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NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE

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Update

Protecting the Privacy of Child Crime Victims

By David Finkelhor, Ph.D. and Charles Putnam, J.D.1

The Problem

One of the harms crime victims face is the possibility that many other people will find out about their experience through widespread publicity in the general media. Such concerns are most obvious in the case of sex crimes, but many non-sexual victimizations cause embarrassment as well. For children, these concerns can be particularly acute, in part because children are so sensitive about their reputations, and in part because children have little power to control and counteract information that is disseminated about them. Fears about their reputation and privacy are likely major reasons why so many children do not disclose victimizations to the police or even to their own families.

Although the traumatic impact of crime victimization has been extensively studied, the impact of publicity and anxiety about publicity on victims has not. It is well established that crime victimization frequently results in psychological harm, but whether publicity or fear about publicity contributes to this cannot be confirmed based on current scientific evidence. Some of the research might be read as suggestive that publicity or fear of publicity contributes to harm. For example, victims with

greater levels of shame and more negative self-perceptions related to the offense tend to be more badly affected by their victimization.^{2,3} Children involved in cases that drag on over a longer period of time tend to recover more slowly.⁴ Nevertheless, this research does not specifically implicate publicity as a source of trauma for victims.

Nonetheless, there are sound reasons to believe that publicity or fears about publicity cause harm to juvenile crime victims. Embarrassment and shame have been established as two sources of trauma for children in the wake of victimization.⁵ These emotions arise in part out of victims' concerns about the perceptions other people will have about them. Their intensity is arguably related to the number of potential people whom a victim can imagine might have these perceptions. In other words, it can be hypothesized that crime victims will feel more embarrassment and shame if many people know about the criminal incidents affecting them.

Secondly, when more people know about a particular painful event, it increases the number of potential sources of reminders about the trauma. For example, when a crime is publicized, there are more people who might mention the episode to the victim. Children recover more slowly from trauma when frequently reminded of it and when circumstances discourage them from moving beyond the role of victim.⁶ Finally, research on victimization and bullying suggests that a past history of victimization and a reputation as a victim sometimes cause children to be targeted for further hazing, exclusion and victimization.⁷ So while there is no strong research yet, there are reasons based on trauma theory and common intuition to believe that publicity may harm child crime victims. Enhancing the privacy of juvenile victims may help minimize the harm of crime victimization from the trauma, and increase their willingness to report crimes.

Why Media Self-Regulation is Insufficient

Many newspapers and broadcasters have voluntary ethical policies that are intended to protect the identities of child victims. There are many problems with these policies, however, that make them insufficient to fully protect child crime victims from the harms of publicity.

- **The policies are not universal.** A few newspapers even have affirmative policies to disclose victim names whatever the age or crime.⁸
- **The policies are not systematic.** Many only cover sex crimes. Sometimes even attempted sex crimes are considered outside the scope of the ethical policy.
- **The policies only cover victim names.** Sometimes stories include the names of close family members, the addresses of the children, and other information that would easily allow the identification of a victim by anyone with even casual knowledge of the child or neighborhood.
- **The policies have loopholes.** If the name of a child has already appeared in the press because of other circumstances, for example, in a missing child report, then the child will often be named in conjunction with the crime when it is discovered. Similarly, if one outlet discloses the name, frequently others will do so too, in spite of their

policies.

Toward Model State Statutes

Generally, U.S. law does not allow prohibitions on the publication of truthful information found in the public domain. Some countries have laws banning the publication of the names and other identifying information about victims even after the information has fallen into the public domain. Such laws generally have been held unconstitutional in the United States because of strong First Amendment traditions.⁹

Several states have erected barriers and protections to ensure that victim names and personally identifying information do not fall into the public domain during investigations, pretrial litigation and trial.¹⁰ Selected components of these statutes¹¹ include the following:

- A right for child victims and witnesses to be identified by a pseudonym in police records, charging documents and court filings.
- A broad list of crimes beyond sex crimes for which identifying information will be protected, including assaults, family and child welfare offenses.
- Provisions for defense counsel to obtain information on identities of victims and witnesses that include requirements not to disclose this information.
- Prohibitions on law enforcement personnel, police, prosecutors and their staff, and court administrative personnel from placing victims' names and identifying information in the public domain.
- Amendments to public records laws so that relevant portions of investigative, prosecution and court records that identify child victims remain confidential after the disposition of the criminal case.
- Adoption of a variety of enforcement measures to encourage compliance ranging from contempt and referral to licensing bodies to criminal sanctions for willful violations.

Ironically, when children are victimized by other children, the widespread state statutes that protect the privacy of juvenile offenders generally work to protect the privacy of juvenile victims at the same time. Unfortunately, children victimized by adults do not currently benefit from as much privacy protection as their juvenile offender counterparts do.

