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Domestic Violence Review

Office of the State Courts Administrator
Office of Court Improvement

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Helpful Web Resources
Family Courts
DV Benchbook
DV Strategic Plan
Petitioner Brochures
Respondent Brochures
DV Civil Injunction Survey Report
DV Resources for Court Staff
DV Case Management Guidelines
Best Practices: Child Support in DV cases
Dating Violence Checklist
Repeat Violence Checklist
Sexual Violence Checklist
DV Checklist
DV Court Action Plan
DV Assessment Final Report

Virtual Court Available for Continuing Education Credits

The Virtual Court program offers Florida domestic violence stakeholders an opportunity to learn about domestic violence proceedings and see the case through the judge's eyes. The program allows the user to act as judge in a domestic violence simulation. The case is fictitious, but the questions are real questions that judges must grapple with every day. Learn the laws that guide judges' actions during domestic violence proceedings with our engaging, interactive online program. The program can be accessed at: http://virtualcourt.flcourts.org.

The Virtual Court program is approved for up to 1.50 non-conference Domestic Violence CJE credit hours. Judges may apply for Continuing Judicial Education (CJE) credit by emailing a request to CJEMail@flcourts.org or writing to: Court Education Division, Office of the State Courts Administrator, 500 South Duval Street, Tallahassee, Florida 32399-1900 (Attention: CJE Credit). Judges who have completed the program but have not yet requested a certificate of completion may do so by sending an email request to vcsupport@flcourts.org.

The Florida Bar has approved 2.00 hours of general Continuing Legal Education (CLE) credit (including 1.50 hours of Marital and Family Law Certification credit) for the completion of this training module. Individuals are required to post their CLE activity on the Florida Bar website, www.floridabar.org, to receive credit. Please refer to course #19141.

Completion of the Domestic Violence Virtual Court training module can count as 2.0 hours of Domestic Violence Continuing Mediator Education (CME) credit. Individuals are required to keep the information pertaining to the completed virtual court course during the two-year cycle. Individuals will then report the information on the CME Reporting Form included in the renewal packet at the time of renewal, not when the credit is earned. The CME Reporting Form is also available on the Dispute Resolution Center's website.

News from the Office of Court Improvement

Online Forms -- The OCI has developed an interactive forms process, allowing the forms used by petitioners and respondents of domestic violence injunctions to be available online, on the Florida courts self-help center. During the first week of availability, the forms received almost 400 views. The forms can be accessed at:
http://www.flcourts.org/gen_public/family/forms_rules/index.shtml

Virtual Court Program News

Case Manager Virtual Court Training Program -- The OCI is proud to announce the newest virtual court program to be added to our growing roster of virtual training modules. This training guide is aimed at domestic violence case managers, and discusses issues related to case processing. With in depth analysis and questions to test participant knowledge, this multi-media module is highly recommended for all stakeholders in the domestic violence court process. The program can be accessed at: http://virtualcourt.flcourts.org.

Upcoming Projects and Events

- COMPLIANCE PROMISING PRACTICES PILOT PROGRAM The Office of Court Improvement has begun a pilot project to examine promising practices for enforcing batterer compliance with orders to complete Batterer Intervention Programs (BIPs). This pilot examines methods of tracking and reminders to ensure that batterers' ordered to BIPs do in fact attend and complete the programs. Such enforcement will demonstrate the courts' continued commitment to protecting victims from further violence.

- DV COORDINATORS MEETING The Office of Court Improvement will be hosting a DV Coordinators meeting February 16-17, 2012, in Ponte Vedra, Florida. This meeting will provide attendees an opportunity to network and learn about recent developments in Florida, and will showcase presentations on such issues as law enforcement responses to domestic violence situations, the impact of advances in technology on stalking, and the ongoing problem of elder abuse in Florida. For more information about the meeting, please contact Kathleen Tailer at tailerk@flcourts.org.

