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## When the Abused Child Fatally Says "No More": Can Parricide Be Self-Defense in Ohio?

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# WHEN THE ABUSED CHILD FATALLY SAYS "NO MORE!": CAN PARRICIDE BE SELF-DEFENSE IN OHIO?

## I. INTRODUCTION

"Abused children who commit parricide are victims, not criminals."<sup>1</sup> These children are often victims of physical, sexual, and psychological abuse inflicted upon them by one parent or by both parents.<sup>2</sup> Yet when an abused child kills an abusive parent, he<sup>3</sup> often faces a criminal justice system and a society that cannot accept the notion that a child could kill his mother or father.<sup>4</sup> It makes little or no difference that the abused child kills his abuser after many years of severe

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1. Mavis J. Van Sambeek, *Parricide As Self-Defense*, 7 LAW & INEQUALITY 87, 106 (1988); see also PAUL MONES, WHEN A CHILD KILLS: ABUSED CHILDREN WHO KILL THEIR PARENTS (1991) [hereinafter MONES, WHEN A CHILD KILLS]. The child who commits parricide is often a victim of frequent abuse and is not acting with criminal intent, but rather is acting in self-defense. MONES, WHEN A CHILD KILLS, *supra* at 318; see also Shelly Post, *Adolescent Parricide in Abusive Families*, 61 CHILD WELFARE 445, 449 (1982) (child abuse in parricidal families typically shows a pattern of frequent "assaults" on the child). Throughout this Comment the word "parricide" will refer to "the murder of [one's] parent." NEW EXPANDED WEBSTER'S DICTIONARY 243 (1989). Another meaning ascribed to "parricide" is the killing of one's father. BLACK'S LAW DICTIONARY 1117 (6th ed. 1990).

2. Throughout this Comment an "abused child" is used to refer to a child subjected to severe and chronic actions such as: (1) physical abuse - the non-accidental injury of a child, including burns and severe beatings, which leave welts, bruises, and broken bones; (2) sexual abuse - any act of a sexual nature committed upon a child or with a child; and (3) psychological abuse - chronic attitude or acts (i.e., verbal threats, ridicule) which interfere with the psychological and social development of a child to the extent that the child's emotional and mental well-being is jeopardized. See OFFICE OF COMPLIANCE AND REVIEW, OHIO DEPARTMENT OF HUMAN SERVICES, PAMPHLET No. 1465, CHILD ABUSE AND NEGLECT 11 (1988) [hereinafter ODHS PAMPHLET]; C. EUGENE WALKER, ET AL., THE PHYSICALLY AND SEXUALLY ABUSED CHILD: EVALUATION AND TREATMENT 8 (1988) [hereinafter WALKER, THE PHYSICALLY AND SEXUALLY ABUSED CHILD]; see also OHIO REV. CODE ANN. § 2151.031 (Anderson 1992) ("abused child" defined).

3. Throughout this Comment the male gender will be used for stylistic purposes to denote both female and male children of abuse. The use of the male gender also realistically reflects the predominance of boys committing parricide. See MONES, WHEN A CHILD KILLS, *supra* note 1, at 46, 141, 175-78, 211. While both girls and boys commit parricide, girls commit only 10% of all reported parricides as compared to boys who commit 90%. *Id.*

4. Most abused children are induced to accept a plea bargain because it is beyond their attorneys' perception that a child could be so brutally abused that he would kill his parent(s). GREGORY W. MORRIS, THE KIDS NEXT DOOR: SONS AND DAUGHTERS WHO KILL THEIR PARENTS 153-54 (1985). "Despite research and evidence on how children are brutalized in their families, it is still easy for this society to respond to parricides as if they happened for reasons other than the most obvious: physical, psychological, and sexual abuse." *Id.* at 23; see also MONES, WHEN A CHILD KILLS, *supra* note 1, at 7. There is an "unspoken expectation that, regardless of the depravity and violence visited upon a child, the child should still treat his or her parents with tolerance, understanding, compassion, and love." *Id.*

and chronic abuse which amounts to nothing less than torture.<sup>5</sup> An abused child who commits parricide may be reacting in self-defense<sup>6</sup> to the abuse inflicted upon him.<sup>7</sup>

Although protecting children from abuse is an important concern in Ohio,<sup>8</sup> many abused children still remain unprotected by the children's services system.<sup>9</sup> "Too often, intervention, when it does come at all, is too late for both children and their parents, when a parent has

5. MORRIS, *supra* note 4, at 154. For case studies of children who have committed parricide, see MONES, *WHEN A CHILD KILLS*, *supra* note 1; MORRIS, *supra* note 4; Post, *supra* note 1; see also, Nancy Blodgett, *Self-Defense: Parricide Defendants Cite Sexual Abuse as Justification*, 73 A.B.A. J. 36, 37 (June 1987); Joelle A. Moreno, *Killing Daddy: Developing a Self-Defense Strategy for the Abused Child*, 137 U. PA. L. REV. 1281 (1989); Robert L. Sadoff, *Clinical Observations on Parricide*, 45 PSYCHIATRIC Q. 65, 68 (1971); Emanuel Tanay, *Reactive Parricide*, 21 FORENSIC SCI. 76 (1983).

6. The average age of children who commit parricide is 16-18. MONES, *WHEN A CHILD KILLS*, *supra* note 1, at 12. Although younger children may commit parricide, adolescents are "particularly susceptible to lashing out against abuse." *Id.* at 14. These adolescents are presumed to be capable of rational thought and thereby criminally responsible for their acts. ELIZABETH HALL ET AL., *CHILD PSYCHOLOGY TODAY* 234 (2d ed. 1986); DAVID A. JONES, *CRIME AND CRIMINAL RESPONSIBILITY* 56 (1978). For a discussion on parricide as self-defense in Ohio, see *infra* notes 98-148 and accompanying text.

7. In 1977 and 1982, approximately 2% (405) and 1% (254), respectively, of all homicides in the United States were parricides. MORRIS, *supra* note 4, at 152. These numbers pale in comparison to the National Committee for the Prevention of Child Abuse's estimates that 5000 children are killed by their parents every year and that 2.25 million children are reportedly abused every year. MONES, *WHEN A CHILD KILLS*, *supra* note 1, at 32; ODHS PAMPHLET, *supra* note 2; see generally MURRAY A. STRAUSS ET AL., *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* (1980). According to information from 39 states representing 77% of the child population, an estimated 1211 child abuse deaths were officially reported to Child Protective Services agencies. Deborah Daro & Karen McCurdy, *Current Trends in Child Abuse Reports and Fatalities: The Results of the 1990 Annual Fifty State Survey*, NATIONAL COMMITTEE FOR THE PREVENTION OF CHILD ABUSE (1990). One-fifth of all murders occur among family members, with the second largest group of murderers being parents who kill their children. MONES, *WHEN A CHILD KILLS*, *supra* note 1, at 24.

8. Ohio has a comprehensive scheme for the reporting and investigation of all allegations of child abuse and neglect. See OHIO REV. CODE ANN. § 2151.421 (Anderson 1992). Every professional who suspects that a child is a victim of abuse or neglect must immediately report or cause a report to be made to the appropriate child protection agency. *Id.*; see also OHIO ADMIN. CODE § 5101:2-34 (1992).

9. In 1991, 85,811 incidents of child abuse were reported in Ohio. OFFICE OF CHILD CARE AND FAMILY SERVICES, QUALITY ASSURANCE AND RESEARCH SECTION, OHIO DEPARTMENT OF HUMAN SERVICES, STATE OF OHIO CHILD ABUSE AND NEGLECT REPORT 1989-1991, March 3, 1992 [hereinafter ODHS REPORT]. This is an increase from 1989 during which 76,239 reports were received. *Id.* Forty percent of all reports involve sexual or physical abuse, and another 12% include physical abuse in conjunction with neglect. ODHS PAMPHLET, *supra* note 2, at 3. Although there is an increased interest in protecting children's rights, the abused child is not always identified by the "system" because the parent/child relationship is still viewed as a private relationship. MILDRED DALEY PAGELOW, *FAMILY VIOLENCE* 148-56 (1984). Police are reluctant to intervene and disrupt the family unit. *Id.* at 354. With no available support system, the child is often unable to reveal the abuse and ask for help. MONES, *WHEN A CHILD KILLS*, *supra* note 1, at 33; see also Samuel Radbill, *Children in a World of Violence: A History of Child Abuse*, in *THE BATTERED CHILD* 3 (C. Henry Kempe & Ray Helfer, eds., 3d ed. 1980) [hereinafter Radbill,



already seriously harmed a child or a child has struck back."<sup>10</sup> Because Ohio has thus far been unable to protect all of its children, some children are forced to protect themselves.<sup>11</sup>

This Comment advocates a course of action that Ohio courts should pursue when an abused child commits parricide and asserts a self-defense claim. This Comment also argues that the Ohio General Assembly should amend section 2901.06 of the Ohio Revised Code<sup>12</sup> to include the battered child syndrome.<sup>13</sup>

Section II of this Comment provides a background of the battered child syndrome and its admissibility as evidence in Ohio. Section II also details the psychological effects of child abuse as well as the admissibility of expert psychological testimony in parricide cases. Section III examines Ohio laws pertinent to the consideration of parricide as a self-defense. The section details: (1) the elements of self-defense; (2) the requirements for the admissibility of expert testimony; and (3) the current state of the law concerning the battered woman syndrome.

Section IV discusses whether parricide can be considered self-defense in Ohio by analyzing how an abused child who commits parricide may satisfy the elements of self-defense and the various evidentiary requirements.<sup>14</sup> Section IV then compares the battered child syndrome with the battered woman syndrome and analyzes the logical connection between the two syndromes. Section V concludes that, until an adequate solution to the problem of child abuse is found, Ohio should judicially and legislatively permit an abused child who commits parricide to (1) assert a self-defense claim, and (2) support such a defense with expert psychological testimony on the battered child syndrome.

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*Children in a World of Violence*] (a cross-cultural study shows a long history of child abuse despite protective services for children).

10. MONES, WHEN A CHILD KILLS, *supra* note 1, at 33.

11. When an abused child perceives changes in his environment that cause him to believe that danger is imminent, he may react by killing his abuser. Sadoff, *supra* note 5, at 68; Tanay, *supra* note 5, at 79. Killing is the act that the child perceives as the only act available to him to protect himself. Van Sambeek, *supra* note 1, at 106. For a discussion on the way abused children psychologically react to events in their immediate environment, see *infra* notes 27-40 and accompanying text.

12. Section 2901.06 permits the admission of expert testimony concerning the battered woman syndrome. OHIO REV. CODE ANN. § 2901.06 (Anderson Supp. 1991). For a discussion of the current Ohio case law and statutory law concerning the battered woman syndrome, see *infra* notes 74-97 and accompanying text. For a comparison of the similarities between battered women and abused children, see *infra* notes 171-89 and accompanying text.

13. For a discussion of battered child syndrome, see *infra* notes 15-46 and accompanying text.

14. Comparisons will be drawn with a 1992 case which decided this exact issue. See *State v. Janes*, 822 P.2d 1238 (Wash. Ct. App. 1992), *review granted*, 832 P.2d 488 (Wash. 1992).



## II. THE BATTERED CHILD

Although child abuse is not a recent phenomenon,<sup>15</sup> a systematic method of identifying children who were repeatedly abused by their parent(s) did not exist until the 1960s.<sup>16</sup> In 1962, C. Henry Kempe coined the term "battered child syndrome" as a medical diagnosis used to characterize a pattern of injuries in children who suffered serious physical abuse.<sup>17</sup> The battered child syndrome initially focused on (1) the identification of a specific set of physical injuries in an abused child, and (2) the proof that a child's current injuries were not accidental.<sup>18</sup> This section provides a background on the admissibility of the battered child syndrome as evidence in parricide cases. This section also details the psychological effects of child abuse and the admissibility of such effects as evidence in Ohio.

### A. *The Admissibility of Medical Testimony—Battered Child Syndrome*

In *People v. Jackson*,<sup>19</sup> a court, for the first time, admitted the diagnosis of battered child syndrome into evidence to support the prosecution of an adult defendant for child abuse.<sup>20</sup> As a result of the *Jackson* decision, expert medical testimony concerning battered child syndrome soon became admissible when relevant.<sup>21</sup> A majority of states now follow *Jackson*,<sup>22</sup> thus enabling prosecutors to use evidence of the

15. For an overview of the history of child abuse and the development of protective services for children, see Samuel Radbill, *A History of Child Abuse and Infanticide*, in *THE BATTERED CHILD* 3 (Ray E. Helfer & C. Henry Kempe, eds., 2d ed. 1974) [hereinafter Radbill, *A History of Child Abuse*].

