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Invisible Abuse: Utah's Response to Emotional Child Abuse

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**INVISIBLE ABUSE: UTAH'S RESPONSE TO EMOTIONAL
CHILD ABUSE**

by

Janae Serrine

**Thesis submitted in partial fulfillment
of the requirements for the degree**

of

DEPARTMENTAL HONORS

in

**Sociology
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Abstract

The very nature of emotional child abuse makes it difficult to detect and report. Nevertheless, scholars and professionals in the field of child welfare have identified emotional abuse as being equally detrimental to children as physical abuse and neglect. Many states, including Utah, have unclear definitions of emotional child abuse. The purpose of this study is to interpret how Utah has used its statute on emotional abuse in the court system and whether the current definition of emotional child abuse has given Utah's courts enough information and direction to prosecute those who emotionally abuse children. Data was collected by researching the legislative history of the statute, compiling cases of emotional abuse that have come before the Utah Court of Appeals, and interviewing professionals who have dealt with cases of emotional abuse in Utah. This study concludes that although child emotional maltreatment, once reported, is being adequately treated therapeutically when cases involve other types of abuse, it is not being addressed adequately in the court system when emotional abuse is solely in question. There is a need for more direction in the legal community in defining and responding to emotional child abuse.

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Introduction

The purpose of this study is to analyze how Utah compares to other states in responding to emotional child abuse in its definition, reporting, and enforcement of the state statute. Utah was selected for analysis not only because I was attending Utah State University, but also because Utah stands out because of its mandated reporter statute that states that every person, not only professionals, must report suspected abuse. Utah was also selected because it did not include a statute for emotional abuse until 2008, and even now it is only briefly mentioned. My hypothesis was that because Utah's statute appears to be very broad in defining emotional abuse, it would negatively impact Utah's court system and other child welfare agencies' ability to respond to emotional abuse effectively.

To test this hypothesis, I compared state statutes, compiled a history of appealed cases in Utah that involved emotional abuse to see how the court responded to the facts of each case, and interviewed professionals in child welfare agencies across Utah to explore their concerns about this issue. In doing so, I wanted to discover whether emotional abuse was being adequately addressed in Utah, and if there was room for improvement specifically in the child abuse statutes. In this paper I will review what the literature has said previously about emotional abuse, describe the methods used in this study, present the results that were found, and then summarize my conclusions and opinions about how Utah is responding to emotional child abuse as well as what should be done in the future.

The abuse and maltreatment of children is broken down into four main categories: physical abuse, sexual abuse, emotional abuse, and neglect. Of these types of abuse, emotional abuse stands out as being the most difficult to both define and report, due to its very nature. Unlike other types of child abuse, emotional abuse does not leave visible signs that would lead to

the reporting and conviction of perpetrators. However, emotional child abuse is more prevalent than we may think: the National Child Abuse and Neglect Data System reported that there were 63,497 cases of emotional child abuse in 2005 (U.S. Department of Health and Human Services, 2007). Over the period 1986-1993 the incidence of emotional abuse rose by 163%, which was a greater increase than the number of reported physical abuse and sexual abuse cases in the same period (Twaite, 2004). For comparison, in 1996 physical neglect accounted for 57.7% of cases of abuse, physical abuse accounted for 22.2%, and emotional maltreatment was involved in 5.9% of cases (Kaplan, 1999).

Even though emotional abuse was involved in a small percentage of cases, many professionals argue that it is underreported due to a lack of a clear definition of what constitutes emotional maltreatment (Hamarman, Pope, & Czaja, 2002; McCoy & Keen, 2009). Emotional abuse has been defined in various ways, and it is difficult for state law enforcement agencies and child welfare professionals to agree on a single definition. Across states, different definitions are used to legally evaluate whether emotional abuse has or is taking place. Utah's definition is limited and only includes that "*Harm or threatened harm* means damage or threatened damage to the emotional health and welfare of a child through neglect or abuse (Child Welfare Information Gateway, 2008)." Other states give more specific definitions of emotional abuse that give more direction. New York's statute, for example, states that

"Impairment of emotional health and impairment of mental or emotional condition includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, acting out, or misbehavior, including incorrigibility, ungovernability, or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child (Child Welfare Information Gateway, 2008)."

Hamarman, Pope, & Czaja (2002) found that the rates of emotional abuse varied dramatically across the states due to how each state defined it. This could be problematic for states that do not have a well-defined emotional abuse statute because even though they may report very low instances of emotional abuse, it may still be occurring and not being treated.

Currently even the most well defined state statutes define emotional abuse in terms of the physical symptoms that children manifest later in life, but by then it is too late to prevent the abuse or stop it from occurring, even though we can treat the child for the lingering effects it had on them. Even the Child Welfare Information Gateway (2008) defines emotional abuse in a way that can be ambiguous by saying it “is a pattern of behavior that impairs a child’s emotional development or sense of self-worth. This may include constant criticism, threats, or rejection, as well as withholding love, support, or guidance.” The lack of clarity and standardization in defining this type of abuse may lead to underreporting of emotional child abuse and a lack of enforcement (McCoy & Keen, 2009). Loue (2005) asks the question, “If it cannot be defined, how can it be addressed (314)?” Creating a statute or at least a written statement that professionals can look at to see what constitutes emotional abuse might increase their likelihood of reporting it.

