

Recommendations for Effective Components for an Ideal Criminal Justice Response to Child
Maltreatment.

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Recommendations for Effective Components for an Ideal Criminal Justice Response to Child
Maltreatment.

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Abstract

Throughout history children have been exposed to various forms of maltreatment. The United States (U.S.) has developed a systematic response to protect children from maltreatment over the years. However, the political ideology of the U.S. limits the involvement that government can have in the personal lives of its citizens. To many U.S. citizens, choices related to childrearing are significantly personal and are protected from the intrusions of government. Due to these beliefs, the U.S. system response to child maltreatment requires a high threshold for intervention. In contrast, Norway has developed a system based on the best interests of a child – or the child’s general well-being. The threshold for response in Norway is significantly lower than the U.S.; however, both governments’ responses have taken criticism from their citizens. Norway is criticized for overzealous enforcement, and the U.S. is criticized for under-enforcement. The following research compares the systematic responses of these two countries to child maltreatment. Using this information, recommendations will be given to promote a middle ground approach for the U.S. system that moves towards the lower threshold for response used in the Norwegian system. These changes would help fill the cracks in the U.S. child protection system that allow child abuse to occur and maintain a low level of government intrusion into private matters of citizens.

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Introduction

Brief History and Outline of Child Protection in the United States

To properly evaluate the criminal justice response to child maltreatment in any country, it is first important to understand the context in which this system operates, how the system has evolved and determined what constitutes maltreatment within these parameters. The response to child maltreatment has not always been an act of the government. Prior to 1875, there was no agency to represent the interests of children, and the criminal courts only handled cases of profound abuse (Meyers, 2008). In 1875, the New York Society for the Prevention of Cruelty to Children (NYSPCC) formed. The formation of the NYSPCC initiated the private sector era of child protection. The NYSPCC and similar private sector agencies responded to the issue of child maltreatment until the early 20th century.

In 1912, the federal government created the Children's Bureau as a federal response to child maltreatment which initiated the public-sector era of child maltreatment. This era was a response to advocates to ensure egalitarian responses to instances of child maltreatment. From 1921 to 1929, the Sheppard Towner Act provided monies for mothers and babies (Meyers, 2008). It was the first program developed to provide services for parents and assist with the early years of child development. Monies were provided to the state to allocate for education and assistance programs related programs such as early childhood education and medical wellness for mother and child.

There were other events, however, that promoted the transition towards a public-sector response. The Great Depression caused the charitable donations funding private sector response agencies to diminish greatly. Also, the New Deal provided millions of dollars in funding for states to support dependent families (Meyers, 2008). By 1967, nearly all states had a child

protection service, but there were few county-level agencies to respond to more localized incidents of child maltreatment (Meyers, 2008). The current system of response was established with Congress' passage of the Child Abuse Protection and Treatment Act (CAPTA) in 1974 (Meyers, 2008). CAPTA provided funding to improve the states' response to child maltreatment. The child maltreatment response in America evolved from a system of disinterest and limited resources to a large-scale system which focuses on the treatment of maltreated children. The public-sector response system evolved through a patchwork of legislative acts which left some cracks, or blind spots, that cause the system to be less effective in reaching its goals.

Federal law has also evolved over time to address the issue of child maltreatment, but the legal system also has holes which were not addressed during its evolution. The U.S. has always had laws related to assault, murder, and rape that could equally be applied to adults and children. Historically, these laws were not used for the protection of children but they have been available for prosecution of offenders who victimize children.

The U.S. legal system, in the early days of NYSPCC, worked towards a goal of treating maltreatment as a form of crime prevention (Thomas, 1972). The system was addressing maltreatment as a way of preventing juvenile delinquency and any changes to the system were reform based. Over time, the system evolved to allow for the NYSPCC to develop police powers and turned the system towards punitive measures against parents and institutions (Thomas, 1972). Law enforcement and courts were mandated to assist in complaints filed by the agency (Thomas, 1972). The current legal system of mandatory reporting and child-specific statutes was initiated during the 1960s and 70s (Thomas, 1972). The system has maintained the beliefs of

early law related to parents' rights to discipline and the preservation of the family as being in the best interest of society and children overall.

The ideals of the early system that remain today have left a legal loophole for maltreatment to be allowed. In the U.S., a certain level of physical abuse is legally allowed for the discipline of a child. For example, Wisconsin law states that

When the actor's conduct is reasonable discipline of a child by a person responsible for the child's welfare. Reasonable discipline may involve only such force as a reasonable person believes is necessary. It is never reasonable discipline to use force which is intended to cause great bodily harm or death or creates an unreasonable risk of great bodily harm or death. (Wis. Stat. Ann. § 939.45)

The concept of reasonableness is subjective. This allows for various interpretations of the term and may allow for a certain level of abuse towards children to be overlooked by the U.S. system.

According to Meyers (2011), the Child Protection Services (CPS) agencies in the US received 3.3 million reports of alleged maltreatment against 6 million children in 2008. The categories of maltreatment are neglect, physical and/or sexual abuse, and psychological, medical, and/or unspecified maltreatment (Meyers, 2011). The most common types of reported child maltreatment are neglect, physical abuse, and sexual abuse (Meyers, 2011).

Reports of child maltreatment enter the formal CPS system in several ways. Most of these reports begin as complaints to a local law enforcement agency (Meyers, 2011). However, reports can also be made to a county social services office. If a report is filed with law enforcement, a criminal investigation takes place to determine if there is probable cause that a crime was committed. If it is determined that probable cause exists, an arrest will be made and/or charges will be filed at the local district attorney's office. Whether probable cause exists

in the case, law enforcement officers will forward the investigation report to the appropriate county social services agency where the incident took place. The county social services agency reviews the case and determines if resources should be allocated for the child or family involved.

Incidents that are reported directly to county social services can be screened out by the caseworker without being reviewed by law enforcement. However, if a caseworker believes that a crime has been committed, the case is then turned over to the jurisdiction's law enforcement agency to investigate. The result of the investigation(s) – either through formal charges and/or a CPS report - determines the resources be provided to a victimized child and/or a family in need.

