



# DANE COUNTY DISTRICT ATTORNEY ISMAEL R. OZANNE



## Deferred Prosecution Unit Child Abuse Initiative: Addressing Racial Disparities and Corporal Punishment

### Problem Identification and Research Statement

Between June 1, 2011 and June 1, 2012 the Dane County DA's Office received 174 referrals for Intentional Physical Abuse to a Child. Of those referrals, 54% were minority offenders.<sup>1</sup> When this percentage is compared with the minority population of 15% in Dane County the disparity is clear.<sup>2</sup> Further, in the 2012 calendar year, the DA's Office has 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 Dane County children.

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."<sup>3</sup> Until this study, it was unknown whether this was due to bias in reporting or that black children were at higher risk for abuse. Conclusions of this study indicated the latter and further recommend 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. In fact, one specific study found that parents who utilize corporal punishment are nine times more likely to physically injure/abuse their children.<sup>4</sup> 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. In fact, many studies point to increased aggression, substance abuse, future domestic violence and criminal behavior as direct consequences associated with corporal punishment. 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.<sup>5</sup> 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<sup>6</sup>.

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.<sup>7</sup> Therefore, pediatricians are

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

<sup>2</sup> US Census American Community Survey 2006-2008

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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](http://www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm)

<sup>6</sup> American Academy of Pediatrics (1998). *Pediatrics*. Retrieved from: <http://pediatrics.aappublications.org/content/101/4/723.full>

<sup>7</sup> Finkelhor D, Jones S. (2006). Updated trends in child maltreatment. Durham NH: Crimes against Children Research Center, University of New Hampshire.

working with parents to develop a method other than corporal punishment to address undesirable behaviors in children.<sup>8</sup>

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 resources and the use of corporal punishment. Programming needs to be culturally sensitive 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:<sup>9</sup>

[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's 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.

### **Dane County District Attorney's Office Commitment to Change**

As the larger community explores peaceful childhood initiatives, the Dane County District Attorney's Office will plan to launch a new diversion program that will target minority parents who encounter the criminal justice system following an arrest for physical abuse to a child which resulted in excessive corporal punishment. This project will address a current service gap that currently exists within the criminal justice system.

### **Current Service Gap**

In addition to law enforcement investigations, the Department of Human Services Child Protection Unit (CPS) is responsible for assessing safety when a report of interfamilial physical abuse is received. Because child safety is the mission of CPS, immediate interventions are implemented to

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<sup>8</sup> Committee on Psychological Aspects of Child and Family Health. Guidance for Effective Discipline. Pediatrics 1998;101:723.

<sup>9</sup> Wise, T. (2005) *White Like Me: Reflections on Race from a Privileged Son*. Berkeley, CA. Publishers Group West.

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 services by minimizing replication of services.
- Support the work of CPS by providing an additional incentive to embrace services.
- Immediately address child protection without implementing bail order not allowing contact with their parents.
- Offer minority offenders a less punitive and more productive response to criminal conduct.
- 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 Dane County District Attorney's Office would prefer to work collaboratively with the Department of Human Services – Child Protection Services in an effort to fast track appropriate criminal cases in which offenders are arrested for intentional physical abuse to a child where excessive physical discipline is the presenting issue. Both minority parents and their children are likely to receive short and long-term benefits from a deferred prosecution model which provides timely intervention addressing alternative discipline approaches. Additionally, this program may be able to accept cases in which a parent/suspect has alcohol and other drug abuse (AODA) issues and qualifies for Drug Court diversions as well as some domestic violence cases in which children are witnesses.

**The goals of the project include:**

- Reduce criminal convictions for minority offenders by recognizing corporal punishment as a culturally acceptable form of discipline and attempting to influence change utilizing culturally sensitive interventions.
- Reduce the number of minority children who are victims of physical abuse within the context of corporal punishment.
- Offering parents/defendants and children services in a timely and meaningful manner.
- Identifying defendants with high levels of motivation to seek and benefit from rehabilitative programming.
- Coordinate services established by DCHS/CPS and the Dane County Deferred Prosecution Program to avoid overlap or conflicting service goals.

**Characteristics of Appropriate Candidates for Fast Tracking and Deferred Prosecution:**

- A parent/suspect who has committed an act of intentional physical abuse to a child within the context of excessive discipline.
- A parent/defendant who has a recent history of AODA issues and is willing and able to undergo treatment through Drug Court.

- A parent/defendant who has made an admission as to guilt of offense.
- A parent/defendant who is showing remorse for his or her behavior.
- A parent/defendant who is working cooperatively with law enforcement and the Department of Human Service.
- A parent/defendant who lacks recent (within 1-5 years) criminal behavior.
- Any parent/defendant who utilizes corporal punishment as a culturally acceptable form of discipline and the current incident escalated to abusive conduct.
- A parent/defendant who is not under jurisdiction with another agency.

With support from the Dane County Executive's Office and collaboration with Dane County Human Services Child Protection Services, a new Deferred Prosecution Unit (DPU) within the DA's Office will begin in the fall of 2013. The intention of this new restorative justice position will be 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 parent/defendant may be an appropriate candidate for fast tracking and deferred prosecution.
- Make initial charging decisions as close in time to the incident as possible.
- Upon receipt of information and recommendation by DCHS for deferred prosecution and fast tracking the ADA will generate and send an offer letter to the defendant or defendant's attorney for settlement.
- Coordinate with the Deferred Prosecution Program an initial interview with the defendant to determine eligibility as soon as possible.
- Upon acceptance of settlement offer the DA's Office will coordinate with Circuit Court a date and time set case for a plea hearing.
- The DPU specialist will collaborate with the DCHS assessment social worker to identify services to be included in program contract.

#### **Identified Services/Costs**

Family Services offers Parenting Paths which is an 18-week comprehensive parenting program for parents who have used excessive discipline techniques. The treatment focuses on child development education, managing children's behaviors and emotions and effective and healthy discipline techniques. The Dane County District Attorney's Office and Dane County Human Services has a long-standing relationship with Family Services and considers the quality of treatment to be of the highest quality. The total cost for Parenting Paths is \$2,160 per person.

#### **Measurement/Data Collection**

The following data will be recorded and maintained in PROTECT:

1. Referrals from law enforcement for physical abuse charges.
2. Referrals to DPU program.
3. DPU success/failure rates.

4. Child abuse recidivism rates.
5. Demographics for child victims, juvenile and adult offenders – sex, race, age.
6. # of child victims who re-enter system as offenders.

**Future Hope**

The Dane County DA's Office welcomes the opportunity to participate in a community-based peace dialog 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.