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DISCRETION IN THE ENFORCEMENT OF CHILD PROTECTION LAWS IN MEXICO

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Discretion is involved in the decision making process of all government officials exercising governmental power. It is the prerogative of a public officer "whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction."¹ Discretion is not limited to substantive choices. It also extends to the actions and implementation of legal procedures.

Throughout history, governmental and legal systems have included a mixture of precise rules and discretionary decisions.² Consequently, this mixture is part of each system's approach to administering justice. Indeed, such an approach is necessary because law is general and cannot anticipate every factual variation in situations where it is designed to regulate. Therefore, the application of the law to individual cases requires the use of discretion. Stated another way, the application of general rules to individual cases requires that government officials exercise discretion in choosing whether to consider case facts not previously articulated by legislators when deciding whether an existing law is applicable to a particular case, and when determining how best to handle the case under the law.

The use of discretion is not parallel in all decisions. Davis proposed a scale for representing the use of discretionary power in governmental decisions.³ At the extreme left, he placed the decisions governed by precise rules; at the extreme right were those decisions involving free discretion; and at the middle were those based in the mixture of discretion and rules.⁴

It can be argued that applying precise rules to individual cases will not create the risk of unjust decisions, while the converse may be true at the opposite end of the scale—namely, unbridled discretion fosters injustice.

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1. KENNETH CULP DAVIS, *DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY* 4 (1969).
2. *See id.*
3. *See id.*
4. *See id.*

Nevertheless, the two extremes may result in injustice. The reason is that the mechanical application of precise rules to individual cases, without the use of discretion, can be as prejudicial as the indiscriminate use of discretion. Ideally, justice should seek an equilibrium between the two extremes. The problem is finding where that equilibrium lies.

One topic of current concern to psychology, law and society, where discretion plays a critical role, is the use of state intervention to protect children from abuse. Child abuse is a major problem that can impinge upon family and community stability because it can lead to the development of behavioral and social problems, including aggression, unsociability, retarded moral development, and delinquency.⁵ Thus, the effect of the use of discretion by government officials on the victims of child abuse, the perpetrators, the families, and society, must be assessed.

Mexico serves as an excellent situs for such an exploration because social research on the law and legal systems is unheard of in this country. Thus, this article considers discretionary power in the implementation of child protection laws in one Mexican state, Sonora. Sonora is located in northwest Mexico and borders the United States.

Part I of this article discusses the frequency of child abuse in Mexico to demonstrate that the problem is as significant in Mexico as in the United States and many other countries. Part II considers the definition and use of physical punishment in Mexico. We argue that tradition and ambiguity in Mexican law allows parental punishment of children to become excessive and abusive. Having demonstrated the salience of the child abuse phenomenon in Mexico, Part III of this article analyzes the laws relevant to child abuse and protection. Part IV examines how these laws are implemented in Sonora, Mexico. This discussion will reveal the extensive use of discretion throughout the Sonora legal system and process.⁶ Part V of this article considers the implications of this analysis for revising child policy and future research.

Because of the nature of our topic and the situs for the research, our focus will be broad and our approach exploratory. Although our findings must be considered tentative, the picture we will draw is nonetheless disturbing and compelling. We believe this clearly justifies our conclusions.

5. See Bonnie E. Carlson, *Emotionally Disturbed Children's Belief About Punishment*, 15 CHILD ABUSE & NEGLECT 19 (1991); Katherine Gussman & David Harder, *Offspring Personality and Perceptions of Parental Use of Reward and Punishment*, 67 PSYCHOL. REP. 923 (1990); Richard S. Welsh, *Severe Parental Punishment and Delinquency: A Developmental Theory*, 5 J. CLIN. PSYCHOL 17 (1975).

6. Relevant social science research is discussed in this section. However, the reader should note that the existing research was carried out in the United States and other countries unless explicitly noted otherwise in the text.

I. CHILD ABUSE

A. Frequency of Child Maltreatment in Mexico

It is difficult to investigate the magnitude of child maltreatment in Mexico, but there is some information available. Data can be derived from cases reported to the Minor Protection Agency (MPA) throughout the 32 states of the Mexican Republic.⁷ However, there is variance among the definitions for what constitutes abuse because each state has its own laws and policies regarding child abuse. Hence, what is reportable and actionable varies from state to state. For example, physical abuse in Mexico D.F. is considered as "any harm caused intentionally to the child."⁸ Nevertheless, in Sonora, this harm would have to result in severe injuries in order to be considered abuse.⁹

With this limitation in mind, let us consider the data regarding the frequency of child maltreatment in Mexico. The MPA published a manual presenting the incidence of child abuse cases.¹⁰ This reference includes a total of 29,192 cases reported in the entire country in 1991.¹¹ Most of these cases (approximately 13,000 of them) occurred in the Federal District. Although Sonora appears as one of the states with the lowest rate of reported cases (less than 1,000 cases in one year),¹² we must remember that, in Sonora, physical abuse is recognized only when the injuries are severe. During an interview, the Procurator (Director) of the MPA in Sonora indicated that in the state's capital city of Hermosillo: 254 cases were reported in 1992; 99 in 1993; 167 in 1994; and 591 in 1995.¹³ In 1996, 710 cases were reported. Of these cases, 50% corresponded to physical abuse, 30% to emotional abuse, 15% to negligence, and 5% to sexual abuse.¹⁴

No national empirical study exists that addresses the incidence of child abuse in Mexico. However, some studies estimated that during the 1970s,

7. The Minor and Family Protection Agency, created by law in 1985, "seeks the family integration, taking care of and encouraging the respect of every family member's rights, especially children." SONORA GOV'T, 12 HANDBOOK OF STATISTICS DIVULGATION 2 (1997). The Agency offers legal services, orientation and defense regarding family law matters with special emphasis in the protection of children's rights.

8. C.P.D.F. art. 295 (1993).

9. *See infra* Part II.

10. COVAC-UNICEF, MANUAL SOBRE MALTRATO Y ABUSO SEXUAL A LOS NIÑOS (1995). This manual, sponsored by UNICEF, is the result of research conducted by the Mexican Association Against Women's Violence. The manual considers different theoretical and practical perspectives on child abuse, and presents data about the incidence of this problem in Mexico.

11. *See id.*

12. *See id.*

13. Interview with Alicia Solano-Verdugo, Procurator of Sonora Minor Protection Agency, in Sonora, Mex. (Feb. 15, 1997).

14. *See id.*

eleven million children were injured by their parents each year.¹⁵ Many of these children died because of their injuries. Related studies calculated that a child was maltreated physically and emotionally each minute.¹⁶ These studies revealed that many injuries are inflicted by parents when exercising the so called "correctional right."¹⁷ This right is conferred on parents by civil law in most Mexican states.