- 2011 DOMESTIC VIOLENCE BENCHBOOK The Office of Court Improvement is in the process of updating its 2008 Domestic Violence benchbook. In addition to the checklists, guides, and legal outlines found in the current benchbook, the 2011 benchbook will include updated cases and in-depth information on current issues the courts may encounter. The updated version is tentatively scheduled to be available by January, 2012.

Developmentally Disabled Victims of Sexual Abuse

By: Ebony Tucker, Esq.[1]

Introduction

Sexual abuse among developmentally disabled children and adults is a problem rarely discussed and often overlooked. For many reasons developmentally disabled individuals are more likely than non-disabled individuals to suffer sexual abuse but less likely to receive counseling, medical treatment or legal remedies.

The purpose of this article is to discuss why developmentally disabled persons are more likely to suffer sexual abuse, what methods are most successful for prevention and ways in which the legal community can be of assistance.

[1] Ebony Tucker is an attorney for the Florida Council Against Sexual Violence.

'Sexual assault' is a 'general term that includes sexual harassment, unwanted sexual contact, child sexual abuse, incest and rape.'[2] 'Developmental disabilities' are defined as 'severe, ongoing physical and/or mental impairments that develop before age twenty-two and prevent, slow down, or limit typical development. Examples of developmental disabilities include: autism, behavior disorders, cerebral palsy, Down syndrome, Fragile X syndrome, Fetal Alcohol Syndrome, and spina bifida.'[3]

Overview

It is estimated that 15,000 – 19,000 developmentally disabled Americans suffer sexual abuse every year.[4] Forty nine percent of those who suffer sexual assault will experience sexual abuse more than ten times during their lives.[5] Though developmentally disabled women are more likely to suffer sexual assault than their male counterparts, the numbers for both males and females greatly exceed the numbers of those sexually abused in the non-developmentally disabled community. For those who are not developmentally disabled, 20% of females and 10% of males will be abused during their lifetimes, respectively.[6] More than ninety percent of people with developmental disabilities will be the victim of sexual assault at some point in their lives.[7] Studies show that 68% of girls and 30% of boys with developmental disabilities will be abused before their eighteenth birthday.[8]

Risk Factors

Though there are many reasons developmentally disabled persons are more likely to be sexually abused than the rest of the public, one of the most important is the dependent-caregiver relationship. Whether a developmentally disabled person lives in an institution, with his or her family or alone, there is usually a relationship with one or more persons who provide a service specific to that person's disability.

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[2] Developmental Disabilities and Sexual Assault, Connecticut Sexual Assault Crises Services, Inc. http://www.connsacs.org/learn/documents/DisabilityandSexualAssault-revisions.doc
[3] *Id.*
[4] Sexual Abuse of People with Developmental Disabilities, http://en.wikipedia.org/wiki/Sexual_abuse_of_people_with_developmental_disabilities
[5] People with Mental Retardation and Sexual Abuse, Davis, Leigh Ann, M.S.S.W., M.P.A.
[6] Sexual Abuse of People with Developmental Disabilities, http://en.wikipedia.org/wiki/Sexual_abuse_of_people_with_developmental_disabilities
[7] Davis at p.1
[8] *Id.*

In their relationships with caregivers, many developmentally disabled people have often been taught to be compliant from a very young age.[9] They are taught to not argue with authority figures such as teachers, parents and various types of caregivers, and to always do what they are told. Often this obedient behavior is rewarded which only reinforces the compliant attitude.[10] This is extremely dangerous because caregivers are the group most likely to sexually abuse the developmentally disabled.[11] In fact, 44% of cases of sexual abuse of developmentally disabled people are believed to occur at the hands of a caregiver whose relationship with the victim was based on the victim's disability.[12] This is true regardless of whether the disabled person lives in a private home or an institution.[13]

Another risk factor is the lack of privacy developmentally disabled individuals feel. Developmentally disabled individuals may require assistance with tasks like dressing, bathing and using the restroom. Because of this, a lack of privacy develops and disabled people who receive assistance may not feel as if they have a right to privacy or ownership of their own bodies.[14] That lack of privacy also leads the victim to comply with unwanted touching because he or she does not understand that they have ownership over their own body.

