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The average prostitute in the United States begins selling sex between the ages of twelve and fourteen. Regrettably, the pervasiveness of child prostitution and other forms of sex trafficking within this country remains a well-kept secret.

According to the National Center for Missing and Exploited Children, every year upwards of 100,000 children alone are sexually exploited (a domestic estimate that does not include those children exploited for labor trafficking purposes). Foster children especially are at risk of sex trafficking. In another study, the National Center for Missing and Exploited Children estimated that, of the children reported missing and likely sexually exploited, sixty percent are runaways from foster care or group homes. In some cases, foster children may become victims of sex trafficking in exchange for basic shelter or financial support. Additionally, foster children often do not have a stable home and thus often lack the support system necessary to oppose a trafficker’s advances.

Professionals working with foster children need to be aware that traffickers target group homes and foster placements and, consequently, need to be armed with the requisite knowledge to effectively advocate for their young clients. Foster children are involved in the abuse and neglect court system and may get passed from home to home. “Pimps” and other traffickers prey on this potentially vulnerable population.

In response to the crisis of human trafficking, the federal government passed the Trafficking Victims Protection Act of 2000 (“TVPA”). The enactment of this federal legislation was a major step in recognizing the widespread problem of human trafficking. The TVPA legally defines “sex trafficking of a minor” essentially as recruiting, harboring, or transporting a minor who will be caused to engage in a commercial sex act. It is important to note that a trafficker need not force, deceive, or coerce a minor to be liable. The mere fact that the victim is a minor is enough to validate the crime of sex trafficking. The TVPA, however, did not specifically address foster children and their unique risks.

Fortunately, on December 20, 2013, the Ways and Means Committee of the House of Representatives released draft legislation H.R. 1732, commonly known as the Strengthening the Child Welfare Response to Human Trafficking Act of 2013 (“Act”). One of the main objectives of this pending legislation mandates the training of caseworkers to identify foster children who are victims of sex trafficking and to harness foster care youth with sufficient tools to become successful adults, free from commercial sexual exploitation.

The Act is meant to compliment the TVPA, which does not explicitly address the role of state child welfare agencies and intervention in matters concerning trafficked children, or commercially sexually exploited children (“CSEC”). Statutory provisions that provide this framework are necessary because child welfare agencies are of
paramount importance to CSEC, considering that the agencies’ professionals maintain consistent personal relationships with foster care youth.

The Act would also impact child welfare legislation by amending Part E, Foster Care and Adoption Assistance, of Title IV of the Social Security Act to require foster care programs to make reasonable efforts when identifying victims of child trafficking and when recording the type of trafficking to which children in their care have been subjected. Finally, the Act seeks to amend the Child Abuse Prevention and Treatment Act to require some state grant money specified for child abuse or neglect prevention to fund services for CSEC, specifically.

Ultimately, the Act has five key, identifiable goals. The Act first and foremost directs the Department of Health and Human Services ("HHS") to develop and publish guidelines to assist child welfare agencies, as well as juvenile and family courts, in addressing and ultimately preventing sex trafficking of youth in foster care. This goal requires states to develop procedures for identifying CSEC and for determining appropriate services. Currently, there is no universal screening method to help identify CSEC and assist them in obtaining necessary services. Implementing an appropriate screening method would be significant because indicators of trafficking tend to be especially difficult to detect in foster care children, who may already display signs of abuse or neglect generally. Accordingly, the Act’s first goal mandates that states provide training for caseworkers in identifying victims of child sex trafficking and those who are at risk of becoming victims. Upon doing so, states maintain the responsibility of reporting identified children to the National Crime Information Center at the Federal Bureau of Investigation and making this information on services available to the public.

The Act’s second objective is to improve the quality of data collected on sex trafficked children. The Act mandates that HHS report to Congress information on children who run away from foster care and group homes as part of its annual report, and that state efforts provide trafficking-specific services to ensure foster children preserve connections with caring adults. This objective will specifically help ensure that these at-risk youth develop a support system to assist them in leaving a trafficking situation or to avoid trafficking altogether. Furthermore, states would be required to submit data on CSEC through the existing foster care data system. The practical implication of this would be to enable workers to use an existing system to avoid spending extra expenses or time, while making a significant impact on how CSEC are identified and supported within the foster care context.

The Act’s tertiary goal is to ensure youth in foster care can lead “more normal lives” by mandating that states implement a “reasonable and prudent parent” standard that moves kids out of foster care more quickly. No longer would states be able to indicate long-term foster care, or “Another Planned Permanent Living Arrangement,” as a stated goal for a child client. For children over the age of sixteen who already have this goal in place, states would document ongoing efforts for permanency and provide a basis for why other options are not in the client’s best interest.

