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## CHILDREN AND THE LAW: KEEPING AN EYE ON THE CHILD

The Honorable Kathleen Blatz†

For the last twenty-five years, Americans have declared war on crime. As a result, legislatures across the country have built prisons, substantially increased sentences for offenders, and devoted more resources to combating violence.<sup>1</sup> Minnesota has been no exception to this national trend.<sup>2</sup> Our state's taxpayers currently spend more than one billion dollars a year on the criminal justice system.<sup>3</sup> Due to these increased expenditures, we have more police, more prosecutors, and more probation officers.<sup>4</sup> Predictably—and as demanded by the citizenry—we have more arrests and more people in local jails and prison.<sup>5</sup> In the courts alone, our major criminal case filings rose more than 700% in the

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† The Honorable Kathleen Blatz is Chief Justice of the Minnesota Supreme Court. The author would like to thank the following persons for their invaluable support to this article: Katie Golden and Val Gunderson.

1. See, e.g., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, KEY CRIME & JUSTICE FACTS AT A GLANCE (last revised May 8, 2000) <<http://www.ojp.ussdoj.gov/bjs/glance.htm>> [hereinafter CRIME & JUSTICE FACTS AT A GLANCE] (graphing trends since the 1970s and 1980s in crime, correctional populations, and expenditures); John Clark et al., "Three Strikes and You're Out": A Review of State Legislation, RES. BRIEF (National Institute of Justice, U.S. Department of Justice, NCJ 165369), Sept. 1997, available at 1 <<http://www.ncjrs.org/pdffiles/165369.pdf>> (discussing enhanced sentences).

2. See MINNESOTA DEPARTMENT OF FINANCE, 2000-01 BUDGET AT A GLANCE: CRIMINAL JUSTICE (October 1999) (visited May 25, 2000) <<http://www.finance.state.mn.us/sbs/pdf/2000criminaljustice.pdf>>.

3. See *id.*

4. See Memo from Honorable Daniel H. Mabley, Chief Judge, Fourth Judicial District to Honorable Kathleen Blatz, Chief Justice, Minnesota Supreme Court at 2-3 (Feb. 22, 1999) (on file with the Minnesota Supreme Court).

5. See MINNESOTA DEP'T OF CORRECTIONS, COMMUNITY PRESERVATION (stating that the Minnesota prison population, numbering 1,200 in the early 1970s, is expected to total more than 7,000 inmates by 2006) (on file with the author); see also NATIONAL INST. OF JUSTICE, Franklin E. Zimring, *Lethal Violence and the Overreach of American Imprisonment* 1, 4, in RESEARCH REPORT—TWO VIEWS ON IMPRISONMENT POLICIES, NCJ 165702 (July 1997) (visited May 25, 2000) (<<http://www.ncjrs.org/pdffiles/165702.pdf>> (noting that there were five times as many people in prison in 1996 as there were in 1973)).

last twenty-five years.<sup>6</sup>

However, for all of our efforts to combat crime, our likelihood of being the victim of a violent crime in 1998 was nearly the same as it was in 1975.<sup>7</sup> In other words, each person's chance of being a victim is the same today as it was twenty-five years ago. This is a shocking statistic. If we have significantly increased resources, why are we failing to make meaningful changes in crime? I believe it is, in large part, because we have failed to make the child protection system—the feeder system to the adult criminal system—a priority.<sup>8</sup>

Children who first come to our courts as abused and neglected victims have a much greater chance of returning as juvenile delinquents, and a much greater chance of returning as adult offenders. This is not an excuse for serious criminal behavior, but it is a reality that the public and those of us whose lives revolve around criminal justice must confront. A person experiencing childhood abuse and neglect is 53% more likely to be arrested as a juvenile, 38% more likely to be arrested as an adult, and 38% more likely to commit a violent crime.<sup>9</sup> Should it come as a surprise that children who witness and experience multiple acts of violence in

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6. See Minnesota Supreme Court Research & Evaluation, Sept. 13, 1999 (on file with the Minnesota Supreme Court); see also NATIONAL CENTER FOR STATE COURTS, A NATIONAL PERSPECTIVE/COURT STATISTICS PROJECT ANNUAL REPORT—1998 (visited May 15, 2000) <<http://www.ncsc.dnu.us/divisions/research/cssp/csp98-sccf.html>> (detailing trends in state court filings from 1984 to 1998).