Despite the potential barriers to reporting emotional abuse, scholars and professionals in the field of child welfare have identified emotional abuse and secondary abuse (children witnessing domestic violence) as being equally detrimental to children as physical abuse and neglect (Twaite, 2004). Professionals also agree that emotional abuse is the core issue in other types of abuse (Garbarino, 1986; Loue, 2005). For example, Claussen and Crittenden (1991) found that 91% of families who had been reported for physical abuse were also guilty of emotional abuse. Emotional abuse has severe impacts on children. Among other problems, adults

who experienced emotional maltreatment as a child are much more likely to have low self-esteem, experience eating disorders, and attempt suicide. They even have a higher attempted suicide rate than those who reported being physically abused as a child (Mullen et al., 1996; Hart et al., 1998). Despite its harmful effects on children, emotional child abuse may not have been addressed as willingly by professionals because as a society we seem to view it as less harmful to children (Kaplan, 1999).

Because of this view, it is important that professionals are given proper direction in how and when to report emotional maltreatment. Utah's Mandated Reporter Statute for child abuse requires that "any person who has reason to believe that a child has been subjected to abuse or neglect must report," which would include emotional abuse (Child Welfare Information Gateway, 2008). Most states only require that professionals who have contact with children on a regular basis must report, such as teachers, social workers, doctors, child care workers, etc., but Utah requires that anyone over the age of 18 must report. The rationale for creating mandated reporting laws for cases of child abuse is to give professionals (or everyone, in the case of Utah) a greater incentive to report. Utah's Code of statutes even tells us that we only need to have a reason to believe the child is being abused and will not be held accountable if the case is unsubstantiated. The state even goes a step further and allows people to report abuse anonymously in hopes of getting people to report without fearing they will get in trouble for reporting if no abuse is found (Child Welfare Information Gateway, 2008). There is no doubt that mandating the report of abuse has increased the number of reports made and can therefore be seen as effective in that regard (McCoy & Keen, 2009).

However, mandate statutes oftentimes do not give professionals much direction, much like abuse definitions, and do not provide clear definitions that would allow professionals to

make better reporting decisions. Although Utah is unique in stating that everyone, not only professionals, are mandated reporters, it has been found that there is no difference between mandated and non-mandated reporters on their beliefs about what is “reportable” (Carleton, 2006). It also appears that mandatory reporting, although increasing the number of cases reported, does not increase the number of children helped (McCoy & Keen, 2009). Authorities even agree that having a mandated reporter statute is largely symbolic; many professionals who do not report are often simply fined or do not receive a punishment at all. In theory, failure to report is considered a misdemeanor in most states and professionals can be threatened to be sued for malpractice.

However, these potential punishments have shown to be inadequate incentives for professionals to report. This is due to the fact that many mental health professionals and clergy have argued that it violates confidentiality of their clients to report suspected abuse. For this reason, many states have excluded clergy from being mandated reporters, and today only 26 states require clergy to report child abuse (Child Welfare Information Gateway, 2008). Some states, however, are rethinking excluding clergy from being mandated reporters because of an increasing number of cases where the clergy themselves have been the perpetrators (Kugler, 2002). Kalichman, Craig, & Follingstad (1989) found that one third of therapists were not willing to break confidentiality by reporting abuse.

Another method of increasing professionals’ likelihood of reporting is to have mandatory training about the types of abuse and how to respond to them. The argument for this policy is that professionals are more likely to report abuse when they have more knowledge about what constitutes abuse and what is reportable. Research has shown that professionals who have been trained about different types of abuse are more certain it is occurring when faced with the

decision to report than those who are untrained (Hawkins, 2001). A study by Kenny (2001) showed that professionals such as teachers and physicians do not have adequate training about the reporting process. American Humane (2003), a non-profit organization for the protection of children and animals from abuse, stated that people oftentimes do not report child abuse because they are unfamiliar with their state statutes and reporting laws. Training more specifically on what abuse is and when to report it would be more beneficial (Carleton, 2006). Even with mandatory training, however, the problem remains that emotional abuse is difficult to define, report, and enforce.

Methods

The data from this study come from a comparison of state statutes on child abuse, a case history of appealed cases of emotional child abuse in Utah, and eight in-depth interviews with child welfare professionals in various agencies throughout Utah.

State statutes were compared by accessing the definition of emotional abuse online for each state via the National Clearinghouse on Child Abuse, the Child Welfare Information Gateway. Once compiled, definitions were divided into four categories: states without any reference to emotional abuse, states with a broad definition of emotional abuse (for example, many states refer to emotional abuse as actions that “harm” children mentally), states with a more standard definition (when a state refers to emotional abuse as developmental or other mental injury of a child), and states with more specific definitions (giving examples of what behaviors a child may exhibit as a result of being emotionally abused). Two states did not have a definition for emotional abuse, twenty states had a very broad definition, another twenty states had a more standard definition, and eight states had very well-defined statutes. Of the last three categories, states were randomly selected by geographical area and were studied more at length.

Washington, Alabama, Oklahoma, Utah, Florida, Minnesota, Ohio, Texas, California, and New York state statutes were examined in depth. These definitions were gathered in order to determine if Utah was defining emotional abuse in a similar way to other states or if there were other states that Utah could use as an example by which to follow.

A history of all cases in Utah that were appealed to the Utah State Court of Appeals was gathered by accessing Westlaw, an online legal database. Five instances were found and examined due to their emotional component, and cases that did not involve emotional abuse were not included, which explains the low number of cases discussed. Allegations of emotional abuse that came before lower courts were not included in this study because they are not publicly accessible, however much can be learned from appellate cases. Appellate cases represent severe cases in Utah where the verdict or procedures were contested by the parent/guardian. It is therefore interesting to note how the appellate court rules in these instances to see how they have interpreted the meaning of the child abuse statutes and whether the definition in Utah gives them enough direction.

