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Battered Child Syndrome: An Overview of Case Law and Legislation

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I. Introduction

An estimated 200 to 400 juvenile and adult children kill their parents or stepparents every year.[1] This number may seem high. In the total universe of murders and even in the smaller population of family murders, the killings of parents, often referred to as parricides, however, are very infrequent events.[2] Indeed "parent killing is among the rarest forms of intrafamilial homicide."[3]

Interestingly, most of these parricide offenders are adult offenders. Between 1976 and 1999, less than twenty-five percent of biological mothers and fathers slain were killed by juveniles under age eighteen.[4] A longstanding history of abuse, whether physical, emotional, or sexual abuse, is frequently found in cases when adolescents kill their parents.[5] The amount of attention these cases receive and frequently the outpouring of sympathy

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[1] Jamie Heather Sacks, Comment, A New Age of Understanding: Allowing Self-Defense Claims For Battered Children Who Kill Their Abusers, 10 J. Contemp. Health L. & Pol'y 349 (1994).

[2] Kathleen M. Heide, Parricide: Incidence and Issues, 4 Just. Professional 19 (1989).

[3] Beth Bjerregaard & Anita Neuberger Blowers, Chartering a New Frontier for Self-Defense Claims: The Applicability of the Battered Person Syndrome as a Defense for Parricide Offenders, 33 U. Louisville J. Fam. 843, 845 (1994-1995).

[4] Kathleen M. Heide & T.A. Petee, Parents Who Get Killed and the Children Who Kill Them: An Examination of 24 Years of Data, in Proceedings of the 2003 Homicide Research Working Group Annual Symposium 319 (Carolyn Block & Richard Block eds., 2003).

[5] Kathleen M. Heide, Why Kids Kill Parents: Child Abuse and Adolescent Homicide (1992); Susan C. Smith, Abused Children Who Kill Abusive Parents: Moving

generated for these young offenders stand in stark contrast to the occurrence of such events.

This Article is organized as follows. Part II briefly reviews characteristics shared by many adolescent parricide offenders (APOs) and describes the circumstances under which they kill. We will focus on the development of the concept of ''battered child syndrome'' in the medical and legal arenas. In an effort to understand the legal remedies available to children who kill parents, Part III briefly reviews the law of self-defense. Part IV addresses the battered wife syndrome (BWS), delineates its similarities to battered child syndrome (BCS), reviews the legislative and judicial responses to battered children who kill parents, and critiques legislation and case law addressing the battered person syndrome (BPS). The Article concludes with an explanation of why legislatures and courts have been reluctant to codify BCS to the same extent as BWS.

II. Characteristics of Adolescent Parricide Offenders and Their Criminal Trials

Heide's review of the literature revealed that twelve characteristics were commonly found in cases of youths who killed parents.[6] (1) A pattern of family violence and/or child maltreatment was typical. Acts of parental brutality and cruelty toward these youth, their siblings, or the abuser's spouse repeatedly occurred. (2) The adolescents' attempts to get help from others failed. Authorities, relatives, and others familiar with the youths' situation did little or nothing to help when apprised of the APOs' situation. (3) The adolescents' efforts to escape their family situation also failed. These youths had attempted to run away, had considered suicide, and some had even attempted suicide. (4) These adolescents tended to be isolated from others and/or to have fewer outlets. (5) Over time, the family situation became increasingly intolerable, and (6) these adolescents felt increasingly helpless and trapped. (7) Their inability to cope lead in some cases to a loss of control. (8) As a group, these youths tended to be criminally unsophisticated. They had little or no significant criminal history. (9) Guns were readily available in many of these cases. (10) The homicide victims were alcoholic, chemically-dependent, or substance abusers in many cases. (11) There was evidence to suggest the parricide offenders were in a dissociative state in some cases. (12) The victims' deaths were perceived as a relief to the offenders and their families, and there was an initial absence of remorse.

Smith also observed that these parricide offenders ''usually suffer years

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Toward an Appropriate Legal Response, 42 Cath. U.L. Rev. 141 (1992); Jessica L. Hart & Jeffrey L. Helms, Factors of Parricide: Allowance of the Use of Battered Child Syndrome as a Defense, 8 Aggression & Violent Behavior 671 (2003); R.A. Olla, Redefining the Objectively Reasonable Person in Texas: A Case for Battered Child Syndrome as Pure Self-Defense for Parricide, Tex. State Bar Sec. Rpt., 17 Juv. L. 6 (2003).