The final aim of the Act is to ensure that youth in foster care are overall better prepared to lead successful lives. Children aged fourteen years or older would select individuals to be part of the team that develops their case plan and would be encouraged
to participate in the plan themselves, offering them a sense of empowerment in their own lives. Furthermore, the law would require that children who have reached the age of fourteen leave foster care with a birth certificate, Social Security card, and bank account. This mandate would ensure that children leaving the system would have a better chance at success and be less likely to fall into a trafficker’s false promise of financial stability.

The Strengthening the Child Welfare Response to Human Trafficking Act sets up specific and ambitious provisions to help safeguard at-risk foster youth from falling through the cracks and becoming representatives of child sex trafficking. The Act has received bipartisan support from representatives of sixteen states and is currently pending in the House of Representatives. The bill needs representatives to support its cause, or its potential for positive change in the lives of child trafficking victims will never be realized. It is important that professionals who care about this issue educate others and that they take action by writing to their state representatives to support the bill.

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Education Connection: A Prison to School Pipeline: Preparing Incarcerated Youth for Reentry into Society and Public School

By Jade Gary

I. INTRODUCTION

Education has proven to be a tool that affords great opportunities for all who pursue it. This maxim also applies to incarcerated youth in the juvenile justice system. Providing youth with an appropriate education while in detention centers has been linked to reducing recidivism and effectively rehabilitating juvenile offenders. Nevertheless, for decades, the system continues to serve as a barrier rather than a path to rehabilitation. Data indicates that higher levels of educational achievement correlate with lower rates of recidivism. Most efforts to rehabilitate incarcerated youth, however, have failed and continue to fail in helping ex-offenders transition into adulthood, because pathways to educational attainment are often undermined.

II. COOK COUNTY JUVENILE JUSTICE SYSTEM

The Illinois Juvenile Court Act of 1899 fostered the idea of rehabilitating, rather than penalizing, juvenile offenders. However, it was not until 2005 that the Illinois legislature created a juvenile division separate from the Illinois Department of Corrections. Today, this division, the Illinois Department of Juvenile Justice (IDJJ), operates eight juvenile correctional facilities, referred to as Illinois Youth Centers. These facilities, which include the Cook County Juvenile Temporary Detention Center, Cook County Jail, and the Illinois Department of Corrections juvenile facilities, all house publicly operated schools on their grounds, including Healy North Alternative High School, Healy South Alternative High School, and Nancy B. Jefferson Alternative School. Chicago Public Schools (CPS) corrections office personnel review the criminal and academic backgrounds of their juveniles to determine where youth offenders will serve sentences. These programs are targeted to students who have some involvement in the Illinois Department of Corrections (IDOC) in an effort to prevent court-involved youth from falling behind academically.

Unfortunately, youth who enter the juvenile justice system typically experience academic setbacks in school, and a disproportionate number of incarcerated youth are identified as having learning disabilities requiring special education services. Today there is often a disconnect between correctional education programs and local school districts that creates complications in helping ex-offenders transition back into public schools.

In theory, given its pioneering efforts as the earliest established juvenile justice system in the United States, Cook County should be the model for the rehabilitation of young offenders, preparing them to reenter the public school system upon release. However, recent data shows otherwise. A 2013 American Sociological Association study revealed that a mere twenty-six percent of juveniles detained in Cook County graduate high school after reentering CPS. Furthermore, youth who have experienced the juvenile
justice system have only a sixteen percent chance of enrolling in a four-year college. The study concluded that essentially, youth arrests lead to high dropout rates because arrested students are involuntarily pushed out of school through enforcement mechanisms.

III. COMMUNICATION BETWEEN AGENCIES

One example of the legal system driving ex-offenders out of the education trajectory is misinterpretation of legislation. The Family Education Rights and Privacy Act (FERPA) mandates the confidentiality of juvenile educational records in an effort to protect children from unauthorized disclosure of a child’s school record. Unfortunately, this legislation is often misinterpreted in the juvenile justice system, causing agencies to delay or refuse the transfer of school records. As a result, students remain out of school for extended periods of time or may even be placed in inappropriate programs that fail to meet their academic needs.

Too often, a lack of coordination with educational transcripts and records prevents youth from receiving credit for courses they completed in juvenile facilities. Because educational records are sometimes unavailable or incomplete, ex-offenders are barred from attending classes upon reentering the public school system.

A 2008 juvenile justice study, conducted in the Cook County juvenile courts, revealed that youth were regularly denied reentry into CPS district schools once advocates revealed that they would not receive academic credits for any detention schoolwork unless they were enrolled at the detention for a full semester. Furthermore, parents were never informed of the necessary paperwork for reenrollment.

