



Family Violence Coordinating Council

March 14, 2019
Hennepin County Government Center
Hennepin County Government Center – C1291
Full Council Meeting
12:15 – 1:30 PM

Fourth Judicial District Family Violence Coordinating Council Serving Hennepin County

Present: Quaintance, Judge Kathryn; Brey, Catherine; Wilson, Kate; Weinstein, Michael, Torborg, Kari, Lopez Ferguson, Tara; Hogan, Elizabeth; Miller, Adam; Pilz, Judy; Taylor, Jennifer; McNaughton, Lisa; Saunders, Jennifer; Braun-Lewis, Jackie; Blace, Joan; Osborn, Erin; Asell, Beth, Crockford, Carrie; Bute, Shiloh; Lockhart, Sarah; Ratner, Rachel; Milgrom, Aaron; Keefe, Amirthini

- 1. Welcome:** Katie Brey welcomed the group.
- 2. Approve February Minutes:** Forwarded to next meeting
- 3. Understanding the Racial Divide in Corporal Punishment Cases: A Child Protection and Criminal Defense Analysis:** Angela Bailey presented; a copy of the presentation is attached. Several questions and ideas were discussed after the presentation: Guardian program to reduce the disparity of cultural experience; disconnect between CHIPS and criminal charges; information sharing CHIPS, Diversion from Criminal Court One court, one family, Public Defenders try to coordinate across case types; is there an need for advocacy in Juvenile Court, there seems to be some pressure for parent/care takers to separate and/or get OFPs.
- 4. FVCC Resource Fair:** Judge Quaintance and Referee Furnstahl
 - Ann Taylor who lead the Resource fair has retired. Judge Quaintance asked sub-committees to discuss whether the fair should continue and identify people who may be able to lead this project.
- 5. Open forum/announcements –** No new business or announcements.

Future Agendas

April 11 – 4th District Self Help overview and OFP/HRO Guide N File automated petition demo

May 9 – Fatality Review Board Annual Report presentation

June 13 – Everything you ever wanted to know about DASC

July and August– No meetings – Enjoy your summer!

September – Domestic violence in the Native community

Upcoming events

Use this link to find us on the web.

[http://www.mncourts.gov/Find-Courts/Hennepin/Family-Violence-Coordinating-Council-\(FVCC\).aspx](http://www.mncourts.gov/Find-Courts/Hennepin/Family-Violence-Coordinating-Council-(FVCC).aspx)

Use this link to access our Google Calendar of events.

<https://www.google.com/calendar/embed?src=fvccalendar%40gmail.com&ctz=America/Chicago>

“Understanding the Racial Divide on Corporal Punishment - A Legal and Historical Analysis”

Judicial Lunch and Learn Series

October 17, 2018

Presenters: Angela Bailey, Assistant Hennepin County Public Defender
 DeAundres Wilson, Attorney at Law

I. Law on Best Interest of a Child Factors:

Minnesota Child Custody Dialogue Group, The New Best Interest of a Child Factors, Minnesota Bench and Bar (Jan. 5, 2016).

Previously, there were 13 best interest factors to assist in deciding primary physical custody after family dissolution, along with four additional factors if joint custody was sought. As of August 1, 2015, 12 new best interest factors are applicable to all cases between parents, without a presumption for or against either sole or joint physical custody. There remains a rebuttable legal presumption for joint legal custody in the absence of domestic abuse.

According to the *Minnesota Child Custody Dialogue Group*:

The current changes seek to encourage processes that support the substantial involvement of both parents in a child’s life, assuming the child’s safety, well-being, and healthy development are continually addressed. . . . There is no order of importance in the factors. In fact, statutory language specifically requires consideration that the factors may be interrelated. And, as before, the court must make findings on each factor and not use one to the exclusion of all others.

Here’s a list of the 12 most recent best interest factors:

1. **Physical, emotional, cultural and spiritual needs of a child.**
2. **Special medical, mental health or educational needs of a child.**
3. **Reasonable preference of a child.**
4. **Domestic abuse.**
5. **Physical, mental health or chemical health issues of a parent.**
6. **History and nature of care.**
7. **Ability of parent to reliably meet the needs of a child going forward.**
8. **Effect on a child of changes to home, school and community.**
9. **Effect on significant relationships of a child.**
10. **Benefit to a child in maximizing time or detriment to a child in limiting time.**
11. **Disposition of parents to support relationship with the other.**

12. Ability of parents to cooperate in rearing their child.

M.S.A. § 260.012. Duty to ensure placement prevention and family reunification; reasonable efforts

(a) Once a child alleged to be in need of protection or services is under the court's jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate services, by the social services agency are made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time. . . . Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon a determination by the court that a petition has been filed stating a prima facie case that:

13. (1) the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14

14. (f) Reasonable efforts are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family. Services may include those provided by the responsible social services agency and other culturally appropriate services available in the community. . . .

