



**DANE COUNTY
DISTRICT ATTORNEY
ISMAEL R. OZANNE**



**Deferred Prosecution Unit Child Abuse Initiative:
Addressing Racial Disparities & Corporal Punishment**

Problem Identification and Research Statement

Between June 1, 2011 and June 1, 2012, the Dane County District Attorney's Office (DA) received 174 referrals for Intentional Physical Abuse to a Child. Of those referrals, 54% were minority offenders.¹ When this percentage is compared with the minority population of 15% in Dane County, the disparity is clear.² Further, in 2012, the DA's Office received almost double the number of overall child abuse referrals, which has caused child abuse professionals to be gravely concerned for the safety and security of children in Dane County.

According to a 2011 study conducted by Brett Drake, PhD and colleagues, "black children are involved in reported and substantiated cases of child abuse and neglect at approximately twice the rate of white children."³ Until this study, it was unknown whether this was due to bias in reporting or that black children were at higher risk for abuse. The study concluded that black children are at higher risk of abuse and further recommended policies that target risk factors such as concentrated poverty, lack of available resources and cultural values that support corporal punishment.

Additionally, research indicates a significant link between corporal punishment and physical abuse. One specific study found that parents who utilize corporal punishment are nine times more likely to physically injure/abuse their children⁴ and experiencing corporal punishment by their parents makes children more than 2 times as likely to suffer an injury requiring medical attention⁵. Because parenting philosophies align themselves with specific cultural values so does corporal punishment. Corporal punishment is no longer viewed by child psychologists or pediatricians as an effective form of discipline. A 2002 meta-analysis of numerous studies on corporal punishment found 85% of the studies indicating that corporal punishment is associated with less moral internalization and long term compliance. Both the meta-analysis and subsequent studies confirmed the association of corporal punishment with impairments in children's mental health including anxiety and depression, alcohol and drug use, and general psychological maladjustment. Additionally, the association of corporal

¹ Dane County District Attorney's Office, Protect Report 6/19/12.

² US Census American Community Survey 2006-2008.

³ Drake, B, Jolley, J, Lanier P, Fluke J, Barth R, Jonson-Reid, M. Racial Bias in Child Protection? A Comparison of Competing Explanations Using national Data. *Pediatrics*. 2011; 127; 471.

⁴ Zolotor A., Theodore A., Chang J, Berkoff M., Runyan D. Speak Softly – and Forget the Stick: Corporal Punishment and Child Physical Abuse, 2008. *American Journal of Preventive Medicine* 2008; 35(4) 364-369.

⁵ Crandall, M., B. Chiu, and K. Sheehan. "Injury in the First Year of Life: Risk Factors and Solutions for High-Risk Families." *Journal of Surgical Research* 133.1 (2006): 7-10.

punishment to increased levels of antisocial behaviors applies regardless of the extent to which parents provide cognitive stimulation and emotional support, and regardless of socio-economic status, ethnic group, and sex of the child⁶. Thirteen out of thirteen studies found corporal punishment to also be associated with eroded parent-child relationships⁷.

Many studies point to increased aggression, antisocial behavior problems, future domestic violence, future child abuse, and criminal behavior as direct consequences associated with experiencing corporal punishment. These outcomes are present in the short-term, while those experiencing corporal punishment are still children, and also last into adulthood. We know children who experience child abuse & neglect are 59% more likely to be arrested as a juvenile, 28% more likely to be arrested as an adult, and 30% more likely to commit violent crime.⁸ A 2010 report by Straus suggests that ending corporal punishment could result in 1,540,000 fewer cases of antisocial behavior problems⁹. In 1998, due to the overwhelming research regarding the negative consequences of corporal punishment, the American Academy of Pediatrics issued a recommendation that all parents be encouraged and assisted by pediatricians to utilize alternative discipline methods.¹⁰

Between 1975 and 2002, there was a parent-reported decline in corporal punishment, and between 1990 and 2006, there was a 48% decline in substantiated physical abuse in the U.S. Researchers attribute this decline in part to the decline in corporal punishment.¹¹ Additional research with over 500 families demonstrated significant reductions in children's externalizing behavior problems as a direct result of decreases in parents' reliance on corporal punishment as discipline¹². A 2010 article noted that corporal punishment is no more effective than other techniques at achieving immediate compliance, and is in fact more likely to increase the negative child behaviors that parents intend to decrease by using it¹³. Therefore, pediatricians are working with parents to develop a method other than corporal punishment to address undesirable behaviors in children¹⁴.