In other cases, students had to repeat certain coursework because public schools were merely suspicious of the quality of detention education programs. Such suspicion likely arose from the fact that juvenile justice agencies were not designed to provide or monitor educational services, and therefore failed to properly manage and document child academic performance.

IV. QUALITY OF EDUCATIONAL SERVICES

Without any accountability to ensure and track student progress, the educational services offered in detainment lack the necessary rigor to compete with the public school system. The Cook County Juvenile Detention Center, through the Nancy B. Jefferson Alternative School and in collaboration with CPS, provides a curriculum comprised of various subjects such as English, Mathematics, Science, Social Science, Computer Education, Health, and Physical Education based on the CPS district-wide curriculum plan. Likewise, all CPS alternative schools, utilize the core district academics plan, spanning between six months to one year depending on the youth’s sentence and grade level. In addition, each day, youth are allotted two and a half hours of supplementary services.

Special education services in these alternative schools are the responsibility of CPS and led by itinerant teachers employed by the district. However, it is unclear if these services are actually provided. Facilities often have few qualified staff members with
professional credentials and staff sometimes fail to develop and implement individualized education plans (IEPs) for students with special education needs or those simply in need of one-on-one attention.

According to an annual report by the John Howard Association, Cook County juvenile detainees are also required to receive vocational training as part of educational services, such as technical computer skills; however, only one of Cook County’s alternative schools, Center Factory, offers vocational training in its curriculum. In addition, most of the instructors assigned to teach vocational-based courses are not certified.

Furthermore, resources are scarce. For the past two years, Nancy B. Jefferson Alternative School has been unable to fill department supply orders for course textbooks. Teachers working in Cook County’s Juvenile Detention Center consistently report that they do not assign homework because students are not allowed to bring supplies (textbooks, paper, writing instruments, etc.) outside of the school facilities for safety reasons.

V. PROPOSAL

Implementation of effective re-entry programs between public schools and detention centers remains an essential component in ensuring that ex-offenders have the appropriate guidance when re-entering the public school system. This may include monitoring student growth prior to and after re-entry into the public school system. In addition, programs should provide counselors and clinical social workers within juvenile detention centers as well as the public school system who can help address each student’s individual mental and emotional needs. These additional measures must be taken to ensure that youth offenders are prepared to pursue greater opportunities upon their release from incarceration.

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Around the World: The Struggle Between Confidentiality and the Need for Transparency in German Child Abuse Reporting Laws

By Jasmine Prokscha

Germany is representative of the tension that exists between the need to protect the privacy of minor victims of child abuse and the need for transparency laws that hold child welfare agencies accountable. Germany’s significant emphasis on confidentiality ranks high in comparison to other countries, which is due, in part, to Germany’s experiences with totalitarian regimes and gross privacy invasions. However, this emphasis directly conflicts with the need to protect victims, who are entitled to privacy and may feel further victimized by publicizing the details of their abuse.

I. GERMANY’S PRIVACY LAWS FOR CHILD ABUSE

Germany has stringent anti-child abuse laws, including ones that forbid corporal punishment. The country has a very broad definition of child abuse, which was strategically devised to protect children. The law requires a holistic assessment of a child’s situation on a case-by-case basis, rather than applying a one-size-fits-all approach. The greatest deference is given to the family unit because the family, and family integrity, has been an extremely important cultural aspect to Germans throughout history. German child abuse laws are designed with a strong parental-education component, rather than relying on the default of immediately removing the child.

Another interesting aspect of German child abuse laws is the privacy it affords children. Children and young people can receive counseling without notifying the legal parent or guardian, should such notification undermine the success of said counseling. Under these laws, mandated reporters must comply because the definition of confidential information extends to data surrounding child abuse as well. Germany has extremely heavy data protection regulation, including data about child abuse. The Sozialgesetzbuch VIII für Kinder und Jugend (social code regarding children), contains specific regulations governing data protection for both public and private child and youth welfare providers. In order to pass-on data without the consent of a child, child welfare providers must ensure that the child receives immediate action by other institutions, such as the hospital or police department.

