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Violence in the family: Policy and practice disparities in the treatment of children

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Abstract

While both domestic violence and child abuse are manifestations of family violence, the perpetrators and victims of family violence encounter disparate systems and consequences. The trend of addressing two forms of family violence in dichotomous ways is beginning to change. This paper explores the historical basis for addressing domestic violence through the criminal justice system and child abuse through the social service system, discusses the consequences of these differences, and proposes policy initiatives that will further protect abused children.

Keywords: Violence; Family; Child abuse

1. Introduction

While both domestic violence[1] and child abuse are manifestations of family violence, the perpetrators and victims of family violence encounter disparate systems and consequences. Efforts during the 1960s and 1970s aimed at bringing the issues of child and spousal abuse into the public and political arena yielded very different outcomes. From the 1970s to the present, the criminalization of domestic violence has been institutionalized in both state and national laws as well as in the public mind. On the other

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[1] Domestic violence in this paper is used to describe violence between husbands and wives or between intimate partners.

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hand during this same time period, the aim of child protective services in child abuse has remained focused on maintaining the child–parent relationship through family preservation programs rather than prosecuting perpetrators of child abuse.

This trend of addressing two forms of family violence in dichotomous ways is beginning to change. A number of prominent thinkers have raised the question; Is child abuse a crime and if it is, why does it still receive a social service response rather than a criminal justice response? The purpose of this paper is to explore the historical basis for addressing domestic violence through the criminal justice system and child abuse through the social service system, discussing the consequences of these differences, and to propose policy initiatives that will further protect abused children.

2. Historical response to domestic violence

Over the past 30 years, there have been significant changes in society's response to domestic violence and spouse abuse. Prior to the 1970s, it was common for some police departments to use "stitch rules" to respond to cases of domestic assault—a wife who was abused had to require a certain number of surgical sutures before a husband could be arrested for assault and battery. This often meant that wives had to be more severely injured by their husbands than someone who was assaulted by a stranger (Gelles & Pedrick, 2000). It was also common for men convicted of domestic violence assaults to receive less serious sentences than men convicted of similar violent crimes with a non-intimate partner. Moreover, women could not obtain a restraining order against an abusive spouse unless she was willing to file for divorce at the same time.

Organized women's groups spent much of the 1970s seeking equal protection for battered women. At this time, police officers were reluctant to arrest domestic violence offenders because women would often file charges against their batterer only to withdraw their charges a few days later. Class action suits were filed to assure that police and prosecutors paid attention to the problem of battered women. In 1974, a class action suit was filed against Cleveland district attorneys for denying battered women equal protection under the law by not following through in prosecution of abusive husbands. That suit was settled by a consent decree ordering prosecutors to change their practices. In all these class action suits, the central goal was to eliminate selective inattention to the problem of battered women and to criminalize violence against women (Gelles & Pedrick, 2000).

Another factor influencing changes in the criminal response to domestic violence was the case of *Thurman v. City of Torrington* 595 F. Supp. 1521 (D. Conn. 1984). Tracy Thurman was a battered wife who had frequently sought help from the Torrington police to protect her from the violent attacks of her estranged husband. Thurman was badly battered and left permanently injured in June 1983 and subsequently filed a civil suit against the City of Torrington and 29 police officers. Thurman was awarded 2.3 million dollars and later settled out of court for 1.9 million dollars. The threat of similar suits motivated a number of eastern municipalities to adopt the policy of mandatory arrest for cases of family violence (Gelles & Pedrick, 2000).

In response to intense political pressure from numerous advocacy groups, a series of legal reforms designed to strengthen the criminal justice response to domestic violence

began to take place. Beginning with the passage of the Pennsylvania Protection from Abuse Act in 1976, every state now provides for protection orders in cases of domestic violence. Almost all states grant protection orders between spouses, ex-spouses, and family members, defined as persons related by blood, marriage, or adoption. In addition, most states allow for protection orders between people who are unmarried and living together as spouses, including same sex couples, or between two people who share a child in common (Feder, 1999).

