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FORGOTTEN CHILDREN:
LAW ENFORCEMENT AGENCIES,
CHILD PROTECTIVE SERVICES,
AND CHILDREN OF ARRESTED
PARENTS IN MICHIGAN

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ABSTRACT

When a child's sole caretaker is arrested, a number of different outcomes can happen depending on how a law enforcement agency handles the situation. There is no single set of guidelines that all police departments follow. In fact, many departments do not have a policy that dictates practice. This can cause children to "fall through the cracks," ranging from being left alone, to being turned over to unqualified caregivers, to being placed in the custody of someone they don't know. This is a problem because not only can it put the child/children in physically dangerous situations, but also it can have long lasting psychological effects. There are some procedures and approaches that police departments have in place that can decrease the harm suffered by these children, their parents and the community when caregivers of minor children are arrested. However, more could be done in this important area. The goal of this research is to identify the possible gaps between law enforcement agencies and Child Protective Services in an effort to reduce harm and provide both agencies with a tool to aide in the development of more effective policies and practices.

INTRODUCTION

With little and inconsistent guidance from the judicial and legislative bodies to which they normally look for direction, law enforcement agencies in Michigan, like those in other states, with few exceptions, are left to establish policies and procedures regarding situations where the arrestee is the primary caretaker of minor children. Often policies and procedures are established only after a tragic or near-tragic event endan-

gers children and encumbers individual officers and agencies in costly lawsuits. Individual officers, lacking procedural guidance, are forced to make discretionary calls in the field that require them to predict outcomes and be held accountable if their discretionary calls result in tragedy. Establishing procedures, policies and practices in a systematic way can alleviate the dangers and risks to agencies, officers, and children.

According to Marcus Nieto in his article *In Danger of Falling Through the Cracks: Children of Arrested Parents*, focusing on the state of California, children “fall through cracks” because when parents are arrested they are not often asked about whether or not they have any children (Nieto, 2002, p.1). “Nearly two-thirds of local law enforcement agencies do not have written policy to guide their officers on whether, or how to assume responsibility for minor children when their caretaker is arrested” (Nieto, 2002, p. 1). Sometimes parents don’t tell police about their children because they don’t want them to be put into the care of Child Protective Services (CPS), fearing they could lose custody of their children. Subsequently, the parents leave the children out of it in the hopes that a family member or neighbor will take care of them while they are gone. This problem is fairly widespread. Nieto reported “nearly two-thirds of incarcerated mothers are the sole caretakers of their children at the time of arrest” (Nieto, 2002, p. 5). It is a bigger problem with mothers because “only 55 percent of men who are incarcerated are fathers and 90 percent of the time the mothers retain custody of the children” (Nieto, 2002, p. 6). California does have laws that allow for officers to take the children into custody if they are in immediate danger, but there are no direct laws dealing with the needs of children of arrested parents (Nieto, 2002, p. 6). There is another law that says that the preference for who gets custody should be given to in a way that least interferes with the parent’s custody, but also is best for the child’s safety (Nieto, 2002, p. 6).

A survey conducted by the California Research Bureau that was given out to law enforcement agencies and social services and welfare agencies findings in regards to law enforcement polices were surprising at the least. Only 13 percent of the respondents reported that their officers will always inquire about an arrestee’s children, regardless of whether or not children are present (Nieto, 2002, p. 11). Another 12 percent said that they would ask about children when there is physical evidence such as toys or baby bottles (Nieto, 2002, p. 11). Of the agencies that have written polices, only 7 percent said they would assume responsibility for children and 11 percent said they would never assume responsibility (Nieto, 2002, p. 12). As for the placement of children of

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arrested parents, 44 percent do not have practices in place to check if a nominated caretaker is suitable (Nieto, 2002, p. 13). For those who do have procedures in place to check suitability of a caretaker, 40 percent rely on a police background check (Nieto, 2002, p. 14). Also 18 percent of police departments are not required to notify another agency such as CPS, if the arrestee is the sole caretaker (Nieto, 2002, p. 15). Ginny Puddefoot and Lisa Foster confirm Nieto's findings in regards to the lack of initiative taken by of police and social service agencies roles concerning arrestees' children (Puddefoot & Foster, 2007, p.1).