II. WHY IS PRIVACY SO IMPORTANT TO GERMANS?

Germans have awarded a high level of respect for the privacy of its citizens in cases of abuse since the reign of the Third Reich and the former communist regime in East Germany. Many German citizens, to this day, have continued to experience the lasting effects of the government’s abuse of citizens’ privacy as a consequence of having been critical of the regime. The Berlin Wall and the Stasi (Staatssicherheitsdienst, secret police) archives are tangible reminders of these violations of privacy. The Stasi archives offer former East German citizens a way to identify how their apartments were bugged,
learn about friends that had betrayed them by becoming informants, and even how strangers were privy to the intimate details of their lives. These very recent, and very real, examples have weighed heavily on German citizens’ minds. Before the Berlin Wall, the Nazi regime also controlled every public aspect of individuals’ lives, and made use of census and data collecting to ascertain who was secretly disloyal to the regime. These historical examples were on the forefront of the drafters of the German Constitution, which was structured to protect the individual’s right to privacy.

Therefore, the reason that a child’s right to privacy is afforded such great respect, even in child abuse situations, is due to Germany’s approach to privacy in general. For example, the German Constitution holds that the respect for human dignity is a supreme principle. The German Federal Constitutional Court, in turn, holds that the comprehensive right to privacy is a direct derivative of this, and states that the right to privacy is a fundamental element of the individual’s right to personhood. Confidential information arising out of protected relationships is presumptively unavailable.

III. THE CONSEQUENCES OF CONFIDENTIALITY

The greatest consequence of this level of confidentiality has been the public’s inability to hold child welfare service providers accountable. Confidentiality and transparency are issues that countries must balance when considering child abuse policies. On the one hand, disclosing information regarding child abuse holds agencies accountable by ensuring that they provide information and statistics that enable other agencies, and government in general, to develop better laws and policies when combating child abuse. Without the necessary statistical information, governments are unable to do so. Similarly, if an agency is conducting research on child abuse in order to develop greater detection and prevention mechanisms, these agencies will be basing their research on very limited samples that may not accurately represent the population.

These issues are present in Germany and are further exacerbated by the lack of centralized authority and continuity among child welfare services. Although there are federal anti-child abuse laws, enforcing these laws are left to the local level and differ between states. Each Länder (German state) has its own Jugendampt (Child and Youth Welfare Authority). The agencies, however, differ on their training, mandated reporting laws, and child abuse investigation procedures. Even the way that child welfare officials are educated on the nature of child abuse differs from Länder to Länder.

This creates numerous issues. First, the lack of continuity prevents agencies from learning from the successes and failures of other agencies. Germany has attempted to counter this by encouraging local governments to participate in the nationwide research and practice development project, Aus Fehlern lernen-Qualitätsmanagement im Kinderschutz (Learning from Mistakes, Quality Management in Child Protection). Second, because of how localized child welfare agencies are, local authorities serve as both the reporting center as well as the agency responsible for service, support, and treatment. This dual role can result in a negative and fearful attitude toward local social services, unwillingness to contact treatment and supportive services, and considerable backlash towards social workers. Third, the division between agencies and protection of
child abuse data has left researches with little centralized data available from Germany. The majority of child abuse research is based off of a local, non-representative sample of cases. As a result of these cases, it is unknown what the success of current child welfare programs may be. While the federal government has developed proposed child abuse prevention trainings for child welfare workers, the extent to which child abuse and neglect are addressed among the different agencies remains unknown.

Why are Germans so against federalized agencies and national data collection? Part of this lies in the desire to protect privacy, and Germany’s history affects this policy. Germans have bad memories of totalitarian regimes, from both the Nazi and Deutsches Demokratische Republik (DDR) regimes. Both of these regimes abused the government’s power to collect data, and instituted rigid control over the population. Therefore, any indication towards a return to these regimes invokes strong reactions from the public. For example, in 1983, when Germany initially planned for a census, the government faced fierce protests and a long legal debate that mandated clarification of constitutional doctrines as to whether information gathering by the federal government was permissible.

IV. PROPOSAL

What does this all mean for German anti-child abuse practices? Germany needs greater unity between its child welfare organizations to ensure continuity between Ländern. At the very least, child welfare workers’ trainings should be unified, which would ensure that even if a child moved between Länder, they would receive the same protective services; otherwise, a parent could simply move to avoid being prosecuted for child abuse.

In regards to releasing data, however, Germany has an uphill battle. German papers will not even publish the names of convicted criminals, as they believe an individual’s right to privacy trumps freedom of speech. Therefore, it is highly unlikely that the media will ever be able to provide the same coverage of child abuse cases that they are able to in the United States. Instead, the only way that the federal government could ensure that Jugendämpter are held accountable would be through reliance on oversight from local governments on the Länder level, or through the local government’s voluntary participation in the Aus Fehlern lernen- Qualitätsgmanagent im Kinderschutz program.