In order for a person to obtain a civil protection order there needs to be some act, usually criminal, committed by the alleged abuser. Conduct that is considered sufficient to obtain a protection order will vary among state statutes. Assault and battery are the most common offenses on which a protection order will be based (Feder, 1999).

In addition, emotional abuse is a behavior that is being recognized by some states as an act that can be the basis for a protection order. Some states are also beginning to issue protections orders based on an act of the abuser interfering with the victim's personal liberty because this is another behavior abusers use to maintain control over their victims. Most jurisdictions make temporary protection orders available to victims of domestic abuse immediately through an ex parte hearing. Ex parte hearings allow one party to appear before a judge to seek immediate assistance without notifying the other party in order to obtain a temporary protection order. The petitioner has to show by a preponderance of the evidence (greater than a 50% probability) that she or her child is in imminent danger. Visible injuries are not required to meet the preponderance of evidence standard and victims often present evidence of recent violence or serious threats to meet the standard (Feder, 1999). In addition to providing protection orders, Pennsylvania's 1976 Protection from Abuse Act also allowed to some extent a police officer to make warrantless arrests for unseen domestic violence acts. All states have followed in this trend and have adopted legislation that allows to some extent warrantless arrests in domestic violence situations.

Other legislative actions that treat batterers as criminals pertain to child custody and handguns. In 1990, both houses of Congress passed House Concurrent Resolution 172 which recommended that when deciding any custody case, if there is credible evidence that one spouse abused the other spouse, then there should be a presumption against awarding the abusive spouse custody. The Model Code of the National Council of Juvenile and Family Court Judges of 1994 endorses this view and states that when the court determines that there was an incident of domestic violence, there is a rebuttable presumption against awarding the batterer sole or joint custody (Feder, 1999). The Violent Crime Control and Law Enforcement Act of 1994 makes it unlawful for any person subject to a court order restraining that person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner, to possess firearms or ammunition.

Another area in which domestic violence advocates have made progress in criminalizing domestic violence behavior is in the area of self-defense. According to law, a battered spouse can only use such force as necessary to defend herself against harm. However, many feminists have pressed for the legal recognition of battered woman syndrome as a defense for a woman who has killed or assaulted a batterer in self-defense. This movement began in the 1970s and continued throughout the 1990s. Many states have passed legislation that ensures the defendant's right to introduce evidence of abuse and expert

testimony about battered woman syndrome during a trial for killing or assaulting an abuser (Gagne, 1998).

3. Impact of pro-arrest policies on domestic violence

Many studies have been conducted to determine the effectiveness of pro-arrest policies on the subsequent behavior of domestic violence offenders. For example in 1981–1982, the Minneapolis Police Department collaborated in an experiment designed to determine the effect of arresting domestic violence suspects on their subsequent behavior. Approximately one third of the suspects were randomly assigned to receive an arrest and at least one night in jail. Another third were randomly assigned to be told to leave the home or else they would be arrested. The remaining third were assigned to be given some kind of "talking to" by police and left at the scene (Sherman, Schmidt, & Rogan, 1992).

Results from the Minneapolis experiment did show arrest was a deterrent from future abuse. Even though the authors cautioned against passage of mandatory arrest laws, 15 states did pass such laws by 1991. The results also led to the National Institute of Justice to fund replications in six other cities. Only in two of these studies (Colorado Springs and Metro-Dade in Miami) did results found in the Minneapolis experiment by showing a 6-month deterrent effect. More importantly, none of the other three replications (Omaha, Charlotte, and Milwaukee) found any support for arrest causing a deterrent effect. Even more surprising, all three of those studies actually showed at least one measure with a statistically significant increase in recidivism from arrest (Sherman et al., 1992).

In analyzing the results from the Minneapolis experiment, it is important to consider the importance of what Toby (1957) has called the individual's "stake in conformity" for predicting the effect of arrest on subsequent domestic violence. Sherman hypothesizes that individuals who are subject to extralegal social control in jobs and marriages are more likely to be deterred by the application of legal sanctions than are those without such stakes in conformity (Sherman et al., 1992).