[6] Heide, supra note 5.

of physical, emotional, or sexual abuse at the hands of parents, witness the abuse of other family members, know that others are aware of the abuse but cannot or will not help, and fear for their lives and their safety.''[7] As the outlets to outside intervention close, these abused children turned to lethal violence in non-confrontational situations as a way to escape the persistent abuse.[8] One of the senior author's cases, ''Patty,''[9] for example, had endured years of physical, verbal, and psychological abuse as a teen by her father. Although Patty had been subjected to abusive acts since she was a child, the abuse intensified when Patty was about age twelve or thirteen, a time when her mother, who had suffered from years of similar types of abuse, divorced Patty's father and moved far away. Patty's father eventually sexually attacked her, much in the way a rapist would attack a victim. Several attempts by Patty to get help from adults and the social services agency failed. Patty ran away only to be brought back home by the police who found her. She considered killing herself and made one unsuccessful attempt. One night, encouraged by her friends, Patty, then age seventeen, shot her father in the head at point blank range as he lay sleeping peacefully in his bed.

Killings like these often appear to be premeditated[10] and seem to meet the traditional requirements of murder. The state will likely formally file charges of first-degree murder in situations where a review of the parricide case suggests that the youth was not in immediate danger; the parent had little opportunity to defend against the attacks; and the killing appeared planned. In a large proportion of adolescent parricide cases, there is substantial corroborative data that establishes that abuse is the contributing or motivating factor behind these homicides.[11]

Considerable debate exists across social, criminal justice, and legal circles as to what the appropriate legal response to such acts of violence by battered children should be. In Heide's typology of parricide offenders, those who are classified as ''severely abused children'' kill the abusive parent for either or both of two reasons: they are desperate and see no other way to end the abuse; and/or they are terrified that they or other family members will be killed or will continue to suffer from serious abuse.[12] Despite the tragic circumstances under which these youths have lived for many years, they cannot legally claim self-defense, as the doctrine has been traditionally defined by the courts.

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[7] Smith, supra note 5, at 142.

[8] Paul A. Mones, Parricide: Opening a Window Through the Defense of Teens Who Kill, 7 Stan. L. & Pol'y Rev. 61 (1995-1996).

[9] Heide, supra note 5.

[10] Robert Hegadorn, Clemency: Doing Justice to Incarcerated Battered Children, 55 J. Mo. B. 70 (1999), available at http://www.mobar.org/journal/1999/marapr/hegadorn.htm.

[11] Heide, supra note 5.

[12] Heide, supra note 5.

III. The Law of Self-Defense

Generally, a person may lawfully use deadly physical force against another in self-defense only when under the reasonable belief that the other is threatening him or her with imminent death or serious bodily injury and that such force is necessary to prevent the infliction of such harm. In most jurisdictions, an honest belief on the part of the defendant that he or she was in imminent danger is not sufficient to constitute self-defense.[13] Self-defense usually requires that the appearance of danger must have been so real that a reasonable person, faced with the same circumstances, would have entertained the same beliefs.[14]

Self-defense results in the acquittal of the defendant when successfully litigated during a murder trial. From the standpoint of society, the defendant's lethal act is considered justified under the externally-defined circumstances. The defendant is not deemed culpable or blameworthy for the actions that resulted in the death of the victim because of the attendant circumstances. Self-defense is based on the law of justification and needs to be distinguished from the concept of excuse. Excuses consider the subjective characteristics of defendants at the time they engage in criminal acts. Excuses may be complete, such as insanity, or partial, such as diminished capacity or voluntary intoxication. Complete excuses totally exonerate defendants from responsibility for their actions, while at the same time condemning these defendants' unlawful actions. Partial excuses hold defendants accountable for their unlawful behavior, although to a lesser extent than would otherwise be the case. Partial excuses reduce the degree of the criminal offense or the punishment rendered in consideration of the defendants' subjective or mental state at the time of the criminal events. Partial excuses, for example, may reduce the degree of the killing from murder in the first-degree to second-degree murder or manslaughter because evidence presented at trial indicated that the defendant was in a state wherein he or she could not form the mens rea needed to constitute premeditated murder. Partial excuses may also serve as mitigating factors at sentencing, resulting in a judge imposing a less severe sentence than statutorily possible.[15]

Some jurisdictions require that for a defendant to claim self-defense, he or she must have exhausted all possible avenues of retreat before responding to force with force. In jurisdictions that impose a duty to retreat, an exception is often made to permit the defendant to stand his or her ground when under attack at home and to use force when threatened with imminent harm. When both the assailant and the victim share the same residence, however, society's expectations appear to be different, particularly in cases in which a

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[13] Some evidence exists that the requirement that one must be in actual danger may be changing. Cynthia K. Gillespie, Justifiable Homicide: Battered Women, Self-Defense, and the Law (1988).

[14] Charles P. Ewing, When Children Kill (1990); Olla, supra note 5.

