

Sexual and Physical Abuse of Children

BY JAMES C. BACKSTROM, COUNTY ATTORNEY

CHILD ABUSE is a tragic problem in the United States. Over the last 30 years jurisdictions have taken great strides in the identification, prosecution and prevention of the physical and sexual abuse of children. However, we still have a long way to go.

While a few children across America are sexually abused every year by strangers, this remains very rare. Tragically, most child victims of sexual and physical abuse are molested by those they trust the most—a family member, guardian or caretaker. More than 80 percent of all children abused and neglected were victimized by a parent, with another six percent falling prey to a relative.¹ Unfortunately, some also fall victim to older children or other adults they should be able to trust, such as members of the clergy, teachers and counselors.

Since the late 1970s, prosecutors' offices, law enforcement, child protective services, health care and treatment agencies, victim advocates, courts, and other interested agencies across the country have increased their efforts to educate their staffs, share information and work more closely together to better serve and protect children.

CHILD ABUSE CASE CHARACTERISTICS AND STATISTICS

Child maltreatment is epidemic in our nation. The total direct costs of child abuse and neglect in the United States total more than \$33.1 billion annually and the total indirect

costs top \$70.5 billion.² An estimated 772,000 children were found to be the victims of child abuse or neglect in 2009.³ Of this number, more than 78 percent suffered neglect, nearly 18 percent were physically abused and 9.5 percent were sexually abused. Another 7.6 percent were psychologically maltreated, 2.4 percent were medically neglected, and about nine percent were victims of other types of maltreatment such as “abandonment,” “threats of harm to the child,” and “congenital drug addiction.”⁴

Abuse and neglect are indiscriminate, affecting children of families across all income levels and from all races and ethnic groups. Nearly five children die each day in America as a result of abuse and neglect by those entrusted to care for them—a loss that translates to an estimated 1,770 deaths related to child abuse each year.⁵ That is 1,770 deaths too many. Approximately 46 percent of those who die from abuse are infants under age one, while children younger than four account for nearly 81 percent of the fatalities.⁶ During 2009, child protective services received an estimated 3.3 million referrals of alleged abuse and neglect involving approximately six million children. Of these referrals, CPS agencies accepted 61.9 percent for further review.⁷

Tragically, however, reports are often not made to authorities regarding children who suffer abuse. And many of the reported cases may not be substantiated because the harm to the child is not immediately obvious to investiga-

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tors. The Third National Incidence Study of Child Abuse and Neglect, conducted in 1995, estimated that the real incidence of abuse and neglect may be three times greater than the reported numbers.⁸ In Minnesota, it has been estimated that less than 20 percent of child victims report sexual assaults.⁹

The lack of reporting of child abuse incidents is one of our greatest tragedies and challenges. We must dedicate ourselves to doing all we can to encourage the reporting of incidents of child abuse so proper steps can be taken to protect these most vulnerable victims. Prosecutors need to take a leadership role by highlighting the extent of the child abuse problem within their jurisdictions and encouraging the reporting of these incidents to law enforcement and child protection agencies.

Sexual abuse of children accounts for about 9.3 percent of the almost 900,000 substantiated incidents of child abuse every year in the United States. That means almost 84,000 kids are sexually abused every year in America.¹⁰ The following are additional statistics concerning sexual abuse of children:

- One in four girls and one in six boys will be sexually assaulted before they reach age 18.¹¹
- One in three victims of sexual assault is under age 12. (In Minnesota, it is estimated that 43 percent of child victims of sexual assault are age six or younger and 34 percent are ages seven-11.)¹²
- One in 18 victims of a violent crime known to police is under age 12—crimes involving sexual assault occurred in 32 percent of these cases.¹³
- There are some noticeable differences between younger and older victims of sexual assault:
- Four percent of adult victims are male.
- Eight percent of victims age 12-17 were male.
- Twenty-six percent of victims under age 12 were male.
- Younger victims are more likely to be the victims of a juvenile offender than are older children.¹⁴
- For victims under age 12, the offender is most often a family member or acquaintance, and seldom a stranger.¹⁵

STATUTE OF LIMITATIONS

Children who are sexually abused suffer from feelings of guilt, humiliation, shame and confusion. They often believe they are somehow at fault. Nothing can be further from the truth. These are innocent youth who most often have been victimized by a loved one, a family member or someone they had trusted. There are few crimes that carry greater long-term negative impacts for the victim than sexual abuse. A child victim's feelings of guilt, shame and fear often

lead to long-term repression of these traumatic and painful events.