Therefore, the law has bearing on the effectiveness of programs designed to reduce maltreatment overall, prevent initial victimization, and reduce repeated victimization. The legal structure of the U.S. criminal justice system becomes a critical component of the country's response to child maltreatment. A violation of the law can initiate services that are mandated, while cases that do not meet the standard for criminal charges can only initiate voluntary service receipt. Perrin & Perrin (2007) point out that 30% to 40% of substantiated cases of maltreatment were offered no services by the by child protective services in 2003.

In contrast, other countries child protection systems take a different approach in responding to child maltreatment. One country that is significantly different then the U.S. is Norway. The structure of the criminal justice system in Norway takes a more punitive approach in its response to child maltreatment. The priority of the Norwegian system is child welfare instead of child protection. The Norway system has equal rights for children and adults, instead of preserving parental rights and family preservation in the U.S. The most significant difference between these systems relates to the threshold for response. The U.S. system is a high threshold response and the Norway system is a low threshold response (Križ & Skivenes, 2014). These

differences are the reason that the Norway system was selected for comparison. The hypothesis is that a middle ground can be found between these two drastically different responses which outlines a more ideal response for child maltreatment.

The following research first considers issues within the U.S. legal system that impact the effectiveness of the criminal justice response to child maltreatment. Then, the criminal justice system responses to maltreatment in Norway and the United States are compared to outline differences in law, case flow, and prevention and treatment programming for victims of child maltreatment and their families. Ultimately, this paper utilizes the information stemming from the country comparison to outline best practices for the U.S. response to child maltreatment. Practice recommendations are rooted in biosocial criminological and psychological theories. This research contributes to the criminal justice field by outlining improvements that can be made to the U.S. response to child maltreatment.

Methodology of Research

The information presented in this paper was collected from various sources. Data that was collected related to the structure of governmental agencies was taken in part from the information provided by the government agencies representatives. The academic research statistics and program evaluation data were retrieved from archived peer-reviewed professional journals on the various topics pertaining to child maltreatment. Published professional literature was research to determine aspects of current definitions and practices related to child maltreatment. Published academic materials were research to determine theoretical frameworks for response programs and attempts to determine why child maltreatment occurs and methods to stop the practice. The goal of this research is to combine these resources on the topic of child maltreatment and the system response of the U.S. and Norway to determine recommendations

for changes in the U.S. system. These methods of research were chosen in order to provide the most thorough and up-to-date information related to child maltreatment and the system response to child maltreatment.

Limitations of this Research

The use of previous scholarly research and governmental reporting in this analysis of the literature limits the scope of the information used to make recommendations to that which is already publically available. Furthermore, research on some specific aspects of the Norwegian child welfare system were not available as there were language and accessibility barriers. Therefore, the breadth and depth of information regarding the Norwegian child welfare system may be less detailed than that provided for the U.S. system.

Literature Review

What is Child Maltreatment?

In the U.S., anyone under the age of eighteen is considered to be a child. However, there are instances where a 17-year-old can be considered an adult. A 17-year-old can be considered an adult if they are an individual who is being investigated or prosecuted for a violation of state or federal law, ordinance violation, or civil law violation. Child maltreatment is not as easily defined as determining who is considered a child. Child maltreatment is a term designed to encompass the broad spectrum of actions which can result in victimization of a child. Child maltreatment has four general categories physical abuse, sexual abuse, and neglect.

Physical Abuse

The State of Wisconsin defines physical abuse to a child as in several ways. The first general definition of physical abuse of a child is “intentional causation of bodily harm” (Wis. Stat. § 948.03). The general description in the criminal statute outlines two elements required.

The first is the intent of the person who commits the act. A defense for those being prosecuted or investigated related to bodily harm is that the intention was not to harm the child but to discipline the child. The second element required is that some level of bodily harm was caused by the actions of the suspect or offender. Generally, the evidence of bodily harm is an injury or lasting pain after the action took place. The definition of physical abuse encompasses a broad range of behaviors that can be perpetrated on a child.

The bodily harm that can be caused in cases of physical abuse can be common bruising, redness swelling or lacerations caused by the actions of the offender or they can be significantly traumatic injuries which require medical intervention. The medical profession has identified several categories for traumatic injuries related to physical abuse abusive head trauma, abdominal injuries, throat injuries, thoracic injuries, fracture injuries and skin injuries related to abuse (Meyers, 2011).

Abusive head trauma is most prevalent in a child younger than 1-year-old (Meyers, 2011). The abusive trauma is commonly caused by two factors. The first is the violent shaking of the child which causes the child's head to swing forward and backward vigorously. The second method of injury is when there are a sudden deceleration and impact after shaking has occurred (Meyers, 2011). An example of this would be an infant that is persistently crying and a caregiver picks up the child. The caregiver, in this case, is unable to console the child and becomes frustrated shaking the baby to stop the child's crying. The child continues to cry after the shaking and is thrown down into a crib or other surface in frustration by the caregiver. The bodily harm which manifests from these actions can be scalp bruising, bleeding from under the scalp but outside of the skull, skull fractures, subdural and/or subarachnoid bleeding, cerebral edema, white brain matter injuries, hypoxic brain injury due to deprivation of oxygen, tears and

contusions of the brain itself, and injury to the nerve roots of the cervical spinal cord (Meyers, 2011).

Research by Bonnier, Nassagne & Evrand (1995) showed that children who suffer this type of abuse have early mortality rates of 15% to 25%. The children who survive the event manifest a wide range of injuries related to the incident. Severe learning disabilities can develop, paralysis of all four limbs, blindness, chronic seizure disorders and persistent vegetative states are possible outcomes in 80% to 90% of those that survive the actions of the offender (Bonnier, Nassagne & Evrand, 1995). The rate of inflicted head injuries has been estimated to be 7.1 to 24.6 per 100,000 children in the U.S and is the most common cause of fatal child abuse (Meyers, 2011).