16. *Id.*

17. C. Henry Kempe et al., *The Battered Child Syndrome*, 181 JAMA 17 (1962).

18. *Id.*

19. 95 Cal. Rptr. 919 (Cal. Ct. App. 1971).

20. *Id.* at 921. Nine years after Kempe's identification of the battered child syndrome, the lack of scientific certainty did not deprive a medical opinion concerning the nature of a child's injuries of its evidentiary value. *Id.*

21. Two years after the *Jackson* decision, the Minnesota Supreme Court unconditionally accepted medical expert testimony on battered child syndrome. *State v. Loss*, 204 N.W.2d 404 (Minn. 1979); see also *People v. Henson*, 304 N.E.2d 358 (N.Y. 1979) (expert medical testimony admissible as circumstantial evidence to show that a child's injuries were not accidental).

22. For prosecution cases in which medical testimony on battered child syndrome was admissible, see *Eslava v. State*, 473 So. 2d 1143 (Ala. Crim. App. 1985); *State v. Moyer*, 727 P.2d 31 (Ariz. Ct. App. 1986); *People v. Jackson*, 95 Cal. Rptr. 919 (Cal. Ct. App. 1971); *People v. Ellis*, 589 P.2d 494 (Colo. Ct. App. 1979); *State v. Dumlao*, 491 A.2d 404 (Conn. App. Ct. 1985); *State v. Screpesi*, 611 A.2d 34 (Del. Super. Ct. 1991); *Albritton v. State*, 221 So. 2d 192 (Fla. Dist. Ct. App. 1969); *Sanders v. State*, 303 S.E.2d 13 (Ga. 1983); *State v. Stuart*, 715 P.2d 833 (Idaho 1985); *People v. Platter*, 412 N.E.2d 181 (Ill. App. Ct. 1980); *Bell v. Commonwealth*, 684 S.W.2d 282 (Ky. Ct. App. 1984); *State v. Nash*, 446 So. 2d 810 (La. Ct. App. 1984); *State v. Conlogue*, 474 A.2d 167 (Me. 1984); *Duley v. State*, 467 A.2d 776 (Md. Ct. Spec. App. 1983); *Commonwealth v. Labbe*, 373 N.E.2d 227 (Mass. App. Ct. 1978); *People v. Barnard*, 286

battered child syndrome to prosecute child abusers.<sup>23</sup>

In *In re Spears*,<sup>24</sup> the Court of Appeals for the Fourth District of Ohio noted that "one would be hard put to argue the impropriety of the admission of expert testimony with respect to physical child abuse."<sup>25</sup> The *Spears* court also noted that in Ohio the use of the battered child syndrome as evidence of physical abuse against child abusers is well accepted.<sup>26</sup>

### B. *The Psychological Effects of Child Abuse*

"Although harsh treatment and inadequate care of children has a long history, widespread recognition of child maltreatment as a social problem, and particularly recognition of the lasting psychological consequences of maltreatment, is a relatively recent phenomenon."<sup>27</sup> Childhood abuse, whether it is physical, sexual, or psychological, takes a toll on the development of a child.<sup>28</sup> Regardless of the type of abuse,

N.W.2d 870 (Mich. Ct. App. 1979); *State v. Loss*, 204 N.W.2d 404 (Minn. 1973); *Aldridge v. State*, 398 So. 2d 1308 (Miss. 1981); *State v. Taylor*, 515 P.2d 695 (Mont. 1973); *Bludworth v. State*, 646 P.2d 558 (Nev. 1982); *State v. Muniz*, 375 A.2d 1234 (N.J. 1977); *People v. Henson*, 304 N.E.2d 358 (N.Y. 1973); *State v. Phillips*, 399 S.E.2d 293 (N.C. 1991); *In re R.W.B.*, 241 N.W.2d 546 (N.D. 1976); *In re Spears*, No. 1200, slip op. (Ohio Ct. App. Dec. 10, 1984) (LEXIS, States library, Ohio file); *Martin v. State*, 547 P.2d 396 (Okla. 1976); *Commonwealth v. Rodgers*, 528 A.2d 610 (Pa. Super. Ct. 1987); *Durand v. State*, 465 A.2d 762 (R.I. 1983); *State v. Lopez*, 412 S.E.2d 390 (S.C. 1991); *State v. Best*, 232 N.W.2d 447 (S.D. 1975); *Hawkins v. State*, 555 S.W.2d 876 (Tenn. Ct. App. 1977); *Righi v. State*, 689 S.W.2d 908 (Tex. Ct. App. 1984); *State v. Tanner*, 675 P.2d 539 (Utah 1983); *State v. Mulder*, 629 P.2d 462 (Wash. Ct. App. 1981); *In re Jonathan P.*, 387 S.E.2d 537 (W. Va. 1989); *State v. Johnson*, 400 N.W.2d 502 (Wis. Ct. App. 1986); *Goldade v. State*, 674 P.2d 721 (Wyo. 1984).

23. Submission of evidence by prosecutors on the battered child syndrome to prove that the defendant is guilty of abusing the child and that the injuries to the child are not accidental is well established. For cases see *supra* note 22; see also Annotation, *Admissibility of Expert Medical Testimony on Battered Child Syndrome*, 98 A.L.R.3d 306 (1989).

24. *In re Spears*, No. 1200, slip op. (Ohio App. Dec. 10, 1984) (LEXIS, States library, Ohio file).

25. *Id.* at 2.

26. *Id.* The court considered the acceptance of testimony on the battered child syndrome with respect to sexual abuse of children. *Id.*

27. Martha F. Erickson et al., *The Effects of Maltreatment on the Development of Young Children*, in *CHILD MALTREATMENT: THEORY AND RESEARCH ON THE CAUSES AND CONSEQUENCES OF CHILD ABUSE AND NEGLECT* 647 (Dante Cicchetti & Vicki Carlson, eds. 1989) ("Maltreatment" is used by the above authors in the same context as "abuse" in this Comment). "Much of the evidence attesting to the psychological consequences of abuse comes from clinical descriptions and uncontrolled studies." *Id.* at 648. The documentation of the actual physical harm is relatively straightforward, but it is much more difficult to document emotional damage. J. Lawrence Aber et al., *The Effects of Maltreatment on Development During Early Childhood: Recent Studies and Their Theoretical, Clinical, and Policy Implications*, in *CHILD MALTREATMENT: THEORY AND RESEARCH ON THE CAUSES AND CONSEQUENCES OF CHILD ABUSE AND NEGLECT* 579, 613 (Dante Cicchetti & Vicki Carlson, eds. 1989).

28. To develop normally a child needs appropriate, predictable, and consistent responses from his care-givers. JAMES LEEHAN & LAURA PISTONE-WILSON, *GROWN-UP ABUSED CHILDREN* 4 (1985).



the underlying psychological effects are similar.<sup>29</sup> Such abuse results in "damage to the child's sense of self and the consequent impairment of social, emotional, and cognitive functioning."<sup>30</sup> Abused children characteristically present a variety of social and emotional problems including aggression, hostility, passivity, apathy, and withdrawal.<sup>31</sup> Prolonged exposure to severe and unpredictable abuse results in feelings of powerlessness,<sup>32</sup> embarrassment, constant fear, self-blame, depression, isolation, low self-esteem, and fear of reprisal by the abuser on themselves or other family members.<sup>33</sup> A child psychologically attaches to his parents and identifies with them.<sup>34</sup> The abused child is psychologically unable to blame the parents and divorce them from his life.<sup>35</sup> Consequently, an abused child learns to mistrust himself and others.<sup>36</sup>

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29. Erickson et al., *supra* note 27, at 648. Damaging psychological consequences result from all types of maltreatment during childhood; see generally James Garbarino & Joan Vondra, *Psychological Maltreatment: Issues and Perspectives*, in *PSYCHOLOGICAL MALTREATMENT OF CHILDREN AND YOUTH* 25, 25 (Marla R. Brassard et al., eds. 1987).

30. The psychological consequences of abuse are consistent in all types of maltreatment. Garbarino & Vondra, *supra* note 29. The "psychological and behavioral profile of the [abused] child . . . [is] fairly predictable." MONES, *WHEN A CHILD KILLS*, *supra* note 1, at 12.

31. See RUTH KEMPE & C. HENRY KEMPE, *CHILD ABUSE* (1978) [hereinafter *KEMPE & KEMPE*]; Harold P. Martin & Patricia Beezely, *Behavioral Observations of Abused Children*, 19 *DEVELOPMENTAL MED. IN CHILD NEUROLOGY* 373 (June 1977).

32. The feeling of powerlessness results from the child's belief in the omnipotence of the batterer and in the futility of either resistance or flight. LEEHAN & PISTONE-WILSON, *supra* note 28, at 3-7.

33. There are five major recurring problems that result from childhood experiences of frequent, continued physical or sexual abuse: (1) mistrust of self and others; (2) deeply ingrained feelings of low self-esteem, shame, and feelings of incompetence; (3) inability to form friendships and other relationships; (4) a feeling of helplessness (i.e., not having control); and (5) difficulty in identifying, acknowledging, and disclosing feelings. LEEHAN & PISTONE-WILSON, *supra* note 28, at 3. Psychological tests reveal that abused children show lower self-esteem and more problems in social relationships than non-abused children. E. Milling Kincard, *Emotional Development in Physically Abused Children*, 50 *AM. J. OF ORTHOPSYCHIATRY* 686, 690-91 (1980); see generally *THE BATTERED CHILD* (Ray E. Helfer & Ruth S. Kempe, eds., 4th ed. 1987).

34. The child develops in the context of interactions with psychologically important adults. Anne E. Thompson, *Normal Child Development*, in *SOCIAL WORK WITH ABUSED AND NEGLECTED CHILDREN: A MANUAL OF INTERDISCIPLINARY PRACTICE* 219, 220 (Kathleen C. Faller, ed. 1981).

35. Children, whether abused or not, take responsibility for incurring parental punishment and feel that such parental behavior was in response to their bad behavior. Judith G. Smetana & Mario Kelly, *Social Cognition in Maltreated Children*, in *CHILD MALTREATMENT: THEORY AND RESEARCH ON THE CAUSES AND CONSEQUENCES OF CHILD ABUSE AND NEGLECT* 620, 628 (Dante Cicchetti & Vicki Carlson, eds. 1989). The abusive parent remains the primary source of care and affection for the child, in spite of the abuse. MONES, *WHEN A CHILD KILLS*, *supra* note 1, at 33-34.

36. The abused child learns not to trust because of the unpredictable and inconsistent responses and behaviors of his parents. LEEHAN & PISTONE-WILSON, *supra* note 28, at 4-5. The abused child learns to mistrust authority from his parents who are the primary authority figures in his life. MONES, *WHEN A CHILD KILLS*, *supra* note 1, at 13.



Some children who live with violent parents ultimately learn to resort to violence as a problem-solving mechanism.<sup>37</sup> Other children withdraw and isolate themselves in an attempt to hide emotionally from the pain caused by the abuse.<sup>38</sup> In either situation, an abused child generally becomes sensitized to his abuser, and develops a strategy for monitoring his environment.<sup>39</sup> Such hypervigilant behavior causes the child to know his abuser and to perceive danger in subtle changes in the pattern of abuse.<sup>40</sup>

An abused child, therefore, not only suffers physically,<sup>41</sup> but also suffers psychologically.<sup>42</sup> Kempe's research<sup>43</sup> shed light on the pervasiveness of the problem of child abuse and has served as an impetus for researchers to study the sociological and psychological effects of abuse on children.<sup>44</sup> Presently, the term "battered child syndrome" still de-

37. "Abuse . . . [is] embedded in a wide range of adolescent problems - delinquency, parricide, running away, and prostitution . . . with the degree of coincidence being in excess of 65 percent in some samples." James Garbarino, *Troubled Youth, Troubled Families: The Dynamics of Adolescent Treatment*, in CHILD MALTREATMENT: THEORY AND RESEARCH ON THE CAUSES AND CONSEQUENCES OF CHILD ABUSE AND NEGLECT 685, 685 (Dante Cicchetti & Vicki Carlson, eds. 1989). There is a high correlation between adolescents witnessing abuse and adolescents committing violent offenses. Gail Goodman & Mindy Rosenberg, *The Child Witness to Family Violence: Clinical and Legal Considerations*, in DOMESTIC VIOLENCE ON TRIAL: PSYCHOLOGICAL AND LEGAL DIMENSIONS OF FAMILY VIOLENCE 97, 99-102 (Daniel J. Sonkin, ed. 1987).