Eight in-depth qualitative interviews were conducted with child welfare professionals throughout Utah. I interviewed the Attorney General for the Child Welfare Division, a Detective for the Cache County Sheriff's Office, a Guardian *Ad Litem*, a Child Protective Services Caseworker and Intake worker for the Division of Child and Family Services, an elementary school Principal, a Psychologist with Bear River Mental Health, and a Juvenile Court Judge. Names were kept anonymous for the confidentiality of these professionals and their agencies. Six of the interviews were conducted in person at the professionals' office, and two were conducted over the phone. The first interview conducted was with the Guardian *Ad Litem*, who gave me the contact information for the rest of the interviewed professionals. A series of questions was asked

to gather information about their professional history, whether they had seen emotional abuse cases and if they were involved with the court system, and their opinion of emotional abuse and how it was being addressed in Utah. These interviews were conducted to get a better sense of how emotional abuse was really being addressed, rather than how it might appear on paper. The professionals that were interviewed are not only experienced in cases of child abuse, but also have insight in the legal process and how emotional abuse is viewed in the legal community.

Results

State Statute Comparison

Each state has its own definition for what classifies emotional child abuse, except for two: Washington and Georgia. These states do not have any definitions for emotional abuse, nor do they even recognize it as part of child abuse as a whole (Child Welfare Information Gateway, 2007). For example, Washington's definition of child abuse states, "*Abuse or neglect* means the injury of a child by any person under circumstances that cause harm to the child's health, welfare, or safety, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child (Child Welfare Information Gateway, 2007). Washington does, however, have a law that says that in cases of separation or divorce, a parent cannot have visitation rights if they have a pattern of "physical, sexual, or a pattern of emotional abuse of a child" (Help Yourself Divorce, 2008).

20 U.S. states¹ have a very broad statute of what constitutes emotional abuse. Of these, I will focus on Alabama, Ohio, Oklahoma, and Utah. These states were selected based on population and geographical differences. Alabama does not have its own definition for emotional

¹ Alabama, Connecticut, Delaware, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Virginia, Utah, West Virginia (Child Welfare Information Gateway)

abuse, but rather it just includes “nonaccidental mental injury” in its definition of overall abuse (Child Welfare Information Gateway, 2007). Alabama even provides examples of what constitutes sexual abuse, physical abuse, and neglect, but does not give any further guidance in the case of emotional abuse.

Oklahoma produces a similar definition of emotional abuse to Alabama’s. Its statute says that harm or threatened harm “includes, but is not limited to, mental injury” (Child Welfare Information Gateway, 2007).

Utah’s definition of emotional abuse is not much different. It is, “*Harm or threatened harm* means damage or threatened damage to the emotional health and welfare of a child through neglect or abuse (§ 78A-6-105).” Utah received 4,905 cases of emotional child abuse in 2007 alone. This number represents 36% of all cases of abuse in Utah, which is substantially higher than the national average of 4.2% (Child Welfare Information Gateway, 2007). However, Utah allows for multiple incidences of abuse to be counted, which can skew the reporting statistics. What is interesting about Utah is that everyone is a mandated reporter, not just professionals. In most states, teachers, physicians, lawyers, and other professionals are the only people who are legally obligated to report abuse; in Utah, however, “any person who has reason to believe that a child has been subjected to abuse or neglect must report” (Child Welfare Information Gateway, 2007).

Utah mentions emotional abuse in two other places in its statute other than its definition. When it addresses when it is appropriate to remove a child from their home and place them in the state’s custody it says (§ 78A-6-302):

“After a petition has been filed under Section 78A-6-304, if the child who is the subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any

one or more of the following circumstances exist... a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer emotional damage.”

Emotional abuse is also addressed in the criminal offense section of the statute. In § 76-5-109 it recognizes that “serious physical injury” includes “any conduct toward a child that results in severe emotional harm, severe developmental delay or retardation, or severe impairment of the child's ability to function.” That means that emotional abuse would fall under the same criminal offense charges as other types of abuse, as long as it is severe. The charges are as follows:

- (a) If done intentionally or knowingly, the offense is a class A misdemeanor;
- (b) If done recklessly, the offense is a class B misdemeanor; or
- (c) If done with criminal negligence, the offense is a class C misdemeanor.

As previously stated, 20 states have limited definitions of emotional abuse. An additional 20 states² have definitions for emotional abuse that are more standard, focusing on what emotional abuse is and what behaviors the child would exhibit. I will focus on only a few of these, but most of these states’ definitions are very similar. I will explore Ohio, Florida, Texas, and Minnesota. These states were selected based on differences in location and population.

Ohio states that an abused child, “because of the acts of a parent, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare”. But it does not stop there; it also goes on to define mental injury, which the previous 22 states that I have mentioned have neglected to do. Ohio defines mental injury as, “any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in § 2919.22 and is committed by a parent or other person that is responsible for the child's care (Child Welfare Information Gateway, 2007).” This statute is much more specific than any of the previous states’ definitions that I’ve mentioned thus far.

