A Road to Hope: The Path to Defining Child Torture to Protect the Children

Mary Ahan
American University Washington College of Law

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By: Mary Ahan

On August 6, 2006, a six-year-old child greeted his mother by walking on his toes.\textsuperscript{1} As punishment, his mother made him stand on his toes in a corner for an hour, and when the child again walked on his toes two hours later to greet his mother’s boyfriend, the terror began.\textsuperscript{2} The boyfriend put the child back in the corner for another hour. Starting to buckle under pain, the child could not stand for another hour and the boyfriend began spanking the child with a spatula.\textsuperscript{3} The child was spanked approximately fifty times by both the mother and boyfriend for an hour.\textsuperscript{4} The child was forced to continue to stand for four hours while the spankings intensified, and then his hands were duct-taped together and held in the air by a scarf.\textsuperscript{5} After enduring over one hundred spankings, the mother pulled the child’s hair, and the child fell and hit his head on the floor’s base molding.\textsuperscript{6} The child’s hands were duct-taped behind his back and he was placed in an unlit basement for four more hours.\textsuperscript{7} The boy was hospitalized for seven days; he was treated for bruising to his arms and face, severe tenderness in his arm, a laceration to his scalp, and two large, oozing wounds on the buttocks, so severe that they were consistent with burns.\textsuperscript{8} The child was brutally tortured, all this because his guardians felt inclined to execute their wrath on the innocent child for his inability to comply with their impossible demands.

Child abuse is an epidemic that plagues the United States. Each year, since 2002, approximately 900,000 American children were identified as victims of child abuse.\textsuperscript{9} In 2006 alone, an estimated 1,530 children died due to child abuse and neglect.\textsuperscript{10} Every state and territory in the United States has child abuse laws proscribing certain physical, sexual, emotional/mental, neglect, and abandonment acts,\textsuperscript{11} but these child abuse laws lack the structure to efficiently prosecute offenders. Although state laws proscribing child abuse exist, child abuse still continues to grow in severity, affirming the position that an additional measure is needed in an attempt to stop child abuse. That measure is the development of a medical definition of child torture and harsher penalties. This editorial is designed to draw attention to the plight of children who are currently being abused by discussing the current definition of child abuse and the emergence of a medical definition of child torture.

What Is Child Abuse?

In the United States, there are at least fifty statutory definitions: one for each individual state, the federal government, the District of Columbia, and the U.S. territories. The federal government lays the groundwork of the child abuse crime as “a crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, neglectful treatment, or maltreatment of a child by any person.”\textsuperscript{12} The statutes in all fifty states, except Washington, and the statutes in all U.S. territories define child abuse to include mental injury or emotional abuse.\textsuperscript{13} Most states structure their child abuse laws similarly to that of Michigan, which defines child abuse as “harm or threatened harm to a child's health or welfare that occurs through non-accidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare . . . .”\textsuperscript{14}

Battered Child Syndrome

Dr. Henry C. Kemp first coined the “battered child syndrome” to describe “a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent.”\textsuperscript{15} Battered child syndrome originated as a physiological term\textsuperscript{16} but is now used to describe the psychological effects on children who are victims of child abuse. Children suffering from battered child syndrome display hypervigilance, the constant monitoring of personal safety and surroundings.\textsuperscript{17} They develop a sense of helplessness and a lack of understanding of how their actions affect their safety.\textsuperscript{18} Additionally, children suffering from this syndrome exhibit signs of post-traumatic stress disorder\textsuperscript{19} and often times develop an anxiety-related disorder (such as depression or separation anxiety).\textsuperscript{20}

The effects of child abuse, whether physical or sexual in nature, cause long term emotional and psychological trauma. Without accounting for mental emotional injury sustained from child abuse, all or part of a child’s abuse is ignored and minimized. It is not merely the physical injury, but rather the abused children’s perspectives that determine the abuse they endured; only the children know the pains that haunt them.

Defining Child Torture

Currently, there is no medical or legal definition of child torture that is uniformly recognized by lawmakers in the United States, although child torture is proscribed in many child abuse statutes. Currently doctors are working on defining child torture in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV). The hope of doctors working to define child torture is that, once it is medically recognized, perhaps the legal community will follow with statutory prohibitions against child torture. The medical community has already revolutionized other areas of the law by creating medical definitions that were later adopted by the legal community.\textsuperscript{21} Doctors are in favor of an aggressive approach to the issue of child torture; they want to create a medical definition of child torture so that child victims can be properly diagnosed as having been tortured, which will facilitate bringing their perpetrators to justice using the aggravated crime of child torture.\textsuperscript{22} In the analyzing the development of the medical definition of child torture, the sources that provide the best insight for what elements should be included are international law, the current legal definition of torture, and existing case law.

International Treaty and Legal Definitions

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The Convention Against Torture (CAT) defines torture as “the means by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him . . . information or a confession, punishing him for an act he . . . has committed or is suspected of having committed, or intimidating or coercing him . . . .”