15. (h) The juvenile court, in proceedings under sections 260B.178, 260C.178, 260C.201, 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, shall make findings and conclusions as to the provision of reasonable efforts. When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family were:

16. (1) relevant to the safety and protection of the child;

17. (2) adequate to meet the needs of the child and family;

18. (3) culturally appropriate;

19. (4) available and accessible;

20. (5) consistent and timely; and

21. (6) realistic under the circumstances.

II. Statutory Law on Corporal Punishment:

A parent may use a reasonable degree of force to restrain or correct his or her child, as long as it does not violate governing laws. Below is a list of governing statutory law, minus the sentencing provisions, and case law that will help you assess whether your client's use of force was reasonable.

Relevant Statutes: in pertinent part.

M.S.A. § 609.02. Definitions

Subd. 6. Dangerous weapon. “Dangerous weapon” means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm

Subd. 7. Bodily harm. “Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.

Subd. 7a. Substantial bodily harm. “Substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.

Subd. 8. Great bodily harm. “Great bodily harm” means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

M.S.A. § 260C.007. Definitions

Subd. 5. Child abuse. “Child abuse” means an act that involves a minor victim that constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.322, 609.324, 609.342, 609.343, 609.344, 609.345, 609.377, 609.378, 617.246, or that is physical or sexual abuse as defined in section 626.556, subdivision 2, or an act committed in another state that involves a minor victim and would constitute a violation of one of these sections if committed in this state.

Subd. 6. Child in need of protection or services. “Child in need of protection or services” means a child who is in need of protection or services because the child: . . .

(2)(i) has been a victim of physical or sexual abuse as defined in section 626.556, subdivision 2, (ii) resides with or has resided with a victim of child abuse as defined in subdivision 5 or domestic child abuse as defined in subdivision 13, (iii) resides with or would reside with a perpetrator of domestic child abuse as defined in subdivision 13 or child abuse as defined in subdivision 5 or 13, or (iv) is a victim of emotional maltreatment as defined in subdivision 15. . . .

Subd. 14. Egregious harm. “Egregious harm” means the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care. The egregious harm need not have occurred in the

state or in the county where a termination of parental rights action is otherwise properly venued. Egregious harm includes, but is not limited to:

- (1) conduct towards a child that constitutes a violation of sections 609.185 to 609.2114, 609.222, subdivision 2, 609.223, or any other similar law of any other state;
- (2) the infliction of “substantial bodily harm” to a child, as defined in section 609.02, subdivision 7a;
- (3) conduct towards a child that constitutes felony malicious punishment of a child under section 609.377;
- (4) conduct towards a child that constitutes felony unreasonable restraint of a child under section 609.255, subdivision 3; . . .
- (6) conduct towards a child that constitutes assault under section 609.221, 609.222, or 609.223; . . .
- (8) conduct towards a child that constitutes murder or voluntary manslaughter as defined by United States Code, title 18, section 1111(a) or 1112(a);
- (9) conduct towards a child that constitutes aiding or abetting, attempting, conspiring, or soliciting to commit a murder or voluntary manslaughter that constitutes a violation of United States Code, title 18, section 1111(a) or 1112(a); . . .

Subd. 15. Emotional maltreatment. “Emotional maltreatment” means the consistent, deliberate infliction of mental harm on a child by a person responsible for the child's care, that has an observable, sustained, and adverse effect on the child's physical, mental, or emotional development. “Emotional maltreatment” does not include reasonable training or discipline administered by the person responsible for the child's care or the reasonable exercise of authority by that person.

M.S.A. § 609.06 Authorized use of force

Subdivision 1. When authorized. Except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist: . . .

- (6) when used by a parent, guardian, teacher, or other lawful custodian of a child or pupil, in the exercise of lawful authority, to restrain or correct such child or pupil.

M.S.A. § 609.377. Malicious punishment of child

Subdivision 1. Malicious punishment. A parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences

unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child and may be sentenced as provided in subdivisions 2 to 6.