² Alaska, Arkansas, Colorado, Florida, Hawaii, Idaho, Iowa, Kentucky, Maryland, Minnesota, Montana, Nevada, Oregon, South Carolina, South Dakota, Tennessee, Texas, Wyoming, Vermont (Child Welfare Information Gateway)

Florida says that mental injury means “an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior (Child Welfare Information Gateway, 2007).” Similarly, Texas says that abuse includes the following:

- “Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning
- Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning (Child Welfare Information Gateway, 2007)”

Minnesota has a similar definition, but it goes a step further. Ohio, Florida, and Texas all define abuse and then go into further detail of what “mental injury” is, but Minnesota has its own definition for emotional child abuse specifically. It states:

“Emotional maltreatment means the consistent, deliberate infliction of mental harm on a child by a person responsible for the child's care, that has an observable, sustained, and adverse effect on the child's physical, mental, or emotional development...Mental injury means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture (Child Welfare Information Gateway, 2007).”

The last eight U.S. States³ along with Washington D.C. have extremely specific definitions. California and New York will be examined in detail due to their differences in population and location in the United States. California’s definition of child abuse includes “serious emotional damage,” and it goes on to define what this means: “*Serious emotional*

³ Washington, D.C., Arizona, California, Maine, New York, North Carolina, Pennsylvania, Rhode Island, Wisconsin (Child Welfare Information Gateway)

damage is evidenced by states of being or behavior including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others (Child Welfare Information Gateway, 2007).” This description is more specific than the previous definitions because it gives examples of what behavior a child may exhibit after being emotionally abused, which is important because it can give mandated reporters guidelines to follow when considering reporting abuse.

New York’s definition is similar to California’s, but even more detailed. This definition gives even more examples of what a child may do after being abused emotionally, which could help professionals identify abused children. It says:

“Impairment of emotional health and impairment of mental or emotional condition includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, acting out, or misbehavior, including incorrigibility, ungovernability, or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child (Child Welfare Information Gateway, 2007).”

This form of definition may give professionals better direction because it explicitly states what they can look for in a child’s actions and behaviors that could indicate emotional abuse. As we can see from the definitions listed, there is a lot of variety in the way states have defined and interpreted emotional abuse in the past. Table 1 on page 13 gives a summary of the categories of definitions across the states. A more uniform definition may help states become better equipped to handle the problems of emotional abuse.

Table 1

Type of Definition

No Definition	Broad Definition	Standard Definition	Clear Definition
GA, WA	AL, CT, DE, IL, IN, KS, LA, MA, MI, , MS, MO, NE, NH, NJ, NM, ND, OH, OK, VA, UT, WV	AK, AR, CO, FL, HA, ID, IA, KY, MD, MN, MT, NV, OR, SC, SD, TN, TX, WY, VT	D.C., AZ, CA, MN, NY, NC, PA, RI, WI
Washington: "Abuse or neglect means the injury of a child by any person under circumstances that cause harm to the child's health, welfare, or safety, or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child."	Utah: "Harm or threatened harm means damage or threatened damage to the emotional health and welfare of a child through neglect or abuse."	Ohio defines mental injury as: "Any behavioral, cognitive, emotional, or mental disorder in a child caused by an act or omission that is described in § 2919.22 and is committed by a parent or other person that is responsible for the child's care."	New York: "Impairment of emotional health and impairment of mental or emotional condition includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, acting out, or misbehavior, including incorrigibility, ungovernability, or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child ."

Case History

This study was able to have access only to cases that were appealed to the Utah Court of Appeals; cases other than appeals cannot be publicly accessed. Appellate cases were found via Westlaw, an online legal database. Even though lower court cases were not accessed, very few cases in Utah have involved emotional child abuse. Only five cases will be reviewed in this section, because cases that did not involve emotional abuse were not evaluated. The low number of cases that have come before Utah's Appellate Court is very telling; either emotional abuse cases are handled outside of court or they are not currently being addressed in Utah. A Child Protective Services Caseworker in Utah said that only 16 out of 59 emotional abuse cases from October 2008-October 2009 were supported by DCFS (personal communication, March 1, 2010). It is interesting to note, however, that Utah has progressed immensely in dealing with cases of emotional abuse in the past few decades, even though more progress is needed.

In 1990, a very clear-cut case of physical and emotional child abuse came to the Utah Court of Appeals. State in Interest of L.D.S. v. Stevens was a case where a young girl was physically and emotionally abused by her stepmother Deanna. L.D.S. was often locked up in her room, forced to eat her own vomit and nearly suffocated with a pillow. L.D.S. was taken into protective custody and screened by Dr. Halverson of Primary Children's Hospital in Salt Lake City, Utah. He reported that "L.D.S.'s symptoms fit the clinical picture of a neglected, mistreated, and emotionally abused child (1990)." The Court of Appeals upheld the termination of Deanna's parental rights under Utah's Code, even though at this time there was nothing specific in the code about emotional abuse.

Eight years after this case another case of emotional abuse went to court, but this time it was not as easy for the Court of Appeals to rule. In the case *State, In Interest of J.M.V. (1998)*, Utah's Court of Appeals ruled in favor of removing children who had been emotionally abused from their home, after much debate and trauma on the children. Some background knowledge of the case is needed in order to understand the significance of its outcome. This case involves two young girls, J.M.V. & S.M.V. and their two half-brothers. Their mother divorced the children's father after years of experiencing domestic violence. Their mother was threatened by her ex-husband often over the next two years, and she consequently committed suicide in 1996. When she died, the children were placed with their aunt and uncle, and their father petitioned for custody. He was allowed visitations, which caused emotional stress on the two girls. Shortly after, the two girls' half-brother, D.V., committed suicide. This act finally raised enough of an alarm, and the girls were permanently placed with their aunt and uncle.