Efforts to reduce racial disparities both in child victims and child physical abuse among minority families must address the risk factors associated with poverty, lack of

⁶ Straus MA, Sugarman DB, Giles-Sims J. Spanking by Parents and Subsequent Antisocial Behavior of Children. *Archives of Pediatric and Adolescent Medicine*. 1997;151(8):761-767. doi:10.1001/archpedi.1997.02170450011002.

⁷ Gershoff, E. T., & Bitensky, S. H. (2007). The case against corporal punishment of children: Converging evidence from social science research and international human rights law and implications for U.S. public policy. *Psychology, Public Policy, and Law*, 13(4), 231-272.

⁸ Long - Term Consequences of Child Abuse and Neglect. Child Welfare Information Gateway. Washington, D.C.: U.S. Department of Health and Human Services, 2006. Retrieved from http://www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm

⁹ Straus, M.A. (2010). Criminogenic effects of corporal punishment by parents. In M. Herzog-Evans & Isabelle Drean-Rivette (Eds.), *Transnational Criminology Manual* (Vol. I, pp. 373-390). Amsterdam: Wolf Legal Publishing.

¹⁰ American Academy of Pediatrics (1998). *Pediatrics*. Retrieved from: <http://pediatrics.aappublications.org/content/101/4/723.full>

¹¹ Finkelhor D, Jones S. (2006). Updated trends in child maltreatment. Durham NH: Crimes against Children Research Center, University of New Hampshire.

¹² Beauchaine, T., Webster-Stratton, C., & Reid, M. (2005). Mediators, moderators, and predictors of 1-year outcomes among children treated for early-onset conduct problems: A latent growth curve analysis. *Journal of Consulting and Clinical Psychology*, 73(3), 371-388.

¹³ Gershoff, E. T. (2010). More harm than good: A summary of scientific research on the intended and unintended effects of corporal punishment on children. *Law and Contemporary Problems*, 73(2), 31-56.

¹⁴ Committee on Psychological Aspects of Child and Family Health. Guidance for Effective Discipline. *Pediatrics* 1998; 101; 723.

resources and the use of corporal punishment. Programming needs to be culturally responsive and geared toward alternative forms of discipline. An analysis of parents' motivation for using corporal punishment is essential to understanding how to provide alternative parenting techniques that still address genuine concern parents have for their children. Author of *White Like Me*, Tim Wise, offers this hypothesis:¹⁵

[There is a "...deep and abiding fear that pumps like blood itself through the veins of black mothers in this country; especially when they are mothers of black men: the fear that persons in positions of authority -- most immediately police -- may well end the life of their man-child if they misinterpret a move, a look, a glance, a comment, or a smirk...So for black parents, even though they despair of allowing school officials -- who are typically white -- to discipline their children, let alone hit them, they often feel as though they have no choice. A paddle, after all, or the flat one one's hand will sting, it may even bruise, but it will not end one's life the way a bullet will. And for black parents, there is every reason to think that unless their children learn self-control at an early age, even if it has to be taught by way of a mechanism they'd rather not see dispensed, the risk of future catastrophe involving those same children will only grow...To be black is to feel the need to do whatever you think is necessary to keep your children alive because their longevity is anything but guaranteed."]

Continued dialog regarding parental motivation for using corporal punishment is needed. Whether culture, economic status, education, and/or religion are the basis for the choices parents make each holding environment represents diversity within our community and therefore should be researched, respected and understood prior to decision-making.