Subd. 2. Gross misdemeanor. If the punishment results in less than substantial bodily harm

Subd. 3. Enhancement to a felony. Whoever violates the provisions of subdivision 2 during the time period between a previous conviction or adjudication for delinquency under this section or sections 609.221 to 609.2231, 609.224, 609.2242, 609.342 to 609.345, or 609.713, and the end of five years following discharge from sentence or disposition for that conviction or adjudication

Subd. 4. Felony; child under age four. If the punishment is to a child under the age of four and causes bodily harm to the head, eyes, neck, or otherwise causes multiple bruises to the body

Subd. 5. Felony; substantial bodily harm. If the punishment results in substantial bodily harm

Subd. 6. Felony; great bodily harm. If the punishment results in great bodily harm. . . .

M.S.A. § 609.221. Assault in the first degree

Subdivision 1. Great bodily harm. Whoever assaults another and inflicts great bodily harm

M.S.A. § 609.222. Assault in the second degree

Subdivision 1. Dangerous weapon. Whoever assaults another with a dangerous weapon

Subd. 2. Dangerous weapon; substantial bodily harm. Whoever assaults another with a dangerous weapon and inflicts substantial bodily harm

M.S.A. § 609.223. Assault in the third degree

Subdivision 1. Substantial bodily harm. Whoever assaults another and inflicts substantial bodily harm

Subd. 2. Past pattern of child abuse. Whoever assaults a minor may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the perpetrator has engaged in a past pattern of child abuse against the minor. As used in this subdivision, “child abuse” has the meaning given it in section 609.185, paragraph (a), clause (5).

Subd. 3. Felony; victim under four. Whoever assaults a victim under the age of four, and causes bodily harm to the child's head, eyes, or neck, or otherwise causes multiple bruises to the body, is guilty of a felony

M.S.A. § 626.556. Reporting of maltreatment of minors

Subdivision 1. Public policy. . .

(k) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 125A.0942 or 245.825. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following:

- (1) throwing, kicking, burning, biting, or cutting a child;
- (2) striking a child with a closed fist;
- (3) shaking a child under age three;
- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- (5) unreasonable interference with a child's breathing;
- (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- (7) striking a child under age one on the face or head;
- (8) striking a child who is at least age one but under age four on the face or head, which results in an injury;
- (9) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;
- (10) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or
- (11) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

III. Relevant Caselaw on Corporal Punishment:

In the Matter of the WELFARE OF the CHILDREN OF N.F., 749 N.W.2d 802 (Minn. 2008).

Facts: In 2005, S.F. disciplined his 12-year-old son, G.F., by paddling G.F. on the back of the upper thighs with moderate force a total of about 36 times. At the adjudication hearing in November 2006, the parties, in addition to stipulating to the basic facts, also submitted as evidence the paddle and two photographs of the back of G.F.'s upper thighs. The photos show no bruising on G.F.'s legs.

The district court concluded that “[s]triking a child with a wooden paddle 36 times” was not reasonable or moderate discipline and therefore constituted physical abuse. The court further concluded that the boys' environment was injurious or dangerous and adjudicated both as children in need of protection or services (CHIPS) based on the physical abuse of G.F. The court continued the boys' placement in the care and custody of their parents, subject to compliance with a case plan that included, among other things, individual and family therapy and oversight by a county social worker.

Parents of two boys appealed an adjudication of the District Court, Hennepin County, Pamela G. Alexander, J., that the boys were **children** in need of protection or services (CHIPS). The Court of Appeals, 735 N.W.2d 735, reversed. Review was granted.

Holdings: The Supreme Court, Page, J., held that:

1. The record was inadequate to establish “physical abuse” as used in the statutory definition of “child in need of protection or services,” and
2. Remand for further development of the record was not in the interests of justice, given that the incident at issue was over three years old and there was no subsequent incidents of physical abuse reported.

Affirmed in part and reversed in part.

Rationale: “Physical abuse,” for purposes of the statutory definition of a “child in need of protection or services,” includes physical conduct that causes the child either physical injury or “mental injury” as defined in the statute governing the reporting of maltreatment

of minors, which is “an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child’s ability to function within a normal range of performance and behavior with due regard to the child's culture.” M.S.A. §§ 260C.007(6)(2)(i), 626.556(2)(m) (2006).

Other Helpful Resources:

Racial Disparities in Society and the Criminal Justice System:

Ta-Nehisi Coates, Between the World and Me (Speigl & Grau; 1 edition, 2015).

Colored Drinking Fountain,” Photograph, Photographer Unknown: an African-American man at a segregated restroom and drinking fountain in Oklahoma City in the Summer of 1939.