In a recent study of the incidence of physical abuse in Sonora, 105 mothers were interviewed. Fifty-nine mothers were reported as abusers and 46 represented the supposedly non-abusive community.¹⁸ Of the latter group, 75% of the mothers spanked or slapped their children, 80% insulted them, 30% pushed or grabbed them, 20% threw children out of their room or house, and 2.2% burned or scalded them.¹⁹ No mothers kicked, bit, or hit their children in this supposedly non-abusive sample.²⁰ These results suggest that probably many cases of abuse are not reported, and that the data presented by the MPA and the Procurator underestimate the magnitude of child abuse.

Why does child abuse occur in Mexico? One reason may lie with the fact that although parents use physical punishment as a way to correct undesirable behavior, the punishment can quickly escalate into abuse. Parents tend to use more severe forms of punishment when their children do not behave, and studies of family violence suggest a link between spanking and child abuse.²¹ Indeed, most incidents of child abuse begin as corporal punishment.²²

II. PHYSICAL PUNISHMENT

Throughout the world, physical punishment is not seen as violence, primarily because of its presumed disciplinary value.²³ However, it involves the intentional use of force to cause pain. The use of physical punishment

15. See J. MARCOVICH, *EL MALTRATO A LOS HIJOS* 26 (1978).

16. See J. MARCOVICH, *EL NIÑO MALTRATADO* 227 (1981).

17. See *infra* Part III.

18. See Martha Frias & Laura McCloskey, *Psychosocial Determinants of Harsh Parenting in Mexico*, J. ABNORMAL CHILD PSYCHOL. (forthcoming Dec. 1997).

19. See *id.*

20. See *id.*

21. See Murray A. Straus, *Discipline and Deviance: Physical Punishment of Children and Violence and other Crime in Adulthood*, 38 SOC. PROBS. 133 (1991) [hereinafter *Discipline and Deviance*]; Irwin A. Hyman, *Corporal Punishment, Psychological Maltreatment, Violence, and Punitiveness in America: Research, Advocacy and Public Policy*, 4 APPLIED & PREVENTIVE PSYCHOL. 113 (1995).

22. See ALFRED KADUSHIN & JUDITH MARTIN, *CHILD ABUSE: AN INTERNATIONAL EVENT* (1981); IRWIN A. HYMAN, *READING, WRITING, AND THE HICKORY STICK: THE APPALLING STORY OF PHYSICAL AND PSYCHOLOGICAL ABUSE OF AMERICAN SCHOOL CHILDREN* (1990).

23. See Victor Corral-Verdugo et al., *Validity of a Scale of Beliefs Regarding the "Positive" Effects of Punishing Children: A Study of Mexican Mothers*, 19 CHILD ABUSE & NEGLECT 669 (1995).

to control children's behavior should lead us to wonder what constitutes "abuse." There are no boundaries establishing the difference between physical punishment as a disciplinary method or child abuse. Physical punishment as a social construct responds to perceptions, attitudes and motivations of the community and its members.²⁴ It could be defined differently depending on situational, cultural or environmental factors. Reid believes that "we live in a culture in which the boundary between discipline and violence is often confused at both the conceptual and behavioral level" which results in significant psychological, medical, social, and legal problems.²⁵

One study revealed that 90% percent of American parents used physical punishment as a strategy to reduce undesirable behavior,²⁶ and in another study, 94% of parents reported having received some kind of physical punishment during their childhood.²⁷ Thus, it is not surprising that in a study of community attitudes regarding definitions of child abusers and spousal abusers, child abuse was defined as abuse only when the physical force was severe, whereas spousal abuse was defined by the use of any degree of physical force.²⁸ Only 17% of the respondents considered the act of hitting a child occasionally with an open hand as abusive.²⁹ Even when the hitting was done with a belt or stick, only 43% considered it abusive.³⁰

Gender is another variable affecting the perception of abusiveness. Although results are inconsistent across studies, some reports show significant gender differences. Kean and Dukes found that respondents were more likely to report fathers than to report mothers engaged in identical abusive behaviors.³¹ Kelder, McNamara, Carlson, and Lynn found that women were more likely than men to rate the same behaviors as abusive.³² This latter finding is consistent with the results reported by Nicholas and Bieber³³ as

24. See David Gough, *Defining the Problem*, 20 CHILD ABUSE & NEGLECT 993 (1996); Jill F. Korbin, *Cross-cultural Perspectives and Research Directions for the 21st Century*, 15 CHILD ABUSE & NEGLECT 67 (1991).

25. John B. Reid, *Behavioral Approaches to Intervention and Assessment with Child-Abusive Families*, in HANDBOOK OF CLINICAL BEHAVIOR THERAPY WITH CHILDREN 775 (Phillip H. Bornstein & Allan E. Katzin eds., 1985).

26. See Straus, *Discipline and Deviance*, *supra* note 21.

27. See Joanne J. Buntain-Ricklefs et al., *Punishments: What Predicts Adults' Approval*, 18 CHILD ABUSE & NEGLECT 945 (1994).

28. See Ida M. Johnson & Robert T. Sigler, *Community Attitudes: A Study of Definitions of Punishment of Spouse Abusers and Child Abusers*, 23 J. CRIM. JUST. 477 (1995).

29. See *id.*

30. See *id.*

31. See Robert B. Kean & Richard L. Dukes, *Effects of Witness Characteristics on the Perception and Reportage of Child Abuse*, 15 CHILD ABUSE & NEGLECT 423 (1991).

32. See Leslie R. Kelder et al., *Perceptions of Physical Punishment*, 6 J. INTERPERSONAL VIOLENCE 423 (1991).

33. See Karen B. Nicholas & Stephen L. Beiber, *Perceptions of Mothers' and Fathers' Abusive and Supportive Behaviors*, 18 CHILD ABUSE & NEGLECT 167 (1994).

well as Kendall-Tackett and Watson.³⁴

Culture also permeates the perception of abusive behavior. In Mexico, physical punishment is accepted not only as an appropriate disciplinary method, but also as a positive practice producing good citizens.³⁵ This attitude has resulted in laws allowing physical punishment as a disciplinary practice.³⁶

III. MEXICAN LAW: PARENTAL RIGHTS, OBLIGATIONS, AND CHILD ABUSE

Article 590 of the Sonora Civil Code declares that persons exerting guardianship have the "faculty of correcting children."³⁷ In addition, it also provides that if necessary, legal authority will assist the parent or guardian by providing "admonitions and correctives to children in order to render sufficient support to parental authority."³⁸ Article 590 is related to Article 248 of the Sonora Criminal Code which establishes that injuries caused by guardians exerting their "correctional right" will not be punishable if they heal in a period of less than fifteen days, but only if guardians do not exceed the limits of this right by correcting their children with cruelty and unnecessary frequency.³⁹ Therefore, Article 248 confers upon parents or guardians the right to discipline their children through the use of physical punishment. Moreover, whereas the Mexican constitution protects children against any harm and confers upon parents the obligation of protecting them,⁴⁰ the Sonora Criminal Code gives parents the right to "moderately" punish their children.