38. Many abused children never become physically violent. Paul Mones, *The Relationship Between Child Abuse and Parricide: An Overview*, in UNHAPPY FAMILIES 31, 35 (Eli H. Newberger & Richard Bourne, eds. 1985). Often, sexually abused children feel a great sense of alienation and isolation which begins with the abuse, continues throughout childhood, and lasts into adulthood. LEEHAN & PISTONE-WILSON, *supra* note 28, at 21.

39. A child may be able to predict his parent's hostility and may then act in ways to protect himself from further abuse. P.M. Crittenden, *Children's Strategies for Coping with Adverse Home Environments: Abuse and Neglect*, Paper presented at a meeting of the Society for Research in Child Development 31-35, Toronto, Canada (1985), *cited in* Erickson, *supra* note 27, at 680.

40. Martín & Beezely, *supra* note 31, at 375; *see also* Post, *supra* note 1, at 451 (the child perceives events which upset the balance within the family and differ from the "normal" pattern of abuse).

41. The physical effects of child abuse may include burns, welts, bruises, broken bones, vaginal or rectal tears, and sexually transmitted diseases. *See supra* note 2.

42. *See supra* notes 27-40 and accompanying text. Emotional harm is often the most serious harm an abused child suffers and is more difficult to specify and document than actual physical harm. Aber et al., *supra* note 27, at 613.

43. *See supra* note 17.

44. Although focused primarily on physical effects, Kempe's efforts "launched a complimentary body of research on all aspects" of abuse. RACHEL CALAM & CRISTINA FRANCHI, CHILD ABUSE AND ITS CONSEQUENCES (1987); PSYCHOLOGICAL APPROACHES TO CHILD ABUSE (Neil Frude, ed. 1981) [hereinafter PSYCHOLOGICAL APPROACHES]; MONES, WHEN A CHILD KILLS, *supra* note 1, at 30; THE ABUSED CHILD: A MULTIDISCIPLINARY APPROACH TO DEVELOPMENTAL ISSUES AND TREATMENT (Harold P. Martin, ed. 1976) [hereinafter THE ABUSED CHILD]; *see generally* THE BATTERED CHILD, *supra* note 33; STRAUSS ET AL., *supra* note 7.

notes the physical effects of child abuse.<sup>45</sup> Abuse, however, affects a child both physically and psychologically. The battered child syndrome purports to identify the effects of child abuse and, therefore, should be expanded to include all the effects of such abuse.<sup>46</sup>

### C. *The Admissibility of the Psychological Effects of Abuse in a Parricide Case*

In *State v. Holden*,<sup>47</sup> an Ohio appellate court first considered the issue of the admissibility of expert testimony concerning the psychological effects of child abuse.<sup>48</sup> The adolescent defendant claimed that he killed his father in self-defense and offered expert psychological testimony regarding the psychological effects of his past abuse to support his claim.<sup>49</sup> The *Holden* court refused to look beyond the purely medical or physical effects of child abuse and, as a result, refused to admit expert testimony on "battered person syndrome."<sup>50</sup> The court stated that there was ample testimony admitted at trial to show that Holden was abused by his father.<sup>51</sup> Admission of additional expert testimony explaining the psychological effects of such abuse would have permitted

45. The battered child syndrome was predominantly a medical term to identify victims of child abuse. Steven R. Hicks, *Admissibility of Expert Testimony on the Psychology of the Battered Child*, 11 LAW & PSYCHOL. REV. 103, 111 (1987); see generally CALAM & FRANCHI, *supra* note 44; THE BATTERED CHILD, *supra* note 33.

46. For lack of an alternative term to identify both the physical and psychological effects of child abuse, the term "battered child syndrome" is used throughout the remainder of this Comment to include all the effects of child abuse. The current concern for the general condition of the abused child goes beyond his physical state and encompasses his psychological state as well. PSYCHOLOGICAL APPROACHES, *supra* note 44, at 5. The physical effects of abuse may fade, but the resulting psychological damage may last a lifetime. CHILD MALTREATMENT: THEORY AND RESEARCH ON THE CAUSES AND CONSEQUENCES OF CHILD ABUSE AND NEGLECT xiii (Dante Cicchetti & Vicki Carlson, eds. 1989). For a discussion of the psychological effects of child abuse, see *supra* notes 27 to 40 and accompanying text.

47. *State v. Holden*, No. 49566 (Ohio Ct. App. Sept. 26, 1985) (LEXIS, States library, Ohio file).

48. The adolescent, Gary Holden, appealed his conviction for murdering his father, contending that the trial court erred when it refused to permit a psychiatrist to testify regarding the "battered person syndrome." *Id.* at 2.

49. The adolescent contended that expert testimony on the psychological effects of abuse was necessary to show that he, a battered person, was justified in his belief that the use of deadly force was needed to prevent his own imminent death or great bodily harm at the hand of his father. *Id.*

50. *Id.* The adolescent was unable to use the battered child syndrome to support his defense. *Id.* The court used the term "battered person syndrome" to explain the effects of the child defendant's past abuse on his perception of the need for self-defense. *Id.* The term as used in *Holden* is consistent with the way "battered child syndrome" is used throughout this Comment.

51. *Id.* The jury was free to consider this testimony in determining whether Holden had a bona-fide belief of imminent danger in order to justify his use of deadly force. *Id.*



the jury to make determinations based on stereotypes of abused children and not the factual situation.<sup>52</sup>

The court concluded that *State v. Thomas*<sup>53</sup> controlled its disposition of the case.<sup>54</sup> In *Thomas*, the Ohio Supreme Court addressed the issue of the admissibility of expert testimony concerning the battered woman syndrome.<sup>55</sup> The court held that:

expert testimony on the "battered wife syndrome" . . . to support defendant's claim of self-defense is inadmissible herein because (1) it is irrelevant and immaterial to the issue of whether defendant acted in self-defense at the time of the shooting; (2) the subject of the expert testimony is within the understanding of the jury; (3) the "battered wife syndrome" is not sufficiently developed, as a matter of commonly accepted scientific knowledge, to warrant testimony under the guise of expertise; and (4) its prejudicial impact outweighs its probative value.<sup>56</sup>

The *Holden* court was "unable to discern a distinction between a 'battered wife syndrome' and a 'battered person syndrome'" and, therefore, refused to admit expert testimony concerning the battered person syndrome.<sup>57</sup> Since *Holden*, Ohio appellate courts have not considered the issue of the admissibility of expert psychological testimony on battered child syndrome offered in support of an abused child's self-defense claim.<sup>58</sup>

52. *Id.*

53. 423 N.E.2d 137 (Ohio 1981) (expert testimony concerning battered woman syndrome held inadmissible to support a battered woman's self-defense claim).

54. *Holden*, No. 49566 at 2.

55. Defendant, Kathy Thomas, shot and killed her common law husband after suffering repeated physical abuse over a period of more than three years. *Thomas*, 423 N.E.2d at 138. Thomas attempted to admit expert testimony on battered wives to aid the jury in weighing the evidence concerning her state of mind at the time of the shooting. *Id.*

The term "battered woman syndrome" was coined by Dr. Lenore Walker. See LENORE E. WALKER, *THE BATTERED WOMAN* 32-33 (1979) [hereinafter WALKER, *THE BATTERED WOMAN*]; LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 18 (1984) [hereinafter WALKER, *THE BATTERED WOMAN SYNDROME*]. The "battered woman syndrome" is defined as a series of common characteristics that appear in women who are repeatedly abused physically and psychologically over an extended period of time by the dominant male figure in their lives. WALKER, *THE BATTERED WOMAN*, *supra* at xv. For the psychological effects of battering on a woman, see *infra* notes 177-87 and accompanying text.

56. *Thomas*, 423 N.E.2d at 140.

57. *Holden*, No. 49566 at 2. For a comparison of the battered woman syndrome and battered child syndrome, see *infra* notes 171-87 and accompanying text.

58. Ohio is not the only jurisdiction which has dealt with the issue of the admissibility of expert psychological testimony on battered child syndrome in a parricide case. For cases which did not admit the evidence, see *Whipple v. Duckworth*, 957 F.2d 418 (7th Cir. 1992) (jury instruction on self-defense refused; federal court upheld the Indiana Supreme Court's decision affirming Whipple's conviction); *State v. Crabtree*, 805 P.2d 1 (Kan. 1991) (a "battered child syndrome" defense, using the same language and justification as the battered wife syndrome defense, does not apply in homicide prosecutions in Kansas); *State v. Cruickshank* 484 N.Y.S.2d 328 (N.Y. App.



### III. PERTINENT OHIO LAW

In order for parricide to be considered a form of self-defense in Ohio, the child defendant must come within the parameters of the law.<sup>59</sup> This section describes Ohio laws pertinent to the consideration of parricide as self-defense. The section details: (1) the elements of self-defense; (2) the requirements for the admissibility of expert testimony; and (3) the current state of the law concerning battered woman syndrome.

#### A. *Self-Defense in Ohio*

Self-defense is based on the principle "that one who is unlawfully attacked by another, and who has no opportunity to resort to the law for his defense, should be able to take reasonable steps to defend himself. . . ."<sup>60</sup> The general rule is that the degree of danger that threatens a purported victim is the measure of the forcible resistance that may lawfully be used in self-defense.<sup>61</sup> Ohio law permits a person to "use such force as the circumstances require to protect himself against such danger as one has good reason to apprehend."<sup>62</sup>

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Div. 1985) (evidence of abuse admitted, but expert testimony on battered child syndrome not admitted); *Jahnke v. State*, 682 P.2d 991 (Wyo. 1984) (evidence of past abuse not relevant in determining reasonableness of defendant's belief in his need for self-defense).

For instances where expert psychological testimony on battered child syndrome has been admitted, see *State v. Janes*, 822 P.2d 1238 (expert testimony admissible and child defendant's conviction overturned); Mark Hanson, *Battered Child's Defense*, 78 A.B.A. J. 28 (May 1992) (Donna Marie Wisener, who claimed she killed her father in self-defense, was acquitted under a new Texas law which allows a person accused of killing a family member to offer evidence of prior abuse); *Abused Teen Cleared in Murder of Father*, WASH. TIMES, July 3, 1989, at A5 (Florida judge, John Kuder, found that Diana Goodykoontz suffered from battered child syndrome and had acted in self-defense when she shot her father); Marcia Chambers, *Child's Self-Defense Growing in Murder Cases*, L.A. DAILY J., Oct. 17, 1986, at B1, col. 3 (California trial court admitted the testimony and Sociz "Johnny" Junatanov was acquitted of attempted murder of his sadistic and abusive father).

59. See *infra* notes 60-73 and accompanying text.

60. WAYNE R. LAFAYE & AUSTIN W. SCOTT, JR., CRIMINAL LAW § 53, at 391 (1972); see also *Akron v. Dokes*, 507 N.E.2d 1158, 1160 (Ohio Ct. App. 1986); *State v. McLeod*, 80 N.E.2d 699, 700 (Ohio Ct. App. 1948).

61. *Columbus v. Dawson*, 514 N.E.2d 908, 910 (Ohio Ct. App. 1986) (the force used by a person must be reasonable in relation to the harm threatened). The use of force in self-defense is justifiable when a person repels force with like force. *State v. Lovejoy*, 357 N.E.2d 424, 426 (Ohio Mun. Ct. 1976); see also *Chillicothe v. Knight*, 599 N.E.2d 871, 875 (Ohio Ct. App. 1992); *State v. Cousins*, No. 1735, 1991 Ohio App. LEXIS 3897, at \*8 (Ohio Ct. App. Aug. 14, 1991); *State v. Fox*, 520 N.E.2d 1390, 1391 (Ohio Ct. App. 1987); *Dokes*, 507 N.E.2d at 1160; *McLeod*, 80 N.E.2d at 701; JONES, *supra* note 6, at 56.

62. *Dokes*, 507 N.E.2d at 1160; see also *State v. Chlebowski*, No. 60808, 1992 Ohio App. LEXIS 2725, at \*11 (Ohio Ct. App. May 28, 1992).