The second most common cause of fatal physical abuse is abdominal injuries caused from punching, kicking or striking a child in the abdomen area (Cooper et al. 1988). The age of children with abuse inflicted injuries to the abdomen is between 2 and 3 years old (Ledbetter, Hatch, Feldman, Filgner & Tapper, 1988). Abdominal injuries are fatal in 40% to 50% of cases when the injury is inflicted due to abuse (Meyers, 2011). Throat injuries are another form of bodily harm that an abuser can do to a child. Throat injuries are commonly caused by forcing an instrument, utensil, finger or item into a child's throat (Meyers, 2011). Thoracic injuries occur in instances where the child is picked up by the perpetrator under the armpits and squeezed with a great deal of force or from receiving a direct blow to the front of the chest cavity both can result in fractures to the rib cage, punctured lungs and cardiac damage in some cases (Meyers, 2011).

The remaining common forms of bodily harm to a physically abused child are fractures and skin injuries. It is common knowledge that children can receive both fractures and bruising

from accidental incidents which are caused by the child falling or general play interactions with other children. However, in cases of abuse there are several types of concerning injuries related to fractures and skin injuries that are not generally seen in typical child development. The number one concern for determining between accidental fractures is the age of the child in question. In order, for children to receive injuries from accidental movement it commonly requires a child to be able to move. The rate of abusive fractures may be as high as 70% in children under the age of 1 (Leventhal, Thomas, Rosenfeld & Markowitz, 1993). The most common form of abusive fracture is the classic metaphyseal lesion (CML) (Meyers, 2011). CML occurs when it is caused by the flailing of the limb during abuse or the swift jerk of the long axis of the bone, causing a splintering of the rounded base at the end of a long bone of an arm or leg (Meyers, 2011).

Injuries to the skin of a child who is exposed to physical abuse can be bruising, burns, bite marks or lacerations. Lacerations can be caused by cutting the child with a sharp object. Bruising much like fractures are common injuries in early child development. However, bruising can be present when an implement is used to strike the child, ligature bruising can occur when restraints are used on child and bruising is a common manifest symptom in the previously outlined forms of bodily harm (Meyers, 2011). The location and shape of the bruise become the determining factor related to investigating abuse. For example, many children have bruising on their shins related to accidents and normal developmental incidents. However, a child with bruising on the abdomen may have sustained a significant abusive trauma.

Bodily harm can also be intentionally caused to a child through biting or burning the child. An adult biting a child and causing injury has no legitimate justification towards discipline or reasonableness. Therefore, bruising or lacerations which have a signature pattern of

an adult human mouth are clear red flags of abuse. A child who is burned by a physical abuser can be burned by several substances such as fire, heated surfaces, chemicals, and water. Burns constitute 10% of physical abuse cases and the age of victims in these cases tends to be between 13 to 24 months old (Rosenberg & Marino, 1989).

Sexual Abuse

Unfortunately, child maltreatment is not limited to solely physical abuses. In some cases, the abuse is sexual in nature. Child sexual abuse consists of sexual penetration, sexual touching, and non-contact sexual acts related to acts of sexual exploitation or voyeurism (Meyers, 2011). Sexual penetration includes the insertion of an item into a child for sexual gratification purposes or insertion of any of the child's body into the perpetrator's body (Berliner, 2000). U.S. law does not allow children to give sexual consent for any act. Penetration abuse consists of several acts including vaginal, anal and oral sex. Abusers will either make the child perform these acts on them or perform the acts on the child. Sexual touching consists of any contact with a child for sexual gratification (Wis. Stat. § 322.120(f)(2)). Sexual touching can be the touching of genitals areas of a child or force a child to touch the genital areas of the perpetrator. The final category of sexual abuse relates to sexual exploitation. A child can be forced to take part in the production of sexually explicit contact which is either possessed by the perpetrator or distributed by the perpetrator. Some children experience sexual abuse when they are forced to view sexually explicit material or watch the perpetrator engage in sexual acts.

Neglect

The final category of child maltreatment relates to neglect of a child. Meyers (2011) points out that neglect can be defined from various perspectives such as psychological neglect, medical neglect, and neglect which causes the legal system to activate. For the purpose of this

research, the definition of neglect will focus on the legal definition of neglect. Wisconsin defines neglect by two key elements. The first element requires that the perpetrator be responsible for the welfare of the child. The second element relates to the harm caused by the neglect (Wis. Stat. § 948.21). Wisconsin sets penalties based on the severity of the harm caused by neglect. Neglect which causes physical harm is a felony in the State of Wisconsin. U.S. statutes require a reasonable potential for physical harm or for physical harm to be caused for an action to be considered neglect.

U.S. Response to Child Maltreatment

In the U.S., incidents of child maltreatment are handled by the Child Protective Services (CPS). CPS agencies are based in state and county governments in the U.S. County CPS agencies handle the majority of cases related to child maltreatment. However, in criminal investigations which cross county or state borders state and federal law enforcement agencies can become involved in the criminal investigation. However, response related to the child will be handled by the county agency in the jurisdiction where the child resides. CPS agency case flow consists of seven stages (1) intake and screening (2) initial investigation/assessment (3) family assessment (4) service planning (5) service provision (6) evaluation of progress (7) case closure (Meyers, 2011).

Intake and screening

The initial reports of child maltreatment in the U.S. can be submitted through statewide hotlines or directly to the local CPS agency in the jurisdiction of the incident (Meyers, 2011). Once a report has been filed within an agency the system response begins. The first stage of response is a determination if the case meets statutory requirements for a criminal investigation. CPS workers need to assess the elements of the case that were described and determine if

guidelines for child maltreatment have been met for intervention (Meyers, 2011). Once a determination is made related to a case the CPS agent needs to determine if a face to face meeting with the child and family (Meyers, 2011). Finally, the severity of the allegations of child maltreatment needs to be determined in order to decide on the appropriate timeline for intervention and interviews related to the allegations. The report can be screened out at this point in the process or further actions can be taken. A case that meets the guidelines and/or legal threshold for child maltreatment requires a response within 24 hours if the case is high priority or 14 days for low priority cases (Meyers, 2011).