7. See MINNESOTA DEP'T OF PUB. SAFETY, BUREAU OF CRIMINAL APPREHENSION, MINNESOTA CRIME INFORMATION 1998, 54-55; cf. MICHAEL D. MALTZ & MARIANNE W. ZAWITZ, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PUB. NCJ 167881, DISPLAYING VIOLENT CRIME TRENDS USING ESTIMATES FROM THE NATIONAL CRIME VICTIMIZATION SURVEY (June 1998) <<http://www.ojp.usdoj.gov/bjs/pub/dvctux.htm>> (showing a slight decline in violent victimizations from 48.5 per 1,000 people in 1973 to 42 per 1,000 in 1996); CRIME & JUSTICE FACTS AT A GLANCE, *supra* note 1.

8. Sadly, for all our talk about needing to protect vulnerable children, the truth is that the Minnesota Department of Natural Resources does a better job of tracking the number of deer in our state than the combined forces of the judicial and executive branch do in tracking the number of children in child protection. See Samuel Hughes, *The Children's Crusaders*, PA. GAZETTE, May/June 1999, at 22, 27.

9. See COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION, COMBATING VIOLENCE AND DELINQUENCY: THE NATIONAL JUVENILE JUSTICE ACTION PLAN, at 66 (Mar. 1996) [hereinafter ACTION PLAN]. This is a frightening statistic in that more than half of all violent adult offenders initiate their violence between ages 14 and 17. See OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, GUIDE FOR IMPLEMENTING THE COMPREHENSIVE STRATEGY FOR SERIOUS, VIOLENT, AND CHRONIC JUVENILE OFFENDERS 3 (James C. Howell ed., 1995).

the home are twice as likely to commit violent acts themselves?<sup>10</sup> I think not.

Until we do a better job of recognizing the link between the treatment of children and criminal violence, we will never make meaningful reductions in crime. Recognizing this connection should not be a source of despair. While a disproportionate number of abused and neglected children end up in prison, the converse is not necessarily true. In other words, many abused and neglected children succeed in life. In addition to their personal strength and life choices, these resilient children have common factors that may be important. One key characteristic in successfully surviving an abusive childhood is having a close bond with a caregiver early in life.<sup>11</sup> Another is the involvement of at least one significant person in that child's life who accepts him or her unconditionally.<sup>12</sup> Thus, when the child protection system becomes involved in a child's life it needs to foster these strengths, encourage positive links, and not act as a barrier to permanence.

Our awareness of these important connections—between the abuse of children and crime, and between children at risk and loving mentors—should provide both an impetus for change and a means for changing. In other words, if the system acts quickly and effectively at the first signs of trouble, we may be able to break the cycle of violence and steer many more at-risk children onto a successful pathway. I believe we can do this by keeping our eye on what really matters: the child. This means focusing on the delivery of services to the child, first and foremost.

There are a number of ways to begin changing the child protection system to ensure we take action when we *first* become aware of a child in need. For one, we must challenge the status quo and seek better ways to meet the needs of children and their families. To do this we must be open to criticisms and be willing to allow some sunshine in. An ongoing pilot project to open child

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10. See ACTION PLAN, *supra* note 9, at 66. One of the articles in this issue also notes the impact of domestic violence on children. See Nancy Ver Steegh, *The Silent Victims: Children and Domestic Violence*, 26 WM. MITCHELL L. REV. 777, Part II.E (2000).

11. See NATIONAL INST. OF JUSTICE RESEARCH REPORT, BREAKING THE CYCLE, 1994, available at <<http://www.ncjrs.org/txtfiles/break.txt>>.

12. See Jean Baldwin Grossman & Eileen M. Garry, MENTORING—A PROVEN DELINQUENCY PREVENTION STRATEGY, (Office of Juvenile Justice & Delinquency Prevention Bulletin, April 1997), available at <<http://www.ncjrs.org/txtfiles/164834.txt>>.

protection hearings to the public is just one example of such efforts. We are now beginning our third year of a three-year pilot project to open many of these hearings.<sup>13</sup> For the last century in Minnesota, the stories of children involved in our court system could not be told because all proceedings in juvenile protection were closed to the public. If opening these hearings to the public does not harm the child, our careful scrutiny of the system will help hold it accountable to the people it serves and ensure that our neediest children do not languish as they pass through it. Two of the articles that follow, authored by the Honorable Heidi Schellhas, Juvenile Court Judge in Hennepin County, and by Susan Harris, Assistant Washington County Attorney, discuss this issue in greater detail.<sup>14</sup>

Second, we need to continue the public debate about whether families should be preserved at all costs. A focus on reunification of children and parents must not be blind to the devastating results of countless disruptive placements. Children need stability, safety, and permanence. Bouncing a child from stranger to stranger, from one parent to another and back again, undermines these very goals of child protection intervention. As participants in the system, we need to be mindful at every turn that children must not be sacrificed at the altar of family preservation.