As a society, we must recognize the pain, trauma and feelings of guilt that lead child victims of sexual abuse to repress these incidents for many years, often well into adulthood. In doing so, it is in the interest of justice and protecting these most vulnerable victims to allow them to seek redress for the terrible pain and suffering they have endured once they finally realize the full extent of their victimization.

In many parts of the country, this already has been done through changes to the criminal statute of limitations involving sexual abuse committed against child victims. For instance, the current criminal statute of limitations in Minnesota for criminal sexual conduct in the first, second, third and fourth degrees involving child victims under the age of 18 is nine years. However, if the crime has not been reported to law enforcement within this nine-year period, the criminal statute of limitations is extended until three years from the time the incident is reported to authorities. In essence, this extends the criminal statute for serious crimes of sexual abuse against children indefinitely. If your state does not have a similar lengthy criminal statute of limitations for cases of child sexual abuse, you should work toward enacting such a provision.

Similar changes are clearly appropriate for the civil statute of limitations in cases of sexual abuse of children. The statute of limitations in civil cases should not begin to run until the victim fully discovers the causal connection between the injury and the abuse. Medical research has confirmed that this often does not occur until the victim is well into adulthood. Proposals are under consideration in a number of states to extend the civil statute of limitations in this manner for child victims of sexual abuse. This is an important and needed change which indirectly will aid the criminal process as well by encouraging more of these vulnerable victims to come forward and seek redress for the terrible trauma and injuries they have suffered. The bottom line is that those who abuse our children need to be brought to justice and held accountable.

IMPACTS OF CHILD MALTREATMENT

We have long known and understood the pervasive and tragic effects of abuse and neglect on the lives of child victims. Abused and neglected children often suffer physical and emotional damage that result in developmental delays, chronic health problems, learning disorders, depression, conduct disorders, post-traumatic stress disorder, and problems with forming and maintaining interpersonal relation-

ships.¹⁶ Research has documented the link between child maltreatment and at least a 25 percent increased risk of low academic achievement, substance abuse, teen pregnancy, juvenile delinquency and adult criminality.¹⁷ Abused and neglected children are reported to be 59 percent more likely to be arrested as juveniles, 28 percent more likely to be arrested as adults and 30 percent more likely to be arrested for a violent crime, according to a National Institute of Justice study.¹⁸ A U.S. Department of Justice survey reveals that 37 percent of women and 14 percent of men in our nation's state jails and prisons were physically or sexually abused as children, in contrast to 12 to 17 percent of women and five to eight percent of men responding to similar surveys in the general population.¹⁹ This is the reason why funding of child abuse prevention initiatives is so important. Also, child protection and foster care services in most states lack enough staff, sufficient training and administrative support to adequately protect children and to provide child victims with the care and treatment necessary to help them overcome the physical and emotional trauma they have suffered. It is also important that adequate funding be provided to law enforcement and prosecutors to ensure that they have the necessary resources to apprehend and prosecute child abuse offenders.

COSTS OF CHILD ABUSE AND MALTREATMENT

Nationwide, the total annual cost of child maltreatment is estimated at \$103.8 billion.²⁰ This 2007 conservative measurement includes more than \$33 billion in direct expenditures required to serve the needs of abused and neglected children, as well as more than \$70 billion of indirect costs related to the long-term effects of child maltreatment on victims, their families and communities.²¹ A 2002 report issued after the 2001 Child Protection Summit of the International Association of Chiefs of Police, the Child Welfare League of America and the National Children's Alliance found that the daily costs to provide child welfare, health care and mental health services for child abuse and neglect victims, along with funding the criminal justice system processes necessary to hold offenders accountable, topped \$67 million.²² "Child victims also frequently require long-term medical and mental health care, as well as special education services, which are estimated to cost an additional \$13 million per day."²³ For those child abuse victims who unfortunately later become involved in committing crimes themselves because their abuse went unreported or adequate treatment and counseling was not made available to them, society spends nearly \$176 million daily to prosecute,

sentence, supervise, incarcerate and treat them.²⁴ Finally, the 2002 report estimated that the lost productivity of those who were victims of child abuse or neglect is estimated at nearly \$2 million per day.²⁵ Therefore, the total daily financial toll of child abuse and neglect in 2002 hit nearly \$258 million, a tally that has since surely risen.²⁶ These staggering costs do not take into account the full extent of human torment these terrible crimes inflict upon their innocent victims.