The idea that developmentally disabled people are not sexual is another important reason why the abuse of developmentally disabled individuals goes unnoticed. The common misconception is that because a developmentally disabled victim may not be able to understand the nature of sexual activity, the victim cannot process the gravity of the abuse. Thus, the 'asexuality' of developmentally disabled individuals has also led to the devaluation of the victim's experience and a belief that the psychological effect is less traumatic than what a non-developmentally disabled victim may suffer.[15]

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[9] Developmental Disabilities and Sexual Assault, p.2
[10] Davis at p.1
[11] *Id* at 2
[12] *Id.*
[13] *Id.*
[14] Developmental Disabilities and Sexual Assault, p.1
[15] Mansell, Sheila; Sobsey, Dick; Calder, Peter. *Sexual Abuse Treatment for Persons with Developmental Disabilities,* p. 406. Unviersity of Alberta, Canada. (1992).

Their perceived lack of sexuality among the developmentally disabled leads those responsible for their education to give inadequate information about their bodies and sexual health which is essential to understanding the prevalence of abuse within the developmentally disabled community. "Sexual interests and desires of the mild and moderately retarded vary in intensity just like those in the [developmentally disabled] population…[T]he mentally retarded adolescent is a sexual being, whose reproductive ability, sexual interests, and sexual activity range from high to low, identical to the range in the general population. However, parents, special education instructors, and institutions open the door to abuse by shying away from any biological instruction either from a misplaced sense of propriety or an unawareness of the importance of such instruction in preventing sexual abuse. Thus, ideas of proper sexual conduct are shaped by unreliable influences from the media, peer groups, caretakers with impure motives, or other perpetrators of sexual abuse."[16]

Reporting and Law Enforcement Response

Developmentally disabled victims are far less likely to utilize sexual assault services than victims in the general population. As such, the underreporting of crimes against developmentally disabled individuals is far more prevalent than when crimes are committed against those not developmentally disabled. It has been estimated that only 3% of sexual assaults committed against people with developmental disabilities are reported to authorities while 16 - 28% of sexual assaults are reported in the general population.[17] The lack of reporting is a significant factor in the ability of the criminal justice system to properly respond to these cases.

The inability to communicate effectively with developmentally disabled victims may also account for low reporting and prosecution numbers.[18] A study charting the criminal justice response to reported cases of sexual assault in which the victims were disabled found that in 65% of the cases monitored, police declined to press charges usually citing the witnesses as incompetent. Only 18% of cases could not move forward because the perpetrator was never found and another 18% were not pursued because prosecutors declined to press charges.

[16] Moran, John, B.A. *Sexual Abuse of the Mentally Retarded Patient: Medical and Legal Analysis for the Primary Care Physician,* p.5. University of Tennessee, School of Medicine (2000).
[17] Sorensen, Daniel D*. The Invisible Victims,* p.4. Caliornia District Attorneys Association Quarterly Journal. (2002).
[18] *Id* at 5.

Many developmentally disabled victims find that their cases are handled outside the criminal justice system. When victims make reports against caregivers or others in institutionalized settings, those reports are often made to non-law enforcement authorities.[19] As such, these cases are also often dealt with administratively.[20] Cases reported to non-law enforcement authorities are usually settled with firings, licensing sanctions and other forms of administrative actions.[21]

In Florida, certain cases of sexual abuse against developmentally disabled victims may be punishable as a second degree felony.[22] Chapter 393 of Florida Statutes specifically addresses cases involving employees or volunteers of the Agency for Persons with Disabilities and its providers who commit sexual abuse against victims living in group homes, residential or foster care facilities or rehabilitative centers.[23] For crimes committed under this chapter, consent of the victim may not be used as a defense and sexual activity not meeting the level of sexual battery is still considered a violation.[24]