A person has the right to defend himself using deadly force<sup>63</sup> only when there is a real or perceived threat of death or great bodily harm.<sup>64</sup> The taking of a human life is justifiable under Ohio law when:

(1) the slayer [is] not at fault in creating the situation giving rise to the need to defend himself; (2) the slayer has a bona fide belief that he [is] in imminent danger of death or great bodily harm and that the only means of escape from such danger was in the use of such force; and (3) the slayer must not have violated any duty to retreat or avoid the danger.<sup>65</sup>

When a defendant asserts a self-defense claim, he bears the burden of raising the self-defense claim, going forward with the claim, and proving each element of the defense by a preponderance<sup>66</sup> of the evidence.<sup>67</sup>

63. " 'Deadly force' means any force which carries a substantial risk that it will proximately result in the death of another person." OHIO REV. CODE ANN. § 2901.01(B) (Anderson Supp. 1991). " 'Substantial risk' means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist." OHIO REV. CODE ANN. § 2901.01(H) (Anderson Supp. 1991).

64. *State v. Robbins*, 388 N.E.2d 755, 758 (Ohio 1979) (citing *State v. Melchoir*, 381 N.E.2d 195, 199 (Ohio 1978)); *Marts v. State*, 26 Ohio St. 162, 167 (1875); *State v. Robinson*, No. 42936, slip op. (Ohio Ct. App. June 11, 1981). A person may also use non-deadly force (force that is less than deadly in that it is not likely to cause death or serious injury) to repel an attack of greater or equal force. See *Cousins*, No. 1735, 1991 Ohio App. LEXIS 3897, at \*8; *Dawson*, 514 N.E.2d at 910. A real or perceived threat of death or great bodily harm is not required in cases where less than deadly force is used to repel a feared attack. *Id.*; *Cousins*, No. 1735, 1991 Ohio App. LEXIS 3897, at \*8; *Fox*, 520 N.E.2d at 1391; *Dokes*, 507 N.E.2d at 1160; *Lovejoy*, 357 N.E.2d at 426; *McLeod*, 80 N.E.2d at 700; see also *Knight*, 599 N.E.2d at 875.

65. *Robbins*, 388 N.E.2d at 758 (citations omitted); *Melchoir*, 381 N.E.2d at 199. The long standing law in Ohio is that:

Homicide is justifiable on the ground of self-defense, where the slayer, in the careful and proper use of his faculties, bona fide believes, and has reasonable ground to believe, that he is in imminent danger of death or great bodily harm, and that his only means of escape from such danger will be by taking the life of his assailant . . . .

*Napier v. State* 107 N.E. 535, 536 (Ohio 1914) (citing *Marts v. State*, 26 Ohio St. 162, 167 (1875)). "This rule has long been enforced in the courts of the state and has become firmly fixed as part of our criminal jurisprudence." *Id.* Otherwise, it is unlawful for a person to "purposely, and with prior calculation and design, cause the death of another." OHIO REV. CODE ANN. § 2903.01(A) (Anderson 1987).

66. "Preponderance" means the better weight of the evidence, that is, evidence that is believed because it outweighs or outbalances the evidence opposed to it. *Robinson*, No. 42936, slip op. at 7 n.2. This definition was given as a jury instruction at the trial level and was derived from § 2901.05 of the Ohio Revised Code. *Id.*

The proper standard for determining in a criminal case whether a defendant has successfully raised an affirmative defense under R.C. 2901.05 is to inquire whether the defendant has introduced sufficient evidence, which if believed, would raise a question in the minds of reasonable men concerning the existence of such issue.

*Columbus v. Eley*, No. 91AP-803, 1992 Ohio App. LEXIS 355, at \*7 (Ohio Ct. App. Jan. 28, 1992) (citing *Melchoir*, 381 N.E.2d at 196); see also *State v. Ferris*, No. 59447, 1991 Ohio App. LEXIS 6073, at \*14 (Ohio Ct. App. Dec. 19, 1991) (the elements of self-defense are cumulative); *State v. Ross*, No. 9-91-3, 1991 Ohio App. LEXIS 5024, at \*5 (Ohio Ct. App. Oct. 23, 1991) (defendant must prove self-defense by a preponderance of the evidence to obtain a jury instruction



### B. Admissibility of Expert Testimony

Expert testimony is subject to the requirement of relevancy.<sup>68</sup> Ohio's rule regarding the admissibility of expert testimony<sup>69</sup> is identical to Federal Rule of Evidence 702.<sup>70</sup> When expert testimony is within the scope of common knowledge or ordinary experience, it is irrelevant, unnecessary and, therefore, inadmissible.<sup>71</sup> Hence, expert testimony is admissible when it is relevant and when the jury lacks the skill or knowledge on that particular issue to make a correct judgment.<sup>72</sup> The trial court has broad discretion in determining both the relevance and admissibility of evidence.<sup>73</sup>

on self-defense). If the defendant fails to prove each element of a self-defense claim by a preponderance of evidence, he fails to demonstrate that he acted in self-defense. *State v. Jackson*, 490 N.E.2d 893, 897 (Ohio 1986), *cert. denied*, 480 U.S. 917 (1986); *Ferris*, 1991 Ohio App. LEXIS 6073, at \*14.

67. OHIO REV. CODE ANN. § 2901.05(A) (Anderson 1987) ("the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused"); *see also* *State v. Martin*, 488 N.E.2d 166 (Ohio 1986), *aff'd*, 408 U.S. 228 (1987) (state may constitutionally require a defendant to prove self-defense by a preponderance of the evidence); *State v. Smith*, Nos. 88AP-89, 88AP-131, 1989 Ohio App. LEXIS 1464, at \*9 (Ohio Ct. App. April 25, 1989); *State v. Tanner*, No. 87AP-1165, 1988 Ohio App. LEXIS 5343, at \*13 (Ohio Ct. App. Dec. 22, 1988); *State v. Folkes*, No. 50291 (Ohio Ct. App. March 13, 1986) (LEXIS, States library, Ohio file).

68. Relevant evidence is any evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." OHIO R. EVID. 401. Relevancy exists when the evidence tends to prove a matter of consequence as a matter of common experience and logic. *Id.* at staff notes. "The rule expresses the usual and general concept of relevancy." *Id.*

69. OHIO R. EVID. 702 staff notes (citing *Hartford Protection Ins. Co. v. Harmer*, 2 Ohio St. 452 (1853)). "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." *Id.* "Testimony in the form of an opinion or inference otherwise admissible is not objectionable solely because it embraces an ultimate issue to be decided by the trier of fact." OHIO R. EVID. 704.

70. Federal Rule of Evidence 702 is based on the test of admissibility set out in *Dyas v. United States*, 376 A.2d 827, 832 (D.C. Cir.), *cert. denied*, 434 U.S. 973 (1972) (citing CHARLES T. MCCORMICK, EVIDENCE § 13, at 29-31 (Edward Cleary ed., 2d ed. 1972)). The test states:

(1) The subject matter must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average layman; (2) the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for the truth; and (3) expert testimony is inadmissible if the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert.

*Id.*

71. *Bostic v. Conner*, 524 N.E.2d 881, 886 (Ohio 1988) (expert testimony not essential to assist jury in understanding issue is inadmissible); *Lee v. Baldwin*, 519 N.E.2d 662, 664 (Ohio 1987) (if issue is within the experience, knowledge, and comprehension of the jury, expert testimony is not admissible); *see also* OHIO R. EVID. 401.

72. OHIO R. EVID. 702 staff notes.

73. *State v. Davis*, 550 N.E.2d 966 (Ohio Ct. App. 1988); *see also* OHIO R. EVID. 403.



### C. Ohio Law on Battered Woman Syndrome

Nine years after *State v. Thomas*,<sup>74</sup> the Ohio Supreme Court again addressed the issue of the admissibility of expert testimony concerning battered woman syndrome in *State v. Koss*.<sup>75</sup> The defendant in that case, Brenda Koss, was convicted of voluntary manslaughter for killing her husband, Michael Koss.<sup>76</sup> She appealed, alleging as error the trial court's refusal to admit evidence of the battered woman syndrome.<sup>77</sup> In its analysis, the *Koss* court examined both the elements of self-defense<sup>78</sup> and the law governing the admissibility of expert testimony.<sup>79</sup> The court specifically addressed the concerns raised in *Thomas*.<sup>80</sup>

First, the *Koss* court disagreed with *Thomas*' holding that expert testimony on the battered woman syndrome is irrelevant and immaterial to the issue of whether the defendant acted in self-defense at the time of the shooting.<sup>81</sup> Since the defendant's state of mind was crucial to the determination of whether she properly acted in self-defense,<sup>82</sup>

(A) Exclusion mandatory

Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) Exclusion discretionary

Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

*Id.*

74. 423 N.E.2d 137 (Ohio 1981). For a discussion of *Thomas*, see *supra* text accompanying notes 53-56.

75. 551 N.E.2d 970 (Ohio 1990).

76. *Id.*

77. *Id.*

78. The court noted that in order to prove self-defense, the defendant must establish that she had a bona fide belief that she was in imminent danger of death or great bodily harm and that her only means of escape from such danger was the use of deadly force. *Id.* at 973 (citing *State v. Robbins*, 388 N.E.2d 755, 758 (Ohio 1979)).

79. The court quoted Ohio Rule of Evidence 702.

If scientific, technical, or otherwise specialized knowledge will assist the trier of fact to understand evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

OHIO R. EVID. 702; see also *Koss*, 551 N.E.2d at 973. Expert testimony in Ohio is admissible if it will assist the trier of fact in search of the truth. *Id.*

80. See *supra* text accompanying notes 53-56.

81. *Koss*, 551 N.E.2d at 974. Expert testimony regarding the battered woman syndrome can help the jury to determine whether the defendant had reasonable grounds for an honest belief that she was in imminent danger at the time of the killing and whether she acted in self-defense. *Id.*

82. *Id.* at 973. The court held that expert testimony on the battered woman syndrome is essential to assist the trier of fact in determining whether the defendant acted as a result of an honest belief that she was in imminent danger of death or great bodily harm and that the use of

testimony concerning her state of mind at the time of the killing was necessary to show that she reasonably and honestly believed that danger of death or great bodily harm was imminent.<sup>83</sup> The court found that expert testimony concerning the battered woman syndrome was essential to understand the defendant's state of mind.<sup>84</sup>

*Koss* then addressed *Thomas*' second concern that battered woman syndrome is a subject within the understanding of the jury.<sup>85</sup> The *Koss* court found expert testimony concerning the battered woman syndrome necessary to rebut the general misconceptions regarding battered women.<sup>86</sup> Expert testimony would "enable the jurors to disregard their prior conclusions as being common myths rather than common knowledge."<sup>87</sup>

Finally, the *Koss* court addressed the third concern raised in *Thomas* that "battered woman syndrome" was not sufficiently developed as a matter of scientific knowledge.<sup>88</sup> The court noted that "since 1981 [when *Thomas* was decided], several books and articles have been written on this subject [and] [i]n jurisdictions which have been confronted with the issue, most have allowed expert testimony on the battered woman syndrome."<sup>89</sup> The court found that the battered woman syndrome had gained substantial scientific acceptance and permitted it to be admitted.<sup>90</sup>

In conclusion, the court in *Koss* held that expert testimony concerning battered woman syndrome may be admitted to assist the trier

such force was her only means of escape. *Id.* at 974. For a discussion on the subjective standard used in Ohio to assess a defendant's belief in the need for self-defense, see *infra* text accompanying notes 115-24.

83. *Koss*, 551 N.E.2d at 974. The court found that the trial court properly instructed the jury that it must put itself in the shoes of the defendant in determining whether she acted in self-defense. *Id.*

84. *Id.* at 973. Admission of expert testimony on the battered woman syndrome does not establish a new defense or justification. *Id.* at 974.

A history of physical abuse alone does not justify the killing of the abuser. Having been physically assaulted by the abuser in the past is pertinent to such cases only as it contributes to the defendant's state of mind at the time the killing occurred; e.g., in that it formed the basis for the woman's perception of being in imminent danger of severe bodily harm or death at the hands of her partner.

*Id.* (quoting ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* (1987)).

85. *Koss*, 551 N.E.2d at 974; see also *State v. Thomas*, 423 N.E.2d 137, 140 (Ohio 1981).

86. "[Expert testimony] is aimed at an area where the purported common knowledge of the jury may be very much mistaken, an area where jurors' logic, drawn from their own experience, may lead to a wholly incorrect conclusion . . ." *Koss*, 551 N.E.2d at 974 (quoting *State v. Kelly*, 478 A.2d 364, 378 (N.J. 1984) (approving the admission of expert testimony on the battered woman syndrome)).