PREVENTING AND RESPONDING TO CHILD ABUSE AND NEGLECT

Early childhood intervention programs focused on children at risk of abuse and neglect have resulted in reductions in maltreatment of 50 to 75 percent.²⁷ Studies that have compared the costs of family support services with savings generated from successful early intervention programs have shown such programs to be extremely cost-effective.²⁸ The programs identify at-risk families and provide appropriate treatment, counseling or monitoring to try to prevent abuse. We also know we can reduce crime by such prevention initiatives. Documented studies have proven the effectiveness of programs of this nature. For example, one such project studied over a 15-year period a group of randomly selected at-risk mothers. Half of the group was scheduled to receive visits by specially trained nurses who provided coaching in parenting skills and other advice and support. The other half did not receive such services. The study showed the program not only reduced child abuse by 80 percent in the first two years, but that 15 years after the services ended, the mothers receiving these services had only one-third as many arrests and their children were only half as likely to be delinquent.²⁹

Research, therefore, clearly confirms that effective prevention and early intervention strategies will reduce the incidence of child abuse and neglect, reduce the severity of its traumatic impacts upon children and reduce future criminal behavior. Child abuse prevention and early intervention programs not only protect children, but also help make our communities safer.

REPORTING INCIDENTS OF CHILD ABUSE

Timely and coordinated responses to incidents of child abuse and neglect which are reported to law enforcement or child protection authorities are critical to preventing further harm to victims and other family members. Unfortunately, far too many incidents of child abuse go unreported. Many citizens and even some professionals

(e.g., day care and school personnel) who regularly come into contact with children often are not adequately trained to recognize the signs of abuse or neglect, and those who do recognize such signs sometimes lack the knowledge of how to report their concerns. Even mandated reporters such as police officers, child welfare workers, health care providers, mental health treatment providers and school personnel may not have clear and consistent reporting policies and practices. Prosecutors need to help ensure that adequate training is made available to all mandated reporters and that the law is clarified to make it clear when mandatory reporting responsibilities apply. Many mandated

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reporters are required to maintain a license to practice their profession, and the requirement to participate in a minimum amount of training in this area could easily be incorporated into their licensure requirements.

Mandated reporters who fail to report child abuse are subject to criminal prosecution. In Minnesota, it is a misdemeanor for a mandated reporter to fail to report. If the child suffers substantial or great bodily harm, it becomes a gross misdemeanor. If a child dies as a result of the abuse, it is a felony for a mandatory reporter to fail to report the incident.³⁰

Some confusion exists nationwide, however, among many mandatory reporting laws regarding whether the duty of mandated reporters applies only while such individuals are performing their professional responsibilities. In other words, are mandatory reporting obligations in place 24 hours a day for these professionals, or only while they are “at work” or “on duty”? For some professionals, like police officers, this line is blurry because law enforcement officers retain the powers of arrest 24 hours a day. This issue is in

need of clarification in many states.

Prosecutors also should assist in educating the public in this area as well because mandatory reporting laws are designed in part to also encourage voluntary reporting of suspected child abuse. For example, both mandatory and voluntary reporters of suspected child abuse receive protections under Minnesota law.³¹ Such reporters receive immunity from liability for reports made in good faith³² and the identity of the reporters is prohibited from being publicly revealed.³³ Similar protections exist in laws across America.

Mandated reporting laws are designed to encourage reports of suspected child abuse so that properly trained authorities (child protection workers and police) can intervene and protect children who have been neglected or abused. Prosecutors should help educate mandated reporters about their statutory responsibilities. Prosecutors should also assist police and child protection workers in educating the public about the importance of reporting suspicions of child abuse and the protections afforded to the reporter when such a report is made. As the Dakota County attorney, I have periodically issued a detailed memorandum to all mandated reporters working for the county outlining the law in this area. I have also periodically issued a memorandum to all employees who are not mandated reporters, encouraging them to voluntarily report child physical abuse, sexual abuse or neglect whenever it comes to their attention while on the job or off duty.³⁴