The Omaha Experiment tested the "stake in conformity" hypothesis. With a sample size of 330, this was substantially smaller than Milwaukee's, but the 73% response rate provided minimally reliable estimates of the sample's stake in conformity measures. The results of the Omaha Experiment showed that employed offenders who were randomly assigned to arrest have a lower likelihood of engaging in further violence. Among the unemployed offenders who were randomly assigned to arrest, being arrested is associated with a significantly higher probability of future violence. This demonstrates that the effect of arrest on future violence depends on whether the offender is employed or unemployed. The probability of future violence decreases by 15.4% among the employed offenders who were arrested and increases by 35.5% among unemployed offenders who were arrested. The same pattern of results emerges when marital status is allowed to specify the relationship between arrest and future violence (Sherman et al., 1992, p. 159).

Sherman summarizes that...

> if one asks whether arrest has any direct influence on the future violence of offenders in this experiment, the answer is that in general, it does not. In most analyses, the

> estimated impact of arrest on future violence was positive although not significantly so. However, if one asks whether the legal sanction of arrest interacts with the informal social bonds of employment or marriage to produce significant differences in these offenders' subsequent violence, the answer is clearly that it does (1992, p. 376).

In considering the deterrence effect of legal sanctions in the police experiments, it is important to note that most offenders were not prosecuted once arrested. For most of those arrested, the legal sanctions after arrest included booking most, handcuffing a few, some spending a few hours in custody, and even a smaller number jailed overnight (Sherman et al., 1992). The absence of prosecution in most of the cases in these experiments undermined the potential deterrent effect of arrest among all groups of offenders, employed/unemployed and married/unmarried (Fagan, 1996).

Low prosecution rates for perpetrators of domestic violence after their arrest is a widespread problem nationally. For example, of the 781 misdemeanor cases or victim complaints involving domestic violence that were heard in Philadelphia Municipal Court between October 1989 and March 1990, there were only 67 (9%) convictions. Of the 67 defendants convicted, two received prison terms (3 months each), while 16 received nonreporting probation. In addition, in one of the groups of battered women surveyed by Lenore Walker for her book *Terrifying Love*, 90% of the women reported assault to the police, but fewer than 1% of the cases were prosecuted and the rate of conviction of batterers was extremely low (McCue, 1995).

Cities like San Diego where about 70% of domestic violence cases are prosecuted do show a high rate of success with offenders. McCue cites that less than 5% of the men who have gone through San Diego's comprehensive domestic violence program are charged with domestic violence again. The program includes a year of required group counseling, with arrest and jail for failure to comply (McCue, 1995).

In order to promote the prosecution of more domestic violence cases, special prosecution units were opened in many district attorney's offices. Special prosecution units provided a better organizational structure for domestic violence cases and gave domestic violence cases higher priority than in the past. These units alleviated the competition with other units over scarce trial and investigative resources (Fagan, 1996).

4. Violence against women act of 1994

The 1994 Violence Against Women Act is federal legislation that provides funding and support for the stricter enforcement of domestic violence laws and prosecution of perpetrators. The Violence Against Women Office was created in the United States Department of Justice to implement the 1994 Violence Against Women Act (VAWA) and to lead the national effort to stop domestic violence, sexual assault, and stalking of women. A total of $800 million in federal funds was authorized to assist states in restructuring law enforcement's response to crimes of violence against women from 1995 to 2000. VAWA was reauthorized in October 2000 and the new legislation authorizes $3.3 billion over the next 5 years (Violence Against Women Office of the Office of Justice Programs, 2000).