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Spotlight On: “Project Respect” and the “Washington State Model Protocol for Commercially Sexually Exploited Children”

By Jessica Saltiel

I. INTRODUCTION

In March 2013, Washington became the first state to put forth a model protocol specifically for dealing with the rising issue of commercially sexually exploited children (CSEC). The model protocol was developed by Project Respect, part of Washington’s Center for Children and Youth Justice (CCYJ). The issues pertaining to CSEC youth cover relatively new territory, and the developers of the protocol emphasize and recognize the need for more information and more research. Because of this, Washington’s model protocol puts forth a flexible and victim-centered approach to establishing policy, implementing training, and encouraging further analysis of this particular field and additional improvements to the protocol.

II. PROJECT RESPECT AND THE CENTER FOR CHILDREN AND YOUTH JUSTICE

Washington’s Center for Children and Youth Justice was founded in 2006 and is a private, nonprofit organization that encourages reform and the development of better practices in Washington’s juvenile justice and child welfare systems. Justice Bobbe J. Bridge founded the Center and now serves as its CEO and president. The Center encourages evidence-based practices, provides funding for research and programs, and proposes legislation. Along with Project Respect, CCYJ maintains many other initiatives, such as Models for Change, which seeks to deter juvenile crime through law enforcement, early intervention, and rebuilding and empowering essential social institutions.

Project Respect was established in response to the statewide need for a uniform protocol for agencies and individuals responding to CSEC situations. In 2011, CCYJ received a two-year grant to develop such a uniform protocol and to assist with subsequent training and implementation. The initiative seeks to approach the situation of CSEC youth with compassion and to encourage state agencies and individuals to view these youth as victims, rather than as criminals. Terri Kimball, the manager of Project Respect, oversaw and coordinated the two-year journey of developing the model protocol and communicated with professionals throughout the state to establish best practices in engaging and supporting CSEC youth. Kimball finds Project Respect’s mission to be essential in allowing CSEC youth to access the resources they need quickly in order to efficiently move towards a path of healing.

In addition to structuring the protocol described below, Project Respect also assists counties in implementing the protocol and training the professionals who will be handling future CSEC cases.
III. THE DEVELOPMENT OF THE “WASHINGTON STATE MODEL PROTOCOL FOR COMMERCIALY SEXUALLY EXPLOITED CHILDREN”

Throughout 2012, CCYJ held several mini-summits to collect input from a range of professionals, including judges, juvenile court representatives, law enforcement agents, attorneys, service providers, community advocates and school representatives. This approach – reaching out to individuals currently involved with CSEC issues – was a unique one and has helped this protocol stand out for its credibility based in personal and practical knowledge.

The first summit took place in February 2012, and the summits concluded in August 2012. Over 200 professionals took part in these summits. The themes addressed in these summits covered three key questions regarding: 1) the lay of the land of CSEC situations in the various regions; 2) the meaning of a victim-centered approach; and 3) the ideal response.

The resulting “Washington State Model Protocol for Commercially Sexually Exploited Children” repeatedly encourages those involved in CSEC cases and situations to view these children as crime victims rather than as criminals. This emphasis stems from model mission statements voted on by participants in the summits. These participants overwhelmingly expressed that a victim-centered outlook was essential to implementing a system to provide support to CSEC youth and to allow them to access the resources they need after they are identified. For example, a victim-centered approach encourages avoiding arrest and detention whenever possible. In addition, the summits clarified that a victim-centered approach would be one that focused on the needs of the CSEC youth as individuals.

IV. AN OVERVIEW OF THE MODEL PROTOCOL

Furthermore, the model protocol centers on concepts of flexibility, collaboration, and training. As for flexibility, the model protocol offers a template for various local jurisdictions to use in identifying CSEC youth and provides them the assistance and support they need. The developers recognize that the exploitation of children does not look the same in the various regions of the state, and the protocol would have to be flexible enough to apply to the various circumstances that arise in different localities. However, the protocol balances this element of flexibility with standardized tools for identification of known risk factors and screening of potential CSEC victims. The protocol is able to directly address the range of circumstances within the umbrella of CSEC, while still providing an element of consistency in the treatment of CSEC youth and the services that would be available to them whatever the location.

In addition, the protocol also encourages the statewide collaboration and coordination between agencies and individuals working with CSEC youth. It provides for three layers of responsibility, one at the statewide level and two at the local and regional levels. The local and regional levels include multidisciplinary teams and task forces. The multidisciplinary teams are smaller, quick responding groups of professionals who take on immediate consultations, while the task forces take on the role
of overseeing the adoption of the model protocol and coordinating community responses under the protocol. Statewide CSEC Coordinating Committees meet annually and receive reports from the local and regional levels to assess efficiency and effectiveness of the current CSEC practices.