The Sonora Civil Code does not define what kind of punishment is considered "moderate." However, we can infer from Article 248 of the Criminal Code that moderate punishment could be any kind of disciplinary method, including inflicting injuries that heal in a period of fifteen days.⁴¹ Further, the Sonora Criminal Code excludes penalties for parents who injure their children in exercising their "correctional right."⁴² "Correction" as specified in Article 590 of the Sonora Civil Code also includes parentally

34. See Kathleen A. Kendall-Tackett & Malcolm W. Watson, *Factors that Influence Professionals' Perceptions of Behavioral Indicators of Child Sexual Abuse* 6 J. INTERPERSONAL VIOLENCE 385 (1991).

35. See ROGELIO DIAZ-GUERRERO & LORAND B. SZALAY, *UNDERSTANDING MEXICANS AND AMERICANS: CULTURAL PERSPECTIVES IN CONFLICT* (1991); Douglas P. Fry, *The Intergenerational Transmission of Disciplinary Practices and Approaches to Conflict*, 52 HUM. ORG. 176 (1993).

36. See generally C.P. SONORA art. 248 (1994).

37. C.C. SONORA art. 590 (1994).

38. *Id.*

39. C.P. SONORA art. 248.

40. MEX. CONST. art. 4. (1994).

41. C.P. SONORA art. 248.

42. C.C. SONORA art. 590.

induced injuries that heal in less than fifteen days.⁴³

Consistent with this approach, neither the Sonora Civil nor Criminal Code explicitly uses the term child abuse—except in one place. Reference to child abuse occurs in the Sonora Administrative Law which created the Minor Guardian Council.⁴⁴ Article 86 of Law 74 establishes that abusive parents will receive an admonition or fine from three to one hundred times the effective minimal salary (about \$4.50 a day) if they physically or mentally maltreat their children, exceeding their “correctional right.”⁴⁵ Article 611 of the Civil Code further establishes that child abuse and neglect are causes for terminating guardianship, among other penalties.⁴⁶ Collectively, however, these articles do not define child abuse, physical maltreatment or mental maltreatment, when parents exceed their “correctional right.” Moreover, these articles do not define their own relationship with Article 248 of the Criminal Code which establishes that producing slight injuries does not deserve any penalty.⁴⁷ The articles are also vague in defining administrative, rehabilitative and legal procedures related to child abuse. They do not specify the process to follow when a child abuse episode is reported. In addition, there is no definition of child abuse or neglect in any code, rule, or precept in the Mexican Law. Given what appears to be ambivalence in Sonora law regarding *what* is child abuse and *when* the state should intervene, it is likely that the administration of Sonora law will be marked by a similar lack of precision and will reflect an extensive use of discretion.

IV. DISCRETION IN THE ADMINISTRATION OF MEXICAN CHILD PROTECTION LAWS IN SONORA

Mexican law does not dictate the process to follow in cases of negligent or intentional child abuse. Moreover, criminal punishment is not applicable because neither negligent nor intentional child abuse is contemplated as a crime in Sonora Criminal Codes. In order to criminally proceed against an abusive parent, the parent must have produced serious injuries on or in his or her child that are not typified as “child abuse” or “maltreatment.” Parents or any child abuser could be prosecuted for lesions, homicide, rape, abandonment, or any other resulting crime, but not for child abuse. The civil law suffers similarly because Article 611 specifies only that parents will lose their parental rights in cases of “child maltreatment.”⁴⁸ Law 74 does not articulate procedures for determining when the penalty specified in

43. *Id.*

44. However, Sonora’s Administrative Law 74 remains independent from both Civil and Criminal Codes.

45. LEY 74 [Law 74] art. 86, *Consejo Tutelar Para Menores* (Hermosillo, Mex. 1994)

46. C.C. SONORA art. 611.

47. C.P. SONORA art. 248.

48. C.C. SONORA art. 611.

Article 86 should be applied.

A survey of the MPA's staff was conducted because there were neither written procedures nor studies of discretion in enforcement of Mexican laws for child abuse cases. Three MPA employees were interviewed in Hermosillo, the capital city of Sonora, Mexico: (1) the Procurator of the MPA—who is also a lawyer; (2) the Chief Psychologist; and (3) a social worker.⁴⁹ The surveys were conducted in the Agency's main office. We intended to interview all of the Agency staff, but the Procurator refused to allow access to the other personnel. The Procurator also declined to answer some of the questions directed to her.

The survey consisted of 64 questions divided into six sections: (1) the incidence of abuse and forms of reporting it; (2) the investigation process for reported cases; (3) assessment and confirmation of abuse by the Agency; (4) perpetrator characteristics; (5) treatment plans and evaluations conducted by the Agency; and (6) standards for removal of abused children from their homes, and for the prosecution of offenders. Based on the responses to this survey, it was possible to estimate the degree of discretion allowed in the investigation of child abuse cases, as well as in the legal resolutions following such investigation.

A. Reporting

Mandatory reporting of child abuse to the MPA is not required under Mexican law. Reporting is discretionary. Thus, it is very difficult for social workers or agencies to detect maltreated children. Culture and law allow for a wide latitude of non-reporting because physical punishment is considered an appropriate method for disciplining children in Mexico.⁵⁰ Individuals will report only severe cases of physical punishment because they do not recognize the existence of physical abuse or child abuse (at least until the child is severely injured). Studies about the decision to call the police have shown that the seriousness of the offense is the principal cause for reporting a case to the police.⁵¹ Mexican caseworkers in protection agencies acknowledge this problem and state the impossibility of detecting the vast majority of the child abuse cases.⁵²

Although reports of child abuse or neglect can be made by a physician, teacher, nurse, neighbor, relative, psychologist, or a social worker via tele-

49. Interview with the Procurator and a social worker of Minor Protection Agency, in Sonora, Mex. (Feb. 15, 1997). Interview with the Chief Psychologist, Minor Protection Agency, in Sonora, Mex. (Feb. 17, 1997).

50. See Corral-Verdugo et al., *supra* note 23; DIAZ-GUERRERO & SZALAY, *supra* note 35.

51. See MICHAEL R. GOTTFREDSON & DON M. GOTTFREDSON, DECISION MAKING IN CRIMINAL JUSTICE; TOWARD THE RATIONAL EXERCISE OF DISCRETION (1990).