[15] Lauren E. Goldman, Nonconfrontational Killings and the Appropriate Use of Battered Child Syndrome Testimony: The Hazards of Subjective Self-Defense and the Merits of Partial Excuse, 45 Case W. Res. L. Rev. 185 (1994).

battered woman kills her abusive spouse or mate.[16] Similarly, convincing a judge or a jury that an adolescent acted in self-defense when he or she killed a parent is difficult unless (1) the parent was attacking the youth, and (2) the possibility of the youth's retreating at that moment without sustaining serious injury or death was extremely remote.[17]

The doctrine of self-defense as formulated almost a thousand years ago was designed to address combat situations between men. It did not take into consideration differences in physical size and strength between men and women[18] as well as between parents, particularly fathers, and their children.[19] In addition, it did not address circumstances related to psychological injury and the perception that aspects of one's self that are deeply valued are being severely damaged, and possibly irreparably destroyed, by another individual.

A compelling argument has been made that the doctrine should be broadened to include psychological self-defense.[20] Like battered wives, children and adolescents who have been severely abused may believe, based on their experiences, that they are in danger of being severely beaten or killed in the near future if they do not take lethal action when it is possible. Abused adolescents who do not believe their physical survival is threatened may feel their psychological survival compels them to attack the abusive parent. Perceiving that they are unable to engage in physical battle as an equal with the abusive parent, abused adolescents frequently strike when the abusive parent is physically defenseless (e.g., sleeping, passed out from drinking).[21]

Seventeen-year-old Peter had been severely abused from the time he was a baby. He was terrified one night that his father was going to make good on his threats earlier that evening to kill his son. Several hour later Peter shot his father, hitting him in the back of the neck and once just behind the ear, as the man sat watching television in the middle of the night. There was no evidence to indicate that Peter's father was aware of his son's presence when Peter trained the rifle on him and fired repeatedly.[22]

In the state in which this homicide occurred, charges of first-degree murder could be brought only by the grand jury. In this case, the grand jurors refused to do so because of widespread publicity that left little doubt in the community that Peter, as well as his mother, had been battered and abused for many years. Notwithstanding the grand jury's action, the prosecutor proceeded to try the case by filing an information charging Peter with second-degree murder, the highest charge possible under the circumstances.

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[16] Angela Browne, When Battered Women Kill (1987).

[17] Heide, supra note 5.

[18] Gillespie, supra note 13.

[19] Heide, supra note 5; Paul A. Mones, When the Innocent Strike Back: Abused Children Who Kill Their Parents, 8 J. Interpersonal Violence 297 (1993).

[20] Ewing, supra note 14.

[21] Heide, supra note 5; Olla, supra note 5.

[22] Heide, supra note 5.

IV. The Battered Child Syndrome

The term "battered child syndrome" first appeared in the *Journal of the American Medical Association* more than four decades ago.[23] Henry C. Kempe, a physician, used the term to describe "a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent."[24] Kempe and his colleagues advocated that physicians should have an obligation to report such abuse and that persistent physical abuse should be recognized as a diagnosable medical condition.[25]

In more recent years, psychological data have also been used to expand this definition and identify the emotional effects from which abused children often suffer.[26] Experts have argued persuasively that

> [c]hild abuse is an inordinately complex problem in the United States, with over one million children suffering from abuse or neglect annually. For those children able to survive the abuse, research reveals that they are likely to suffer serious physical injuries, emotional trauma, or become future victims of abuse or perpetrators of violence against others.[27]

Thus, although battered child syndrome was originally coined as a diagnosis for physical abuse, the term since the 1980s has increasingly been recognized as encompassing both the psychological and physical effects of prolonged child abuse.[28]

A. Is Battered Child Syndrome the Child's Equivalent of Battered Wife Syndrome?

Mental health professionals, researchers, and legal scholars have been quick to point out the similarities between battered child syndrome and battered spouse syndrome. The battered woman's syndrome is used as a "shorthand reference to the body of scientific and clinical literature that forms the basis for much expert testimony in domestic violence cases."[29] In her book *The Battered Woman*, Lenore Walker identified three phases that typify the "cycle of violence" of abusive relationships.[30] "The pattern is

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[23] C. Henry Kempe et al., The Battered Child Syndrome, 181 J. Am. Medical Assoc. 1 (1962).

[24] Kempe et al., supra note 23, at 17.

[25] Kempe et al., supra note 23; Helping the Battered Child and His Family (C. Henry Kempe & Ray E. Helfer eds., 1972); The Battered Child (Ray E. Helfer & Ruth S. Kempe eds., 1987).

[26] Kristi Baldwin, Battered Child Syndrome as a Sword and a Shield, 29 Am. J. Crim. L. 59 (2001); Olla, supra note 5.