Finally, the model protocol encourages further data collection and improvements, recognizing that the issue of CSEC youth is new and somewhat uncharted territory, and this field still requires a greater development of knowledge. The protocol points out that “there is no comprehensive data available on the number of commercially sexually exploited children in Washington and much of the data that is available is problematic. It is vital that we find ways to improve CSEC data collection.” As the protocol is implemented throughout Washington, further research can be done to determine what practices and approaches are most effective in both deterring the sexual exploitation of children in general and in providing the most efficient and beneficial support to victims.

V. CONCLUSION

In 2013, task forces throughout Washington began to implement CCYJ’s model protocol. The response from the officials who make up these task forces has been positive, deeming it a “well-crafted, comprehensive blueprint” that will help in both standardizing how CSEC situations are handled and reforming the way people think about sexual exploitation victims. Benton County prosecutor Andy Miller, one of the participants in the development of the protocol, believes that the implementation of the protocol will not only lead to more convictions, but will allow Washington to be one of the strictest states in the country as to CSEC issues.

Project Respect’s final product seen in the “Washington State Model Protocol for Commercially Sexually Exploited Children” reflects both an emerging awareness of the issue and presence of CSEC youth in this country as well as a pressing need to keep collecting data and keep researching the best ways to provide desperately needed services to this group of children. Project Respect’s development of a model protocol for supporting CSEC youth is an endeavor that should spread to other states, and Washington’s example could potentially be used as a template for the unique problems and circumstances that are found throughout the country.

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In 2011, there were 681,000 individual children who were victims of childhood maltreatment, 1,570 of whom died as a result. The following year, the number of child victims increased, totaling 1,640 child fatalities. The U.S. Department of Health and Human Services reports that children under the age of one are most likely to die from Fatal Childhood Maltreatment (FCM), or death as a result of child abuse or neglect. Approximately forty-two percent of FCM’s are under the age of one, with eighty-two percent being children ages birth to three. To put these figures in perspective, 1,139 children ages birth to fourteen died in car accidents in 2010. Given the pervasiveness of car travel, the comparable number of childhood fatalities resulting from abuse and neglect suggests that FCM is a critical issue.

The formation of the New York Society for the Prevention of Cruelty to Children in 1875 formally established the practice of protecting children from abuse and neglect. However, examples of child abuse or maltreatment were addressed through the criminal court system dating as far back as the early 1800s. Unfortunately, despite the long-term institutionalization and attempts to protect children from this type of treatment, cases of child abuse and the resulting fatalities are still all too frequent occurrences.

Access to child abuse records in cases resulting in death has been the subject of much debate and legislation, even resulting in an amendment to the Child Abuse Protection and Treatment Act in 1992, allowing for the disclosure of records in fatal cases of child abuse and neglect in certain circumstances. The amendment reads that disclosure may be made permissible for the purposes of “bonafide” research. Although not all states allow access to records for research purposes, Oklahoma does.

In October of 2013, a group of scientists, predominately from the University of Oklahoma, published a twenty-one year study of investigations of childhood maltreatment fatalities in Oklahoma titled *Fatal Child Maltreatment: Characteristics Of Deaths From Physical Abuse Versus Neglect*. On the one hand, the study confirmed findings of earlier studies with regard to the age of the victims, illustrating that child victims tend to be younger, with eighty-five percent of victims being under the age of five. Additionally, the study confirmed that while men were overall responsible for more FCM’s, women were more often associated with FCM’s that resulted from neglect while men were associated with FCM’s resulting from abuse.

What differentiates the Oklahoma study from previous studies regarding FCM was that it included a larger population over a longer period of time. Previous studies spanned a mere one to nine years, whereas the Oklahoma study covered twenty-one years, from 1986 to 2006. The Oklahoma study was based upon the deaths of 685 children in the state of Oklahoma, which was a significantly larger population than previous studies that ranged from investigating 28 to 276 cases.

The Oklahoma study was the result of collaborations between the Oklahoma Child Death Review Board, the Oklahoma Department of Human Services (Child
Children’s Legal Rights Journal

Welfare division) and the University of Oklahoma. The records for the Oklahoma study were obtained directly from the Oklahoma Child Death Review Board. The names and files were identified by DHS as deaths resulting from childhood maltreatment and those cases were passed on to University researchers and became the basis for their findings. The files from the Oklahoma Death Review Board included the children’s names (although the Oklahoma state statute provides that the names may not be published in the study), the investigation reports from the Department of Human Services and local law enforcement agencies, and reports from the medical examiner’s office. The file from the Department of Human Services also included a description of the incident that ultimately led to the child’s death.