VAWA authorizes grants to promote arrest policies. These grants help states, localities and tribal governments treat domestic violence as a serious criminal offense. This program recognizes that for mandatory arrest to be a fully effective intervention, it must be part of a coordinated, integrated criminal justice response to domestic violence with consistent follow-through by victim service providers, prosecutors, and judges. Currently, 27 states and the District of Columbia have adopted laws requiring the arrest of a person when there is probable cause that he or she has assaulted a family member or has violated a domestic violence protection order. Pro-arrest or mandatory arrest policies convey a message to the victim, the family, and the community that domestic violence is a serious crime that will not be tolerated (Violence Against Women Office).

The Violence Against Women Act addresses one of the key problems in enforcement of protection orders because it provides for the interstate recognition and enforcement of protection orders. VAWA mandates interstate enforcement of protection orders. VAWA states that full faith and credit must be given to other states' permanent or ex parte temporary protection orders as long as the due process requirements were met in the issuing state (Feder, 1999). VAWA also authorizes severe federal sentences for abusers who travel interstate with the intent to injure, harass or intimidate a domestic partner or violate a protection order. In addition, the FBI is creating a national database concerning persons subject to protection orders, which will be available for criminal justice purposes, and to civil courts in domestic violence cases (Violence Against Women Office).

5. Police involvement and incarceration of domestic violence offenders

Two studies, the *2000 National Violence Against Women Survey* and the *1998 Violence by Intimates Reports* help to measure the impact of the Violence Against Women Act on police involvement and incarceration of domestic violence offenders. Unfortunately, there is no complete data on state arrest rates of domestic violence offenders.

The *National Violence Against Women Survey* published in July 2000 consisted of telephone interviews with a nationally representative sample of 8000 U.S. women and 8000 U.S. men about their experiences as victims of various forms of violence, including intimate partner violence. According to the *National Violence Against Women Survey*, only 7.5% of perpetrators of intimate partner rape (percentages are for rape against women only) were prosecuted. Out of the cases that were prosecuted, the perpetrator was convicted in 41.9% of them and the perpetrator was sent to jail or prison in 69.2% of the convictions. Similarly, perpetrators of intimate physical assault (percentages are for assault against women only) were prosecuted in 7.3% of the cases, 47.9% of those prosecutions led to a conviction, but only 35.6% of the convictions led to a jail or prison sentence. Interestingly, perpetrators of intimate stalking (percentages are for stalking of women only) were prosecuted in 14.6% of the cases, convicted in 40% of the prosecuted cases, and 56.3% of those convictions led to a jail or prison sentence (Tjaden & Thoennes, 2000).

For the *Violence by Intimates Report*, the Bureau of Justice Statistics conducted national surveys of persons confined in local jails and State and Federal prisons. These nationally representative surveys are the principal source of information on those serving time following a conviction and includes: their backgrounds, their prior criminal histories,

and the circumstances surrounding the offense for which they had been incarcerated. Both jail and prison surveys obtain details about the offender's relationship to the victim and how the crime was carried out (Greenfield, 1998).

Each year from 1992 to 1996, there were more than 960,000 victimizations of women by an intimate. Violent victimizations include rape, sexual assault, robbery, and aggravated and simple assault. About half the female victims reported the incident to law enforcement authorities. Most victims reported that the police responded to their call for assistance and for a majority of those, within 10 min of the call. In about 20% of these cases, the victim reported that the offender was immediately arrested (Greenfield, 1998).

The *Violence by Intimates Report* shows that those who committed a violent crime against an intimate represent about 25% of convicted violent offenders in local jails and about 7% of violent offenders in state prisons. In local jails, 75% of the intimate violence offenders had been convicted of assault. In state prisons, 41.6% of the offenders convicted of a violent offense against an intimate were serving a sentence for homicide, 29.6% were serving a sentence for assault, and 21.0% were serving a sentence for rape/sexual assault (Greenfield, 1998).