What is significant about this case is a) the girl's father was allowed visitations after DCFS workers had already shown that he was emotionally abusive to the kids as he had been with their mother, and b) the father was not charged with being emotionally abusive even though it had caused two deaths in the family. This case shows how slow the state has been to recognize and prosecute emotional child abuse. At the time of this case, emotional abuse was not yet in the statute (it was later added in 2008), so the final result of this case was that the court concluded that because the girls' father was emotionally abusive "to the point of causing mental and emotional damage," the children are "neglected" pursuant to [Utah Code Ann.] Section 78-3a-2(16), in that they lack proper parental care by reason of the fault or habits of [Father] (2008)."

Six years after this case, in 2004, another case was brought to the Utah Court of Appeals, this time involving sexual and emotional abuse. In *State ex rel. L.N.*, a father had sexually and

emotionally abused his 6-year old son and 3-year old daughter. L.N. appealed, saying there was not enough evidence that he had abused his children. The court ruled that they had not erred in favor of the children. Although this case was primarily a sexual abuse case, it is a step forward to show that Utah began looking at the emotional component of other types of abuse.

In 2006, another case ruled in favor of removing an emotionally abused child. In State ex rel. L.I., the Utah Court of Appeals terminated parental rights because it was able to give evidence that A.I. had emotionally abused L.I., his daughter. The court cited Utah's Statute by saying:

“Utah Code section 78-3a-103(a) defines an ‘abused child’ as one who ‘has suffered or been threatened with nonaccidental *physical or mental harm*, negligent treatment, or sexual exploitation.’ Utah Code Ann. § 78-3a-103(a)(i) (Supp.2005) (emphasis added). Thus, there was sufficient evidence to support the juvenile court's conclusion that A.I. neglected or abused L.I.”

This statement is significant because the court was able to rule that A.I. had been abusive because he had caused “mental harm” to his daughter (the state statute at this time used mental harm instead of emotional harm and was later updated in 2008 to reflect the statute Utah has today).

Ten years after the first case in 1998, Utah has increased the speed by which it identifies emotional abuse. In 2008 Utah revised their abuse statute to include emotional abuse. This was shown in State ex rel. S.W. (2008) where the Utah Court of Appeals determined that “the relationship between the mother and child was inappropriate due to yelling and screaming, name calling, and boundary issues.” S.W.'s mother appealed the case and claimed that there was insufficient evidence that she was emotionally abusing her child, which is a common problem in emotional abuse cases. In this case, however, the court ruled in favor of S.W. and found that her mother was in fact emotionally abusive. The court found that her mother often manipulated S.W.

and therefore did not consider S.W.'s testimony with as much weight as it otherwise would have. S.W.'s mother admitted in this case that she had S.W. check her for genital herpes when S.W. was ten years old. For this and many other reasons, the court stated:

“There is a serious disconnect between Mother’s perception of S.W. and her needs and S.W.’s actual condition. Mother’s behavior when angry or frustrated is out of control and constitutes verbal and emotional abuse of S.W....Mother uses inappropriate techniques in parenting such as yelling and excessive discipline.”

The court also cited that S.W.’s mental health needs were currently not being met by her mother. This case is one of the best examples of Utah’s courts confronting emotional child abuse, mostly because it is a case that does not involve other types of abuse. In this way it is unique; most of the other cases in Utah involving emotional child abuse have been combined with physical abuse, sexual abuse, or neglect. It is also unique because there are very few cases that involve emotional abuse at all.

The history of Utah’s cases shows the progression of Utah’s Court of Appeals, but it also shows how the court has responded to changes in the child abuse statutes. For example, in the last case in 2008, the court was swift to get involved for the child’s mental well-being because the emotional abuse statute had been added to the Utah Code. Before Utah included emotional abuse in its statute, it relied heavily on the neglect and abuse statutes, which were less specific and gave less direction about how to intervene in cases of emotional abuse. It is clear that adding emotional abuse to the statute in Utah was helpful for the court system, and therefore could be beneficial for other states as well who may need to rely on other forms of abuse like Utah has done in the past.

Interviews

The last stage of this study was to interview professionals in Utah who had experience with child abuse and could offer opinions and concerns they had about Utah’s effectiveness in

responding to emotional child abuse. I interviewed eight professionals in Utah: the Attorney General for the Child Welfare Division, a Juvenile Court Judge, a Guardian *Ad Litem*, a Detective for the Cache County Sheriff's Office, a Child Protective Services Caseworker and Intake worker for the Division of Child and Family Services, an elementary school Principal, and a Psychologist with Bear River Mental Health. I interviewed the Guardian *Ad Litem* first, who gave suggestions of who else to interview. I then contacted them individually and asked permission to interview them, giving them a letter of information about the study and assuring them that their identities and agencies would be held confidential.

After interviewing professionals in Utah I found general trends in their responses. When I asked them to describe cases of emotional abuse they have been involved in, all of the interviewees responded that it is very rare that they get involved with a case of sole emotional abuse not tied to other forms of abuse. They indicated that most of their cases have been paired with physical abuse, sexual abuse, or neglect. Most of the professionals I interviewed also pointed out that emotional abuse is a large component of all abuse cases, and that therapy is usually provided in all abuse cases because of that emotional component. They gave examples of emotional abuse such as witnessing domestic violence, having a parent who is mentally ill or dealing with substance abuse, a parent threatening to hurt or kill themselves, and constant name-calling and putting the child down.