In an attempt to address this problem, Minnesota has enacted legislation to provide for concurrent permanency planning.<sup>15</sup> This new approach to child protection and permanency is an important effort to see time through the eyes of a child. Historically, children were placed in foster care while significant efforts were expended to reunite them with their parents. Subsequently, if reunification was deemed unsuccessful, the efforts then turned to finding another home for the children. Under a concurrent permanency planning program, these two planning tracks occur simultaneously to prevent multiple placements of children if reunification efforts fail. The articles by State Senator Jane Ranum and Brian Guidera, Division Manager of the Children and Family Services Department in the Hennepin County Attorney's Office, discuss concurrent

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13. See Amended Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. Feb. 5, 1998).

14. See Heidi Schellhas, *Open Child Protection Proceedings in Minnesota*, 26 WM. MITCHELL L. REV. 631 (2000); Susan Harris, *Open Hearings: A Questionable Solution*, 26 WM. MITCHELL L. REV. 673 (2000).

15. See MINN. STAT. § 260C.213 (Supp. 1999).

planning and its implementation in Minnesota.<sup>16</sup>

Finally, in Minnesota we recently amended the rules governing child protection in the courts.<sup>17</sup> The purpose of these rules is to secure safe and permanent homes for children,<sup>18</sup> provide judicial procedures to protect and promote the safety and welfare of children,<sup>19</sup> and “provide for a just, thorough, speedy, and efficient determination of each juvenile protection matter.”<sup>20</sup> Importantly, the rules reflect and buttress the statutory changes establishing shorter permanency timelines.<sup>21</sup> The rules also give judges increased control over child protection cases in order to move the cases along and achieve stability for children more quickly.

The other articles included herein also address important child protection issues such as the Indian Child Welfare Act as discussed by Peter K. Wahl, Professor Robert Oliphant’s review of the burden for custody modification, and Lawrence Schlam’s article on third-party custody rights. Bringing these aspects to the forefront and debating their merits is a step in the right direction as we reevaluate and rework the child protection system, with an eye on what is best for the child.

I hope our collective discussions will further raise awareness of the issues facing the child protection system. But this will happen only if those of us who are involved ask ourselves the toughest questions every single day: “Was *the system* part of the problem, or part of the solution today?” and “Was *I* part of the problem, or part of the solution today?” As members of the child welfare system, we need to put our own practices under a microscope so that we may

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16. See Senator Jane Ranum, *Minnesota’s Permanency and Concurrent Planning Child Care System*, 26 WM. MITCHELL L. REV. 687 (2000); Brian J. Guidera, *Concurrent Permanency Planning: Implementation In Hennepin County*, 26 WM. MITCHELL L. REV. 699 (2000).

17. See Order of the Minnesota Supreme Court, No. C4-97-1693 (Dec. 19, 1994).

18. See MINN. R. JUV. P. 37.02(a).

19. See MINN. R. JUV. P. 37.02(c).

20. MINN. R. JUV. P. 37.02(f).

21. Under federal statutes, permanency plans for children must be decided within 12 months of the date the child enters foster care. See 42 U.S.C. § 675(5)(C) (1994). Minnesota’s permanency statute is more stringent and requires a permanency plan be made within 12 months of removal for children age eight and older, and within six months of removal for children under eight years of age. Another important change is the increased control by judges over child protection cases. Further, Minnesota requires the mandatory appointment of a guardian *ad litem* in every child protection case. See MINN. STAT. § 260C.163, subd. 5 (Supp. 1999); MINN. R. JUV. P. 62.01.

strive to excel in our individual areas. This close-up view and analysis should not close our eyes to the larger picture. Our field of vision needs to recognize where our area of professional expertise crosses into other parts of the system, and how we can better work together across our invisible, yet often very real, boundaries. By using a wide-angle lens instead of a microscope to keep an eye on the child, perhaps we can all do a better job of protecting the best interests of our children. No less than our future depends on it.