The trend is now that the average prison sentence for those who victimized a spouse or other intimate to appear similar to the average sentences for victimizing strangers or acquaintances. Moreover, domestic violence is being taken as seriously if not more seriously than stranger violence because the median sentence of state prisoners for assault was 4 years longer if the victim was the offender's spouse rather than a stranger. The longer sentence for domestic violence assault might be related to how the rate of death or injury among all victims of violent crime committed by state prisoners was higher for intimates than for any other category (other relative, acquaintance, stranger). However, the number of intimates killed has dropped from nearly 3000 per year and 13.6% of all homicides in 1976 to fewer than 2000 and 8.8% of all homicides in 1996 (Greenfield, 1998).

6. Historical response to child abuse

Throughout the history of American society's response to domestic violence, there has been an increasing trend toward criminalization. Acts of violence between husbands and wives or intimate partners is no longer viewed as a private family matter, but as a crime. In contrast to this, child abuse, another manifestation of family violence, is still primarily viewed as a family problem that can best be treated by social services. The provision of social services has not always been accepted as the best way to prevent child abuse from reoccurring, and today the complete acceptance of social services as the solution to child abuse is being questioned.

The year 1874 marked the formal initiation of the anticruelty movement led by Elbridge Gerry of the New York Society for the Prevention of Cruelty to Children (NYSPCC). Anticruelists relied on coercive reform of child abuse offenders as effective deterrents to reoccurrences of abuse. The strategies of the anticruelists included warnings to parents, surveillance, arrests for nonsupport, playing on parents' fears of losing their children, and ensuring punishment of persons who acted cruelly to children, often through imprisonment

at hard labor (Costin, Karger, & Stoesz, 1996). NYSPCC officers wore badges and uniforms to delineate their role as a policing force to prevent child abuse.

Elbridge Gerry believed that the work of the NYSPCC was independent of and exclusive from the work of existing charitable institutions. He did not make referrals to or collaborate with any social service agency. In 1894 when the New York State Board of Charities tried to inspect a NYSPCC shelter for children, Gary refused to allow them on the premise that his organization was not a social service agency. This sparked a lengthy court suit in which the New York Court of Appeals eventually ruled in favor of Gerry's position that the NYSPCC was a law-enforcement agency rather than a charitable institution and thus not subject to inspection by the state board (Costin et al., 1996).

However in the 1920s, the NYSPCC changed its focus from coercive reform to casework services. The NYSPCC officers stopped wearing their badges and uniforms and acquired training in providing casework services. This was part of a larger trend in social service work that reflected a more compassionate and less punitive approach to the problems affecting poor children and their families (Lindsey, 1994).

Until the 1960s, child abuse was addressed primarily through the intervention of caseworkers providing services through private social service agencies (Lindsey, 1994). The confinement of child abuse to the private sphere changed dramatically after the publication of Henry Kempe's article *The Battered Child Syndrome* in 1962. This prompted the federal Children's Bureau to draft a model statute for the reporting of child abuse. The statutes that followed became commonly known as mandatory reporting laws because they required certain professionals such as physicians to report child maltreatment to a public agency. By the end of 1963, 13 states had enacted reporting laws, and by 1967 every state and the District of Columbia had passes statutes requiring reporting by health care professionals (Waldfogel, 1998).

In 1974, the Child Abuse Prevention and Treatment Act (CAPTA) was signed into law, providing financial support for states to adopt mandatory reporting laws and to establish formal child protective services systems. States received federal money if they adopted mandatory reporting laws, created agencies to investigate child abuse allegations, and demonstrated that they had a child protective service system in place to respond to child abuse and neglect. CAPTA also established a National Center on Child Abuse and Neglect (NCCAN) in the U.S. Department of Health and Human Services to conduct research on the incidence of maltreatment and to support state and local efforts to prevent and treat child abuse and neglect (Waldfogel, 1998).

As stated in Costin et al. (1996), with the rise in federal and state legislation addressing child abuse, two critical social values clashed. These were the responsibility to protect children at risk and the wish to respect parental autonomy. Because of the desire to protect family autonomy, child welfare services were aimed at minimizing intrusion into family life. To address this dilemma, Kadushin established protocol that became the norm for how child welfare agencies should properly address child abuse. Kadushin's hierarchy progresses from the least intrusive intervention of providing counseling in the home to the most intrusive intervention of placement or adoption of the child (Lindsey, 1994).