A three-year nationwide study done by the American Bar Association in 1994 found arrests of mother of minor children were increasing and many police departments provide no formal training on what to do when an officer arrests the sole caretaker of a child. Police officers were required to contact CPS only if they suspected child abuse and only a small number of law enforcement agencies nationwide let CPS know when they arrested a mother who was the sole caretaker of a child (Smith, Elstein, & ABA Center on Children and Law, 1994). Some of the major findings dealing with Child Protective Services were: CPS noticed an increase in the number of calls from police for their help in placing children arrestees and few informal procedures were in place for CPS to check nominated caretaker's acceptability. Also, a child's age did affect placement in that older children were more likely to live on their own or with friends, whereas younger children were more likely placed for adoption, and few CPS agencies had a special policy to deal with children of arrestees (Smith, Elstein, & ABA Center on Children and the Law, 1994). Even after the parent had been arrested, "few child welfare agencies have specific policies and procedures to address the needs of children with incarcerated parents" ("Serving Children," 2003). Perhaps if there are policies at the arresting stage on how to deal with children of arrested caregivers, then it can also help make the situation less traumatic for the children of incarcerated parents.

In Nell Bernstein's book *All Alone in the World*, she discussed how traumatic it can be to watch a parent get arrested: strangers forcefully entering into a house, sometimes with weapons drawn and they take away this person who the child looks to for protection (Bernstein, 2005, p. 9). "70 percent of children who are present at a parent's arrest watch that parent being handcuffed and nearly 30 percent are confronted with drawn weapons" (Puddefoot & Foster, 2007, p. 9). "For children, the loss of a parent is always experienced as traumatic" (Puddefoot & Foster, 2007, p. 13). Children often have feelings of loss; hurt, anger, and they

blame themselves for their parent getting arrested (Puddefoot & Foster, 2007, p. 13). Children who have witnessed a parent getting arrested will often show signs of post-traumatic stress syndrome, which are the inability to sleep or concentrate and they have flashbacks of the traumatic event (Bernstein, 2005. p. 9). These symptoms will often keep occurring after the parent is arrested. Children who have incarcerated parents often retaliate in various ways such as, “truancy, disciplinary problems, alcohol and other drug use, running away, and aggressive behavior” (Reed & Reed, 1997). Bernstein makes reference to Nieto’s research, in that police officers say either that nothing can be done or that other agencies should be improved rather than theirs. The data shows that only 55 percent of the departments that have a written policy about how officers should act when arresting the primary caregiver consider a “minor” as someone under eighteen years old (Bernstein, 2005. p. 19). Some departments consider anyone under the age of ten a “minor.” This can cause several children to go undetected and can force children who are not old enough to hold a job to live on their own (Bernstein, 2005. p. 20).

METHODS

This data collection relied on mixed methods, which was a combination of quantitative and qualitative research methods in collecting and analyzing data. The methods consisted of surveys and follow-up interviews. The survey tool is modeled after the California Research Bureau instrument used in a state-wide survey of law enforcement agencies in 2001 (see Appendix). After receiving human subjects clearance by Eastern Michigan University, three researchers distributed these surveys to officers from different regions of the state who were at the Police Officer’s Association of Michigan annual meeting, June 3–5, 2009 in Grand Rapids, Michigan. Thirty-eight of those surveys were collected and analyzed for preliminary findings. In addition, selected Child Protective Services caseworkers will be informally interviewed and surveyed. Surveys will also be mailed to all local Michigan police departments (approximately 350) and county sheriffs’ departments (approximately 83). There will also be follow-up interviews with officers from varying law enforcement agencies. The goal of this research is to assess existing policies, procedures, and practices in Michigan law enforcement agencies relative to children whose primary caretaker has been arrested, and to identify innovative strategies that could be implemented by local law enforcement agencies to improve their responses to the children of arrested parents.

PRELIMINARY FINDINGS

The preliminary findings that were collected from analyzing the thirty-eight surveys showed a lack of policies and communication, confirming Nieto and the ABA study; these findings are also a possible indicator of the results that might be found with more data collection (see Appendix for details).