87. *Koss*, 551 N.E.2d at 974 (quoting *Kelly*, 478 A.2d at 378).

88. *Id.* at 972; see also *Thomas*, 423 N.E.2d at 140.

89. *Koss*, 551 N.E.2d at 972. For sources cited by the *Koss* court, see *id.* at n.1.

90. *Id.* at 974.



of fact in determining whether the defendant acted in self-defense when "evidence establishes that a woman is a battered woman"<sup>91</sup> and "when an expert is qualified to testify concerning battered woman syndrome. . . ."<sup>92</sup> With this decision, Ohio explicitly recognized that physical and psychological abuse can greatly impact the defendant's state of mind at the time of a killing.<sup>93</sup> Thus, Ohio is among a substantial number of jurisdictions willing to admit expert testimony concerning the battered woman syndrome to support a woman's self-defense claim when she kills her batterer.<sup>94</sup>

When the *Koss* court decided the issue of admissibility of expert testimony concerning the battered women syndrome, it noted that H.B. No. 484 was pending before the Ohio General Assembly.<sup>95</sup> The bill recognized that the battered woman syndrome is a matter of commonly accepted scientific knowledge, that the subject matter and details of the syndrome are not within the general understanding or within the common knowledge of the general public, and that expert testimony of the "battered woman syndrome" is admissible in a self-defense case.<sup>96</sup> Ohio passed the bill later that year.<sup>97</sup> Ohio has now judicially and legisla-

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91. *Id.* at 975. The court explicitly required that the threshold question of whether the female defendant was herself a "battered woman" be answered in the affirmative before expert testimony on the "battered woman syndrome" can be admitted. *Id.* at 974.

92. *Id.* at 975. The court expressly overruled *Thomas*. *Id.* at 974. The *Thomas* court held expert testimony on the battered woman syndrome inadmissible to support the affirmative defense of self-defense. *State v. Thomas*, 423 N.E.2d 137, 140 (Ohio 1981).

93. *Koss*, 551 N.E.2d at 974; see generally BROWNE, *supra* note 84 (discussing the impact of abuse on the perceptions of battered women who kill their abusers).

94. For self-defense cases admitting testimony regarding the battered woman syndrome, see *Thompson v. State*, 813 S.W.2d 249 (Ark. 1991); *People v. Day*, 2 Cal. Rptr. 2d 916 (Cal. Ct. App. 1992); *People v. Yaklic*, 833 P.2d 758 (Colo. Ct. App. 1991); *Ibn-Tamas v. United States*, 455 A.2d 893 (D.C. 1983); *Terry v. State*, 467 So. 2d 761 (Fla. Ct. App. 1985); *Smith v. State*, 277 S.E.2d 678 (Ga. 1981); *State v. Minnis*, 455 N.E.2d 209 (Ill. Ct. App. 1983); *State v. Hodges*, 716 P.2d 563 (Kan. 1986); *Commonwealth v. Craig*, 783 S.W.2d 387 (Ky. 1990); *State v. Anaya*, 438 A.2d 892 (Me. 1981); *State v. Hennem*, 441 N.W.2d 793 (Minn. 1989); *May v. State*, 460 So. 2d 778 (Miss. 1984); *State v. Kelly*, 478 A.2d 364 (N.J. 1984); *State v. Gallegos*, 719 P.2d 1268 (N.M. Ct. App. 1986); *State v. Torres*, 488 N.Y.S.2d 358 (N.Y. Sup. Ct. 1985); *State v. Liedholm*, 334 N.W.2d 811 (N.D. 1983); *Koss*, 551 N.E.2d at 970; *Bechtel v. State*, 840 P.2d 1 (Okla. Crim. App. 1992); *State v. Moore*, 695 P.2d 985 (Or. Ct. App. 1985); *Commonwealth v. Stonehouse*, 555 A.2d 772 (Pa. 1989); *State v. Hill*, 339 S.E.2d 121 (S.C. 1986); *Fielder v. State*, 756 S.W.2d 309 (Tex. Crim. App. 1988); *State v. Allery*, 682 P.2d 312 (Wash. 1984); *State v. Landis*, 406 N.W.2d 171 (Wis. Ct. App. 1987).

For a recent case admitting expert testimony regarding battered "person" syndrome, see *Commonwealth v. Kacsmar*, No. 02002, 1992 Pa. Super. LEXIS 3773 (Pa. Super. Nov. 4, 1992) (trial court erred in refusing to admit expert testimony regarding the psychological effects of ongoing abuse on an adult male who shot and killed his abusive older brother). The court in *Kacsmar* found that such evidence is indistinguishable from expert testimony regarding battered woman syndrome. *Id.* at \*21.

95. *Koss*, 551 N.E.2d at 974 n.2; see also *infra* note 97.

96. See *infra* note 97.

97. H.B. No. 484, introduced on May 2, 1989 and codified in 1990, states:



tively recognized that battering can impact a woman's state of mind at the time of the killing and that evidence of this impact is necessary to properly evaluate the reasonableness of the woman's belief in the imminence of danger and her subsequent need for self-defense.

#### IV. ANALYSIS

When an abused child kills his abusive parent, it may be the only act which he believes he can take to survive. This section considers the extent to which such a belief can support a claim of self-defense and addresses the question of whether parricide can ever be considered self-defense in Ohio. This section also compares the battered child syndrome with the battered woman syndrome and analyzes the logical connection between the two syndromes.

##### A. *Self-Defense in Parricide Cases*

In Ohio, the taking of a human life is a justifiable act under certain circumstances.<sup>98</sup> Parricide may be one of those circumstances.<sup>99</sup> The child bears the burden of raising the self-defense claim, going forward with the claim, and proving each element of the defense by a preponderance of the evidence.<sup>100</sup>

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(A) The general assembly hereby declares that it recognizes both of the following, in relation to the "battered woman syndrome:"

- (1) That the syndrome currently is a matter of commonly accepted scientific knowledge;
- (2) That the subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace and are not within the field of common knowledge.

(B) If a person is charged with an offense involving the use of force against another and the person, as a defense to the offense charged, raises the affirmative defense of self-defense, the person may introduce expert testimony of the "battered woman syndrome" and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of the force in question. The introduction of any expert testimony under this division shall be in accordance with the Ohio Rules of Evidence.

OHIO REV. CODE ANN. § 2901.06 (Anderson Supp. 1991).

98. Self-defense justifies otherwise unlawful conduct. *See State v. Davis*, 456 N.E.2d 1256, 1261 (Ohio Ct. App. 1982); *see also State v. Robbins*, 388 N.E.2d 755, 758 (Ohio 1979); *State v. Melchoir*, 381 N.E.2d 195, 199 (Ohio 1978); *Napier v. State* 107 N.E. 535, 537 (Ohio 1914); *Marts v. State*, 26 Ohio St. 162, 167 (1875). *See supra* text accompanying notes 60-67.

99. *See State v. Janes* 822 P.2d 1238 (Wash. Ct. App. 1992). Defendant, 17 year-old Andy Janes, shot and killed his stepfather as he walked through the door from work. *Id.* at 1240. The parricide followed over ten years of severe physical abuse. *Id.* Janes' conviction for murder was overturned and the case reversed and remanded. *Id.* at 1245. The appellate court's decision, however, is set to be reviewed by the Washington Supreme Court. *See State v. Janes*, 832 P.2d 488 (Wash. 1992).

100. *See supra* notes 65-66 and accompanying text.

The first element that the abused child must prove in order to successfully assert self-defense is that he was not the aggressor who caused the confrontation.<sup>101</sup> The abused child, however, will generally kill the abusive parent when the parent is "in his least defensible position, thus increasing the child's chance of success" of defending himself.<sup>102</sup> This may lead to the conclusion that the child was the aggressor.

If the child has been subjected to serious and chronic assaults over an extended period of time,<sup>103</sup> he knows his abuser and may perceive any change in the abusive pattern as a direct threat to his life and safety.<sup>104</sup> The child may react to the perceived threat and protect himself.<sup>105</sup> The child is not required to wait and see if the abuser will continue the abuse or carry out a threat.<sup>106</sup> The child has the right to defend himself using deadly force since there is at least a perceived, if not potentially real, threat of death or great bodily harm.<sup>107</sup> The abused child may show that he was reacting to the aggressions of the abuser<sup>108</sup> and, thus, "not at fault in creating the situation giving rise" to the need to defend himself.<sup>109</sup>

101. The defendant must have not caused the need for him to defend himself using deadly force. *Robbins*, 388 N.E.2d at 758.

102. MONES, WHEN A CHILD KILLS, *supra* note 1, at 14. Generally, at the moment of the murder the parent is not confrontational because he is not striking or molesting the child. See Post, *supra* note 1, at 449; see also Billie F. Corder et al., *Adolescent Parricide: A Comparison with Other Adolescent Murder*, 133 AM. J. OF PSYCHIATRY 957 (1976); Mones, *supra* note 38, at 33-34 (profiles of abused children who committed parricide).

103. See *supra* notes 1 and 33.

104. See *supra* notes 39-40. "It has been demonstrated that a developing sequence of events that becomes increasingly psychologically unbearable for the adolescent takes place prior to the parricide . . ." Post, *supra* note 1, at 451.

105. See *supra* notes 60-67 and accompanying text for a discussion of when an individual may act in self-defense.

106. The defendant is "not bound to run the risk of waiting to see if his assailant would, in fact, [kill him or cause great bodily injury]—that might be too late for safety . . ." *Jordan v. State*, 7 Ohio Cir. Dec. 133, 136 (Jefferson Cir. Ct. 1896).

107. See *supra* notes 63-67 and accompanying text.

108. *McGaw v. State*, 174 N.E. 741 (Ohio 1931) (defendant may present evidence of the turbulent and dangerous character of the victim); *State v. Smith*, 460 N.E.2d 693 (Ohio Ct. App. 1983) (defendant may present evidence of his own knowledge of the victim's prior violence); see also *State v. Janes*, 822 P.2d 1238 (Wash. Ct. App. 1992). In *Janes*, the defendant killed his abusive stepfather. *Id.* at 1240. Janes attempted to admit evidence concerning ten years of prior abuse to show that he acted in self-defense; therefore he was not the aggressor. *Id.* at 1241. The court held that such evidence would assist the trier of fact in evaluating the reasonableness of Janes' acts. *Id.* at 1243. For case studies of other adolescents who reacted to the abuse inflicted upon them, see MONES, WHEN A CHILD KILLS, *supra* note 1; MORRIS, *supra* note 4.

109. *State v. Robbins*, 388 N.E.2d 755, 758 (Ohio 1979). The child is a passive victim enduring the abuse inflicted on him by his primary care-giver, authority figure, and affection-giver, who is typically much larger in size and has considerably greater strength. See CALAM & FRANCHI, *supra* note 44, at 7; MORRIS, *supra* note 4, at 164-65; Van Sambeek, *supra* note 1 at 99-100; Lois Timnick, *Fatal Means For Children To End Abuse*, L.A. TIMES, Aug. 31, 1986, § 2, at 3. He is generally a withdrawn, peaceful, submissive and overly compliant adolescent who has



If the abused child proves that he did not cause the confrontation, he must then show that he had a "bona fide belief that he was in imminent danger . . ." <sup>110</sup> of great bodily harm or death and "that his only means of escape from such danger was in the use of such force." <sup>111</sup> To prove this element of self-defense, the child must show that his honest, bona-fide belief was reasonable. <sup>112</sup> Since the child generally acts when the parent is nonconfrontational, <sup>113</sup> evidence must be presented to show the reasonableness of the child's perceptions of imminence of the danger and the absence of any other means of escape. <sup>114</sup>

Ohio utilizes a subjective test to evaluate the reasonableness of a defendant's belief and conduct as it relates to his self-defense claim. <sup>115</sup> Under this test, the defendant has the right to have the fear which induced him to act in self-defense measured by his own physical and mental condition and not by that of a hypothetical reasonable per-

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never been arrested or in trouble at school. CALAM & FRANCHI, *supra* note 44, at 7; MONES, WHEN A CHILD KILLS, *supra* note 1, at 86.