Initial investigation/assessment

After the completion of the intake and screening process, CPS workers need to determine whether or not the case requires collaboration with a multi-disciplinary team for investigation or if the case can be investigated solely by the caseworker. Cases which meet the criminal requirements for child maltreatment will require the CPS worker to collaborate with law enforcement to investigate the incident. Meyers (2011) points out key decisions to be made in the investigation and assessment stage of the process: (1) did maltreatment occur which rises to the threshold of criminal behavior? (2) Is the child currently in danger of victimization? (3) What is the probability that the child will be victimized again? (4) Are services needed to keep the child safe, reduce potential risks, or address any effects of the current/past maltreatment? (5) Does the child need to be removed from the home for safety reasons?

Family assessment

Based on the investigation and assessment the CPS worker needs to perform an assessment of the family to determine several factors. The most important factor relates to the safety of the child within the family. Determining how protected the child is from further

victimization by staying with the family. It is important to note that children can be victimized by non-family members. Therefore, the safest place for the child may be within the family. However, in cases where a family member is the one who maltreated the child, the home may not provide protection for the child but instead provide opportunity for further victimization. Offenders may lash out against the child for the disclosure and further victimization may occur. In order to protect the child, they may need to be placed in care outside of the home.

Service planning

After completing the initial assessment and investigations have taken place into the incident, CPS workers need to determine a plan of action for the child who was victimized. The case may involve several different members of a multi-disciplinary team at this point in the process and a plan needs to be made to coordinate all efforts of the investigation towards the goal of protecting the child. Service planning is done on a case by case basis in order to best intervene and target areas of concern related to the investigation. The service plan should determine the outcomes that are needed for the child and family, goals that will help to reach the desired outcomes, interventions and service which will support these goals, the best provider for these interventions, and the timeline for progress evaluations (Meyers, 2011).

Service provision, evaluation of progress, and case closure

At this stage in the process, the CPS worker becomes the facilitator and coordinator of services to the family and/or child. The goal at this stage is to make the best selection for services which are evidence-based programs proven to provide the best service to the family and/or child (Meyers, 2011). The services selected by the CPS worker and the involvement of the family and/or child in these programs need to be continuously evaluated to measure progress. The success or failure of the service provided is measured based on the safety of the child,

degree of achievement on a family-level, changes in the risk assessment of the household or child, and the effectiveness of services to on the effects of the child maltreatment on the victim (Meyers, 2011). Based on this evaluation a determination can be made to close the case or reevaluate the service plan and execute a new service plan to improve or initiate progress towards case closure.

Norwegian System Response to Child Maltreatment

The country of Norway has established a system response for child maltreatment which has distinct differences to the United States program. The differences between these systems can be found in the core principles of programs, the law of each system, and the agency structure of the systems. The Norwegian system has a shorter history than the United States system and, therefore, has had fewer elements of system response to weave together. The United States government has federal, state, county and municipal governments which need to be intertwined to facilitate resources and protection to children. The Norwegian system only has federal, county, and municipal service to consider in its process. The Country of Norway does not have states like the government in the U.S. The Norwegian system of child protection adopted the United Nations (U.N) Convention on Rights of the Children in 1991 which was followed by the implementation of the Child Welfare Act in 1992 (Sengupta, 2013). The U.N. Convention on Rights of the Children outlined the rights of children to be adopted by the signing nations of the U.N. Sengupta (2013) describes the evolution of the Norwegian system over the last thirty years; there have been three distinct stages of response to child maltreatment in Norway: protection, prevention, and promotion.

Definition of child maltreatment in Norway

The Norwegian system has criminalized all forms of physical abuse to children and removed the legal privilege afforded to parents in the United States. As mentioned previously, Norway adopted the recommendations of the U.N. Convention on Rights of Children in 1991. The scope of the U.N. convention was to establish rights for children living in UN countries.

Article 19 of the U.N. convention on Right of Children states:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. (Office of the High Commissioner United Nations Human Rights [OHCUNHR], 1990)

Article 19 takes a clear stance related to all forms of physical or mental violence against children and establishes that children have a right to be protected against all forms of violence. Norway has adopted these rights into legislation.

The Norwegian system is designed around the idea of early intervention to avoid further harm towards children (Skivenes & Thoburn, 2016). The threshold for what is required for early intervention is considerably lower than the U.S. In-home care and social services intervention can take place in cases that do not meet the level of guidelines or legal intervention required for a U.S. intervention. Intervention in the U.S. is the last resort effort to avoid serious harm to the child. In Norway, intervention is a form of rehabilitation which can correct behavior before it has a chance to develop into significant harm (Skivenes & Skramstad, 2015). The threshold for rehabilitative behaviors towards prevention is significantly lower than prevention of serious harm.

Intake and screening in Norway

The low threshold for intervention in Norway has a significant impact on the intake and screening process. Concerns for a child's well-being and reports of potential abuse are filed with the municipal agency where the child resides (Norwegian Child Welfare, n.d.). These of municipal jurisdictions provide more available outlets for individuals to report versus the county agency system in the U.S. Once a report is filed it is screened based on whether the incident or situation reported is in best interests of the child's welfare. A determination is made whether intervention is needed will be made by the municipal agency.

Initial investigation/assessment

Once a determination is made to move forward with a report the investigation stage of the process begins. The individual who reported the incident may be contacted and the parents of the child will be contacted by the Municipal Child Welfare agent. A meeting will be arranged with the child and an assessment is done of the child's well-being (Norwegian Child Welfare, n.d.). It is important to note that even though the threshold is low in the Norwegian system. Serious reports of physical and sexual abuse are reported as well. The same process of screening needs to take place. However, the unique element in the Norway system relates to lower threshold responses. In the U.S. system, a lower threshold case is screened out and the process moves forward to case closure (Meyers, 2011). In Norway, that case may still require a response from the system. Due to the broad spectrum and nature of Norwegian complaints the assessment stage in initial investigation also includes the family assessment to determine the safety of the home and if staying in the home is in the best interest of the child (Norwegian Child Welfare, n.d.).