The Adoption Assistance and Child Welfare Act of 1980 is federal legislation that made the primary objective of child protective service agencies to intervene in families with the least intrusive means of providing services to families first. The Adoption Assistance and

Child Welfare Act required state child protective service agencies to make reasonable efforts to prevent placement of children and to provide service plans and case reviews for children in placement in order to be eligible for Title IV-E funding. The service plans for children most frequently had family reunification as the goal. The Child Welfare Services, Foster Care, and Adoption Assistance Reforms of 1993 strengthened the Adoption Assistance and Child Welfare Act of 1980. This legislation created the Family Preservation and Support Services Program which provided $1 billion over a 5-year period to support state efforts at family preservation; thus making family preservation the best-funded and most widely accepted approach in child welfare.

Even though family preservation has become the most widely utilized approach in child welfare, there is virtually no evidence that family preservation programs are effective at either protecting children from further harm or reducing placements of children. An extensive review of evaluations of intensive family preservation programs found no evidence, based on methodologically acceptable research studies, that intensive family preservation programs were effective in reducing placements. As Gelles points out, reducing placements should not be the measure of success; the main outcome variable should be child safety (Gelles, 1996). A 2-year study of the Illinois Family First Program did look at these outcomes and found no differences in the number of subsequent confirmed reports of child abuse between experimental groups that received intensive family preservation efforts and the control groups that received standard child welfare interventions.

Such a tremendous focus on family preservation and supportive services for families often does not create a safe environment for abused children. To address this problem of safety for children, the Adoption and Safe Families Act (ASFA) of 1997 significantly revised the Adoption Assistance and Child Welfare Act of 1980. Under ASFA, states do not need to make reasonable efforts to reunify families if there are "aggravated circumstances." Aggravated circumstances exist if a parent has aided in the murder or murdered another child, has committed a felony that resulted in the serious bodily injury to a child, or has had their parental rights to a sibling terminated. Other ASFA changes address the need for children to have a permanent home as soon as possible, whether through family reunification or adoption. ASFA requires states to have permanency planning hearings within 12 months after the child has been in placement rather than 18 months. ASFA also requires states to file termination of parental rights petitions for any children who have been in foster care for 15 of the last 22 months.

In addition to promoting child safety through federal legislation such as ASFA, some states are experimenting with innovative collaborations with law enforcement agencies to achieve the goal of child safety. In 1994, legislation was passed in Missouri that delineated two different types of responses from child protective services to meet the different needs of families coming into the system. For families in which it was likely that a crime had been committed or that an alleged perpetrator or child would have to be removed, the response would take the form of an investigation by child protective services, in cooperation with law enforcement. For all other families, a family assessment and service delivery response would be made (Waldfogel, 1998).

In addition, the Florida legislature enacted legislation in 1998 requiring three counties (Pinellas, Pasco, and Manatee) to transfer responsibility for investigating reports of child

maltreatment from District Child Protective Service offices to the county sheriffs. In these counties, Sheriff's Departments now oversee all child abuse investigations. Officers and detectives work side by side with traditional child protection caseworkers. Researchers at the University of Pennsylvania School of Social Work are currently evaluating the consequences of transferring the responsibility for child abuse and neglect investigations from a child welfare agency to law enforcement agencies in the three Florida counties. This evaluation includes a process and outcome evaluation of the transfer of responsibility by comparing the three counties to three comparison counties. The project is funded by the National Institute of Justice and the Office of Juvenile Justice and Delinquency Prevention. This study could be quite important because unlike domestic violence, there has been no research done on the impact of police involvement on the reoccurrence of child abuse in abusive families.