Law Enforcement Policies

Whatever the nature of state statutes concerning crime victims, police officers, victim advocates and prosecutors can typically do a great deal to help advise victims and their families and prevent many unwanted and unnecessary breaches of privacy. Officials can take a variety of steps to help protect crime victims and their families from damaging publicity:

- Provide written materials and give informal briefings to victims and families about the kinds of publicity that can occur, the consequences it can have, ways of preventing it and crime victims' rights with regard to the media.
- Ask victims, witnesses and families about their concerns regarding publicity.

- Decline to disclose identifying information about victims and witnesses to reporters without the victims' consent unless legally required to do so.
- Educate journalists who cover police and court matters about the value of protecting the victim's privacy.
- Protect victims and families from having to confront reporters and photographers by arranging for them to wait for court proceedings in non-public areas of the courthouse and arranging for them to use private entrances and exits from the courthouse if they prefer to avoid reporters and photographers.
- Use pseudonyms instead of actual names in reports, charging documents and other documents filed in court where local procedure allows.
- Negotiate appropriate protective orders with defense counsel establishing procedures for identifying victims and safeguarding personally identifying information about them.
- Inform the court about the privacy needs of child victims, families and witnesses.
- Request closed evidentiary hearings where there is evidence that open hearings are likely to injure a child.
- Develop protocols to train investigators, prosecutors and victim advocates in these and other steps that can enhance victim privacy.

Conclusion

Although more research is needed, there are many reasons to believe that publicity may be harmful to child crime victims. State statutes that enhance privacy protections for child crime victims can be enacted. In the meantime, there are a variety of informal measures that police officers, victim advocates and prosecutors can take to enhance the privacy of child crime victims.

1 David Finkelhor, Director, Crimes Against Children Resource Center, Professor of Sociology, University of New Hampshire. Charles Putnam, Research Associate Professor of Political Science, University of New Hampshire. Former chief of homicide prosecution, New Hampshire Office of the Attorney General. Please note: For the purposes of compliance with Section 507 of PL 104-208 (the "Stevens Amendment"), readers are advised that the funds for this program are derived from federal sources, (U.S. Department of Justice).

2 Andrews, Bodily shame as a mediator between abusive experiences and depression. *Journal of Abnormal Psychology*, 1995. 104(2): p. 277-285.

3 Mannarino and Cohen, Abuse-related attributions and perceptions, general attributions, and locus of control in sexually abused girls. *Journal of Interpersonal Violence*, 1996. 11(2): p. 162-180.

4 Runyan, Everson, Edelson, Hunter and Coulter, Impact of legal intervention on sexually abused children. *Journal of Pediatrics*, 1988. 113: p. 647-653.

5 Andrews, Bodily shame as a mediator between abusive experiences and depression. *Journal of Abnormal Psychology*, 1995. 104(2): p. 277-285.

6 Runyan, Everson, Edelson, Hunter and Coulter, Impact of legal intervention on sexually abused children. *Journal of Pediatrics*, 1988. 113: p. 647-653.

7 Ross, *Childhood bullying, teasing, and violence: What school personnel, other professionals, and parents can do*. 2nd ed. 2003, Alexandria, VA: American Counseling Association.

8 Kaiman, Shelton paper names names in sex assaults, in *The Seattle Times*. 2003: Seattle, WA. p. B1.

9 *Florida Star v. B.J.F.*, 491 U.S. 524 (1989) (civil damages award, premised on violation of state statute, against newspaper for publishing name of rape victim unconstitutional where reporter lawfully obtained victim's name), *Cox Broadcasting Corp v. Cohen*, 420 U.S. 469 (1975) (civil damages award against television station for broadcasting name of rape-murder victim held unconstitutional where station had obtained name from courthouse records), *Oklahoma Publishing Co. v. Oklahoma County District Court*, 430 U.S. 308 (1977) (court's pretrial order enjoining news media from publishing name or photograph of 11 year-old juvenile delinquent held unconstitutional where reporters had been allowed to attend delinquency hearing), *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979) (indictment of newspapers for violating state statute forbidding publication of names of youth charged as juvenile offenders without prior written approval of the juvenile court held unconstitutional where newspapers obtained name of juvenile from witnesses, police and prosecutors in a publicly accessible document).

10 Putnam and Finkelhor, Mitigating the impacts of publicity on child crime victims and witnesses, in Unpublished Manuscript. 2004, Crimes against Children Research Center - University of New Hampshire: Durham, NH.

11 For information on state statutes addressing this issue, contact the National Center for the Prosecution of Child Abuse at (703) 549-4253, or on the Internet at www.ndaa-apri.org/apri/programs/ncpca/ncpca_home.htm.