ISSUES RELATED TO INVESTIGATION AND PROSECUTION

In the last two decades, prosecutors, police, child protection workers, health care and treatment providers, victim advocates, judges, and other interested agencies across the country have significantly improved their procedures for investigating, prosecuting and handling cases involving child abuse. The most critical component of these improvements has been the effort for all concerned agencies to work more closely together in this process. Coordinated investigations are the standard today. Such coordination is mandated by law under certain circumstances in some states, such as Minnesota, where the law requires a coordinated investigation between law enforcement and social services when interfamilial cases of abuse are being investigated. Coordinated investigations occur voluntarily in our state in other cases of child abuse as well. In Dakota County, Minnesota, we have developed written guidelines governing the coordination of investigations of child abuse or neglect by law enforcement agencies, child protection ser-

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vices, and the County Attorney's Office.³⁵

Coordinating the investigation of law enforcement and child protection agencies avoids duplicate interviews of children, allows for the strengths of both disciplines to be utilized (i.e., a child may feel more comfortable opening up to a police officer or social worker depending upon the individual), and reduces the trauma upon the child. As part of a coordinated investigation, law enforcement continues to focus on criminal conduct that may have occurred, while social workers make assessments concerning the health and safety of the child and determine whether an out-of-home placement is necessary. In Minnesota, either law enforcement or child protection can place a temporary 72-hour hold upon a child to ensure that the youth is in a safe place while the facts of the situation are sorted out.³⁶

Child protection teams are now used in most states to review and investigate child protection complaints. These teams comprise professionals from a wide range of disciplines who meet to review specific cases to enhance communication through agencies, facilitate the sharing of information, and keep all of the agencies working together to improve the system's response to the needs of children. For example, the Dakota County Child Protection Team within my jurisdiction meets twice quarterly to review cases. The team consists of an assistant county attorney, a law enforcement representative, a social services representative, school personnel, a medical doctor, and other agency representatives when needed. The team provides suggestions and ideas on how to best address specific cases.

The testimony of child witnesses often imposes challenges to the prosecuting attorney. For any witnesses, it is difficult to testify in front of the person who hurt them. This is especially difficult for children. Also, younger children with limited vocabulary have difficulty describing what happened to them or what they observed happening to others. The prosecutor's office is often unable to pursue these cases unless there was a witness to the incident or the physical evidence is severe enough to make evidence of abuse clear.

To address these difficulties, some states have enacted legislation or court rules to make it easier for child witnesses to testify in court. In Minnesota, if a child under the age of ten testifies incompletely as a result of inadequate memory or fear, the prosecutor can bring in prior statements the child has made regarding the incident to supplement the child's testimony if certain criteria are met.³⁷ Prior statements made for purposes of medical diagnoses in child abuse situations (and others) may also be admissible into evidence.³⁸ Statutes or court rules also often allow certain accommodations to be made for young witnesses, including

allowing the presence of a support person during the child's testimony, to assist the child in dealing with the trauma often associated with such testimony.³⁹ In Minnesota, courtrooms also can be closed to the public during a child's testimony if specific findings are made by a judge that this is necessary to protect a witness or ensure fairness in the trial.⁴⁰ Such closings of courtrooms to the public, however, are rare.

Another important practice that has been developed regarding the prosecution of cases of child abuse involves the use of independent examinations of the child victim by specially trained professionals. In Minnesota, Midwest Children's Resource Center in St. Paul and Corner House in Minneapolis are two agencies that conduct exams and interviews for many children under age ten who have been physically or sexually abused. These same professionals also can assist in interviewing young witnesses of other crimes if necessary. Medical personnel at these agencies are specially trained in the areas of physical and sexual abuse and interview techniques involving children. The availability of specially trained personnel to aid in questioning young children and gathering evidence of child abuse is very important and helpful to ensure a successful prosecution or to document unsubstantiated allegations. Minnesota is also privileged to be the home of the National Child Protection Training Center, located on the campus of Winona State University. This organization develops child protection educational curriculum for colleges and universities and trains professionals who work with children concerning child protection issues.⁴¹

CONCLUSION

Physical and sexual abuse of children across America remains a significant problem. Over 1,700 children die each year at the hands of their abusers. Hundreds of thousands more survive the physical and sexual abuses inflicted upon them, but are forever scarred by the pain and trauma they have suffered. We must continue to dedicate ourselves to doing all we can to prevent child abuse in our nation. Protecting our most precious resource, our children, demands no less.

¹ *Child Maltreatment 2009*. U.S. Department of Health and Human Services, Administration on Children, Youth and Families. Retrieved June 16, 2011, from <http://www.acf.hhs.gov/programs/cb/pubs/cm09/cm09.pdf>.