7. Police involvement and the incarceration of child abuse offenders

There is very little state data available on the number of child abuse offenders arrested and convicted in the United States. According to *The 1999 Juvenile Offenders and Victims National Report*, females as the primary provider of child care were the perpetrators of most child maltreatment. For all types of maltreatment (physical abuse, neglect, medical neglect, sexual abuse, psychological abuse), 54% of the perpetrators were female, 22% were male, and 24% were both male and female. For just physical abuse, 33% of the perpetrators were male and 41% were female, and 26% were both male and female. For just neglect, only 10% of the perpetrators were male and 64% were female, and 25% were both male and female. For sexual abuse, 62% of the perpetrators were male and 6% were female, and 29% were both male and female. Male perpetrators were more common in maltreatment cases involving older victims. For example, at least one male was identified as the perpetrator in 30% of cases involving victims under the age of 1, compared to 58% of cases involving victims ages 12–17 (Snyder & Sickmund, 1999).

In cases of sexual abuse, male-only perpetrators were more common than female-only perpetrators. The majority of sexual abuse cases involving female perpetrators also involved male perpetrators. Sexual abuse perpetrators also comprise the majority of all child abuse perpetrators. The total number of state prison inmates with child victims was 42,616 in 1991. The number of inmates imprisoned for homicide (murder and negligent homicide) of a child was 3545. There were 39,923 imprisoned for rape and sexual assault of a child (forcible rape, forcible sodomy, statutory rape, lewd acts with children, and other sexual assault) and 3895 imprisoned for assault (aggravated assault, child abuse, simple assault) of a child (Snyder & Sickmund, 1999). The median sentence for a violent offender who had victimized a child was 132 months, and if the victim was an adult, the median sentence was 180 months (Snyder & Sickmund, 1999).

From the data above, it is evident that sexual abuse of children is prosecuted more often than physical abuse of children. This may stem from the cultural belief in American society that child sexual abuse is the worst form of child abuse. Physical abuse of children needs to be taken as seriously as child sexual abuse by law enforcement because physical abuse of children has long-term consequences for children that are as damaging if not

more damaging than child sexual abuse (Hansen, 1993). The decision to move the investigation of child abuse cases from the District Child Protective Services to the Sheriffs department in some Florida counties is an attempt to treat physical abuse of children as seriously as sexual abuse of children and other crimes. This also reflects a recent trend to address child abuse as crime rather than a social service issue. Duncan Lindsey has written extensively about treating child abuse as a crime. First, he makes the distinction between child abuse and child neglect. He makes the distinction that child abuse and child neglect are two qualitatively different issues that should be treated in fundamentally different ways (Lindsey, 1994).

It is crucial to make this distinction between child abuse and child neglect because they need to have different policy responses. Child neglect is by far more common than child abuse. In 2001, there were 2.7 million referrals for child abuse and neglect received by child protective services across the country. The number of referrals that were substantiated was 492,108. Of those substantiated referrals, 59.2% of those children suffered from neglect, 18.6% were physically abused, 9.6% were sexually abused, and 6.8% were emotionally abused (Children's Bureau, 2003).

By no means should family support and preservation services be stopped for the children who suffer from neglect mainly because of reasons of family poverty. However, the 18.6% of children who are physically abused deserve to have their abuse taken as seriously as spousal abuse and abuse between strangers. This is not to suggest that treating child abuse as a crime will prevent child abuse from occurring, but the fundamental question is whether child abuse is a crime? Lindsey asks some provocative questions related to this such as...

> At what age does striking an individual with a fist or club, with the purposeful intent to inflict bodily harm, change from child abuse (treatable by counseling or therapy) to criminal assault (punishable by imprisonment, fine, or both)? Presumably, a person twenty-one years of age could legally press criminal charges against a parent for assault. Why then cannot a teenager, a child, an infant do the same? At what age does a child cease to be the ward of quasi-legal protective service workers and gain full protection of the law (1994, p. 171)?

Lindsey's solution to these pressing questions is that arrest should be mandatory if there is evidence of severe physical abuse. Lindsey gives the following reasons in support of mandatory arrest of child abusers...