110. "Imminent" has not been specifically defined by the Ohio courts, however, one court found "no authority that states that actions taken in self-defense must be simultaneous to the presented danger." State v. Ross, No. 9-91-3, 1991 Ohio App. LEXIS 5024, at \*5 (Ohio Ct. App. Oct. 23, 1991). Imminence is commonly defined as "[n]ear at hand; . . . impending; on the point of happening; threatening; menacing . . . [s]omething close at hand . . ." BLACK'S LAW DICTIONARY 750 (6th ed. 1990).

111. *Robbins*, 388 N.E.2d at 758 (citations omitted).

112. The defendant must have had reasonable grounds for his honest belief that the danger was imminent. State v. Newberry, No. CA 10353 (Ohio Ct. App. Dec. 18, 1987) (LEXIS, States library, Ohio file); Jordan v. State, 7 Ohio Cir. Dec. 133, 136 (Jefferson Cir. Ct. 1896) (actions of the assailant must be such that would induce the defendant to honestly believe that his assailant intended death or serious bodily harm). The defendant's belief must be reasonable as to himself, not reasonable to a reasonable man. State v. Lovejoy, 357 N.E.2d 424, 427 (Ohio Mun. Ct. 1976) (quoting State v. Reid, 210 N.E.2d 142, 148 (Ohio Ct. App. 1965)).

Evidence of the victim's threats, the victim's dangerous character, and the victim's prior violence may be presented to show that the defendant's honest belief was reasonable. See *McGaw*, 174 N.E. at 743; *Smith*, 460 N.E.2d at 696; State v. Randle, 430 N.E.2d 951, 953 (Ohio Ct. App. 1980); see also OHIO R. EVID. 405 (method of proving character); see also *Janes*, 822 P.2d at 1242. Under Washington law, there must be some evidence of aggressive or threatening behavior, gestures or communication by the aggressor that makes a defendant's bona fide belief in the imminence of the danger reasonable. *Id.* (citing State v. Walker, 700 P.2d 1168 (Wash. Ct. App.), *review denied*, 104 Wash. 2d 1012 (1985)).

113. See *supra* note 102.

114. Actions in self-defense need not be simultaneous to the present danger. State v. Ross, No. 9-91-3, 1991 Ohio App. LEXIS 5024, at \*4 (Ohio Ct. App. Oct. 23, 1991). See generally MONES, WHEN A CHILD KILLS, *supra* note 1; MORRIS, *supra* note 4; Hicks, *supra* note 45; Moreno, *supra* note 5; Post, *supra* note 1; Van Sambeek, *supra* note 1.

115. "The test relates therefore to the *actual* state of mind of the slayer . . . and whether such state of mind . . . [rests] on reasonable grounds, not reasonable to a reasonable man, but reasonable as to the slayer." State v. Lovejoy, 357 N.E.2d 424, 427 (Ohio Mun. Ct. 1976) (quoting State v. Reid, 210 N.E.2d 142, 148 (Ohio Ct. App. 1965)); see also State v. Schaeffer, 117 N.E. 220, 225 (Ohio 1917); State v. Thomas, 468 N.E.2d 763, 764 (Ohio Ct. App. 1983); State v. Cope, 67 N.E.2d 912, 917 (Ohio Ct. App. 1946).

son.<sup>116</sup> The abused child's act of self-defense, therefore, must be evaluated based on the particular beliefs manifested by the child.<sup>117</sup>

Showing that his honest bona fide belief was reasonable is the most difficult element of a self-defense claim for the abused child to prove.<sup>118</sup> When the abused child takes the life of his abusive parent, he may be taking the only action which he perceives will prevent death or further abuse.<sup>119</sup> An explanation of why a child kills his abusive parent requires an understanding of the effects of the abuse on the child and the child's perception of his need for self-defense.<sup>120</sup>

The Ohio courts must consider the reasonableness of the child's actions in light of all the circumstances as they appeared to the child at the time of the killing.<sup>121</sup> The child's ability to discern a pattern of abuse coincides with his perception of imminence.<sup>122</sup> It may be reasonable for the child who has been a victim of severe and chronic abuse to perceive subtle changes in the abuser's pattern as a direct and imminent threat to his life or safety.<sup>123</sup> The child's use of deadly force is, therefore, justified even though a nonabused individual may not per-

116. *Thomas*, 468 N.E.2d at 764. "A nervous, timid, easily frightened individual is not measured by the same standard that a stronger, calmer, and braver man might be." *Nelson v. State*, 181 N.E. 448, 449 (Ohio Ct. App. 1932).

117. *See Nelson*, 181 N.E. at 449. "The test does not relate to what *should be*, but may not be, apparent to the slayer." *Lovejoy*, 357 N.E.2d at 427 (quoting *Reid*, 210 N.E.2d at 148).

118. A similar concern is present for battered women. *See CHARLES EWING, BATTERED WOMEN WHO KILL* (1987). The narrow limits of self-defense requiring reasonable belief in the imminence of the danger and the necessity to use deadly force make self-defense difficult to prove in battered woman situations. *Id.* at 47.

119. *See Mones, supra* note 38, at 36-37; *see also supra* notes 41-42.

120. *See generally Van Sambeek, supra* note 1; *see also supra* notes 29-42 and accompanying text.

121. What is crucial is the state of mind of the child at the time of the killing, his belief of imminence, and the various circumstances which make his honest belief reasonable. *State v. Newberry*, No. CA 10353 (Ohio Ct. App. 1987) (LEXIS, States library, Ohio file); *see also State v. Koss*, 551 N.E.2d 970, 973 (Ohio 1990) (when evaluating the reasonableness of a battered woman's belief, one must consider the circumstances as they appeared to the woman at the time of the killing); *see also State v. Schaeffer*, 117 N.E. 220, 225 (Ohio 1917); *State v. Thomas*, 468 N.E.2d 763, 764 (Ohio Ct. App. 1983); *State v. Cope*, 67 N.E.2d 912, 917 (Ohio Ct. App. 1946); *Nelson v. State*, 181 N.E. 448, 449 (Ohio Ct. App. 1932); *Lovejoy*, 357 N.E.2d at 427 (citing *Reid*, 210 N.E.2d at 148).

122. Given the chronic and unpredictable nature of the past abuse, any subtle change is indicative to the child that something is very wrong. *Post, supra* note 1, at 451. When there is a change in that pattern, the abused child perceives his very survival to be imminently at stake. *Id.*; *see also supra* notes 39-40.

123. *See State v. Janes*, 822 P.2d 1238, 1243 (Wash. Ct. App. 1992) (in evaluating the reasonableness of Janes' belief, the court concluded that it must consider the effects of battering on the defendant's perception of imminence); *see also supra* notes 39-40.



ceive the existence of imminent danger and the necessity to defend himself.<sup>124</sup>

Even if the child shows that his honest belief was reasonable, he may use deadly force if it is the only means of escape.<sup>125</sup> Thus, the child's honest beliefs in the imminence of the danger and in the real or apparent necessity to act in self-defense justify his use of deadly force only when he also believes that the use of such force is the only means of escape.<sup>126</sup> The child's belief is again judged on a subjective standard.<sup>127</sup>

The child's decision to use deadly force must be considered in light of the child's perception of the lack of another alternative.<sup>128</sup> A child depends upon his parent(s) for his emotional, financial, and physical survival.<sup>129</sup> The abused child lives in a vulnerable situation and is often unable to protect himself.<sup>130</sup> He lives with the excruciating dilemma of running away, which involves living on the streets or being picked up and returned, or remaining and taking the abuse.<sup>131</sup> He has no independent ability to support himself. He is unable to tell anyone<sup>132</sup> nor can he leave the abusive environment.<sup>133</sup> He has been taught not to trust

124. The defendant may be mistaken as to the existence of the imminence of the danger. *State v. Cope*, 67 N.E.2d 912, 916-17 (Ohio Ct. App. 1946); see also *State v. Koss*, 551 N.E.2d 970, 973 (Ohio 1990) (prior battering may make a battered woman's belief in the imminence of danger reasonable even if she is mistaken). The actual existence of imminent danger is not an indispensable prerequisite to the right to kill in self-defense. *State v. Newberry*, No. CA 10353 (Ohio Ct. App. 1987) (LEXIS, States library, Ohio file).

125. *State v. Robbins*, 388 N.E.2d 755, 758 (Ohio 1979).

126. It is enough for the jury to decide that the defendant believed in the imminence of the danger and that such danger was so great he must do what he did. *State v. Carr*, 11 Ohio Cir. Dec. 353, 359 (Ohio Cir. Ct. 1900). The jury need not be satisfied that the only way the defendant could escape from the deceased was by killing him. *Id.*

127. *Id.*

128. MONES, WHEN A CHILD KILLS, *supra* note 1, at 318. Because of the family dysfunction, the abnormal supplants the normal and the abused child cannot fully appreciate or take advantage of the alternatives. *Id.* at 39. Also, because of the physical and social isolation of the family, the abused child may not be able to "perceive alternatives other than murder to solve the extreme conflict produced by a pathological family system." Post, *supra* note 1, at 451.

129. MONES, WHEN A CHILD KILLS, *supra* note 1, at 33-34, 41. Parents have a strong influence on the child simply from the nature of the parent-child relationship, which is one in which the child depends on the parent for his very survival. Moreno, *supra* note 5, at 1301 n.145.

130. MONES, WHEN A CHILD KILLS, *supra* note 1, at 33; Morris, *supra* note 4, at 164.

131. MORRIS, *supra* note 4, at 154; see also Mones, *supra* note 38, at 36-37 (the child has no choice of flight and is "inextractably" trapped in the home).

132. Because the child psychologically attaches to his parents and identifies with them, he is unable to divorce himself from them. MONES, WHEN A CHILD KILLS, *supra* note 1, at 33-34. An abused child feels embarrassed, isolated, powerless, and fearful, all of which affect his ability to perceive ways out of the abusive environment. *Id.* at 33-34, 37, 41; see also *supra* notes 27-40 and accompanying text.

133. The child does not reach the age of majority until he is 18 years old. OHIO REV. CODE ANN. § 3109.01 (Anderson 1989). The child is legally obligated to stay in the home and, if he

authority<sup>134</sup> or may have found others unwilling or unable to intervene.<sup>135</sup> Therefore, when the abused child commits parricide, it may be because he has been unable to escape the abusive environment and finds it impossible to physically or psychologically survive without killing.<sup>136</sup>

The final element of self-defense requires the child to show that he did not violate any duty to retreat.<sup>137</sup> Ohio adheres to the common law "true man" doctrine.<sup>138</sup> There is no duty to retreat from one's home or business.<sup>139</sup> This doctrine has been modified to require retreat when the use of deadly force occurs outside a person's home or business.<sup>140</sup> Additionally, in *State v. Walker*,<sup>141</sup> an Ohio appellate court further modified the general principle that one has no duty to retreat. The *Walker* court found that where both parties have an equal right to be in the home, a person does have a duty to retreat, if possible, before killing an attacker.<sup>142</sup> The court, therefore, held that a duty to retreat does apply to self-defense claims involving violence between spouses in the marital home.<sup>143</sup>

A child who commits parricide may rightfully fall within the doctrine expressed in *Walker*. A child, however, is in a much different position than two adults in a domestic violence situation.<sup>144</sup> The child who kills his abuser is often the victim of years of abuse.<sup>145</sup> Although

runs away, he will be returned. For Ohio law governing child runaways, see generally OHIO REV. CODE ANN. ch. 2151 (Anderson 1990).

134. See *supra* notes 32, 36 and accompanying text.

135. See *supra* notes 32, 36 and accompanying text.

136. Van Sambeek, *supra* note 1, at 99-100. "Parricide by adolescents is the culmination of parental abuse that can no longer be tolerated." Post, *supra* note 1, at 454; see also MONES, WHEN A CHILD KILLS, *supra* note 1, at 33-34, 37, 41; PAGELOW, *supra* note 9, at 354; Hicks, *supra* note 45, at 124-25; Mones, *supra* note 38, at 36-37; Moreno, *supra* note 5, at 1301.

137. *State v. Robbins*, 388 N.E.2d 755, 758 (Ohio 1979). There is no similar common law duty to retreat before using non-deadly force, even if such retreat is possible. *Columbus v. Dawson*, 514 N.E.2d 908, 910 (Ohio Ct. App. 1986). There is only a duty to retreat before using force likely to cause death or great bodily harm. *State v. Hale*, No. CA 11473, 1989 Ohio App. LEXIS 3904, at \*6 (Ohio Ct. App. Oct. 13, 1989).