All of the professionals I interviewed mentioned that emotional abuse depends on how the child reacts to it; some children are not affected by a parent's abusive behavior and it is therefore not considered emotional abuse. The Juvenile Court Judge I interviewed expressed that how a child reacts to verbal abuse often depends on how secure their attachment is to the abuser. He told me about how he himself was yelled at and sworn at by his grandpa but because he felt

loved by him it did not affect him. He said that his siblings often felt emotionally abused by his grandpa, which demonstrates how the same behavior may or may not constitute abuse.

Most of the professionals I interviewed are heavily involved with the court system and have seen cases of emotional abuse that have gone to court. When I asked if they believed that the court system was adequately addressing the problem of emotional abuse, I got mixed results. The psychologist I interviewed believes that the court process is slow and trusts parents to clean up their act on their own. Most interviewees felt that the court system was not addressing emotional child abuse as well as it could, but they concluded that there were “bigger fish to fry” so to speak and that we need to “pick our battles” and understand that emotional abuse is not the biggest issue that child welfare agencies deal with. Everyone did agree, however, that although the court does not prosecute emotional abuse, enough therapy and/or other services are provided to help children who have been abused emotionally. The Attorney General stated, “I think the court addresses emotional abuse well on the treatment end. We always give kids therapy and other services. But we don’t handle parents well; we don’t hold them accountable.”

When I asked if emotional abuse is hard to detect, most of the professionals I interviewed agreed that it was, simply because there is no physical proof it is occurring, and it is often just based on what the child says. However, one of the professionals I interviewed believes that it is not hard to *detect* emotional abuse, but that is it only hard to prove. The Attorney General for the Child Welfare Division said that most adults can see it and feel it and that it is not hard to detect. Everyone believed that emotional abuse was being reported as well, but that it is hard to follow through and prove it is occurring. The psychologist I interviewed did believe, however, that many people are scared to report abuse of all kinds because they are scared to invade the privacy of another and feel like it is not their responsibility.

When I talked to the Attorney General as well as the Child Protective Services caseworker, they said that they suspected a lot of emotional abuse cases were weeded out when they are called in to Intake because of insufficient evidence. I spoke with an Intake worker who disagreed and said that cases are opened if they meet DCFS's definition of emotional maltreatment, but that many go unsupported because of a lack of evidence. The Intake Worker gave me the definition that they adhere to in determining whether to open a case as well as support a case:

EMOTIONAL MALTREATMENT: Conduct that subjects a child to psychologically destructive behavior. Emotional maltreatment may be shown by a pattern of psychologically destructive behavior or by a single serious incident of such behavior. Emotional maltreatment includes (but is not limited to) the following:

- A. Demeaning or derogatory remarks that affect or can be reasonably expected to affect a child's development of self and social competence.
- B. Engaging in or threatening the child with conduct that causes or can reasonably be expected to cause the child emotional harm, such as threatening harm, rejecting, isolating, terrorizing, ignoring, or corrupting the child (e.g., harming an animal or threatening to harm an animal in the presence of a child).
- C. Domestic violence related child abuse. [See: The definition of Domestic Violence Related Child Abuse.]
- D. Violence observed by the child between a caregiver and another in the presence of the child that may include (but is not limited to) the abuse of animals.
- E. Providing a child with materials harmful to a child. [See: The definition of Material Harmful to a Child.]

The CPS Caseworker I spoke with did suspect, however, that some cases may not be opened up that should be. She said that, "maybe Intake is not taking it seriously, because it's probably happening and I've never seen a case that was exclusively emotional abuse."

When I asked, "What do you see as the major strengths and weaknesses of Utah's enforcement of child emotional abuse?" I received relatively uniform answers. Most of the respondents believe that Utah has great Child Welfare agencies and employees who are dedicated to helping children. The Juvenile Court Judge said that a major strength of Utah is how many advocates we have for abused children. He said, "I think it's interesting to note that all

cases start with “In the Interest of...” In divorce cases it’s just Mom vs. Dad. Juvenile court is all about the child and it is designed to protect the child.”

When referring to Utah’s weaknesses, most of the respondents argued that Utah’s weaknesses were not really specific to Utah, but were a result of the nature of emotional abuse itself. The Attorney General said that “emotional abuse is a problem everywhere.” As the psychologist put it, “It’s not really whether Utah is doing a good job or not, it’s just the very nature of emotional abuse that makes it hard to confront.” The Guardian *Ad Litem* said that emotional abuse needs to be better recognized because it is just as damaging as other types of abuse and receives the least amount of attention. The CPS caseworker also argued that we need to be more preventative instead of being only reactive. She said that she wished we could have parenting classes offered or even mandated when children are born in hospitals or go into kindergarten. The psychologist I interviewed brought up a point that no one else voiced:

“We have a great need for better foster care. I guess it’s alright to say that someone’s unfit to parent and take their kids away, but then where do they go? We need to have somewhere that is better for the kids or they might as well stay with their parents. Right now you have no guarantee the kids will be better off in foster care, and oftentimes they come away more damaged. Sometimes bad parents are better than the alternative. Some foster parents are in it for the money. We have a big push to “preserve the family” in Utah, so if we are going to take kids away for emotional abuse we need to have better foster care. We also need more funding. Emotional abuse gets thrown aside when we have caseworkers who are overworked; they tend to weed out the less important cases.”

After establishing what the respondents thought about the nature of emotional abuse and how the court addresses it, I asked “Do you think Utah’s prosecution of these cases is effective?”

The psychologist responded by saying that,

“You can be arrested and prosecuted for domestic violence in front of a child (secondary abuse). You can also be arrested for attempting suicide in front of a child due to its emotional damage. There are changing ideals; we are shifting to starting to charge individuals for these types of things.”