52. Telephone Interview with Irma Rodriguez, Chief Psychologist, Minor Protection Agency, in Sonora, Mex. (Feb. 17, 1997).

phone, personal notification, or in writing, these individuals rarely report suspected child abuse cases. Only 8% of the reported cases come from those sources.⁵³ Physicians never directly report a case of suspected abuse to the Agency. They communicate their suspicion to social workers at clinics or hospitals. It is up to the social workers to inform the MPA. They are the professionals who report most frequently to the MPA; data from the Sonora MPA show that social workers report 20% of its accounted cases.⁵⁴ However, these statistics must be viewed in light of the fact that most of the reports (72%) come from anonymous calls.⁵⁵

In countries where mandatory reporting exists, the problem of effective detection still persists. Professionals report only a small portion of suspected cases of child abuse. In the United States, the Department of Health and Human Services found that agencies such as schools, hospitals, day care centers, social services and mental health centers reported only 28% of the recognized cases in 1986.⁵⁶ Benson, Swann, O'Toole, and Turbet found that one third of the physicians in the United States and Northern Ireland who suspected child abuse in the past, had not reported it.⁵⁷ In another study, carried out in two states of the United States, 24% of interviewed licensed psychologists indicated that they tend not to report suspected cases of sexual abuse.⁵⁸ These results are quite startling given that mandatory reporting of child abuse cases is the law throughout the United States.

This lack of compliance has also been documented in Australia. Peter Lamond reported that even after the introduction of a mandatory reporting law in Australia, only 7% of surveyed professionals increased their reporting behavior.⁵⁹

It is unclear whether reporting would increase under mandatory laws that were configured differently than those in the United States and Australia. For example, in the Netherlands, doctors who suspect that a child is being maltreated request advice from a "confidential doctor" or refer the case to appropriate professionals.⁶⁰ The confidential doctor verifies the existence of abuse and organizes the most adequate assistance with the exist-

53. Interview with Alicia Solano-Verdugo, Procurator of Sonora Minor Protection Agency, in Sonora, Mex. (Feb. 15, 1997).

54. *See id.*

55. *See id.*

56. *See* Anne Reiniger et al., *Mandated Training of Professionals: A Means for Improving Reporting of Suspected Child Abuse*, 24 *CHILD ABUSE & NEGLECT* 63 (1995).

57. *See* D.E. Benson et al., *Physicians' Recognition of and Response to Child Abuse: Northern Ireland and the USA*, 15 *CHILD ABUSE & NEGLECT* 56 (1991).

58. *See* Seth C. Kalichman et al., *Professionals' Adherence to Mandatory Child Abuse Reporting Laws: Effects of Responsibility Attribution, Confidence Ratings, and Situational Factors*, 14 *CHILD ABUSE & NEGLECT* 69 (1990).

59. *See* Peter Lamond, *The Impact of Mandatory Reporting Legislation on Reporting Behavior*, 13 *CHILD ABUSE & NEGLECT* 471 (1989).

60. *See* Jaap E. Doek, *Management of Child Abuse and Neglect at the International Level: Trends and Perspectives*, 15 *CHILD ABUSE & NEGLECT* 51 (1991).

ing services. This approach has been followed in Belgium and Germany.⁶¹

Why do professionals fail to report child abuse? Decisions to report have been studied by several researchers in the United States. Results indicate that one of the strongest predictors for the lack of reporting was the professionals' confidence in the validity of their suspicions.⁶² Professionals recognize their lack of training to effectively detect child maltreatment. Thus, it is not surprising that many reports are inaccurate. In a study conducted in Australia, it was observed that when teachers reported suspected cases of child abuse, only 67% accurately detected that the child was subjected to some type of abuse.⁶³ Hence, a third of the reported cases could not be confirmed.⁶⁴ Faller found that in 1981, 35% of the reports in Michigan from nonprofessionals and 47% of reports from professionals were confirmed.⁶⁵ Unfortunately, professionals do not know what to look for and how to report it.⁶⁶

Crenshaw, Lichtenberg, and Bartell indicated that the best predictor for reporting was the professionals' belief that what they were doing was in the best interest of their client.⁶⁷ There are other explanations for not reporting. Kalichman and Brosig found that the decision to report was related to the desire to protect the child.⁶⁸

Zellman surveyed mental health professionals ("MHPs") who, on at least one occasion, failed to report a case of child abuse.⁶⁹ He found that 60% of these MHPs believed that they lacked sufficient evidence; 35% reported that the family previously accepted treatment and thus the MHPs did not feel a need to report; 26% feared potential disruption of treatment if they reported; 25% believed that they could help the child better than Child Protective Services (CPS), and 22% believed that CPS services were of such poor quality that they did not want to report.⁷⁰ Reiniger, Robinson, and McHugh add to this list of professionals in the United States.⁷¹ Their respondents were dissuaded from reporting because of lost time due to potential future court involvement, discomfort over future contact with CPS once

61. *See id.*

62. *See* Kalichman et al., *supra* note 58.

63. *See* Lamond, *supra* note 59.

64. *See id.*

65. *See* Kathleen C. Faller, *Unanticipated Problems in the United States Child Protection System*, 9 CHILD ABUSE & NEGLECT 63 (1985).

66. *See* Reiniger et al., *supra* note 56.

67. *See* Wesley B. Crenshaw et al., *Mental Health Providers and Child Sexual Abuse: A Multivariate Analysis of Decision to Report*, 2 J. CHILD SEXUAL ABUSE 19 (1993).

68. *See* Seth C. Kalichman & C.L. Brosig, *Practicing Psychologists' Interpretations of and Compliance with Child Abuse Reporting Laws*, 17 LAW & HUM. BEHAV. 83-93 (1993).

69. *See* Gail L. Zellman, *Child Abuse Reporting and Failure to Report Among Mandated Reporters: Prevalence, Incidence and Reasons*, 5 J. INTERPERSONAL VIOLENCE 3 (1990).

70. *See id.*

71. *See* Reiniger et al., *supra* note 56.

a report is made, and potential legal liability for breaching confidentiality by reporting.⁷² This last reason may be specious: mandatory reporting represents a legal limitation on confidentiality for MHPs,⁷³ and professional organizations allow members to breach confidentiality to maintain compliance with the law. The organizations simply require that the clients be informed of confidentiality limits prior to the initiation of professional services, or when the professional becomes aware from unexpected statements and/or behaviors from the patient that they may have to report. This solution, however, is not favored by all MHPs. Many MHPs in the United States consider confidentiality essential to successful psychotherapy.⁷⁴

Even when reporting occurs, there is some bias in who is reported. Chasnoff and colleagues conducted a study in Florida in order to determine the factors motivating professionals to report pregnant mothers who consume alcohol or illicit drugs.⁷⁵ They found that women with low socioeconomic status were more likely to be reported, and the rate of reports was ten times higher among black women.⁷⁶ Hughes reported similar results;⁷⁷ more low income families and families of color were reported to CPS in the United States, resulting in minorities being over-represented.⁷⁸ Derezotes and Snowden pointed out that this bias could be caused by cultural diversity rather than invidious intent.⁷⁹ Different cultural groups present significant differences in communication styles, values, and family relationships, and these differences may not be recognized or understood by those responsible for reporting.⁸⁰ For example, most MHPs in the United States are white middle-upper class individuals.⁸¹

Studies in the United States show that professionals are concerned about reporting laws because the laws may lead to over-reporting of inappropriate cases, may require reporting upon suspicion, which is difficult given the breadth with which child abuse is defined; and may impinge upon

72. *See id.*

73. *See* Wesley B. Crenshaw and J.W. Lichtenberg, *Child Abuse and the Limits of Confidentiality: Forewarning Practices*, 11 BEHAV. SCI. & L. 181-92 (1993).