Arrestee raises concern.....	48%
Child or children present	33%
Every time	19%

Table 1 Under what circumstances, if any would officers/deputies inquire of an arrestee about any children who might be left unattended?

When asked “Under what circumstances, if any, would officers/deputies inquire of an arrestee about any children who might be left unattended while the arrestee is in custody?” only a small percent said that they would ask every time. This means that there is a great chance that if officers don’t ask whether or not the arrestee has children he or she is responsible for there could be a child left alone for a long period of time with no to care for the child.

No	58%
Yes	39%
No available response.....	3%

Table 2 Does your department have any written polices/procedures/regulations relating to assuming responsibility for minor children when their caretaker is arrested?

When asked “Does your department have any written polices/procedures/regulations relating to assuming responsibility for minor children when their caretaker is arrested?” over half of the officers said that there were no procedures or policies in place. The next question that officers were asked was “Does the response differ if the arrestee gives the name for a caregiver?”

Yes	47%
No	47%
Don’t know	6%

Table 3 Does the response differ if the arrestee gives the name for a caregiver?

The fact that the response of yes and no are both almost 50% is not surprising. If the child goes with a nominated caretaker, then the experience could be less traumatic for the child by staying with someone they know as opposed to staying at a police station. The other side is that the child could be going with a drug addict or child molester, which

could cause more harm to the child then if he or she were stay at the police station. The next finding deals with the previous finding because it asks, “Are there procedures to check up on nominated caregivers?”

No	76%
Yes	16%
Don't know	8%

Table 4. Are there procedures to check up on nominated caregivers?

Surprisingly a majority of the officers responded that there are no procedures to check on a nominated caregiver, which could lead to put the child in more danger because if the child or children go with a nominated caregiver, who is to know if the caregiver is a drug dealer or user because there is no way to check up on this person once the child is in that caregivers custody. Another finding was that 69% said that the type of crime did not affect the response. The last finding concerns whether or not an officer will notify another agency such as CPS.

No	69%
Yes	26%
Don't know	5%

Table 5. Does the type of crime affect the officers/deputies response?

Yes	52%
No	42%
Depends on the charge.....	3%
Don't know	3%

Table 6. Will an officer notify another agency?

This finding could show that only slightly over half the time is someone notified to check up on the child and to help the child with this traumatic event. If another agency is not notified then the child or children could be with an unfit caretaker, alone in their home, or alone at the police station. These are only preliminary findings, as additional data from the primary study will be analyzed in the future.

IMPLICATIONS

Although there are several problems, including a lack of resources and policies for police, there are procedures in place now and ideas and plans for the future on how to support law enforcement agencies and CPS to better protect children when their parents are arrested. One way is to

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break down the barriers between law enforcement agencies and social service departments, illustrated by one officer, who said, “Deputies did not want to be ‘social workers’ in the field”(Nieto, 2002, p. 23). Some potential ways to help are for all law enforcement agencies to establish a written procedure telling officers how they should respond, such as asking all arrestees if they have children and if so, where those children are (Nieto, 2002, p. 33). Legislatures could require that all law enforcement agencies have training and information on how to deal with situations involving arresting the sole caretaker of a child (Nieto, 2002, p. 33). A way to help the children after the parent is arrested is for both police and CPS to have formal cooperation with local community-based organizations, because police stations are often inadequately set up for child care and being there can be stressful for the child, and CPS often has a heavy caseload and cannot respond immediately (Nieto, 2002, p. 34).

There are such community-based support programs and groups all over California. An example of this is a San Francisco non-profit organization that set up a program called Kinship Support Network, which provides family support and guidance to relative caregivers and their children (Nieto, 2002, p. 27). Another option that would require some extra money (and thus may not be the most practical option) is for “counties to establish full-service, 24-hour shelters for children” while another caretaker is found (Nieto, 2002, p. 35). Puddefoot and Foster (2007) suggested a plethora of ways to help law enforcement and social services agencies better collaborate when it comes to dealing with children of arrested parents. Some of these suggestions are: base relationships on common goals, trust, and respect; learn all you can about the other agencies involved; establish clear, concise goals; share information, resources, and authority; communicate frequently and clearly; and have clear expectations of all partners (Puddefoot & Foster, 2007, p. 25). Also timely response by child welfare services and cross-training on roles and responsibilities of each participating agency can help to reduce the traumatic effects on the children, increase goodwill between agencies, reduce the number of children taken into formal child welfare services custody, and reduce the cost associated with formal placement (Puddefoot & Foster, 2007, p. 37).