When I asked the Detective about prosecution of emotional abuse, he said:

“The Criminal and Traffic Code 76-5-109 talks about ‘severe emotional harm.’ It’s equal value to other cases. It’s a 2nd degree felony, punishable to 1-15 years in prison if done with intent to harm child, and it’s a 3rd degree felony, punishable to 0-5 years with parole for wreck less emotional harm, and for criminal negligence – meaning you just don’t care, don’t do anything to stop it – it’s a misdemeanor and you can spend up to one year in jail. If there’s physical evidence there, it will be prosecuted. I would want to charge with emotional abuse more, but it can’t be proved or prosecuted. It’s part of all cases, we just don’t charge with it. I haven’t used emotional abuse part of statute personally.”

The Juvenile Court Judge expressed similar thoughts; he said that emotional abuse needs to be extreme for it to be prosecuted because we do not have the resources to do otherwise.

One of the most important questions I asked the participating professionals was, “Do you think that a more clear definition of emotional abuse would help in reporting and prosecuting it?”

Again, the results were mixed. A few of the professionals agreed that we need to have a more clear definition. The CPS worker commented:

“The statute should be more clear cut. It’s like the DCFS minimum standard for cleanliness – well what is that? We have to make personal judgment calls a lot. It’s really vague. DCFS’s definition clears it up but it needs to be more spelled out for other agencies.”

However, most professionals I interviewed believe that the definition *should* be vague so that professionals have more flexibility in determining whether emotional abuse is occurring. The psychologist said, “It is better to be clear, but it is difficult to define – how do we know everything that constitutes emotional abuse? In the DSM-IV it is not specifically defined as a disorder. Child abuse is a legal term.” The Attorney General expressed similar concerns, as did the Detective and the Juvenile Court Judge. They said, respectively:

“We would be doing victims a disservice if it’s specific. It needs to be vague. We need to use our judgment to figure out if abuse is going on. It’s hard to enforce as it is, and it would be a lot harder if it had to fit certain criteria. It’s necessary to be vague so we can justify it.”

“In a way, I can see that a vague definition makes it harder to report abuse and doesn’t give any specific instructions. Yet, for prosecution’s sake, the more broad the better because more can be classified as “harm” to children emotionally. We can’t predict every situation that will happen or come in through the door, so it’s best to keep it vague so we can classify it case by case instead of by what a definition says what emotional abuse is or is not.”

“Get the law to the legislature, there’s no doubt about it. They’re changing it all the time. I have a quote “Hard cases make bad law.” It’s like the Domestic Violence statute – some professionals feel that parents shouldn’t be charged with domestic violence. When we have a domestic violence case in Utah then CPS needs to get involved; well this seems good, but some argue that that makes those victims of domestic violence much less likely to get help because they are scared about what CPS might do. There is a huge range for emotional abuse, and the resulting definitions have a huge range as well. A clearer definition would help, but it might not do more than where we are already. There are a lot of ways to get the child help – still can reach treatment without statute (with an invested community).”

These varied responses show that professionals are unsure whether a more clear definition would be beneficial for Utah in identifying and treating emotional abuse. In general, the interviews suggest that emotional abuse is difficult to define, report, and prosecute even if the statute gives a clear definition. Everyone that was interviewed commented on how problematic emotional abuse is and did not hesitate to say that it was possibly the most detrimental form of abuse on children. They also mentioned, however, that much of what we need to do to help prevent and treat emotional abuse would not be possible. For example, the standards of the state require that the physical health or safety of the child must be in jeopardy if the child is to be removed from the home. Children who have been emotionally abused may not receive as much attention from the public or get treatment as quickly as children who are abused in other ways. One way that Utah has helped children that was discussed by the professionals I interviewed is Utah’s treatment of domestic violence as a form of child abuse. This has allowed professionals to help children who have witnessed domestic violence and allow the state to get involved in these cases.

These interviews show that Utah has done well in treating emotional abuse when supported by the Division of Child and Family Services, but that Utah needs to have a better system of reporting emotional abuse and prosecuting offenders. Overall, emotional abuse is a problem that is not easily solved by the legal system of any state, as discussed by those who were interviewed. Prosecuting emotional abuse requires manpower and resources that we currently need for other types of abuse.

Discussion

Based on the results of this study, I have reached the conclusion that Utah's statute on emotional abuse is more specific and gives more direction than I previously thought. Although it appears to be vague in defining emotional abuse, it does include specific guidelines for removing a child from their home and into the state's custody, even in cases of emotional abuse, and it does have a provision for making severe emotional abuse a criminal offense, something that most states lack. Hamarman et al. (2009) even concluded that Utah has a higher rating on a scale of 0-3 in its civil and criminal state statutes concerning child emotional abuse.

Many of the professionals I interviewed believed that having a broad definition of emotional child abuse increased their ability to identify and respond to emotionally abused children, despite what the literature says. As some of the professionals I interviewed stated, most agencies have their own definition of emotional abuse that guides them in making decisions, and having a broad legal definition gives professionals more leeway in making decisions. The question is whether we should allow professionals to make these decisions on their own or if we should have a more standardized guideline for them to follow. The interviewees of this study feel like they would make better decisions on a case by case basis rather than needing to meet every criteria of a definition.

This does not solve the problem, however, of those states like Connecticut that did not report a single instance of emotional abuse in 2007. States that have little or no definition of emotional abuse may have a harder time intervening in these cases. Although Utah has done well in the treatment of children who have been emotionally abused, it still needs to find a way to make the community more aware of emotional abuse and treat it as a criminal charge.