138. "[A] true man, who is without fault, is not obliged to fly from an assailant who . . . maliciously seeks to take his life or do him enormous bodily harm." *Erwin v. State*, 29 Ohio St. 186, 199-200 (1876); see generally 28 O. JUR. 3D *Criminal Law* § 1820, at 345 (1981).

139. *State v. Williford*, 551 N.E.2d 1279, 1281 (Ohio 1990); *State v. Jackson*, 490 N.E.2d 893, 896 (Ohio 1986), cert. denied, 480 U.S. 917 (1987).

140. There is a duty to retreat when one is outside of one's home before using force likely to cause great bodily harm or death. *Jackson*, 490 N.E.2d at 896; *State v. Hale*, No. CA 11473, 1989 Ohio App. LEXIS 3904, at \*6 (Ohio Ct. App. Oct. 13, 1989).

141. 598 N.E.2d 89 (Ohio Ct. App. 1992).

142. *Id.* at 90.

143. *Id.*

144. See *supra* notes 27-40 and accompanying text.

145. See *supra* notes 5, 33. The situation in *Walker* involved a single occurrence of domestic violence. 598 N.E.2d at 89.



the child may have a somewhat equal right to be in the home,<sup>146</sup> he does not have the same freedom to leave as an adult does.<sup>147</sup> The child also may be unable to see any other alternative of escape.<sup>148</sup> Thus, the *Walker* doctrine should be narrowly interpreted when the violence involves a child.

### B. Admitting Expert Psychological Testimony on the Battered Child Syndrome

In requiring the child to prove his self-defense claim by a preponderance of the evidence,<sup>149</sup> courts must allow the child to submit evidence in support of his theory of self-defense.<sup>150</sup> Evidence concerning the connection between severe and prolonged abuse and the child's violent act is necessary to support the child's self-defense claim.<sup>151</sup> It is necessary to consider the state of mind of the abused child at the time of the killing in order to evaluate the reasonableness of his conduct.<sup>152</sup> Expert psychological testimony on battered child syndrome must be offered in self-defense claims to establish the reasonableness of the child's perception that the danger was imminent and required him to use deadly force in self-defense.<sup>153</sup>

146. Until the child reaches the age of majority, his parent(s) are legally obligated to support him. See OHIO REV. CODE ANN. § 3103.031 (Anderson 1992). This would include shelter. *Id.*

147. See *supra* note 131.

148. See *supra* notes 128-36 and accompanying text.

149. See OHIO REV. CODE ANN. § 2901.05 (Anderson 1987); see also *State v. Jackson*, 490 N.E.2d 893, 897 (Ohio 1986); *State v. Martin*, 488 N.E.2d 166 (Ohio 1986); *Columbus v. Eley*, No. 91AP-803, 1992 Ohio App. LEXIS 355, at \*7 (Ohio Ct. App. Jan. 28, 1992); *State v. Ferris*, No. 59477, 1991 Ohio App. LEXIS 6073, at \*14 (Ohio Ct. App. Dec. 19, 1991); *State v. Ross*, No. 9-91-3, 1991 Ohio App. LEXIS 5024, \*5 (Ohio Ct. App. Oct. 23, 1991); *State v. Smith*, Nos. 88AP-89, 88AP-131, 1989 Ohio App. LEXIS 1464, at \*9 (Ohio Ct. App. April 25, 1989); *State v. Tanner*, No. 87AP-1165, 1988 Ohio App. LEXIS 5343, at \*13 (Ohio Ct. App. Dec. 22, 1988); *State v. Folkes*, No. 50291 (Ohio Ct. App. March 13, 1986) (LEXIS, States library, Ohio file).

150. Defendant's right to present evidence to support a self-defense claim is "fundamental." *State v. Randle*, 430 N.E.2d 951, 953 (Ohio Ct. App. 1980).

151. Since abuse effects a child's perceptions of the need for the use of deadly force in a given situation, understanding why a child perceives something as he does is essential in understanding why the child committed parricide and why this was an act of self-defense. See *supra* notes 27-40 and accompanying text.

152. See *State v. Koss*, 551 N.E.2d 970, 973 (Ohio 1990); *McGaw v. State*, 174 N.E. 741, 743 (Ohio 1931); *State v. Newberry*, No. CA 10353 (Ohio Ct. App. Dec. 18, 1987) (LEXIS, States library, Ohio file); *State v. Smith*, 460 N.E.2d 693, 697 (Ohio Ct. App. 1983); *State v. Randle*, 430 N.E.2d 951, 953 (Ohio Ct. App. 1980); *Jordan v. State*, 7 Ohio Cir. Dec. 133, 137 (Jefferson Cir. Ct. 1896).

153. *Koss*, 551 N.E.2d at 973 (state of mind of the battered woman defendant crucial in evaluating her self-defense claim); *State v. Schaeffer*, 117 N.E. 220 (Ohio 1917); *State v. Thomas*, 468 N.E.2d 763, 764 (Ohio Ct. App. 1983); *State v. Cope*, 67 N.E.2d 912 (Ohio Ct. App. 1946); *Nelson v. State*, 181 N.E. 448, 449 (Ohio Ct. App. 1932); *State v. Lovejoy*, 357 N.E.2d 424, 427 (Ohio Mun. Ct. 1976) (citing *State v. Reid*, 210 N.E.2d 142, 150 (Ohio Ct. App. 1965)); see also MONES, WHEN A CHILD KILLS, *supra* note 1, at 62, 318 (the effects of

The child may present testimony and evidence of the victim's threats against him to establish his belief that he was in danger at the time of the killing.<sup>154</sup> The child may also present evidence of the turbulent and dangerous character of the victim,<sup>155</sup> as well as the child's own knowledge of the victim's prior violence.<sup>156</sup> He should also be permitted to submit evidence of past abuse and the effects of such abuse.

The state of mind of an abused child is ordinarily beyond the knowledge and comprehension of the jury.<sup>157</sup> "Battered children live in an environment wholly different from the safe and nurturing home depicted by traditional values and social expectations. The impact of long-term abuse on a child's emotional and psychological responses is a matter that is thus beyond the average juror's understanding."<sup>158</sup> Without the aid of an expert, a jury is not competent to draw conclusions regarding the reasonableness of the child's perception of the imminence of the danger to which he reacted.<sup>159</sup> Juries consist of adults, who are not the child's peers, and who are often unable or unwilling to accept that a child could kill a parent.<sup>160</sup> One of the "crucial matters an expert can explain is how the child's perceptions have been shaped by years of abuse and not just by the events surrounding the moment of the homicide."<sup>161</sup> Expert testimony is necessary to enable the jurors to understand how the battered child perceives and reacts to things in his immediate environment.<sup>162</sup> Expert testimony also helps explain the sense of powerlessness, fear, and anxiety in the battered child's life.<sup>163</sup>

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abuse fundamentally alter the parameters for defining and determining the presence of imminence and the child sees killing as the only alternative); Hicks, *supra* note 45, at 127 (necessity of understanding the psychological traits which bear on the child's belief that imminent danger exists); Mones, *supra* note 38, at 36. "In the classic parricide situation, the imminent danger is more subtle and only perceptible to the abused child." Van Sambeek, *supra* note 1, at 91.

154. *State v. Randle*, 430 N.E.2d 951, 953 (Ohio Ct. App. 1980); *see also* OHIO R. EVID. 405 (method of proving character).

155. *McGaw v. State*, 174 N.E. 741 (Ohio 1931).

156. *State v. Smith*, 460 N.E.2d 693, 697 (Ohio Ct. App. 1983).

157. *See supra* notes 27-40 and accompanying text.

158. *State v. Janes*, 822 P.2d 1238, 1243 (Wash. Ct. App. 1992).

159. Expert testimony is needed to put the child's perceptions into context. *Id.* at 1243. *See generally* MONES, WHEN A CHILD KILLS, *supra* note 1.

160. It is difficult to even imagine abuse so bad that the child's only option was murdering the parent. MORRIS, *supra* note 4, at 153, 159; *see also* MONES, WHEN A CHILD KILLS, *supra* note 1, at 7.

161. Amicus Brief for Washington Coalition Against Domestic Violence et al., at 16, *State v. Janes*, 822 P.2d 1238 (Wash. Ct. App. 1992) (No. 59022-2) (traumatic effects are felt even in the absence of the abuser because the child lives in constant fear). It is necessary for the jury to understand the cumulative psychological effect of the violence over the years. *See generally* Hicks, *supra* note 45; Post, *supra* note 1.

162. *See* Amicus Brief for Washington Coalition Against Domestic Violence et al., at 10-12; MONES, WHEN A CHILD KILLS, *supra* note 1, at 276; Hicks, *supra* note 45, at 104.

163. *See supra* note 162.



In summary, expert psychological testimony on the battered child syndrome is relevant.<sup>164</sup> The nature of the issue is such that the jury is incompetent to make a correct judgment on the issue without the aid of persons whose skill or knowledge on that issue is superior.<sup>165</sup> "The scientific understanding of battered child syndrome is sufficiently developed"<sup>166</sup> to allow "a witness qualified as an expert [to] testify thereto."<sup>167</sup> The probative value of such testimony<sup>168</sup> significantly outweighs any prejudicial impact it may have.<sup>169</sup> Therefore, expert psychological testimony on battered child syndrome should be admissible under Ohio's evidentiary requirements.<sup>170</sup>

### C. Admissibility of Evidence on Battered Child Syndrome as a Matter of Analogy with Battered Woman Syndrome

Common sense and logic dictate that a state court which admits expert psychological testimony on the battered woman syndrome relat-

164. The reasonableness of the child's honest belief at the time of the killing is in question and, therefore, evidence which goes to that issue is relevant. *State v. Smith*, 460 N.E.2d 693, 695 (Ohio Ct. App. 1983) (since state of mind is crucial it is necessary for defendant to relate reasons for feeling as he did); *see also supra* note 68. For cases which have held that the reasonableness of the defendant's honest belief in the need for self-defense is based on the state of mind of the defendant, *see State v. Koss*, 551 N.E.2d 970 (Ohio 1990); *McGaw v. State*, 174 N.E. 741 (Ohio 1931); *State v. Newberry*, No. CA 10353, slip op. (Ohio Ct. App. 1987) (LEXIS, States library, Ohio file); *State v. Randle*, 430 N.E.2d 951 (Ohio Ct. App. 1980); *Nelson v. State*, 181 N.E. 448, 449 (Ohio Ct. App. 1932) (defendant has the right to be judged based on his own physical and mental condition); *Jordan v. State*, 7 Ohio Cir. Dec. 133, 137 (Jefferson Cir. Ct. 1896).

165. *See supra* notes 27-40 and 157-63 and accompanying text.

166. *State v. Janes*, 822 P.2d 1238, 1243 (Wash. Ct. App. 1992). "[S]cientific understanding of the battered child syndrome is sufficiently developed to make testimony concerning that syndrome admissible in appropriate cases." *Id.* For evidence of the scientific acceptability of the psychological aspect of battered child syndrome, *see generally CALAM & FRANCHI, supra* note 44; *THE BATTERED CHILD, supra* note 33; *LEEHAN & PISTONE-WILSON, supra* note 28; *MONES, WHEN A CHILD KILLS, supra* note 1; *MORRIS, supra* note 4; *PAGELOW, supra* note 9; *STRAUSS ET AL., supra* note 7; *Aber et al., supra* note 27; *Blodgett, supra* note 5; *Erickson et al., supra* note 27; *Garbarino, Troubled Youth, supra* note 37; *Garbarino & Vondra, supra* note 29; *Goodman & Rosenberg, supra* note 37; *Hicks, supra* note 45; *Kempe, supra* note 17; *Kincard, supra* note 33; *Martin & Beezely, supra* note 31; *Mones, supra* note 38; *Moreno, supra* note 5; *Barry Siegel, When Tortured Children Strike Back, 7 UPDATE ON LAW-RELATED EDUC. 6* (Fall 1983); *Smetana & Kelly, supra* note 35; *Timnick, supra* note 109; *Van Sambeek, supra* note 1.

167. OHIO R. EVID. 704.

168. The information given by an expert is necessary for the jury to understand the state of mind of the child at the time of the killing. The showing of the connection between the child's abusive history and his violent response is absolutely necessary in parricide self-defense claims. *Moreno, supra* note 5, at 1306; *see also supra* notes 110-36 and accompanying text.