The governor of California has also signed Assembly Bill 1942, which “expresses the legislature’s intent that law enforcement and county child welfare agencies develop joint protocols to ensure that a child’s safety and well being at the time of a parent’s arrest”(Puddefoot & Foster, 2007, p. 6). The bill also directs the “Commission on Peace Officer Standards and Training (POST) to develop guidelines and training for use by

state and local law enforcement officers that address issues concerning child safety when a caretaker, parent, or guardian is arrested” (Puddefoot & Foster, 2007, p. 6). It is important that these protocols protect the physical safety of the children, but it also important for their mental and emotional health to be protected.

There is one police department that has helped to develop a new approach to this problem. The New Haven Department of Police Service has collaborated with Yale Child Study Center (YCSC) to form the Child Development-Community Policing Program (CD-CP) (Bernstein, 2005, p. 22). The program was started to help with “healing the wounds that chronic exposure to violence inflicts on children and families” (Bernstein, 2005, p. 22). The program has gone beyond that to help change the way that police handle arrests when children are present. Through the CD-CP police officers can get training in child development and clinicians at the YCSC are on call twenty-four hours, and will even come the scene to offer counseling and support (Bernstein, 2005, p. 23). The CD-CP program has been replicated in thirteen other cities and other police departments look at the New Haven model for help with their own departments (Bernstein, 2005, p. 25). This program hopes to help ease the suffering and trauma that children go through when the primary caregiver is arrested and to help police seem like the good guys who are there to help the children and their families.

The preliminary findings illustrated that there are the same problems in Michigan as Nieto found in California. Some quotes that we collected from the officers who filled out the surveys help to show the changes that need to be made. One officer said that he was not a “social worker” and that his main concern was making the arrest. This goes to show how there needs to be guidelines or procedures for officers when they arrest the primary caregiver of a minor child so the arresting officer knows what to do with the child or children and doesn’t have to worry about taking care a child or children while trying to deal with the arrest. Another officer said, “I called CPS two times and both times they said that the issue was not a primary concern.” Illustrating the need for better communication between law enforcement agencies and CPS so the children can get the care they need by being placed with a fit caretaker and not being left alone or at the police station, which is not set up to take care of children. There also needs to be more formal communication between law enforcement agencies, CPS, and local community organizations. Another way to help with making policies is for round table discussions to take place between the heads of law enforcement agencies

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and Child Protective Services. If the two agencies can work together and work on the issue from both sides then polices can be put in place that work together from both sides.

Much can go wrong when the primary caregiver of a minor is arrested and an arresting officer can't always predict what is going to happen or how to handle a situation. Although when there are policies and procedures in place on how to act during a situation like that, it lessens the chances for something to go wrong such as a child being left alone for a long period of time. Current and future research can find and identify the possible gaps between law enforcement agencies and Child Protective Services in an effort to reduce harm and provide both agencies with a tool to aide in the development of more effective policies and practices to better protect the children.

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APPENDIX

1. Please give us a sense of the size of your department:

A. How many officers/deputies do you have? _____

B. Approximate the number of felony arrests you made last year? _____

- C. Approximate the number of misdemeanor arrests you made last year? _____
- D. Approximate the number of female (felony) arrests you made last year? _____

2. Please estimate how many arrests of mothers of minor children have been made in the last six months. I realize you probably have no hard numbers on this, but please give me your best figure.