While interviewing professionals for this study, I found a large disparity between the percentage of emotional abuse cases reported in Utah and what child welfare agencies reported they were involved in. In 2007 Utah reported that 36% of all abuse cases were classified as emotional abuse, yet every professional I interviewed said that they rarely see a case of emotional abuse and that it is very seldom that it is not paired with another type of abuse. Hamarman et al. (2009) also stated that Utah was one of the only states that counted multiple or recurring incidents of abuse. This method of reporting could skew their reported rates of abuse to a large degree.

On the surface, Utah has a definition that allows professionals to classify emotional abuse on a case by case basis and has helped the state of Utah be one of the top states in number of reported emotional abuse cases. We could believe that Utah is potentially able to respond to emotional abuse better than other states because they at least have reported cases. Many states in 2007 did not report a single occurrence of emotional abuse, so Utah at least has a definition that allows classification of this type of abuse. However, professionals interviewed stated consistently that emotional abuse was rare and almost never reported in a case of its own; this disparity raises concerns that emotional abuse may not occur as often as Utah reports.

I would support standardizing how we report cases of abuse across states so that the rates that are reported do not misrepresent what is actually occurring within each state. I would also

suggest creating a standardized definition of emotional abuse on the national level so that states have some sort of direction as to how to define it in their own state and in their agencies. When left up to each state individually, some states are reporting high numbers of emotional abuse and some are not reporting a single occurrence; this disparity does not tell us if children who are being emotionally abused are being acknowledged and treated at the same level in all states. It does tell us, however, that states are having a hard time recognizing what emotional abuse is and how to intervene.

The interviews that were conducted also brought up the issue of enforcement and prosecution of emotional abuse as a criminal offense. Unfortunately, the Detective I interviewed and some of the other professionals as well stated that even though Utah does have a provision that would allow for severe emotional abuse to be prosecuted, in practice it is not commonly done because it would never hold up in court. The Detective believes that the court system has a lot to do with politics, and he himself has never tried to charge a criminal of emotional abuse because he does not think it would lead to conviction.

The professionals I interviewed all came to the same conclusion: emotional abuse is a problem everywhere, and Utah is doing its best to intervene. It appears that Utah has done everything possible to promote reporting of child abuse; it is one of the only states that mandates that everyone, not just professionals, report suspected abuse. Once reported, it appears that Utah has also done well to ensure that families get treatment. Most of the respondents interviewed pointed out that every case that is opened up is offered services such as therapy or counseling and parenting classes, whether or not it is prosecuted.

What I thought was interesting is how often the respondents said that emotional abuse is not the highest priority. They stated that we need to pick our battles and focus on what needs

precious resources like time and money. This is not to say that they did not believe emotional abuse was a problem. On the contrary, they agreed that emotional abuse was a serious problem and that Utah's court system was not responding to it as well as they could. However, they mentioned that the very nature of emotional abuse makes it hard for professionals to do more than they currently are, and we would need to devote more resources than we have to combat it. In summary, emotional abuse, although very detrimental in terms of its effects on children, is very difficult to solve. It is a deeply personal and private issue that cannot usually be seen, which limits the number of reported cases. It is also difficult to prove, and therefore difficult to enforce and prosecute. Utah has done well in some aspects, but it would be helpful for all states to have a uniform definition of abuse so that it is at least being treated the same in terms of its definition across states. (See Tables 2 and 3 for a summary of key findings).

Future research will need to be done to compare Utah to other states' models of reporting, treating, and enforcing/prosecuting emotional abuse. For the purposes of this study, only Utah was examined in-depth, but we would be able to understand more about the nature of emotional abuse as well as other ways of intervening in these cases if other states were also examined to the same degree. As mentioned, a weakness of this study was the inability to access court cases that were lower than the appellate level. Although these cases are not publicly accessible, further research that examines these cases or finds data on how often emotional abuse is seen in the court system would be very useful in determining how to help the court system respond to emotional abuse.

Table 2

Obstacles and Efficacy of Utah's Model

	Detection/Reporting	Enforcement/Prosecution	Treatment
Strength	SEMI-STRONG	WEAK	STRONG
Obstacles	It is difficult to see and prove, the community is often hesitant to report, and we often have to rely on children to self-report	We would need resources that we currently do not have	Many times therapy services are offered but are not required for parents and children of emotional abuse cases
Efficacy	Emotional abuse is reported, but often not supported by DCFS (even though children may be treated)	Utah's statute only allows for extremely severe cases to be prosecuted, and even then the legal community may not charge or drops the charge to give the criminal an incentive to settle out of court	Treatment is effective, but it is usually after the abuse has taken place for a long period of time and it is hard to intervene when it is occurring

Table 3

Data

	Comparison of State Statutes	Case History	Interviews
Results	States have dramatic differences in their definitions of emotional abuse, and there is no standard or uniform definition. Utah's definition is very broad.	Utah has very few cases of emotional abuse in the court system, and has progressed in how they rule over the last 10 years.	Emotional abuse is not often seen and is a problem, but Utah is confronting the problem the best it can. There is also a disparity in number of cases reported and what is actually seen.
Implications	Utah's definition may not give professionals the direction they need to intervene in cases of emotional abuse.	Giving the court system a more clear definition may help them prosecute and enforce emotional child abuse more effectively.	A more standard way of reporting emotional abuse may help to statistically determine where emotional abuse is occurring and how to respond.

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