Black’s Law Dictionary defines torture as, “the infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure.”

Both of these definitions include three significant elements: (i) severe or intense pain or suffering, (ii) to the body or mind, including physical injury and mental anguish, and (iii) for a purpose, including the satisfaction of the sadistic pleasure of the torturer.

Case Law Definitions

Most states include “torture” in their statutory definitions of child abuse, but provide no definition of torture itself. While it would seem this is broad, courts have held the contrary. Michigan courts have held child torture statutes are not constitutionally vague, since the term “torture” does have a commonly understood meaning giving a person of ordinary intelligence fair notice that his contemplated conduct is forbidden. It is not problematic, since “torture” is an element of the child abuse crime, not a crime unto itself. Many states that define “torture” do not have child torture statutes; rather child torture has primarily been defined through case law.

In Canler v. Kentucky, the Kentucky Supreme Court held that severe spanking resulting in serious physical injury or permanent scarring may constitute “torture, cruel confinement or cruel punishment,” as statutorily prohibited. In instances where an interpretation of child torture is necessary, it is the jury’s function to determine whether the amount of force used during a spanking constitutes cruel punishment. The focus in Canler was on the injury sustained by the child. In In re A.G. et al., the Illinois Appellate Court concluded that “torture” includes conduct that solely involves the infliction of emotional harm, mental pain and suffering, mental anguish and agony. This case recognized that torture includes non-physical injury. The Supreme Court of California still upholds the rule in People v. Steger that in order for the jury to determine whether the defendant had intent to inflict extreme and prolonged pain (torture), jurors should consider all of the circumstances and not rely solely on the victim’s wounds. When proving child torture in California, a key item of proof is the defendant’s intent.

Elements In The Medical Definition of Child Torture

The medical definition of child torture should have certain elements for states to model their statutes after. The medical definition should contain the following elements: (i) intent to cause cruel physical or mental pain and suffering, (ii) infliction of serious bodily injury, or emotional harm, or severe mental pain or suffering, (iii) some protraction in time, (iv) upon another person within his or her custody or physical control.

The first element is intent to cause severe injury with a cruel, sadistic purpose. The intent to torture should not be inferred from the injuries on the child’s body. Intent should be inferred from the type of act and duration or frequency. The child’s awareness of pain, or lack thereof, should not be used to negate intent. The second element is the infliction of serious bodily or mental harm. Based on the battered child syndrome, it is essential that both physical and mental injury be included in the medical definition of child torture, for the definition to fully address the injuries that victimized children sustain. All abuse is torture in that it has traumatic and long-lasting effects on a child, but including “severe” is a threshold that separates child abuse and torture. It is imperative that there not be a requirement on how much injury a child must sustain in order to qualify as torture, since this would only send a message to child torturers to cease the act before they meet that leave of physical injury. The third element is that the act or acts occur over a period of time, such as a severe beating that continues for four hours or a mother that burns her child with a cigarette everyday for a month. However, it is important that a single act may constitute child torture, so long as the other elements are satisfied. The fourth element is regarding control; not only is the tormentor in control of the child victim but also forces the child to endure an act and/or perform an act against his or her will.

Implication Within The Legal Community

A medical definition will serve as a template for enacting state legislation for child torture. Upon states developing legislation regarding child torture, researchers will be able to assess the effectiveness of each state’s definition, subsequently allowing states to mimic and adopt the most effective statutes. In addition to developing a definition of child torture, states will have to decide between three options of how to enforce the new statute: (i) keep torture within their child abuse statutes as an element of the child abuse statute, (ii) use child torture as a sentencing enhancement or aggravating factor, or (iii) make child torture a new crime.

Child Torture as an Element Within Child Abuse Statutes

The medical definition of child torture will certainly have different elements and severity than child abuse and it is not effective for a state to keep child torture buried within the child abuse statute. Keeping child torture as an element in a child abuse statute will prevent longer sentences from being imposed on perpetrators. For example, in Alabama “[a] responsible person . . . who shall torture, willfully abuse, cruelly beat or otherwise willfully maltreat any child under the age of 18 years shall, on conviction, be guilty of a Class C felony.” In Alabama a Class C felony is punishable by not more than ten years and not less than one year and one day. However, if a person seriously injures a child she or he may be convicted of aggravated child abuse, a Class B felony, which carries a penalty of not more than twenty years and not less than two years. The opportunities for a longer sentence are limited by this option, and the Alabama Code is one clear example of why child torture should be a sentencing enhancement or aggravating factor.

Child Torture as a Sentencing Enhancement or Aggravating Factor

Using child torture as sentencing enhancement or aggravating factor is the most effective option. This allows for the defendant to be charged under the child abuse statute, while the child torture definition can be used to explain how and why
The three main forms of child abuse are physical, sexual, and emotional. Neglect and abandonment generally are proscribed in separate statutes. 12