Current Service Gap

In addition to law enforcement investigations, the Dane County Department of Human Services - Child Protection Unit (CPS) is responsible for assessing safety when a report of intra-familial physical abuse is received. Because child safety is the mission of CPS, immediate interventions are implemented to address alternative parenting approaches and family reunification. Unfortunately, the criminal justice system does not operate this expeditiously and therefore misses the opportunity to:

- Coordinate services that will help families when they need it.
- Efficiently utilize scarce county resources by minimizing replication of services.
- Support the work of CPS by providing an additional incentive for parents to embrace services.
- Immediately address child protection without implementing a bail order not allowing contact between parents and their children.
- Offer offenders a less punitive and more productive response to criminal conduct.

¹⁵ Wise, T. (2005) *White Like Me: Reflections on Race from a Privileged Son*. Berkeley, CA. Publishers Group West.

- Collaborate with CPS to structure meaningful services.
- Send a unified, clear and consistent systemic message to families.
- Spare defendants high legal costs that further stress families.

Therefore, the DA's Office would prefer to work collaboratively with CPS in an effort to expedite appropriate criminal cases in which offenders are arrested for Intentional Physical Abuse to a Child where excessive physical punishment is the presenting issue. Both parents and their children are likely to receive short-term and long-term benefits from a deferred prosecution model which provides timely intervention focusing on alternative, non-violent discipline. Additionally, this program takes into account the reality that, in most low-level child abuse cases, a defendant is not going to be incarcerated for a long period of time and that children are not going to be permanently removed from a parent's care. This program will create and monitor Deferred Prosecution Unit (DPU) caregiver contracts that utilize community-based services, education, and support to ensure that these children are going to be safe. The DPU general program may also be able to accept cases in which a caregiver has AODA, mental health, or domestic violence issues which have contributed to, compounded, or are related to the abuse of the child.

Dane Co. DA's Office Commitment to Child Protection and Cultural Sensitivity

The Dane County DA's Office continues to respect all individual's rights to participate in diversion programming regardless of race, color, national origin, sex, religion, disability and age. As the larger community explores non-violent parenting initiatives and the cultural context of corporal punishment, the Dane County DA's Office will launch a new diversion program designed to protect all children and strengthen families. Because a disproportionate number of minorities are referred to the DA's Office, it is expected that this initiative will impact short-term and long-term racial disparities in the criminal justice system. This initiative will provide timely and culturally responsive programming to all eligible defendants filling a current service gap. Additionally, the DA's Office will support professional education opportunities for staff that teach culturally responsive service delivery.

Goals of the Project:

- Provide an opportunity for eligible caregivers to participate in an alternative to the formal criminal justice response following an incident of physical abuse of a child as the result of excessive corporal punishment.
- Integrate parenting programs that strive to reduce the number of children who are abused by the excessive use of corporal punishment by replacing current discipline practices with positive parenting methods.
- Strive to provide services to all child victims that promote healing.
- Offer parents/defendants and children services in a timely, culturally responsive and systems coordinated manner.
- Strive to offer all participants services that will promote positive change and are appropriate to their needs, abilities, goals, history and offense.

- Eliminate the use of corporal punishment/physical discipline by all participants.
- Provide professional training opportunities regarding strategies to end violent parenting and efforts to improve cultural responsiveness.
- Engage the community in a discussion that explores non-violent parenting practices.

Appropriate Candidates for Deferred Prosecution Child Abuse Initiative:

- Any caregiver who has committed an act of intentional physical abuse to a child within the context of excessive physical punishment including caregivers who perceive corporal punishment as an acceptable form of discipline within their culture.
- Any caregiver who demonstrates willingness to participate in recommended services – which may include parenting, mental health treatment, and/or AODA treatment if there is a history of substance abuse issues.
- Any caregiver who verbalizes recognition/admission that they utilized corporal punishment which resulted in physical abuse and verbalizes willingness to address the contributing factors and the effects of their actions.
- Any caregiver who is working cooperatively with law enforcement and the Department of Human Services.
- Any caregiver who lacks recent criminal behavior (within 1-5 years).
- Any caregiver who is not under jurisdiction with another agency.