² Wang, C. T. & Holton, J. (2007). *Total Estimated Cost of Child Abuse and Neglect in the United States*, p 3-4. Prevent Child Abuse America. Retrieved June 16, 2011, from http://member.preventchildabuse.org/site/DocServer/cost_analysis.pdf?docID=144.

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- ³ See *Child Maltreatment 2009*, *supra* note 1.
- ⁴ *Id.*
- ⁵ *Child Abuse and Neglect Fatalities 2009: Statistics and Interventions*, U.S. Department of Health and Human Services, Administration on Children, Youth and Families, available at <http://www.childwelfare.gov/pubs/factsheets/fatality.pdf#Page=2&view=Fit>.
- ⁶ *Id.*
- ⁷ See *Child Maltreatment 2009*, *supra* note 1.
- ⁸ Child Welfare League of America *Fact Sheet*, available at <http://www.cwla.org/programs/childprotection/childprotectionfaq.htm#2>
- ⁹ Report of the Minnesota Interagency Task Force on Domestic Violence and Sexual Assault Prevention, Jan. 2002.
- ¹⁰ See *Child Maltreatment 2009*, *supra* note 1.
- ¹¹ Federal Bureau of Investigation Annual Statistics; Minnesota Interagency Task Force on Domestic Violence and Sexual Assault Prevention, January 2002.
- ¹² Snyder, Howard, & Sickmund, Melissa (1999). *Juvenile Offenders and Victims: 1999 National Report*, National Center for Juvenile Justice
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Welfare Information Gateway 1-6*, available at www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm.
- ¹⁷ *Id.* at 5 (citing Kelley, B. T., Thornberry, T. P., & Smith, C. A. (1997). *In the wake of childhood maltreatment*. Washington, DC: National Institute of Justice).
- ¹⁸ Widom, C. S. & Maxfield, M. G. (2001). An Update on the "Cycle of Violence." National Institute of Justice: Research in Brief. Available at <http://www.ncjrs.gov/pdffiles1/nij/184894.pdf>
- ¹⁹ Caroline Wolf Harlow, *Prior Abuse Reported by Inmates and Probationers*, Apr. 11, 1999, U.S. Justice Dept.'s Bureau of Justice Statistics, p. 2
- ²⁰ See *Total Estimated Cost of Child Abuse and Neglect in the United States*, *supra* note 2.
- ²¹ *Id.*
- ²² *Building Partnerships That Protect Our Children: Recommendations from the 2001 Child Protection Summit*, International Association of Chiefs of Police; Child Welfare League of America; National Children's Alliance, 2002, p. 2.
- ²³ *Id.*
- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ Olds, D.L., et al., "Long-term Effects of Home Visitation on Maternal Life Course and Child Abuse and Neglect: Fifteen-year Follow-up of a Randomized Trial," *Journal of the American Medical Association*, Vol. 278, No. 8, August 27, 1997, pp. 637-652. and Olds, et al., "Long-term Effects of Nurse Home Visitation on Children's Criminal and Antisocial Behavior: 15-Year Follow-up of a Randomized Controlled Trial," *Journal of the American Medical Association*, Vol. 280, No. 14, October 14, 1998, pp. 1238-1244.
- ³⁰ Minn. Stat. § 626.556, Subd. 6.
- ³¹ Minn. Stat. §626.56, Subd. 4 (a) (1).
- ³² Minn. Stat. §626.56, Subd. 4 (a) (1) and Subd. 5.
- ³³ Minn. Stat. §13.82, Subd. 17 (h).
- ³⁴ Copies of the most recent version of these memorandums can be located at the Dakota County Attorney's Office website: www.co.dakota.mn.us/attorney.
- ³⁵ A copy of these guidelines can be located at the Dakota County Attorney's Office website: www.co.dakota.mn.us/attorney.
- ³⁶ Minn. Stat. §260C.175 and 260C.176.
- ³⁷ Minn. R. Evid. 801(d) (1) (B).
- ³⁸ Minn. R. Evid. 803 (4). See also *Crawford v. Washington*, 541 U.S. 36 (2004).
- ³⁹ See for example Minn. Stat. §631.046.
- ⁴⁰ Minn. Stat. §631.045.
- ⁴¹ The National Child Protection Training Center's website can be found at: www.ncptc.org.

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