Service planning

Due to the low threshold of the Norwegian system service planning by Child Welfare agents can involve a large spectrum of services. For cases that low in severity or potential harm to the child in-home services are provided to the family. In-home services can be guidance or advice for the family, parent groups for support, an assigned support contact for parents or the child, financial support for kindergarten, financial support for daycare or child leisure activities, and parent relief on weekends or home visits (Norwegian Child Welfare, n.d.). Cases which are more severe can initiate family group conferences. Family group conferences are arranged meetings with the parents of the child where the extended family is brought in as a support system for change and accountability (Norwegian Child Welfare, n.d.). Cases, where a determination was made that it was not in the best interest of the child to stay at home, are reviewed by the County Social Welfare Board for approval (Norwegian Child Welfare, n.d.). Children under the age of 12 are placed into foster care and children between 12 and 18 are placed in residential child care institutions (Norwegian Child Welfare, n.d.).

Service provision, evaluation of progress and case closure

Finally, once a Child Welfare agent has completed an investigation, assessment and service plan the service provision, evaluation of progress and case closure aspects of the process begin. Norway's system operates like the U.S. in these stages of the process. The goals of the Norwegian system are (1) the child's best interest (2) family preservation (3) permanency (Križ & Skivenes, 2014). The evaluation of progress and effectiveness of services are measured against these goals. If the child's best interests are being met by the family a case can be closed. In cases where the goals are not being met, the process moves back to the service plan and assessment stage to determine the child's best interest and restart the process under new services.

Comparison of Response

Key Issues in U.S. Response

The first key issue to address in the United States system response to child maltreatment is the issue of legal corporal punishment or physical discipline in the United States. The United States still allows for physical violence against children that is considered “reasonable” for the purpose of discipline by a parent or guardian (Wis. Stat. Ann. § 939.45). The United States is one of the countries that signed the U.N. treaty related to child rights but did not ratify the treaty. This choice allowed for corporal punishment to be a continued practice in the U.S. The primary reason that the U.S. does not criminalize corporal punishment against children is that the practice remains prevalent in American society. Gershoff (2013) points out that 85% of teenagers reported being spanked or slapped by their mothers. The idea of pushing forward legislation that 85% of parents would be against would be extremely unpopular for a politician. The primary advocates for the continued use of corporal punishment are religious based proponents. Pingleton (2014), a clinical psychologist and minister, advocates for the use of corporal punishment as a legitimate means of correcting children’s behavior. Pingleton (2014), states that “the gentle sting of a spanking is connected to the greater and often long-term pain of harmful choices. Simply put, prevention is easier than cure” (p. 1). Pingleton’s (2014) views on child discipline practices are similar to many in the U.S.

The foundation of these practices begins to erode with the application of modern biological research. Children make impulsive decisions due to the underdeveloped prefrontal cortex and overactive amygdala structures in their brains (University of Rochester Medical Center (URMC), n.d.). Children are not rational decision makers consistently calculating pain versus pleasure throughout their day but are instead operating out of primary biological impulses.

Biological impulses towards fear and pain avoidance are present in the amygdala but the rational to extrapolate long-term consequences is not present during childhood (URMC, n.d.). This is a primary reason why modern research has shown the effectiveness of corporal punishment on creating short-term compliance. Gershoff (2013) highlighted a study that showed that spanking was equally as effective as placing a child into time-out related to short-term compliance. However, spanking over time has been found to be ineffective in gaining long-term compliance (Gershoff, 2013). Despite the issues related to effectiveness physical punishment remains a practice in the United States. Miller-Perrin & Perrin (2007) point to surveys of U.S. parent's show that 75% to 90% use some form of physical punishment.

The legal privilege provided to parents by the U.S. government and the high prevalence of physical punishment in U.S. households significantly impacts the system response for child maltreatment in two ways. The first impact is related to the biggest critique of the U.S. child maltreatment response. Križ & Skivenes (2014) point out that one of the biggest criticisms of the child protection system response is the high threshold for system response. The legal privilege allows for a reasonable degree of physical punishment to be administered to a child. Because of the ambiguity of reasonableness, early intervention is not available to many families in the U.S. To warrant an intervention from the system, a traumatic event must have occurred. The allowance for children to be physically struck sets a bar for what is considered harmful to a child and intervention related to all aspects of child maltreatment. Instead of early intervention, the system is required to stand by until the problem becomes worse or provide service that has voluntary participation. Gershoff (2013) points out that most substantiated case of child abuse started as an attempt at physical discipline that escalated towards abuse. A study by Fréchette, Zoratti & Romano (2015) found that children who are spanked are 60 times more likely to

experience physical abuse than children that are not spanked. Waiting exposes children to more severe forms of maltreatment and abuse. Late intervention is contrary to the system goals of child protection.

The final issue within the system response relates to the ideology of parental rights over child rights. As stated previously, U.S. parents are given legal privilege over children. Murray Straus (2001) a professor of sociology states “Is it unrealistic to expect husbands not to hit their wives? Why is violence unacceptable between strangers but acceptable between parent and child?”. The criminal justice system has removed the practice of corporal punishment from the corrections system and police officers are required only to use physical force against a person for the defense of themselves or others. Physical force is never to be used by an officer as a means of punishment. Yet parents are afforded the legal privilege of administering physical punishment to children for acts that would not constitute a legal, physical response from criminal justice system actors. As a society, the US has decided that it is a violation of human rights to administer physical punishment to an adult that has sexually assaulted, murdered or physically abused a child but administering physical punishment to a child for defying a parent’s rules is acceptable.