The Oklahoma study was not only unique in that it covered a larger population over a longer period of time, but also in that the researchers specifically investigated the differences in FCM’s as a result of physical abuse versus those FCM’s that were a result of neglect. The researchers addressed factors such as the characteristics of the alleged perpetrators, the child’s family size, and whether there had been prior contact with the child welfare system.

The Oklahoma study found evidence demonstrating that particular features of either individual caregivers or families, tended to have an impact on the likelihood of an FCM occurring as a result of either abuse or neglect. These findings are important as they can inform programming and interventions aimed at prevention. Understanding more about the perpetrators allows for more accurate and targeted resources, with the hope of increasing the efficacy of interventions and ultimately the prevention of further childhood deaths resulting from abuse or neglect.

The different characteristics in FCM’s that resulted from abuse versus those that resulted from neglect are reflected in the findings of the study. Children who died as a result of neglect were more likely to come from larger families, where there had been a prior child maltreatment investigation of the family (twenty-nine percent of the cases) but not an investigation specific to the child victim. In twenty-six percent of the cases there had been no prior investigation by child protective services of the child victim. Furthermore, in cases in which a child died as a result of neglect, forty-three percent of the alleged perpetrators were biologically related to the victim, and forty percent of the alleged perpetrators were women, typically the mother. By comparison, ten percent of perpetrators in neglect resulting in death cases were men. The authors state that these findings indicate that targeting resources aimed at preventing neglect in families with these characteristics, larger family size with previous system contact where the mother is the caregiver, may be more effective.

In contrast, in abuse resulting in death cases, only nineteen percent of families had prior contact with child protective services, and in only fourteen percent of the cases had there been previous contact with child protective services for the specific child victim. Furthermore, only twenty-nine percent of the alleged perpetrators in these cases were biologically related to the child victim, and thirty-four percent were men. In contrast, sixteen percent of the alleged abuse perpetrators were women. The differences in characteristics among FCM’s that result in abuse versus neglect similarly illustrate that
prevention based programming may be more effective when directed to the populations more likely to benefit from specific targeted services.

While this study provided researchers with a much more comprehensive understanding of the difference between abuse and neglect FCM cases, the study also had limitations. The lack of independent investigations of the FCM’s forced researchers to be reliant and work solely with what preexisted in the files they received from the Child Death Review Board. As a result, there were several other factors that the study was unable to address, limiting the findings of the study. In particular, the researchers mention that they were unable to investigate the role of a parent’s mental health status or the overall socio economic status of the family.

Ultimately, the Oklahoma study authors emphasize focusing programming on addressing physical abuse of children amongst men. Furthermore, the authors note that the prevalence of mothers in FCM neglect cases may be a result of the frequency with which mothers are primary caregivers. As a result, the authors suggest providing services aimed at preventing neglect specifically targeting mothers who may be at a greater risk.

The Oklahoma study shed light on how current programs aimed at preventing child deaths as a result of maltreatment may be enhanced and how new programming can be effective. Gaining further understanding on the critical components of the impact of socioeconomic family status, the mental health of parents and caregivers, and the families interaction with other governmental resources and programs can only provide further insight into how future FCM’s can be prevented.

Sources:

45 C.F.R. § 1340.14 (i)(2)(i)-(xi).


In the Courts: When the Bell Rings Silently: Punitive and other Constitutional Concerns for Juvenile Detainees in Isolation

By Kevin Young

While isolation is contrary to the social nature of humanity, it is commonly used by correctional facilities to punish juvenile detainees. In some instances, incarcerated youth have been isolated for a period exceeding seven hundred hours. Given such occurrences, isolating juveniles is a controversial topic that has been in the courts for years. In 1979, the Supreme Court determined in the case of Bell v. Wolfish what the appropriate use of isolation should be for juveniles. The Court stated that as a general rule, punitive ramifications could not be used on juveniles because as minors, they are not to be considered convicts under the Due Process Clause of the Fourteenth Amendment. The Court stated further that for a punitive detention to be warranted, an officer must have expressed intent to punish the detainee, and there must be an objectively rational basis for the officer’s act. Alternatively, isolation can be used as a punitive measure if it is reasonably related to the government’s objective and if the isolation the detainee is subjected to is not excessive in relation to such objective. Different jurisdictions have implemented their own methods of applying the Bell rule to the isolation of juvenile detainees, occasionally borrowing from procedures for dealing with other acts of violence and implementing review boards.

Several years after Bell v. Wolfish, the Eleventh Circuit Court of Appeals implemented a multifactor test for determining whether the use of isolation should be considered punitive. In H.C. by Hewett v. Jarrard, the court borrowed the multifactor test used by several other circuits to determine whether an officer’s conduct to a detainee is unreasonable. The factors include the need for force, the amount of force used, the extent of the injury inflicted, and whether force was applied in good faith to maintain or restore discipline.