74. *See* Steven R. Smith & Robert G. Meyer, *Child Abuse Reporting Laws and Psychotherapy: A Time for Reconsideration*, 7 INT'L J.L. & PSYCHIATRY 351 (1984).

75. *See* Ira J. Chasnoff et al., *The Prevalence of Illicit Drug or Alcohol Use During Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida*, 322 NEW ENG. J. MED. 1202 (1990).

76. *See id.*

77. *See* D. Michael Hughes, *When Cultural Rights Conflict With the "Best Interest of the Child."* A View From Inside the Welfare System, in CHILD SURVIVAL: ANTHROPOLOGICAL PERSPECTIVES ON THE TREATMENT AND MALTREATMENT OF CHILDREN 377 (Nancy Scheper-Hughes ed., 1987).

78. *See* Patricia G. Tjaden & Nancy Thoennes, *Predictors of Legal Intervention in Child Maltreatment Cases*, 16 CHILD ABUSE & NEGLECT 807 (1992).

79. *See* David S. Derezotes & Lonnie R. Snowden, *Cultural Factors in the Intervention of Child Maltreatment*, 7 CHILD & ADOLESCENT SOC. WORK 161 (1990).

80. *See id.*

81. *See id.*

client confidentiality, and therefore damage the therapeutic relationship.⁸² As one response to these concerns, the American Bar Association advocates for discretionary reporting rather than mandatory reporting.⁸³ However, this response is not favored by all. Crenshaw, Lichtenberg, and Bartell investigated alternative models for reporting: the standard model, the family self-report model, conjoint reporting, and discretionary reporting.⁸⁴ Although MHPs see these alternative methods as desirable, CPS case workers were reluctant to consider any strategies other than mandatory reporting.⁸⁵

Another response to the dilemmas posed by reporting focuses on training. Because professionals and agencies acknowledge the need to train professionals in detecting child abuse cases, some states in the U.S. have passed laws that mandate training for professionals (psychologists, psychiatrists, nurses, teachers, and other professionals) in how to identify and report child abuse cases. For example, in 1988 the New York legislature passed a law requiring professionals to take a two-hour course called Identification and Reporting Child Abuse and Maltreatment as a Prerequisite for Licensure.⁸⁶ In a survey conducted in Hermosillo, Sonora, Mexican physicians reported that they received some training for detection of child abuse during their professional careers.⁸⁷ However, no special training or guidelines for other professionals exist. Thus, the detection process is haphazard and idiosyncratic in Sonora.

B. Legal Process⁸⁸

An administrative process is initially followed when a case of child abuse is reported. The MPA, a governmental agency, was especially created for investigation and treatment of child abuse.⁸⁹ Reports of suspected child abuse are turned over to the Agency's social workers for verification. Social workers then investigate the case with parents and neighbors. After confirmation of the existence of child maltreatment, the social worker sends the child to a physician to establish the severity of injuries.

82. See Crenshaw et al., *supra* note 67.

83. See Seth C. Kalichman et al., *Mandatory Child Abuse Reporting Laws: Issues and Implications for Treating Offenders*, 21 J. OFFENDER REHABILITATION 27-43 (1994); Alberto C. Serrano & David W. Gunzburger, *Incest and Professional Boundaries: Confidentiality versus Mandatory Reporting*, 5 INT'L J. FAM. THERAPY 145 (1983).

84. See Crenshaw et al., *supra* note 67.

85. See *id.*

86. See Reiniger et al., *supra* note 56 (describing N.Y. Soc. Serv. Law § 1988, sometimes referred to as "The Lisa Steinberg Amendment").

87. See Martha Frias et al., *Discrecionalidad in la Deteccion y Reporte de Maltrato Infantil en Instituciones de Salud en Mexico* (1997) (unpublished manuscript on file with the Universidad de Sonora, Mexico).

88. Information on this process was obtained during the interview with Alicia Solano-Verdugo, Procurator of Sonora Minor Protection Agency, in Sonora, Mex. (Feb. 15, 1997).

89. See *supra* note 7.

At this point, if the injuries do not heal within fifteen days, social workers turn the case over to the criminal court to prosecute the abusive parent(s) for the resulting injuries, and to the civil court to remove parental rights in cases of severe child abuse. For injuries resulting from "moderate" (healing in less than fifteen days) physical or emotional maltreatment, the MPA refers the case to its mental health professional staff to evaluate the harm to the child, and to design appropriate intervention for the child and the abusive parents or relatives.

If child abuse is confirmed by Agency social workers, a criminal action (in conjunction with a civil action in some cases) will be initiated against the abuser. These actions can result in a child being removed from the home, if the perpetrators are the parents. If removal occurs, two options are considered for the minor: (1) finding a relative who is willing to take care of the child, or (2) sending the child to a shelter. After the child is removed from the abusive home, psychologists at the MPA develop a plan for intervention. The child and family receive medical and psychological treatment. Once the treatment is completed, the child and family are evaluated. The psychologist can recommend the reintegration of the child into the family if the evaluation supports such a result.

The Procurator of the MPA decides whether the child can return home by considering the recommendations of Agency psychologists and social workers. If the child is reintegrated into the home and the abuser repeats the offense, the child is immediately removed from the home. New criminal and civil proceedings are initiated against the offender, and the penalties are higher for the recidivistic offender.

Let us consider the legal process in more detail.

C. Decision to Investigate

Once a child abuse case is reported to the MPA, social workers are required to investigate it. (Approximately 2 percent of the cases are not investigated because the Agency will be unable to find the target family, or the family does not cooperate and there is no legal recourse available.)⁹⁰

However, there are no standards or guidelines for verifying that child abuse has occurred. How can the Agency's social workers determine the existence of child abuse when the law allows parents to use physical punishment, and when there is no definition of child abuse? In the worst circumstances, such as when a child is dead or disfigured, the social workers can see the harm clearly and identify it. In other cases, abuse becomes much more difficult to identify. The MPA psychologist who was surveyed reported that the Agency considers harm "maltreatment" only when injuries take more than fifteen days to heal or when the minor requires hospitaliza-