There is a second issue that results due to the U.S. system’s preference for parent rights over child rights. The Supreme Court in *Parham v. J.R.*, (1979) states “the natural bonds of affection lead parents to act in the best interest of their children” as a justification for limited constitutional obligations of the state over the parent-child relationship. Although, this may be true in the general population of the U.S., the unfortunate reality is that the people who abuse their children do not demonstrate these natural bonds of affection. The Supreme Court in *Parham v. J.R.*, (1979) decided that parents have the right to voluntarily commit their children to

mental health institutions in Georgia. The case determined that it was not a violation of constitutional rights to due process for minors to be initially committed to a mental health institution (Parham v. J.R., (1979). The U.S. system is founded on the concept that parents generally know what is best for their child and the child protection system has not evolved past this concept. Collins (2007) points out that the legal system has adopted preferential treatment related to interfamilial issues based on a “romanticization” of the parent-child relationship. Collins (2007) points out that states have maintained incest statutes which allow for child sexual abuse to be charged at a lesser penalty than child sexual abuse by a stranger. The preferential treatment of parents by the system can result in cases where a child meets the high threshold for response by the system but is placed back into the care of the abusive parent or family member. Collin et al. (2009) found that 30% of children reunified with their parents after being removed and placed in foster care reported new incidents of substantiated maltreatment.

Differences in U.S. and Norway Response

Structure Differences

One distinct difference between the systems relates to the structure of the systems. The CPS program in the United States is based at the county-level. Each state is responsible for setting up county agencies to handle reports of child maltreatment and the delegation of resources. The Norwegian system is structured with municipality based systems. Municipality Child Welfare Service (MCWS) agency are responsible for generating cases and presenting their findings to County Social Welfare Boards (County Child Welfare Boards and Social Affairs (CCWBSA), n.d.). The use of municipal agencies versus county agencies creates a more direct community intervention and lower case volume for workers to manage. U.S. county agencies

are handling cases from the large municipalities in their county jurisdiction but also all rural community cases as well.

The Norwegian system is currently at the promotion stage of child welfare. The U.S. system is rooted in a protection based system. The first distinction between these programs sets the paths and justifications for practices of both programs. The U.S. system is designed to intervene in extreme situations for the protection of children and the Norwegian system is designed for early intervention to promote the well-being of children prior to the need of protection from the state (Križ & Skivenes, 2014). Križ & Skivenes, (2014) defines the U.S. and Norwegian systems as child protection systems and family service systems. These differences point to core ideology distinctions between the two systems. The three elements of the Norwegian family service system are (1) the child's best interest, (2) family preservation, and (3) permanency (Križ & Skivenes, 2014). The three elements of the U.S. child protection system are (1) to ensure child safety, (2) permanency, and (3) child and family well-being (Križ & Skivenes, 2014). Ultimately, this results in a Norwegian system that is focused on the child and a US system that is focused on the preservation of the family.

Threshold for response

The CPS system in the U.S. has a screening process at its initial stage. Reports of child abuse or neglect can be filed with state referral agencies or county agencies (Children's Bureau, n.d.a). Once a report is filed a stark difference in ideology is present in the screening process. The U.S. screening process is based on determining if the child has experienced a significant harm or is at risk of a significant harm. The Norwegian system is working towards the best interest of the child and determining the child's welfare. A case is far more likely to meet the screening requirements of the Norwegian system with the lower threshold for intervention.

Corporal Punishment

Norway has a complete ban on the use of corporal punishment against children. The United States allows for a reasonable level of force to be used against a child for the purpose of discipline. The debate over corporal punishment continues in the United States. The impact that parental privilege has related to the comparison of these programs relates to deployment of resources. The goal of the U.S. protection system is to “determine if a child has been harmed or is at risk of harm (a disposition), reduce the risk and increase the safety of the child, and determine the need for services to support the family” (Children’s Bureau, n.d.b). The Norway family service system is based on the goal to

ensure that children and adolescents who are living under conditions that represent a risk to their health and/or development receive the help they need when they need it, and to contribute to children and adolescents growing up in safe, secure and caring conditions. (Norwegian Child Welfare Services, n.d., p. 1)

The difference in goals of these two systems impacts the threshold for the response from the system. The family service system has a low threshold for response and the protection system has a high threshold for a response (Križ & Skivenes, 2014). Threshold has a huge impact on a systems program development, access, and deployment. Low threshold provides access to programs that are designed for early intervention and high thresholds limit access to early intervention programs. These programs may be available to the protection system but are going to be voluntary versus mandatory due to the low threshold. Program design in protection systems is going to be towards dealing with the acute and chronic trauma that has already occurred versus preventing these traumatic situations.

Legal Rights

Norway ratified the U.N. Convention on Rights of Children in 1991 and by doing so provided equal rights to children and parents. Norwegian Child Welfare (n.d.) states:

The Child Welfare Services must base its actions on the best interests of the child.

Sometimes the child's best interests(sic) conflicts(sic) with those of the parents. The Child Welfare Services' first duty is to provide help and support to the parents so that they can be good carers(sic) for their children. If such measures and initiatives fail to produce the desired result, or if the problems experienced by the parents for whatever reason are insurmountable, an alternative may be to relocate the child or children outside the home for a shorter or longer period. (p. 1)

The practice has allowed for earlier intervention and a lower threshold for initiating service or a response from the child welfare system. Some argue that the Norwegian system has placed the rights of children over the rights of parents in some cases. Roy (2016) explains that in the last five years three Indian families have had their children taken into custody by the Norwegian child welfare system under accusations of abuse. The Indian government is being requested by the parents of the child to intervene on their behalf work with Norwegian government official and have the children returned to their parents (Roy, 2016). Norway has been criticized for a low threshold for severe intervention. A summary of the differences between the child maltreatment systems of the U.S. and Norway can be found in the Appendix table 1.

System Recommendations

After conducting a review of existing literature and comparing the literature related to the child maltreatment response systems of the U.S. and Norway the following recommendations can be made to improve the U.S. system response. It is important to note at this point in the

research that there is an understanding that a system as large as the U.S. child protection system cannot change drastically over a short period of time. Therefore, recommendations that are made in this paper have taken the slow change into account versus recommendations of drastic change that are not probable for the system. There are several recommendations that are made related to the comparisons that proceeded this section. See appendix for a table summarizing the following recommendations. Recommendations for the structure or the system, threshold for response, legality of corporal punishment and legal rights recommendations are made in this section of the paper based on the comparisons of the issues within the U.S. system and a comparison of the Norwegian system response.