- (1) Don't know _____
- (2) 1-4 _____
- (3) 5-10 _____
- (7) 31-50 _____
- (9) 101-200 _____
- (4) 11-15 _____
- (5) 16-20 _____
- (6) 21-30 _____
- (8) 51-100 _____
- (10) over 200 _____

3. Has the number increased, decreased, or remained the same over the last few years?

- A. Increased—why do you think the number is increasing?
 - (1) General increase in enforcement activity _____
 - (2) Increase in drug-related crime _____
 - (3) Increase in prostitution _____
 - (4) Other _____
- B. Decrease _____
- C. Remained the same _____
- D. Don't Know _____

4. Would you say that deciding how best to respond to the placement needs of minor children whose mother is arrested poses major, some, few, or no problems for your officers/deputies?

- (1) Major: explain _____

- (2) Some: explain _____

- (3) Few: explain _____

- (4) No problems: explain _____

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(5) Don't Know _____

5. What percent of the sole parents that your officers/deputies arrest are females?

- (1) Over 90 percent of the cases involve a female _____
- (2) 80-89 percent of the cases involve a female _____
- (3) 70-79 percent of the cases involve a female _____
- (4) 60-69 percent of the cases involve a female _____
- (5) 50-59 percent of the cases involve a female _____
- (6) Less than 50 percent of the cases involve a female
(estimate the number: _____ percent)
- (7) Don't Know _____

6. For what type of crimes are mothers most likely to be arrested?

- (1) Drug-related offense _____
- (2) Economic crimes _____
- (3) Prostitution _____
- (4) Others _____

7. Under what circumstances, if any, would officers/deputies inquire of an arrestee about any children who might be left unattended while the arrestee is in custody?

- (1) Every time _____
- (2) When the arrestee raises the concern _____
- (3) When there is a child or children present _____
- (4) Other _____

(5) Don't Know _____

7A. Are officers/deputies more likely to ask the arrestee about any children if the arrestee is a female rather than a male?

- (1) Yes _____
- (2) No _____
- (3) Don't Know _____

8. Does your department have any written polices/procedures/regulations relating to assuming responsibility for minor children when their caretaker is arrested?

(1) Yes (If, so how is a minor defined?) _____

Please attach a copy or copies of the written procedure

(2) No _____

9. Under what circumstances, if any, would your department assume responsibility for minor children?

10. Does your department's response differ depending on whether the arrestee suggests the name of a friend or relative who might care for the child or children?

(1) No _____

(2) Don't Know _____

(3) Yes: _____

(a) How? _____

(b) Who makes the initial decision to place the child or children?

(1) Mother _____

(2) Arresting officer/deputy _____

(3) Child Protective Services _____

(4) Other _____

(c) Who ultimately decides who is an "acceptable" caretaker?

(1) Mother _____

(2) Arresting Officer/deputy _____

(3) Child Protective Services _____

(4) Other _____

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(d) Are there procedures to check on the nominated caretaker?

(1) Yes__ What are they?_____

(2) No_____

(3) Don't Know_____

11. Does your response differ depending on what the arrestee is charged with?

(1) Yes__ Please

explain_____

(2) No_____

(3) Don't know_____

12. Do your officers/deputies notify other agencies after they arrest a mother who is the sole caretaker of a young child or children?

(1) No_____

(2) Yes__ What agency?

(a) Child Protective Services_____

(b) Other_____

How soon must you notify them?

(a) ASAP_____

(b) Other_____

How must you notify them?

(1) By phone_____

(2) In person_____

(3) In writing_____

(4) Other_____

13. Does your agency have a working relationship with Child

Protective Services when a caretaker or a mother of a minor child is arrested? If so, please describe:

14. What else, if anything, could be done to better respond to the needs of children whose parents are arrested?

15. Would any of your response to these questions been different if the sole caretaker was the father rather than the mother of female?

- (1) No___
(2) Don't Know___
(3) Yes___ Please explain: _____

16. Lastly, I would like to pose two hypothetical cases and ask you how you think your officers might respond.

Officers/deputies arrest a mother of two children, whose ages are 6 months and 5 years, on a drunk driving charge on a Saturday at 2 p.m. They take the mother into custody and learn that she has an outstanding warrant for welfare fraud. She tells the officer that she is an only parent and the children are with a teenage babysitter who is expecting to go home at 4 p.m. (the father's whereabouts are unknown—he has not provided any child support for several years). She further relates that her next-door neighbor would probably be willing to take care