> Child abuse like other physical assault, is not an action that falls within the purview of child welfare agencies. Child abuse is not a clinical syndrome or psychological disorder requiring specialized therapeutic intervention, support, and care. Child abuse is, first and foremost, a criminal act, requiring decisive coercive control, and is therefore a police matter. The sooner it is treated as such, the sooner children will be protected to the fullest extent possible. This does not mean that the perpetrator shouldn't be provided with treatment and counseling, rather, it means that the child abuse needs first to be prosecuted as a criminal act and then, when advisable, to

> provide treatment to the perpetrator with the best available therapeutic services (1994, p. 172).

Even though sexual abuse of children is most frequently prosecuted form of child abuse, making the societal commitment to prosecute these offenders can even be difficult to achieve at times. The struggle of the Catholic Church to determine how to punish priests who sexually abused children exemplified societal reluctance to prosecute child abusers on par with other criminals. An estimated 1500 priests have been accused of sexually abusing children over five decades. Historically, Catholic bishops and cardinals have protected known abusers from criminal prosecution. One of the most hotly debated questions was whether priests who sexually abuse children should be prosecuted for such behavior. Victims and parents of victims strongly advocated for prosecuting sexually abusive priests, but the Catholic clergy and many lay people were divided on this issue. Because of this ever-growing scandal and increasing schism in the church, the US Conference of Catholic Bishops met to discuss how to address this crisis. After lengthy debate, the bishops devised the Charter for the Protection of Children and Young People. Some of the protective measures include establishing an Office for Child and Youth Protection and requiring dioceses to report sexual abuse allegations to public law enforcement authorities. The Catholic Church's actions demonstrate a new commitment to keeping children safe through prosecuting and incarcerating abusive priests. Law enforcement officials need to expand this commitment and prosecute those who physically abuse children whether they are parents, other family members, non-relatives, or public individuals who maintain an intimate relationship with families like clergy members.

The struggle to implement tough policies against sexually abusive priests and other abusers of children conflicts with the trend to treat more and more juvenile offenders as adults. Nearly every State now has laws that make it easier to handle more youth as adult criminals. According to the Bureau of Justice Statistics' Annual Survey of Jails, an estimated 9100 youth under the age of 18 were held in adult jails on June 30, 1997—about 2% of the total jail population. The majority of which are held as adults. This figure is 35% greater than the 1994 figure (Snyder & Sickmund, 1999). Juvenile offenders are expected to have the capacity and maturity that merits their movement from the juvenile justice system to the criminal justice system, yet the actions of many adults who physically abuse children are protected from similar incarceration because physical abuse of children continues to be treated as a child welfare issue rather than a criminal justice issue.

8. Conclusion

It is time to recognize that child abuse is a crime committed against children just as domestic violence is a crime committed against adults. It is long past due for child welfare agencies to change the paradigm under which they work to protect children and to begin addressing how to achieve justice for child abuse victims. As this paper has shown, there has been a continual progression towards higher prosecution rates of domestic violence incidents over the last thirty years. Even though child abuse is another form of violence

within the family and a crime committed in the home, it is still more frequently treated as a social service issue rather than a criminal matter. In addition, the mainstream child welfare establishment continues to support the traditional view of child protective services and police working in separate spheres. As long as this continues, prosecutors will not have access to evidence collected through strong criminal investigations that they need to meet the legal requirements to prosecute child abusers. Moreover, states need to make a commitment to gathering data regarding the number of successfully prosecuted child abuse cases in order to ensure that children are receiving equal treatment in the criminal justice system.

The Child Welfare League of America's Standards of Excellence for Services of Abused or Neglected Children and their Families outline specific roles for child protection agencies and law enforcement agencies. The CWLA promotes coordination and cooperation between child protection agencies and law enforcement agencies when there has been a criminal violation and there is need to hold an individual legally accountable for his or her actions (Child Welfare League of America, 1999). But CWLA is reluctant to take the next step which is to hand over the investigation of child abuse to the leadership of law enforcement agencies so that more child abuse crimes can be treated and prosecuted as exactly that, crimes.

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