Structure Recommendations

The Norway child maltreatment response is structured around a municipal level Child Welfare Service and the U.S. system uses the county level response. A change in the U.S. system towards the municipal system is needed to improve the response from the system in several ways. The first result of changing the structure from county to municipal would be the distribution of caseload across a larger staff. A study on the current U.S. system response determined that case-carrying staff needed to be increased by 50% to meet in-home response needs (Kaye, Shaw, DePanfilis & Rice, 2012). Providing additional staff in municipal locations would allow for caseload and workload dispersal and better service provided to children.

The structure recommendation would be to follow the same jurisdictional system that is in place in law enforcement. County agencies have jurisdiction over the entire county and municipal agencies have jurisdiction over the cases that are generated within the city limits. Not all municipalities have law enforcement agencies. The smaller cities, villages, and townships contract the county agencies to provide law enforcement services. The same system would be

recommended for child protection agencies. The county agency would provide services to families and children in the rural communities and the large municipalities would be responsible for creating and maintaining a child protection service agency within the municipal jurisdiction. The structure change would allow for caseworkers to spend more time with each service plan and evaluation.

The multijurisdictional level approach would expand on the system benefits of the Norwegian system. Although, the decision to have a municipal level response in Norway is based on their government structure and not the optimization of resource response the model provides a model for improvement. City police departments are formed when municipalities become too large for a county sheriff's office to properly manage, the same logic seems to apply to county child protection agencies. Once a municipality reaches a certain level or the constituents in that jurisdiction decide it is appropriate a municipal child protection agency formation seems to be a logical step to improve service. Oversight for the municipal agency would be provided by the county circuit court in which the city resides.

Threshold Response Recommendations

The threshold for response needs to be lowered in the U.S. system. Maintaining a system response that requires serious harm or the risk of serious harm allows for a large portion of children to be without needed services. There are several reasons why the threshold for response needs to be lowered or different pathways need to be established for diversion programs and services to initiate services at an earlier point in the process. Biosocial criminologists point to several issues related to child maltreatment.

The first issue relates to biological impacts of prolonged chronic stress in maltreated children. Exposure to abuse and neglect in early childhood disrupts the development of the

neocortex and hippocampus, while the amygdala and corpus callosum are significantly smaller in abused children versus non-abused children (Chugani et al., 2001). These sections of the brain are associated with aggression, violence and other anti-social traits (Beaver, 2016). A concerning study related to the impacts of child abuse and neglect on children was discovered in research related to telomere length. Telomeres are sequences of nucleotides at the end of chromosomes which are used to measure biological age, shorter telomeres result in an increase in biological age (Shalev et al. 2013). Findings demonstrated that children with repeated exposure to violence resulted in a reduction of telomere length like that caused by smoking (Beaver, 2016). This demonstrates that there are levels of harm that cannot be measured during a face-to-face assessment of a child in need. The current system works well to identify the signs of serious harm which manifest physically but there is a gap where chronic damage can take place which goes unnoticed.

One metric to consider when determining the success of the response to child maltreatment in the U.S. is delinquency. Bates & Swan (2014) point out that experiencing maltreatment early in life is one of the few empirically tested correlates to later delinquency and even adult crime. Bates & Swan (2014) also point out that Nurse-family partnerships programs have been successful in deterring delinquency and preventing maltreatment early in life. Nurse-family partnership programs center around two stages of intervention pregnancy and first two years of life of the child. Nurse-family partnerships are programs where nurses conduct home visits of expectant mothers who are considered high-risk. The risk assessment of these mothers is determined by the age of the mother, the marital status of the mother and the economic status of the mother (Olds, 2006). An example of a high-risk mother would be a teenage expectant mother, with a teenage partner, low economic status, and poor support system. The nurse

educates the mother during pregnancy on best practices for a healthy pregnancy for mom and baby and after the birth of child, the nurse works to educate the mother on proper child development and building a support network to raise the child. These programs have demonstrated women who participate in these programs are less likely to physically abuse or neglect their children versus control groups (Beaver, 2016). Expansion of these types of programs is needed to close the gaps of the U.S. child maltreatment response. The expansion could include home visits from pediatric nurses at critical stages of development or in response to critical incidents in life.

Another way the system has adapted to address the gaps created by the high threshold for intervention through differential response (DR) programs. DR programs were developed to help mitigate the problems created by the high threshold of the U.S. system by providing two separate pathways of response to child maltreatment (Kyte, Trocme & Chamberland, 2013). The first pathway is the traditional response towards the risk of serious harm or the presence of serious harm. The second pathway is a service-oriented pathway which seeks to assist the family and prevent low-risk situations from becoming high-risk situations (Kyte, Trocme & Chamberland, 2013). Not all states have adopted the DR method towards system response. Some states are in initiating and studying pilot programs and others have discontinued the programs (National Conference of State Legislatures, 2015). DR programs provide a strong step towards providing a response that fills in the gap created by the high threshold child protection system. However, some states are not implementing these programs and without increases in staffing to handle the additional workload created by these programs, the programs are not successful in meeting service goals. As stated earlier, Kaye, Shaw, DePanfilis & Rice's (2012) research indicated a staffing increase of 50% would be needed to properly meet the goals of increased in-home care

programs such as the DR programs. Coupling the municipal staffing recommendation, expansion of nurse-family partnerships and DR programs is a necessity for an improved response from the system.

Corporal Punishment Recommendations and Legal Rights Recommendations

Corporal punishment and the precedence of parental rights over child rights are two issues that work collectively. Corporal punishment allows for a level of violence to be administered on children in the U.S. The research indicated that the use of corporal punishment is ineffective for long-term discipline correction and equivalent to a time-out in short-term discipline correction (Gershoff, 2013). However, despite the academic research 85% of parents in the U.S. still utilize corporal punishment for discipline (Gershoff, 2013). Sunstein (2014) points out that people tend to give undue weight to the short-term. Perhaps the short-term benefits of correction in behavior are why people persist in using corporal punishment prevalently in the U.S. Sunstein (2014) gives examples of short-term bias in decision making related to smoking, texting and driving, and unhealthy food choices. Parents that utilize corporal punishment are ignoring the academic research related to potential risks and effectiveness of the practice. Parents are allowed to make this choice without input from the child or representation of the child's interest in the argument due to the imbalance between paternal rights and child rights.