90. Interview with Alicia Solano-Verdugo, Procurator of Sonora Minor Protection Agency, in Sonora, Mex. (Feb. 15, 1997).

tion.⁹¹

The Procurator of the MPA indicated that a medical examination is always conducted in suspected child abuse cases because Sonora Law 74 requires it as part of the verification process.⁹² Medical examinations are conducted in hospitals or with forensic physicians. Hence, once a report of alleged abuse is filed with the Agency, the social worker will intervene in family affairs and will take the minor out of the home for a medical examination. The social worker will do so even though there is no certainty of the validity of the allegation. This approach may be overly intrusive because unnecessary intervention of the state in family affairs may cause emotional distress between family members, or may cause family dysfunction.⁹³

Alter conducted a study to identify the factors that child protective workers use to reach decisions about substantiating a child neglect case.⁹⁴ She found that their decision was based on the degree of physical harm observed, the age of the child, and the frequency of abuse.⁹⁵ If a child presented moderate harm, the social worker's decision was based not only on the harm caused, but also on a consideration of whether it occurred in one or different combinations of the following factors: negative parent-child relationship, high parental deviant behavior, or no parental motivation to change.⁹⁶ Alter also concluded that because deviant behavior was a social construct, the identification of deviant behavior was associated with the alleged abuser's social class and the motivations and attitudes of the workers.⁹⁷

D. Decision to Intervene

As mentioned before, Sonora Law 74 establishes that if injuries heal in less than fifteen days, parents will receive psychological treatment at most. But in these cases, how do the social workers decide when such treatment is needed? In the Mexican culture, answering this question is difficult because physical punishment is accepted as a disciplinary method, the law lacks a clear definition of child abuse, and the law does not provide guidelines for

91. Telephone Interview with Irma Rodriguez, Chief Psychologist, Minor Protection Agency, in Sonora, Mex. (Feb. 17, 1997).

92. Interview with Alicia Solano-Verdugo, Procurator of Sonora Minor Protection Agency, in Sonora, Mex. (Feb. 15, 1997).

93. See Gary B. Melton & Howard A. Davidson, *Child Protection and Society. When Should the State Intervene?*, 42 AM. PSYCHOL. 172 (1987); Michael Wald, *State Intervention on Behalf of "Neglected" Children: A Proposed Legal Response*, 6 CHILD ABUSE & NEGLECT 3 (1982).

94. See Catherine F. Alter, *Decision-making Factors in Cases of Child Neglect*, 64 CHILD WELFARE 99 (1985).

95. See *id.*

96. See *id.*

97. See *id.*

intervention.⁹⁸ Intervention in reported cases, therefore, is discretionary. However, in most situations the severity and frequency of abuse appear to be the factors most frequently taken into consideration when making the intervention decision.

Characteristics of both the perpetrator and the decision maker also appear to play a role in the intervention. Tjaden and Thoennes analyzed information extracted from child protective services and criminal courts from three counties in the United States (Denver, Colorado; Los Angeles, California; and Newcastle, Delaware).⁹⁹ They found that of 833 cases reported, 244 did not result in the development of a treatment plan.¹⁰⁰ In the majority (60%) of these cases, the service was not considered necessary because the report was an isolated case of maltreatment.¹⁰¹ Nevertheless, in the rest of the cases, the characteristics of the perpetrator affected the caseworker's decision to intervene.

After the investigation of the case, if the maltreatment is corroborated, the Agency must decide what kind of treatment is necessary in order to protect the child. However, treatment selection is plagued by indefiniteness about what exactly is being treated, what constitutes success, and how the services should be delivered to minimize the harm to the child.¹⁰² This is particularly problematic in Mexico because of the lack of a legal definition of child abuse. Without a definition, social workers, lawyers, medical doctors, nurses or other professionals work within an ambiguous context.

E. Decision to Pursue the Criminal Process

Law 74 establishes that if parents cause severe injuries to their children, the case will be turned over to criminal court. As previously mentioned, because there is no law labeling child abuse as a crime, prosecutors must charge the person with homicide, rape, abandonment, or causing lesions. "Lesion" is defined in criminal statutes not only as injuries, burns, contusions, fractures, and dislocations, but also as any alteration to the health, or any other harm leaving a material mark on the body.¹⁰³ This definition contains two elements: the harm must have been produced by an external cause, and there must have been an intent to produce this harm. Essentially, the Criminal Code covers three different kinds of injuries: slight injuries, severe

98. See Frias & McCloskey, *supra* note 18.

99. See Tjaden & Thoennes, *supra* note 78.

100. See *id.*

101. Article 248 of Sonora's Criminal Code allows "infrequent" physical punishment to children. Therefore, an isolated episode of physical punishment is not seen as child abuse if it results in injuries healing in less than fifteen days.

102. See Christine Wekerle & David A. Wolfe, *Prevention of Child Physical Abuse and Neglect: Promising New Directions*, 13 CLINICAL PSYCHOLOGY REV. 501 (1993).

103. C.P. SONORA art. 242.

injuries, and injuries that put life in danger.¹⁰⁴

The Procurator of the MPA is supposed to bring charges for severe injuries (i.e., injuries that take more than fifteen days to heal). If the injuries are severe, the Agency always will proceed criminally. According to the Procurator, forensic physicians examine the injuries and produce a report specifying the type of injuries and the probable time for healing. It is this report, rather than actual healing time, that the Procurator uses to decide whether to charge the offender. Forensic examination of the injuries is the only evidence on which the procurator will base decisions.

With how much certainty will the physician determine when the injuries are likely to heal? What happens if two or more professionals differ in their diagnosis? The law does not provide any response to these questions. Therefore, social workers and the Procurator have the discretion to decide which cases will be criminally prosecuted. The Procurator asserts that only seven to fifteen cases are turned over to criminal court in a given year. Comparing these cases with the cases reported as physical abuse, approximately 1% of the reported cases are criminally prosecuted. This low rate of prosecution could be the result of the wide discretion of case workers in the Minor Protection Agency, and a bias for psychological treatment or non-intervention.

Unfortunately, there are no data on the frequency or type of psychological treatment in these cases in Mexico. Yet, United States data do provide some support in this regard. For instance, the low rate of prosecution is strikingly similar to that which occurs in the United States, where less than 5% of the cases result in criminal prosecution.¹⁰⁵ Tjaden and Thoennes concluded that this low tendency to prosecute occurs because child maltreatment is seen as a psychological problem.¹⁰⁶ Moreover, some experts are concerned with the psychological harm to the child, if the child is involved in a criminal proceeding.¹⁰⁷ In the Tjaden and Thoennes study, the decision to prosecute was based upon the severity and frequency of the harm to the child.¹⁰⁸ For instance, criminal prosecution occurred where sexual abuse was involved. The victim's age also was a significant predictor of criminal prosecution.¹⁰⁹

As to the hypothesis that the Agency prefers non-intervention, support is only conceptual at this point in time. The bias toward non-intervention might occur because of the legal recognition in Sonora of the right to physically punish children. Unless the abuse is severe and obvious, officials

104. *Id.* art. 243.

105. *See* Tjaden & Thoennes, *supra* note 78.