Ava DuVernay, 13th, <https://www.netflix.com/title/80091741>

Summary: With Melina Abdullah, Michelle Alexander, Cory Booker, Dolores Canales. An in-depth look at how state-sanctioned segregation laws, criminalization and violence against blacks, and the prison industrial complex system in the United States took the place of slavery in oppressing African Americans for political and economic gain. 2016.

Jonathan Kahn, Race on the Brain (Columbia University Press, 2018).

Karen Nevatia, Racial Disparities in America’s Prison System, ASCJ 200, (February 18, 2018); <https://www.census.gov/quickfacts/fact/table/US/PST045216>; <https://www.bjs.gov/content/pub/pdf/p16.pdf>

Summary: America’s incarceration rates among races are widely disparate, due to a number of factors — people of color are more likely to be arrested by (primarily white) law enforcement officers, and subsequently more likely to be given time in prison and longer sentences by (primarily white) judges. It provides statistical data on the percentage breakdown of race within the federal and state prison system, compared to the percentage breakdown of race within the general American population.

Gordon Parks “Photos from Alabama circa 1956.” Depicting the impact of Jim Crow laws and segregation on African Americans of that era.

“1920 Duluth Lynchings,” Photograph, Photographer Unknown: On June 15, 1920, police arrest three African American circus workers on questionable charges of rape of a white woman. That evening, three of them, Elias Clayton, Elmer Jackson, and Isaac McGhie, are taken from the jail by a mob of thousands and lynched. A physician’s examination of her subsequently found no evidence of rape or assault. The photograph of the lynchings was made into a postcard. Two of the lynch victims are still hanging while the third is laid on the ground.

“Open Casket Funeral of Emmett Till”: <http://www.history.com/this-day-in-history/the-death-of-emmett-til>. On August 28, 1955, while visiting family in Money, Mississippi, 14-year-old Emmett Till, an African American from Chicago, is brutally murdered for allegedly flirting with a white woman four days earlier. The Emmett Till murder galvanized the African American Civil Rights Movement and brought international attention to the brutality of Jim Crow segregation.

James E. Wright III, The Trayvon Martin Effect: Estimating the effect of the Trayvon Martin shooting on reading performance scores using the synthetic control method (June 5, 2016).

<https://www.tandfonline.com/doi/full/10.1080/23311886.2016.1232954>

#BlackLives Matter: the Birth of a New Civil Rights Movement

<https://www.theguardian.com/world/2015/jul/19/blacklivesmatter-birth-civil-rights-movement>

Summary: Black America is in a state of protest. The Black Lives Matter movement is the 21st-century civil rights movement fueled by grief and rage against injustice and institutionalized racism and by frustration at the endemic brutality of the state against those it deems unworthy.

Cornel West, Race Matters, (Beacon Press, 1993).

Corporal Punishment in the African American Community:

Cooper, Brittney. The Racial Parenting Divide: What Adrian Peterson Reveals About Black and White Child Rearing, Salon Magazine (Sept. 16, 2014).

http://www.salon.com/2014/09/16/the_racial_parenting_divide_what_adrian_peter_son_reveals_about_black_and_white_child_rearing/

Summary: Making the case that African Americans' history of authoritarian parenting was meant to protect African American children against state-sanctioned violence, but may be doing more harm than good.

Stop Beating Black Children,” by Stacey Patton, Sunday Review, New York Times, March 10, 2017.

Summary: “Black parents are still about twice as likely as white and Latino families to use corporal punishment on their children. I’ve heard many black people attribute their successes, or the fact that they weren’t in jail, on drugs or dead, to the beatings they received as children. . . .But if whupping children kept black people out of prison or safe from abusive cops, there would be no mass incarceration or police brutality. If beatings were a prerequisite for success, black people would be ruling the world.”

Trauma-Informed Care:

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_144790b

The Department of Human Services or DHS disfavors the use of corporal punishment and generally perceives it to be an unnecessary and physically, psychologically, and emotionally harmful to children. Where a finding of maltreatment is made administratively against a parent, they will generally aim to send parents to culturally appropriate services providers who specialize in trauma-informed care. According to their website, DHS addresses child trauma issues collaboratively with Minnesota’s grantee in the National Child Traumatic Stress Network funded by the Substance Abuse and Mental Health Administration (SAMHSA). DHS recommends that parents adopt parenting styles that do not rely on corporal punishment in order to avoid the inherent risk of inadvertently or deliberately committing child abuse in a fit of anger.