169. The concern regarding the prejudicial effect of such testimony would be similar to that expressed concerning battered woman syndrome, namely, allowing the jury to base its decision on a stereotype. *See State v. Thomas*, 423 N.E.2d 137 (Ohio 1981); *State v. Holden*, No. 49566 (Ohio Ct. App. Sept. 26, 1985) (LEXIS, States library, Ohio file).

170. For instances where expert psychological testimony on battered child syndrome has been admitted, *see supra* note 58.

ing to a self-defense claim should admit similar evidence when an abused child raises the battered child defense.<sup>171</sup> The psychological profile of an abused child has an “amazing resemblance”<sup>172</sup> to that of a battered woman.<sup>173</sup> The battered woman syndrome and the battered child syndrome each describe a common set of psychological effects found in both women<sup>174</sup> and children,<sup>175</sup> each of whom has been physically and psychologically brutalized over a period of years.<sup>176</sup>

The psychological effects which plague battered women are also indigenous to abused children.<sup>177</sup> Battered women and abused children are often similarly abused by loved ones over a period of years.<sup>178</sup> Battered women and abused children both experience feelings of helplessness, fear, isolation, low self-esteem, self-blame, depression, and an overriding desire to please others.<sup>179</sup> Both are psychologically dependent on their abusers,<sup>180</sup> socially isolated, and fear reprisal on themselves or other family members if they reveal the abuse.<sup>181</sup> These feelings result from being repeatedly and unpredictably subjected to physical, sexual, or psychological abuse.<sup>182</sup>

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171. Children should be permitted to use evidence of their abuse if adults are allowed to use expert testimony concerning the effects of their battering. MORRIS, *supra* note 4, at 154. “Who speaks for kids who strike back after years and years of abuse?” *Id.*

172. MONES, WHEN A CHILD KILLS, *supra* note 1, at 37.

173. The difference between the psychological features of battered woman syndrome and battered child syndrome are negligible. Hicks, *supra* note 45, at 106; *see also infra* notes 177-89 and accompanying text.

174. *See supra* note 55.

175. Although the term “battered child syndrome” was used originally to denote the physical effects of child abuse, the effects of abuse go beyond the physical. The battered child syndrome should include the psychological effects as well. *See supra* notes 41-46 and accompanying text.

176. *See generally* EWING, *supra* note 118; MONES, WHEN A CHILD KILLS, *supra* note 1; MORRIS, *supra* note 4; WALKER, THE BATTERED WOMAN SYNDROME, *supra* note 55; *see also supra* notes 5, 33.

177. Amicus Brief for Washington Coalition Against Domestic Violence et al., at 18, State v. Janes, 822 P.2d 1238 (Wash. Ct. App. 1992) (No. 59022-2).

178. For women, *see* EWING, *supra* note 118; WALKER, THE BATTERED WOMAN, *supra* note 55; WALKER, THE BATTERED WOMAN SYNDROME, *supra* note 55. For children, *see supra* notes 5, 33 and accompanying text.

179. For women, *see* BROWNE, *supra* note 84, at 144; EWING, *supra* note 118, at 9-12; WALKER, THE BATTERED WOMAN, *supra* note 55, at 32-33, 45-54. For children, *see supra* notes 31-36 and accompanying text.

180. A battered woman and an abused child will develop a “traumatic bond” with their abuser. Don Dutton & Susan Lee Pointer, *Traumatic Bonding: The Development of Emotional Attachments in Battered Women on Other Relationships of Intermittent Abuse*, 6 VICTIMOLOGY 139, 146-47 (1981). “Traumatic bonds” are the “strong emotional ties [which develop] between two persons where one person intermittently harasses, beats, threatens, abuses, or intimidates the other.” *Id.* at 146-47.

181. *See supra* notes 33-36 and accompanying text.

182. EWING, *supra* note 118, at 11 (describing the term “learned helplessness” used by Dr. Lenore Walker to characterize a woman’s psychological reaction to battering). For children, *see supra* notes 27-40 and accompanying text.



Battered women and abused children live in constant fear.<sup>183</sup> They develop the ability to monitor their environments and detect subtle changes in the abusive pattern.<sup>184</sup> Both may perceive imminent danger from such changes.<sup>185</sup> Generally, they act when the abuser is nonconfrontational because this is when the only chance for escape exists.<sup>186</sup> Neither the battered woman nor the abused child is capable of conceiving any alternatives such as escape.<sup>187</sup>

An abused child, however, is in an even more vulnerable position than the battered woman. Because a child is completely dependent on his parents and is legally unable to simply leave the abusive environment,<sup>188</sup> the abused child has an even more genuine reason to feel helplessness, fear, and isolation.<sup>189</sup>

The *Koss* decision paves the way for judicial recognition of expert psychological testimony on the battered child syndrome.<sup>190</sup> To allow a woman to present expert testimony while excluding such testimony for a similarly situated child defies common sense and logic.<sup>191</sup> If the child offers evidence that he is a "battered child" and offers testimony from an expert qualified to testify about the battered child syndrome, expert testimony concerning the syndrome should be admitted.<sup>192</sup> When the issue of the admissibility of expert psychological testimony on the battered child syndrome is presented at trial, Ohio courts should admit

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183. For women, see CYNTHIA K. GILLESPIE, *JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, & THE LAW* 123 (1989). For children, see Post, *supra* note 1, at 449.

184. For women, see GILLESPIE, *supra* note 183, at 123; WALKER, *THE BATTERED WOMAN*, *supra* note 55, at 49-54. For children, see *supra* notes 39-40 and accompanying text.

185. For women, see EWING, *supra* note 118; GILLESPIE, *supra* note 183; WALKER, *THE BATTERED WOMAN*, *supra* note 55; WALKER, *THE BATTERED WOMAN SYNDROME*, *supra* note 55. For children, see *supra* notes 39-40 and accompanying text.

186. For women, see GILLESPIE, *supra*, note 183, at 123; M.J. Willoughby, *Rendering Each Woman Her Due: Can A Battered Woman Claim Self-Defense When She Kills Her Sleeping Batterer?*, 38 KAN. L. REV. 169, 184 (1988). For children, see *supra* notes 27-40 and 113-14 and accompanying text.

187. For women, see EWING, *supra* note 118, at 9-12; GILLESPIE, *supra* note 183, at 144; Willoughby, *supra* note 186, at 172. For children, see *supra* notes 128-36 and accompanying text.

188. Women are also unable to leave due to the psychological effects of abuse, but there is not the same restriction on an adult woman as there is on a child. For the psychological effects which disable a woman's ability to leave, see *supra* notes 177-87 and accompanying text.

189. Hicks, *supra* note 45, at 125.

190. *State v. Koss*, 551 N.E.2d 970 (Ohio 1990). Battering has similar, if not almost identical, effects on women and children. See *supra* notes 177-87 and accompanying text.

191. The *Holden* court specifically noted that it could find no discernible difference between battered woman syndrome and the battered child [person] syndrome. *State v. Holden*, No. 49566 (Ohio Ct. App. Sept. 26, 1985) (LEXIS, States library, Ohio file). Because the battered woman syndrome was inadmissible, so was battered child syndrome. *Id.* Considering the *Koss* decision, it logically follows that, now that the battered woman syndrome is admissible, the battered child syndrome is also admissible.

192. These are the same evidentiary requirements for a woman claiming self-defense when she has killed her batterer. See *Koss*, 551 N.E.2d at 975.

such evidence by way of analogy to similar evidence admissible on the battered woman syndrome.

In addition to judicial recognition of the admissibility of expert psychological testimony on the battered child syndrome, the General Assembly should amend section 2901.06 of the Ohio Revised Code to include the "battered child syndrome." The House initially considered the designation "battered person syndrome" to include, but not be limited to, "battered woman syndrome," "battered spouse syndrome," and "battered person syndrome."<sup>193</sup> The term was restricted, however, to "battered woman syndrome" because the General Assembly decided that the other syndromes were not established syndromes based on research.<sup>194</sup> This is not the case for the battered child syndrome. The battered child syndrome is currently a matter of commonly accepted scientific knowledge<sup>195</sup> and is not within the general understanding of a layperson.<sup>196</sup>

## V. CONCLUSION

"The purpose of battered woman syndrome [and battered child syndrome] in a homicide trial is *never* to put forward the proposition that the mere fact that the woman [child] was beaten by the man [parent] in the past somehow justifies her killing him [the parent] in cold blood at some later date."<sup>197</sup> Rather, the sole purpose of admitting expert testimony is to help the jury understand the state of mind of the defendant at the time of the killing.<sup>198</sup> Expert testimony also enables the jury to understand why the defendant's conduct was rational and reasonable under the circumstances.<sup>199</sup> This purpose has been judicially

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193. Am. Sub. H.B. 484 committee notes.

194. *Id.*

195. See *supra* note 166. The *Koss* decision reveals the dynamic nature of the law in Ohio and its amenability to the adoption of new scientific principles when such principles achieve general acceptance and respectability in the professional scientific community. *Koss*, 551 N.E.2d at 974 (court reviewed other jurisdictions and found the battered woman syndrome scientifically accepted); Stanley Kent, *Battered Woman Syndrome Revisited*, 61 CLEV. B.J. 218 (May 1990).

196. See *supra* notes 27-40 and accompanying text.

197. GILLESPIE, *supra* note 183, at 159.

198. See GILLESPIE, *supra* note 183, at 159-60; Van Sambeek, *supra* note 1, at 102-03.

199. *Koss*, 551 N.E.2d at 973 (Ohio 1990) (expert testimony on battered woman syndrome admissible to assist the trier of fact in evaluating the reasonableness of the woman's belief in the imminence of the danger); Commonwealth v. Kacsmar, No. 02002, 1992 Pa. Super. LEXIS 3773, at \*23 (Pa. Super. Ct. Nov. 4, 1992) ("the proposed testimony [on battered person syndrome] would have aided the jury in evaluating appellant's behavior and state of mind at the time of the killing"); State v. Janes, 822 P.2d 1238, 1242 (Wash. Ct. App. 1992) (expert testimony on the battered child syndrome admissible to assist the trier of fact in evaluating the reasonableness of the child's belief in the imminence of the danger).



and legislatively recognized in Ohio for a woman but not for a child.<sup>200</sup>

Ohio presently allows expert testimony into evidence on the battered woman syndrome in support of a woman's self-defense claim by judicial decision and through legislative action.<sup>201</sup> The Ohio courts "must recognize that acceptance of evidence on battered woman syndrome has not only paved the way for admissibility of similar evidence regarding battered child syndrome, it mandates such a result."<sup>202</sup> In addition, the Ohio General Assembly should recognize that the battered child syndrome is the functional and legal equivalent of the battered woman syndrome<sup>203</sup> and amend section 2901.06 of the Ohio Revised Code to include the battered child syndrome.

Ohio courts must recognize that child abuse takes a high toll on the victim, both physically and psychologically.<sup>204</sup> When faced with the issue of the admissibility of expert psychological testimony on the battered child syndrome, Ohio courts should overrule *Holden* and allow an abused child to present a self-defense claim supported by expert psychological testimony on the battered child syndrome.

Taking another's life is justifiable only under very limited circumstances. When this fatal alternative is forced on the abused child, however, the child must be allowed to assert a claim of self-defense and must be permitted to support such a claim with expert psychological testimony on the battered child syndrome.

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200. Despite the overwhelming similarities between battered women and abused children who kill their abusers, *State v. Holden*, No. 49566 (Ohio Ct. App. Sept. 26, 1985) (LEXIS, States library, Ohio file), is still good law.

201. *Koss*, 551 N.E.2d at 974; OHIO REV. CODE ANN. § 2901.06 (Anderson Supp. 1991).

202. *Hicks*, *supra* note 45, at 126. "There can be no legitimate grounds for not applying theoretical bases of imminency as they relate to battered women to battered children who kill their abusive parent." Amicus Brief for Washington Coalition Against Domestic Violence et al., at 14-15, *State v. Janes*, 822 P.2d 1238 (Wash. Ct. App. 1992) (No. 59022-2). As well, there can be no legal justification for such different treatment of adults and children. *See supra* notes 171-89 and accompanying text; *see also* *Commonwealth v. Kacsmar*, No. 02002, 1992 Pa. Super. LEXIS 3773, at \*23.

203. *See Janes*, 822 P.2d at 1243. Expert psychological testimony on battered child syndrome is capable of surviving the same scrutiny that the battered woman syndrome underwent in *Koss*, 551 N.E.2d at 972-74.

204. *See supra* notes 27-40 and accompanying text.