106. *See id.*

107. *See* Eli E. Newberger, *Prosecution: A Problematic Approach to Child Abuse*, 122 *INTERPERSONAL VIOLENCE* 47 (1987); DAVID. B. WEXLER, *THERAPEUTIC JURISPRUDENCE: THE LAW AS A THERAPEUTIC AGENT* (1990).

108. *See* Tjaden & Thoennes, *supra* note 78.

109. *See id.*

would hesitate to override parental rights and discretion in child rearing.

Indeed, it is arguable whether it makes much sense to arrest child abusers in Mexico. In Mexico, there is no economic assistance for families or unemployed persons. Although well-intentioned social workers could decide to turn the case over to the criminal court, ostensibly for the child's benefit, the family would not have money to subsist if the parent was incarcerated. In addition, if the case is turned over for criminal prosecution, the law does not provide for psychological treatment or any other kind of help for the family.

There is one exception to the process described so far. A case may be reported directly to the police rather than the MPA. If this occurs, the police have wide discretion in deciding whether to arrest alleged abusers. There are no specific rules or guidelines constraining their decisions. Gottfredson and Gottfredson proposed four functions for arrest: preventive, social-medical, demonstrative, and administrative.¹¹⁰ One rationale for incarceration is preventive, that is, the protection of the child.¹¹¹ Another is social-medical, providing medical or psychological attention.¹¹² As already noted, however, treatment is not an option once arrest occurs in Mexico.¹¹³ The demonstrative function implies that the arrest will serve as a deterrent, and the administrative function considers the arrest as a mechanism for gathering information. These two functions are not justified in child abuse cases because the state is seeking the protection of the child, and the Agency or prosecutor can obtain information without incarcerating the abuser.

In cases where criminal prosecution results and the abuser is found guilty, the abuser could be sentenced to prison depending on the injuries caused. Judges determine the sentence by interpreting the law; selecting, interpreting, and evaluating the relevant facts; and by applying the law to those facts. Judges may differ in deciding what are the relevant facts, evaluating these facts, and interpreting relevant rules of law.

There are several theories related to the judicial interpretation of the rules. Until the beginning of the seventeenth century, a dominant theory postulated the existence of a group of universal, supreme, eternal, and intrinsically valid principles which would serve as inspirations for the formulation of rules and in the solution of legal cases.¹¹⁴ According to this theory, it was sufficient for jurists to follow these natural principles when creating law or finding the ultimate solution to a legal problem. If the law is based on such intrinsic values, then it is just.¹¹⁵ Conversely, justice results from

110. See GOTTTFREDSON & GOTTTFREDSON, *supra* note 51.

111. *See id.*

112. *See id.*

113. Interview with Alicia Solano-Verdugo, Procurator of Sonora Minor Protection Agency, in Sonora, Mex. (Feb. 15, 1997).

114. See EDUARDO GARCIA MAYNEZ, INTRODUCCION AL ESTUDIO DE EL DERECHO (1980).

115. *See id.*

judges applying the law, which in turn was based upon these self-evident principles. This principle was debated by Montesquieu¹¹⁶ and Spencer,¹¹⁷ who offered theses stating that law and justice were determined by environmental factors and their interaction with individuals.

By the end of the nineteenth century, it was recognized that law was a product of social and political conventions.¹¹⁸ In addition, the development of social sciences impacted legal theory, criticizing the belief that judges could solve cases by simply applying the law formalistically. Scholars such as Holmes, Brandies, and Pound acknowledged that the law was a product of social policy and that its application and the solution of legal problems vary according to social contexts.¹¹⁹ Therefore, it was concluded that the existence of rules governing human activity and their judicial individualization are determined by the social, economic, and psychological conditions of group members, instead of simple deductive reasoning.¹²⁰ Thus, sentencing as part of the judicial process is influenced by social, economic, political, and psychological factors—i.e., extra-legal factors. For example, Andrews and colleagues conducted a study assessing the mitigating and aggravating circumstances for sentencing.¹²¹ They found that the sentencing decision was influenced by extra-legal factors, such as the defendant's education, employment, financial situation, marital status, age, gender, and reputation of the judge.¹²²

Although only a small percentage of parents have been sentenced for causing injuries to their children in Sonora, one implication of the above research is clear. In the sentencing stage in child abuse cases, the judicial decision (Mexican Law does not contemplate juries in the judicial process) may depend on extra-legal factors as well as on the evidence presented, resulting in a great disparity in sentence decisions among judges.¹²³ Specifically, judges are members of a society who share beliefs concerning the disciplinary use of physical punishment. Some judges may believe that if a parent severely injures his/her child because of the child's behavior, the parent must have used the right conferred to him/her by law (correctional right). Others may believe that the correctional right does not give parents the right to injure children for "discipline." Such a discrepancy in beliefs could cause substantial disparity in sentences. Thus, the same offense could result in different penalties.

116. See BARON DE MONTESQUIEU, *THE SPIRIT OF LAWS* (1748), reprinted in *GREAT BOOKS OF THE WESTERN WORLD* (Mortimer J. Adler, ed., Encyclopedia Britannica, Inc. 2nd ed. 1990).

117. See HERBERT SPENCER, *THE PRINCIPLES OF SOCIOLOGY* (1897).

118. See JOHN MONAHAN & LAURENS WALKER, *SOCIAL SCIENCE IN LAW* (1994).

119. See MICHAEL H. HOFFEINER, *JUSTICE HOLMES AND THE NATURAL LAW* (1992).

120. See MONAHAN, *supra* note 118.

121. See D.A. Andrews et al., *Some Psychometrics of Judicial Decision Making*, 14 *CRIM. JUST. & BEHAV.* 62 (1987).

122. See *id.*

123. See *id.*

Unequal treatment of like cases has been the concern of jurists and researchers. Some argue that similar offenses should receive similar penalties. Nevertheless, there is not enough research to determine which factors intervene inappropriately in judicial decision-making and what is the best way to eliminate disparity in sentences. Attempts at mandatory sentencing schemes in the United States, for example, have not gone uncriticized. For instance, discretion in sentencing may be justifiable in some cases on the grounds that each case is unique and judges have to attend to the special characteristics of each case. In addition, mandatory sentencing schemes do not recognize the rehabilitative function of sentencing. Finally, studies show that discretion has not been eliminated in the implementation of mandatory sentencing.¹²⁴

F. *Decision to Pursue the Civil Process*

Article 611 of Sonora Civil Code states that child abuse and neglect are grounds for termination of parental rights, which is a civil law action.¹²⁵ The Procurator of the MPA indicated that ten to twenty cases are turned over to the civil courts in Sonora annually. This is less than 1% of the reported cases. Severity of the abuse is the sole variable to be considered in deciding whether to terminate parental rights.¹²⁶ A civil process is also followed for allegations of negligence when parents physically abandon their children.¹²⁷

The court should evaluate an individual's ability to function as a parent. Even parents considered to be abusers by Agency case workers may be concerned fathers and mothers. In a previous study of parental abusive behavior in Mexico, punitive parents were found to be unaware of positive strategies for rearing their children.¹²⁸ Moreover, the punitive parents believed that physical punishment was a good method to discipline their children.¹²⁹ Thus, in some cases, parents use punitive or coercive strategies as a method for training their children because they believe that it is an appropriate technique for correcting undesirable behavior.