Norway resolved this issue by ratifying the U.N. Convention on the Rights of a Child. By establishing rights for children equal to rights of parents Norway removed the imbalance between parents and children legally. After implementing equal protection from corporal punishment for children that is afforded to adults, corporal punishment was made illegal in Norway. The U.S. is not going to criminalize corporal punishment or rectify the imbalance

between adults and children. There are too many parents that are currently in support of corporal punishment and advocate for parental rights. Sunstein (2014) points out that in American culture the government intervention on topics which are believed to be a personal choice are considered tyrants, national nannies, and meddlers.

The recommendation based on this research is towards what is considered a paternalistic nudge. A change in legislation or law is not likely to be forthcoming. However, programs which further educate on the risks and limited benefits of corporal punishment could begin to move society away from the practice. Wallace & Roberson (2015) outline the personalistic theory in victimology which posits that child maltreatment is the result of characteristics in caregivers. There are four significant characteristics that are outlined (1) inability to plan (2) lack of knowledge (3) lack of judgement (4) lack of motivation (Wallace & Roberson, 2015). A proper program would seek to educate caregivers in these four categories to limit the probability that maltreatment will reoccur or escalate. The expansion of nurse-family partnership programs would provide an inlet to provide this education to parents. Similar to the process of public education related to tobacco use the same system of education and awareness could be used related to corporal punishment. Sunstein (2014) described this practice as soft paternalism versus hard paternalism. The Norwegian system implemented hard paternalism practices by criminalizing corporal punishment. Soft paternalism is more likely to be received in the U.S. and have a greater potential to change behavior.

Summary and Conclusion

This research started with a review of the history of the child maltreatment response in the U.S. In the beginning of child protection programs in the U.S. the focus was on providing funding towards pregnant mothers and infants for education on caregiving and wellness (Meyers,

2008); however, the system has evolved to be heavily focused on the primary objective of child protection. However, this has created a high threshold for response from the system which has caused a great deal of criticism. Criticisms are legitimized by the fact that 30% to 40% of substantiated cases of child maltreatment in the U.S. were offered no services by child protective services in 2003 (Perrin & Perrin, 2007).

A comparison of the low threshold response of the Norwegian child welfare system response was outlined. Four aspects of significant differences resulted from this research. First, a structural difference was identified between the two systems. The second difference identified was the difference in threshold response. The U.S. system was found to have a high threshold for response and the Norwegian system was found to be significantly lower. The third difference relates to the corporal punishment. The U.S. legalizes corporal punishment for discipline of children and Norway has made these actions illegal. The final difference between the systems related to the legal rights of children. The Norway system has provided equal rights for children and adults and the U.S. system still maintains legal preference for parents over children.

Recommendations made to improve the U.S. system response to child maltreatment based on the comparison of the two countries response differences and the key issues in the U.S. system response. The first recommendation was to adopt a municipal level structure for the child protection system. The structure for child protection would mirror the structure of municipal law enforcement in the U.S. to better handle caseloads and better meet the needs of in-home program responses. The second recommendation relates to the threshold of response. The U.S. system needs to address the large gaps that are created by the high threshold response. Biosocial criminological research describes the hidden damage to children that can go unnoticed by using a high threshold response.

The recommendation of this research is to expand the current programs of Nurse-family partnerships and differential response. Nurse-family partnership programs would be expanded to include more children and parents than high-risk pregnant women and their children under the age of one. Instead the program would follow these cases and initiate in cases of low threshold significance to assist and educate caregivers on child development, proper care, and effective long-term discipline practices. The third and fourth recommendations are linked together because the issue of corporal punishment and equal legal rights for children and caregivers are linked together. The recommendation of this research is towards a soft paternalistic approach to these issues related to education and training in the problems with corporal punishment and benefits or providing equal rights to children. An education and training system like the smoking cessation programs would be recommended to improve these issues.

In conclusion, throughout history children have been subject to various forms of maltreatment from caregivers. Aristotle and Plato both urged for the killing of infants born with birth defects (Wallace & Roberson, 2015). Medieval parents were documented to have severed limbs from children to improve the child's income as a beggar (Wallace & Roberson, 2015). The evolution of the Norwegian and U.S. systems is a testament to the evolution of standards of child protection throughout history. The Norwegian system has moved past child protection and to a child welfare focused response, while the U.S. system is exhibiting a slow move towards child welfare from its current child protection focus. However, the application of the recommendations of this paper would be a step towards a system which limits its intrusion into the personal lives of citizens while still protecting the innocent among us and future generation

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Appendix A

Table 1.

Differences in Norwegian and U.S. responses to child maltreatment

	United States	Norway
Structure Differences	<i>County-level agencies</i>	<i>Municipal level agencies</i>
Threshold for response	<i>Screens for cases of serious harm</i>	<i>Screens for child welfare and makes determinations based on the best interest of the child</i>
Corporal Punishment	<i>Legal</i>	<i>Illegal</i>
Legal Rights	<i>Parent Rights have precedence over child rights</i>	<i>Parents rights and child rights are equally evaluated</i>

Table 2: Recommendations Summary

	United States	Norway	Recommendations
Structure Differences	<i>County-level agencies</i>	<i>Municipal level agencies</i>	Creation of municipal level agencies within the U.S. system response
Threshold for response	<i>Screens for cases of serious harm</i>	<i>Screens for child welfare and makes determinations based on the best interest of the child</i>	Funding towards expanding and implementation of Nurse Family Participation programs and differential response programs in all areas will provide the non-punitive tools to respond in lower threshold cases.
Corporal Punishment	<i>Legal</i>	<i>Illegal</i>	Maintain legal status but provide education and resources to begin changing behavior away from corporal punishment like smoking cessation programs.
Legal Rights	<i>Parent Rights have precedence over child rights</i>	<i>Parents rights and child rights are equally evaluated</i>	Soft paternalism approach to the politics of child rights versus parent rights