The case of H.C. by Hewett v. Jarard, involved a juvenile detainee who was placed in isolation after laughing at another detainee’s prank of flushing underwear down a toilet. The detainee was kept in isolation for seven days and was not given the chance to defend the allegations or present evidence on his own behalf. The court held that the isolation was not reasonable under the circumstances and amounted to a violation of the detainee’s procedural Due Process rights. Given the nature of the offense and the extensive period of time that the detainee was in isolation as a result, the court ruled the punishment to be unconstitutional.

Isolation triggers multiple layers of constitutional review. Even if isolation is allowed as punishment under the Fourteenth Amendment, it must also meet the Eighth Amendment’s threshold for cruel and unusual punishment. Isolation violates the Eighth Amendment in two ways: if its use is not measurable to the goals of punishment and thus becomes a purposeless and needless imposition of pain and suffering, or if it is grossly out of proportion to the severity of the act committed.

The Seventh Circuit case of Mary and Crystal v. Ramsden identified five factors to be applied in making the determination of whether isolation furthered a purposeless
imposition of pain and suffering, or was significantly out of proportion to the stature of the act committed. The ruling came a year after the Bell case, and the Ramsden court said that the detainee’s age, nature of the misconduct, the emotional state of the detainee when isolated, how the facility treated the detainee while isolated, and the nature and extent of any injury suffered by the detainee, should all be factors considered when determining its constitutionality.

These factors are applied liberally to both the initial isolation and successive decisions that the correctional facilities make. For example, in Ramsden, two detainees were isolated after attempting to escape and assaulting a guard. The issue was not whether the initial choice of isolation was appropriate, but rather whether the conduct was deemed unconstitutional because the facility denied medical attention and removed the detainees’ bed and linens. The facility’s subsequent actions, and not the initial act of assigning isolation, were what was held to be a needless infliction of pain and suffering.

Illinois has also ruled on how detainees can be isolated by categorizing and addressing what protections these detainees should be guaranteed upon isolation. In the case of In re Washington, the administrative statutes in place regarding juvenile isolation were challenged. The Illinois Supreme Court affirmed the various procedures used by the Department of Corrections stating that isolation is permissible when used only as a means of removing a detainee from the general population due to the danger that the detainee may pose to the safety of other detainees or to the staff. When isolation is used, minors have the opportunity to confront the validity of the charges that led to the isolation and present evidence in the case of their defense.

The court additionally affirmed the grouping method previously in place that determined how correctional facilities use isolation - whether an emergent or non-emergent isolation case. Emergency isolation is the immediate isolation of a detainee when he/she presents a clear and present danger to the safety of others in the facility or if the security of the correctional facility would be endangered without isolation. When this type of isolation is triggered, the detainee is to receive a hearing within a three-hour period of the act. Non-emergency isolation requires the removal of the minor from the current activity, and the detainee is subsequently placed in the recreational area where they would await a hearing within the hour.

Without regard to whether the punishment is allowed, alarming patterns are present throughout the isolation cases. One commonly stressed issue by the court is whether a detainee can use evidence and present evidence in his or her defense. In both considering whether isolation is punitive and in determining whether it is cruel and unusual, courts also consider whether an independent body making decisions had the opportunity to hear from the detainee. If a board was not present in making the isolation determination, courts seem to accept as an alternative an appellate process that allows a detainee to question the isolation decision and return to the general juvenile population.

Another commonality is how isolation can turn into a negative spiral and lead to further problems for the detainee. In Ramsden, the detainee attempted suicide by hanging herself with her towel, and as a result the staff removed her bed linens. A similar situation is seen in the H.R. case, where a detainee initially received reasonable punishment by being placed in a cell which had a toilet with an operating mechanism.
located outside the cell. In order to flush the toilet the detainee had to get the attention of the guards down the hall by pounding on the cell door. After relations had deteriorated between the detainee and the guards, the guards refused to operate his toilet. In both situations, the court noted that the trauma suffered by the detainees was caused by the stresses of being put into isolation. As such, any use of isolation for juveniles should be questioned.

Punitive measures are constitutionally forbidden from being used on juvenile detainees in correctional facilities. This rule applies to all forms of punishment, including isolation. The use of isolation should be tailored back to ensure that constitutional rights are protected. As it has been abused as a technique in the past, isolation is already under increased scrutiny. Additionally because the relations between the correctional facility and the detainee often deteriorate during isolation, there is a slippery slope that might trigger a constitutional violation during the course of isolation. As such, courts should rule against the use of isolation for juvenile detainees.

Sources:
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