Yet, how do judges use the information provided in the case, including information provided by the psychological evaluators? Dalgeish and Drew conducted a study to assess the factors related to judicial decisions to separate children from their home in child abuse cases in the United States.¹³⁰

124. See GOTTFREDSON & GOTTFREDSON, *supra* note 51, at 165-67.

125. C.C. SONORA art. 611.

126. Interview with Alicia Solano-Verdugo, Procurator, Sonora Minor Protection Agency, in Sonora, Mex. (Feb. 15, 1997).

127. See *id.*

128. See Frias & McCloskey, *supra* note 18.

129. See *id.*

130. See Leonard I. Dalgeish & Elizabeth C. Drew, *The Relationship of Child Abuse Indicators to the Assessment of Perceived Risk and to the Courts Decision to Separate*, 13 CHILD ABUSE & NEGLECT 491 (1989).

Analysis revealed that the strongest factors contributing to a judicial decision for separation were severity of the abuse, parenting skills, and family cooperation in the child abuse investigation.¹³¹ Type of abuse, and age and sex of the victim were not important predictors.¹³² Judicial decisions were permeated by subjective factors, such as their perceptions of parenting and the lack of family cooperation.¹³³ Since psychological evaluations will address parenting skills in these cases, it is unfortunate that there is no research on the reliability or validity of these assessments.¹³⁴ Given the well known battle of the experts in United States courts, it is likely that inter-evaluator reliability is high only in obvious cases. How much judges depend on these evaluations is also unknown. But given that there is no definition of child abuse in Mexican law to guide decision-making regarding terminating parental rights, judges have wide discretion when deciding these cases.

Finally, because of the lack of definition, the prosecutor also has wide discretion in deciding whether to turn cases over to a civil court. Ironically, the state could be promoting the inappropriate disintegration of families, family dysfunction and dysfunctional distress, because it does not have a precise rule governing intervention decisions. However, there are no studies related to this issue in Mexico.

V. IMPLICATIONS

Judges and government officers must exercise discretion because of the lack of precise rules and the ambiguity of existing laws. Although the exercise of discretion is common throughout governmental and legal decisions, overly broad or unfettered discretion may lead to injustice. Such is the case, we believe, in the enforcement of child protection laws in Sonora, Mexico. In Sonora, precise rules do not exist and the ambiguity of the existent laws related to child maltreatment appears to result in the inability of the state to detect and respond to the child abuse phenomenon. The imprecision of the existing laws leaves broad discretion in determining what could be considered physical abuse. Differences in perceptions of the physical abuse phenomenon could cause great disparity in reporting behavior. Personal factors of the reporters as well as cultural, political, social, and environmental factors may play an important role in this determination.

Similarly, the intervention of the state in family relations, without precise rules guiding this intervention, could result in grave injustices. In Mexico, there are no guidelines for investigation or intervention in child abuse cases. For instance, Sonora laws related to child maltreatment allow

131. *See id.*

132. *See id.*

133. *See id.*

134. *See* Daniel A. Krauss & Bruce D. Sales, *Legal Standards, Expertise, and Experts in Child Custody Decision-making*, 4 PSYCHOL. PUB. POL'Y & L. (forthcoming 1998).

case workers to ask for medical examination in all reported cases. Suspicion of abuse permits the state to intervene; and in several cases this intrusion is unnecessary (i.e., many of the reported cases are not confirmed). In short, this law appears to result in government interference with family relations, without the certainty of abuse.

Therefore, it is necessary to elaborate rules and guidelines for detection and intervention in cases of child abuse. A statutory definition of child abuse is needed, as well as the implementation of standards and guidelines for investigating suspected cases of child abuse. Similarly, threshold criteria for appropriate government intervention are required. Part of Mexico's difficulty results from laws that allow parents to use "moderate physical punishment" to correct their children.¹³⁵ As a result of this imprecision, only very few cases are prosecuted.

More perplexing is the inconsistency that appears in Mexican law in this regard. Children are protected by the Mexican constitution, which establishes that children have the right to have their physical and mental necessities satisfied.¹³⁶ Moreover, the constitution sets forth parents' obligation to protect their children from any harm.¹³⁷ However, article 248 of the Sonora Criminal Code states that slight injuries inflicted by parents or guardians are not punishable when they are the result of using a "correctional right."¹³⁸ This article shows that whereas the constitution protects children against any harm, and creates the legal obligation of parents to protect them, the Sonora Criminal Code confers on parents the right to "moderately" punish their children— even if the parents cause harm, injury, or pain to their children. Accordingly, Sonora law conflicts with national law.¹³⁹

The law also presents another inconsistency. On one hand, the criminal law does not punish parents who cause less than "severe injuries" (injuries that heal in less than fifteen days) to their children in the exercise of their "correctional right". On the other hand, Law 74 recognizes that moderate punishment could be a form of abuse and mandates treatment for parents who physically abuse their children, even if the resulting injuries heal in less than fifteen days.

There may be several causes for such inconsistencies and reliance on overly broad discretion. Identifying poor draftsmanship is only superficially helpful since it does not explain why the dilemma has occurred and why it persists. Although research will have to confirm the following hypotheses, it is likely that the law resulted from a lack of awareness of the social significance of child abuse in Mexico. The law may have evolved: (1) through the traditional cultural acceptance by Mexican society of the par-

135. See C.P. SONORA art. 248.

136. MEX. CONST. art. 4.

137. *Id.*

138. C.P. SONORA art. 248.

139. *Id.*

ents' right to correct their children as they see fit; (2) from the cultural belief that the state should not supersede parental judgments; and (3) from the presumed inability of the state to provide dysfunctional families economic and social support or therapeutic and educational interventions.

So what should occur in Mexico to address the child abuse dilemma? First, research institutions in Mexico need to devote themselves to detecting risk factors for child abuse, and for demonstrating the negative consequences of child abuse for Mexican society. Second, researchers need to design and prove the effectiveness of intervention programs for Mexican families. Third, legal definitions of child abuse and neglect need to be created based upon the findings of the above research. Fourth, research needs to focus on the effectiveness of alternate detection methods for use by law enforcement and social service personnel. Fifth, research needs to explore the effectiveness of alternative legal mechanisms for responding to child abuse cases, and based upon the results of this work establish guidelines for intervention. Sixth, and finally, Article 248 of the Sonora Criminal Code, as well as similar provisions throughout Mexico need to be repealed so that child abuse can receive the appropriate focus and attention it deserves in Mexican society.