Court Response

For the sexual assault cases involving developmentally disabled persons that do reach court, many of those cases are non-forcible sexual battery cases where the ability of the victim to consent is an issue. There are several different tests applied by courts to measure whether the victim was able to understand and consent to the sexual activity taking place. The tests vary according to jurisdiction. The most common tests used are listed as follows:

"Nature of the conduct" test – most common test and used by the largest number of states. This test only requires that the victim understand what sexual activity is and the voluntary aspect of sexual activity. Florida utilizes this test for sexual battery crimes as defined by Chapter 794 of Florida Statutes.

"Totality of the circumstances" test – considers factors other than the sexual act, the nature or the consequences. This test allows for any special circumstances, as well as the perpetrator's intent, to be included in consent analysis.

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[19] *Id* at 4.
[20] *Id.*
[21] *Id.*
[22] Fla. Stat. § 393.135 (2) (2011).
[23] *Id.*
[24] Fla. Stat. § 393.135 (3); Fla. Stat. § 393.135 (2) (2011).

"Nature and consequences" test – requires that the victim understand the nature and consequences of the sexual activity as well as the risks and possible negative outcomes.

"Morality" test – determines if the victim has a moral understanding of the sexual activity in addition to understanding the nature and consequences of having sex.

"Judgment" test – ascertains whether the victim can exercise judgment in regards to their own consent to sexual activity.[25]

Forty nine states use one test to determine a victim's consent while Illinois is the only jurisdiction to use a combination of two tests (their courts employ the "totality of the circumstances" test along with the "morality" test).[26]

The treatment of developmentally disabled victims as witnesses is also a key part of court response. An experienced person who is available to help the victim navigate the complexities of court processes is especially key in cases where the victim is developmentally disabled. Florida, specifically, requires the court to appoint an advocate to represent a person with mental retardation if the person with mental retardation is a victim of a sexual offense or a witness to a sexual offense committed against a minor or person with mental retardation.[27]

Conclusion

Raising awareness of the problem of sexual assault in the developmentally disabled community is the first step to more effective prevention and treatment. Education on this issue is instrumental in order to properly meet the needs of developmentally disabled victims.

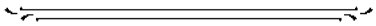
For more information about this topic, please visit:

[25] Morano at p.9-10.
[26] *Id* at 10.
[27] Fla. Stat. § 914.17 (2) (2011).

1) Florida Developmental Disabilities Council http://www.fddc.org/

2) The National Center for Victims of Crime http://www.ncvc.org/ncvc/main.aspx?dbID=dash_Home

3) Agency for Persons with Disabilities http://apdcares.org/



Domestic Violence Resources

Below is a list of a variety of resources on a variety of subjects within the domestic violence area. Each resource provides valuable information and insight into various aspects of domestic violence. The OCI encourages domestic violence stakeholders to peruse the various articles.

Technology

Our featured article is on the topic of **Domestic Violence and Technology**. Technology has begun to advance at a rapid pace, with new devices, software, and concepts appearing every day. This rapid pace of advance has allowed batterers new avenues of abuse. By remaining current on the latest technological advances and their impact in the area of domestic violence, the court system can fashion effective responses.

- Baughman, L. *Friend Request or Foe? Confirming the Misuse of Internet and Social Networking Sites by Domestic Violence Perpetrators*. 19 Widener Law Journal 933 (2010). This article discussed the benefits and risks of internet social networking websites for victims of domestic violence and the possibility of misuse by perpetrators of abuse to stalk, harass, and terrorize their victims. It also examined states' responses to threats of violence and stalking that originate on the Internet.

