find these things out early on in order to work effectively with them.

What successes do you see in your work?

Lots. I just signed a number of orders releasing kids from probation. I hear the positive talk about all the things that have gone well with these kids. It is an enjoyable part of my job to hear how kids have done well and have done everything asked of them. We do many studies of recidivism regarding the kids in our programs. We need to justify the expenses of these programs. There are gaps in the data. We don't know if kids have acted out as adults or in other counties so we do not have hard scientific data. But we do all that we can do and our studies do suggest that we are making a positive difference. We pay a lot of attention to the numbers. We use a rating scale—the Child and Adolescent Functional Assessment Scale (CAFAS) to measure a youth's day-to-day functioning. We use the measure pre- and post-services to see how they have improved overall after the court's involvement. And these numbers show that we are making a difference.

What would you like to do differently?

We have great programs. I would like to have some kind of group home concept. It is hard to find foster homes for delinquent children. Our Court does license a couple of homes, but this is definitely lacking. A professionally run group home would be good to have—somewhere to place children who have short-term needs. Sexual predator cases when girls are the offenders are also very hard to deal with. We have no treatment options within the state for this group.

We also do not have a detention facility. We have to buy beds from other counties, which is a pain for transport, but we also don't overuse detention as can sometimes happen when it is readily available. We don't want kids to get acclimated to a detention facility. We want it to be a shock to kids. It is expensive to run a facility, and I prefer spending on programs. Also, it is very important to have home-based services to really see what is going on in the homes. Wrap around services are very successful here—the kids' CAFAS scores show big changes for the kids who have gone through wrap-around.

How do you obtain the funding for all these services?

I don't know. I have spent many years begging. We show statistics and show that programs do work.

Do you have any advice for new attorneys planning to practice in this area?

Often young attorneys who are looking for experience seek to get on the court appointment list. Sometimes those are the ones that are not good at it don't stay with it. There is an awful lot of social work involved in this practice and we need people that enjoy this kind of work. As a judge I have often felt like I was practicing social work more than law.

And burn out is a problem to be aware of. Our attorneys are paid by the hour for all their time. We try to create an incentive for them to work hard on their cases. It is not fair to give them flat contract rates when some case may require a great deal of work.

Students should seek to get experience in the field before they graduate. Getting to court, working with experienced lawyers, just shadowing practitioners is the best training.

Can you offer any advice to the social workers who testify in your court?

Be clear. Don't be defensive. We are all on the same team to help make things better for the kids. Be specific and give examples to show how you arrived at your conclusions. Be professional and confident. Sometimes people disagree, and we need to be okay with that because we are all really on the same side.

Any last thoughts on how to effectively practice in the field of child welfare?

Everyone needs to keep an open mind to figure out the best plan for an individual child. If you are rigid or need to have others agree with you, it won't go well. Sometimes you try things and it doesn't work and you need to be able to be flexible and try something else. These cases go on for a long time. ◎

The Michigan Child Welfare Law Journal
Call for Papers: Special Education Issues

The editorial board of *The Michigan Child Welfare Journal* invites manuscripts for an issue regarding practice involving special education issues. The *Journal* takes an interdisciplinary approach to child welfare, as broadly defined to encompass those areas of law that directly affect the interests of children. The editorial board's goal is to ensure that the *Journal* is of interest and value to all professionals working in the field of child welfare, including social workers, attorneys, psychologists, and medical professionals. The *Journal's* content focuses on practice issues and the editorial board especially encourages contributions from active practitioners in the field of child welfare.

The main text of the manuscripts must not exceed 20 double-spaced pages (approximately 5000 words). The deadline for submission is April 1, 2007. Manuscripts should be submitted electronically to *kozakiew@msu.edu*. Inquiries should be directed to:

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The Michigan Child Welfare Law Journal
School of Social Work
238 Baker Hall
Michigan State University
East Lansing, MI 48823
517.432.8406

Upcoming Trainings and Conferences

State Bar of Michigan Children's Law Section

Annual Training

February 19, 2007

Thomas M. Cooley Law School , Lansing, Michigan
Details to come.

Paving the Road to Recovery and Reunification: Courts, Child Welfare, and Treatment Partners

April 3-4, 2007

Kellogg Center, East Lansing, Michigan
This conference will focus on substance abuse screening and assessment; service planning for families highlighting effective treatments; recovery support, including addressing issues of relapse; and implications of parental substance abuse for children.

Michigan Appellate Bench Bar Conference

May 2-4, 2007

St. John's Conference Center , St. John's, Michigan
Details to come.