With support from the Dane County Executive's Office and collaboration with CPS, a new position was created in the Deferred Prosecution Unit (DPU) in the fall of 2013. The intention of this new restorative justice position was to create one hybrid position that will utilize scarce county resources in the most efficient and effective manner.

Role Of The Dane County District Attorney's Office

- Participate in Safe Harbor interviews and provide feedback during debriefing as to whether this caregiver may be an appropriate candidate for expedited services and deferred prosecution.
- Make initial charging decisions as close in time to the incident as possible.
- Upon receipt of information and recommendation by CPS for deferred prosecution, the prosecutor will generate and send an offer letter to the defendant or defendant's attorney for settlement.
- Coordinate an initial interview for the participant with the Deferred Prosecution Program (DPP) to determine eligibility as soon as possible.
- Upon acceptance of settlement offer, the DA's Office will coordinate with the courts to set a date and time for a plea hearing.
- The DPU Child Abuse Specialist will collaborate with the CPS assessment social worker to identify services to be included in DPP contract.

Identified Services and Costs

Deferred Prosecution contracts will include participation in a parenting program assessment and, when necessary, mental health and/or AODA assessments. Participants will be expected to comply with recommendations of the provider subsequent to that assessment. All participants will participate in an approved comprehensive parenting program focusing on child development, effective healthy discipline techniques, managing children's behavior, and addressing cultural and generational factors that have influenced their use of corporal punishment. Participants may also be required to participate in generalized aggression treatment, Certified Domestic Violence Abuser Treatment, AODA treatment, and/or individual, group or family treatment to address mental health and family conflict issues. In-home family services may be recommended on an as needed basis. Participants will be required to participate in employment readiness and/or GED programs if they are not currently employed or have not obtained a high school diploma. English as a Second Language courses will be recommended for participants who have not acquired fluency in English.

This initiative also seeks to incorporate services for the child victims. Therefore, contracts will, in many cases, require that the participant obtain an assessment for the child victim, and follow through with subsequent recommendations. These recommendations may include in-home services or outpatient individual, group and/or family treatment.

All services will be provided in a culturally responsive and trauma informed context by trained professionals. Approved providers accept multiple insurance carriers and/or offer a sliding fee scale. Certain services may be provided free of charge.

Some contracts will also incorporate mandatory participation with Court Appointed Special Advocates (CASA) volunteers. In these cases, volunteers will meet weekly with the victim/s in the home or other locations. They will make observations regarding family dynamics and communication, and gain insight into the child's perception of changes in the home. Involvement with CASA will help to provide a more comprehensive picture of whether the parent is implementing and integrating skills they are acquiring in their parenting program and/or treatment, and whether they are refraining from the use of physical discipline. CASA services are provided free of charge.

Measurement And Data Collection

The following data will be recorded and maintained in PROTECT and supplementary data base:

1. Referrals from law enforcement for Intentional Physical Abuse to a Child charges.
2. Referrals to DPU program.
3. DPU successful completion and non-completion rates.
4. Child abuse recidivism rates.

5. Demographics for child victims, juvenile and adult offenders – sex, race, age.
6. Number of child victims who re-enter system as offenders.
7. Adverse childhood experiences of offenders and child victims.
8. Time between arrest, referral to DPU, acceptance to DPU, and beginning of treatment.
9. Reasons for return to court (program failure)
 - a. New offense
 - b. Non-compliance
 - c. Financial limitations
10. Interventions utilized
 - a. CASA
 - b. Parenting program
 - c. Employment readiness
 - d. In-home therapy
 - e. Generalized aggression treatment
 - f. AODA
 - g. Individual, Group and/or Family treatment
 - h. Certified Domestic Violence Abuser Treatment

Future Hope

The Dane County DA's Office welcomes the opportunity to participate in an on-going community conversation in an effort to reduce crime, support children and families, address racial disparities within the criminal justice system, and enhance community services. We are hopeful this collaborative initiative will result in shared understanding and shared responsibility for all members of our community, beginning with children.