Batterer Typology

- Robinson, L. *Investigating Batterer Typology: The Role of Personality Characteristics, Attachment, and Family of Origin Dynamics*. Texas A & M University (dissertation) (May, 2005), *available at* http://repository.tamu.edu/bitstream/handle/1969.1/2458/etd-tamu-2005A-CPSY-Robinson.pdf?sequence=1. This dissertation advanced earlier studies on batterer typology. The author used a variety of methods to collect data, and concluded that the typology clusters found in the current study were not entirely consistent; the inconsistencies found suggested that further research would be beneficial.

Domestic Violence and Families

- Cole, M.A.; Caron, S.L. *Exploring Factors Which Lead to Successful Reunification in Domestic Violence Cases: Interviews with Co-Workers*. 25 Journal of Family Violence 297 (2010), *available at* https://www.ncjrs.gov/app/publications/Abstract.aspx?id=252110. This study examined factors that caseworkers believe lead to successful reunifications where the child(ren) have been removed from their parents due to domestic violence. In-depth interviews revealed that successful reunifications took place in families who engaged in services, admitted to issues, set boundaries, and established and maintained a support system.

Animals and Abuse

- Arkow, P. *Expanding Domestic Violence Protective Orders to Include Companion Animals*. Commission on Domestic Violence, vol. 8 (2007), *available at* http://www.nationallinkcoalition.org/assets/docs/pets-protective-orders.pdf. This article discussed the correlation between animal abuse and intimate partner violence, the growing need for animal protection as a part of the protections offered to domestic violence abuse victims, and other issued associated with protecting pets from domestic violence. The article also provided a list of helpful additional resources that detailed more thoroughly the ideas presented.

Cultural Issues

- Ahmad, F.; Driver, N.; McNally, M.J.; Stewart, D.E. *Why Doesn't She Seek help for Partner Abuse?: An Exploratory Study with South Asian immigrant Women*. 69 Social Science and Medicine 613 (2009), *available at* http://www.sciencedirect.com/science/article/pii/S0277953609003712. This study explored the experiences of immigrant South Asian domestic violence victims in Toronto, and abused women in that population delayed seeking help from professionals. The authors found that three major ideas emerged from the discussions: reasons for delayed help-seeking, turning points and talking to professionals. The dominant reasons for delayed help-seeking were social stigma, rigid gender roles, marriage obligations, expected silence, loss of social support after migration and limited knowledge about available resources and myths about partner abuse.

Disabilities

- Lightfoot, E.; Williams, O. *The Intersection of Disability, Diversity, and Domestic Violence: Results from National Focus Groups*. 18 Journal of Aggression, Maltreatment, and Trauma 133 (2009), *available at* http://www.tandfonline.com/doi/abs/10.1080/10926770802675551. "Using data from two national focus groups of 19 key informants, this article explores the unique issues faced by people with physical and sensory disabilities in accessing help for domestic violence, with a particular emphasis on the experiences of people of color with disabilities. In addition, this study explores the programmatic preferences of people of color with disabilities in seeking help in regards to domestic violence, and assesses the cultural competence, disability awareness, and domestic violence awareness of domestic violence service providers and disability organizations."

Offender Data

- Henning, K.; Connor-Smith, J. *Why Doesn't He Leave? Relationship Continuity and Satisfaction Among Male Domestic Violence Offenders*. 26 Journal of Interpersonal Violence 366 (2011), *available at* http://jiv.sagepub.com/content/26/7/1366.short. This article explored the issues of relationship continuity in couples where domestic violence is present from the offending male's perspective, and relationship satisfaction in those same men. The authors, using a large sample of offender men, found that more than half (59%) reported they were planning on continuing their relationship. Factors associated with relationship continuity included older age, being married to the victim, having children together, attributing less blame to the victim for the recent offense, and having a childhood history of family violence. Among men who were

continuing their relationship, low relationship satisfaction was predicted by having children, expressing hostile attitudes toward women, being jealous, blaming the victim for the arrest incident, and describing the victim as aggressive.