2007 Nominations Open for Major State Bar Awards

The State Bar of Michigan is seeking a few outstanding lawyers and judges to be the recipients of major awards that will be presented at the September 2007 Annual Meeting in Grand Rapids. Nominations are now open and any member of the State Bar can propose a candidate for the following awards:

The **Roberts P. Hudson Award** goes to a person whose career has exemplified the highest ideals of the profession. This award is presented periodically to commend one or more lawyers for their unselfish rendering of outstanding and unique service to and on behalf of the State Bar, given generously, ungrudgingly, and in a spirit of self-sacrifice. It is awarded to that member of the State Bar of Michigan who best exemplifies that which brings honor, esteem and respect to the legal profession. The Hudson Award is the highest award conferred by the Bar.

The **Frank J. Kelley Distinguished Public Service Award** recognizes extraordinary governmental service by a Michigan attorney holding elected or appointive office. Created by the Board of Commissioners in 1998, it was first awarded to Frank J. Kelley for his record-setting tenure as Michigan's chief lawyer.

The **Champion of Justice Award** is given for extraordinary individual accomplishments or for devotion to a cause. Not more than five awards are given each year to practicing lawyers and judges who have made a significant contribution to their community, state and/or the nation.

The **John W. Cummiskey Pro Bono Award** named after a Grand Rapids attorney, recognizes a member of the State Bar who excels in commitment to pro bono issues. This award carries with it a cash stipend to be donated to the charity of the recipient's choice.

The **Liberty Bell Award** recipient is selected from nominations made by local and special-purpose bar associations. The award is presented to a non-lawyer who has made a significant contribution to the justice system. The deadline for this award is **Wednesday, May 2, 2007**. All other award nominations are due on **Friday, April 6** at 5:00 p.m.

An Awards Committee, co-chaired by State Bar President-Elect Ronald Keefe and attorney Francine Cullari reviews nominations for the Roberts P. Hudson, Champion of Justice, Frank J. Kelley Distinguished Public Service and Liberty Bell awards. The Bar's Pro Bono Initiative Committee reviews nominations for the Cummiskey Pro Bono award. The committee's recommendations are then voted on by the full Board of Commissioners at its June meeting.

Last year's non-winner nominations will automatically carry over for consideration this year. Nominations must be submitted on SBM forms and should include sufficient details about the accomplishments of the nominee to allow the committees to make a judgment. Application forms may be downloaded from *www.michbar.org.* Click on Media Resources, then Events and Awards.

Nominations can be submitted online, by facsimile, or mail to Ms. Naseem Stecker, State Bar of Michigan, 306 Townsend St., Lansing, MI 48933 or *nstecker@mail.michbar.org.* For more information call: (517) 367-6428 or (800) 968-1442, facsimile (517) 482-6248. Cummiskey Award nominations should be directed to Gregory Conyers at (517) 346-6358 or *gconyers@mail.michbar.org.*

National Association of Counsel for Children

Protecting Children and Promoting Their Well-being Through Excellence in Legal Advocacy

The NACC is a nonprofit child advocacy and professional membership association dedicated to representation and protection of children in the legal system. Founded in 1977, the NACC is the only national association of its kind. The NACC provides training and technical assistance to child advocates and works to improve the child welfare and juvenile justice systems. If you work with children as an attorney, judge, administrator, care provider, physician, therapist, social worker, teacher, law enforcement officer, or are simply a concerned citizen and want to improve your effectiveness while improving the system, the NACC is your organization. *Join us today!*

Member Benefits

- Toll-free and internet access to NACC Child Advocacy Resource Center
- Subscription to the NACC's quarterly publication, *The Guardian*
- Discounts on publications include *The Children's Legal Rights Journal*, NACC annual *Children's Law Manuals* and *Child Welfare Law and Practice*
- Access to the NACC Listserv information exchange
- Public policy and legislation updates
- Discounts on conferences and trainings

Your Dues Also Support

- **Amicus Curiae**
- **Speakers/Training Bureau**
- **Public Policy Advocacy**
- **Standards of Practice**
- **Youth Empowerment**
- **Outstanding Legal Advocacy Award**
- **Student Essay Competition**
- **Children's Attorney Certification**
- **National Children's Law Office Project**

NACC – Membership Application

I wish to become a member.

INDIVIDUAL MEMBERSHIPS:

☐ Regular $80 ☐ Supporting $100* ☐ Patron $250*
☐ Student $40 ☐ Sustaining $150* ☐ Lifetime $2500*

*Includes special thank you listing in The Guardian.

☐ I would like $10 of my membership dues to support my local NACC affiliate.

GROUP MEMBERSHIPS:

Group memberships are available at a significant discount. Please contact the NACC for more information.

☐ **Please send information on establishing an affiliate.**

Make Check Payable to: NACC

Mail to: National Association of Counsel for Children, 1825 Marion Street, Suite 242, Denver, CO 80218

Telephone: Office: 303-864-5320 • Fax: 303-864-5351

Federal Tax ID#: 84-0743810

All but $80 of your membership fee is tax-deductible.

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☐ **Enclosed is my check in the amount of $** _____

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