Therapeutic Jurisprudence in Domestic Violence Cases

- Cattaneo, L.B.; Goodman, L.A. *Through the Lens of Therapeutic Jurisprudence: The Relationship Between Empowerment in the Court System and Well-Being for Intimate Partner Violence Victims*. 25(3) Journal of Interpersonal Violence 481 (2010), *available at* http://jiv.sagepub.com/content/25/3/481.short. This article began by noting that there is an established connection between intimate partner violence victims' empowering experiences in the court system and their satisfaction with the court process. Based on that initial concept, the authors investigated the relationship between empowerment and victim depression, quality of life, fear, and intention to use the court system in the future. Results indicated that more empowering experiences in the court predicted improvement in depression and quality of life.

Intimate Partner Homicide Prevention

- The National Resource Center on Domestic Violence has posted a new collection of articles, research and other resources relating to Intimate Partner Homicide Prevention. http://www.vawnet.org/special-collections/DVHomicide.php

Caselaw Corner

G.C. v. R.S. and K.C., --- So. 3d ----, 2011 WL 4104731 (Fla. 1st DCA 2011). REASONABLE PARENTAL DISCIPLINE IS NOT DOMESTIC VIOLENCE. The father appealed a final judgment of injunction for protection against domestic violence. The petition for injunction was filed by his former wife on behalf of their minor child after the father administered a single spank on the child's buttocks in response to the child's disrespectful and defiant behavior. The appellate court confirmed that a spouse has standing to seek an injunction against domestic violence against a former spouse on behalf of the parties' children. However, the court also noted that the common law recognized a parent's right to discipline his or her child in a reasonable manner, and that in both civil and criminal child abuse proceedings, a parent's right to administer reasonable and non-excessive corporal punishment to discipline their children is legislatively recognized. The court held that under established Florida law this single spank constituted reasonable and non-excessive parental corporal discipline and, as a matter of law, was not domestic violence. The court also stated that reasonable parental discipline is available as a defense against a petition for an injunction against domestic violence and reversed the final judgment. September 16, 2011.
http://opinions.1dca.org/written/opinions2011/09-16-2011/11-2710.pdf

Parrish v. Price, --- So. 3d ----, 2011 WL 2278990 (Fla. 2d DCA 2011). EX PARTE TEMPORARY INJUNCTIONS UPHELD. The respondent appealed two temporary injunctions against domestic violence entered against him ex parte that were filed by his former wife on behalf of the parties' two adolescent children. At the hearing, the respondent moved to dissolve the temporary injunctions, arguing that the petitioner's petitions contained insufficient allegations and were based on hearsay. The court denied his motion and proceeded with the hearing. The petitioner presented her case and rested, but by then the scheduled hearing time had been consumed. The court extended the temporary injunctions until further order and scheduled another hearing for two weeks hence in order for the respondent to present his case. Before the date of the scheduled hearing, however, the respondent elected to appeal the non-final temporary injunctions pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(B).

The court held that the petitioner was authorized to petition for the injunctions on behalf of the children. Section 741.30 clearly contemplates that children are among those who may invoke the statute's protection from domestic violence, and Florida Rule of Civil Procedure 1.210(b), applicable to all civil cases, provides that a minor cannot sue on his or her own behalf. Rather, suit must be instituted by an appointed representative or a "next friend," such as a parent. Thus, a child's only vehicle for seeking protection under the domestic violence statute is through a petition filed by a next friend or representative. The court also held that the allegations were sufficient to support the temporary injunctions, however, the court offered no opinion on whether permanent injunctions were warranted. The petitions were based almost entirely on hearsay statements the children supposedly made to the petitioner. At the renewed hearing on the permanent injunctions, the court may consider taking testimony from one or both of the children in order to assess the accuracy of the allegations and to determine whether the respondent engaged in violence against his children. June 10, 2011.
http://www.2dca.org/opinions/Opinion_Pages/Opinion_Page_2011/June/June%2010,%202011/2D10-3484.pdf

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People wishing to contribute to future editions of the "Domestic Violence Review" should contact Andrew Wentzell at Wentzella@flcourts.org.