[27] Smith, supra note 5, at 141.

[28] State v. Janes, 121 Wash. 2d 220, 850 P.2d 495, 501, 22 A.L.R.5th 921 (1993).

[29] U.S. Dep't of Justice, The Validity and Use of Evidence Concerning Battering and its Effects in Criminal Trials 6 (1996), available at http://www.http://www.ncjrs.org/txtfiles/batter.txt.

[30] Lenore Walker, The Battered Woman (1979).

characterized by a series of stages with differing engagement, coercion, and physical aggression'' that vary in severity, intensity, and duration across battering relationships.[31] These phases include 1) tension-building, 2) acute-battering, and 3) contrite-loving stages.

Phase one, the tension-building stage, typically involves an escalation of behaviors on the part of the abuser as he reacts negatively to interactions with the victim due to his fear of abandonment. The victim in this stage feels like she is ''walking on egg shells'' and either reacts by trying to nurture and reassure the abuser or avoid him for fear of setting off an abuse episode. The abuser's fear that the victim is going to leave him is ''reinforced as she avoids him in the hope of not triggering the impending explosion. He becomes more oppressive, jealous, threatening, and possessive'' during this time.[32]

The second phase involves the period when the abuser attacks the victim. These acute incidents range in time from minutes to hours. Victims and batterers experience symptoms immediately after the attack similar to those of disaster victims, including feelings of shock, denial, and incredulousness that the event occurred.

The final phase, or the contrite-loving stage, is a time of overt kindness and contrition on the part of the abuser. ''It is a phase welcomed by both parties, but ironically, it is the phase during which the woman's victimization becomes complete. In this phase, the batterer constantly behaves in a charming and loving manner.''[33] The abuser commonly calls upon outside parties such as friends and family to appeal to the victim and assures all that the abuse was a one-time incident for which there were rational explanations. This ''honeymoon phase'' showers the victim with attention, affection, and adoration. By making victims gradually begin to take responsibility for the episode and by making them feel that they must help their abusers to get better, the battering cycle is set to begin anew. It is important to note that just as every abusive relationship has unique contextual factors related to the victim and abuser, this three-phase cycle of violence does not necessary reflect how each battering episode occurs across situations.

The cycle of violence described above provides the backbone for the psychological construct of ''learned helplessness.''[34] This psychological theory ''describes what happens when a person loses the ability to predict what actions will produce a particular outcome. Because the battered woman tries to protect herself and her family as best she can, those with learned helplessness choose only those actions that have a high probability of being

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[31] U.S. Dep't of Justice, supra note 29, at 21.

[32] NVAA, Chapter 9: Domestic Violence 21 (2000), available at http://www.ojp.usdoj.gov/ovc/assist/nvaa2000/academy/1-9-dv.htm 9.

[33] NVAA, supra note 32, at 22.

[34] Charles P. Ewing, Fatal Families: The Dynamics of Intrafamilial Homicide (1997); Lenore E. Walker, Terrifying Love: Why Battered Women Kill and How Society Responds (1989); Lenore E. Walker, The Battered Woman Syndrome (1984); Lenore E. Walker, The Battered Woman (1979).

successful.''[35] As the battering intensifies and persists, the victim may perceive that there is no escape and that survival of the abuse is her first priority.

This theory was first introduced to the courts by psychiatrist Elisa Benedek in the 1978 trial of Ruth Childers. After eighteen years of abuse, Childers had killed her husband with a shotgun after calling the police when he began to attack her in a drunken rage. Expert testimony indicated that the gun had gone off accidentally. At trial, Benedek argued that battered women experience learned helplessness born from a ''sense of futility and dependence.'' Their helplessness eventually leads them to ''develop an exaggerated sense of their assailant's power and [they become] convinced they are in greater danger than a third party might perceive.''[36] Benedek's testimony of battered woman syndrome and learned helplessness did not lead to Childers' anticipated acquittal. Childers was found guilty of involuntary manslaughter and sentenced to the maximum penalty of five years in prison.

The parallels between BWS and BCS syndromes clearly exist. Although the three phases observed by Walker in cases of battered women are not typically seen in cases of battered children, other similarities are present. Battered spouses display hypervigilance and observe danger signals that others may overlook. Similarly, battered children often suffer the same type of psychological disturbances and develop permanent emotional sensitivities that make them react differently than normal people would under the same circumstances.[37] Like abused women, these abused children cultivate awareness of subtle cues of behavior that may indicate imminent danger, and they become prepared to defend themselves with little notice.[38]

The admissibility of expert testimony on the defendants' state of mind at the time of the killings has been greatly impacted by acceptance of battered spouse syndrome defenses. As noted by psychologist and lawyer, Charles Patrick Ewing, evidence pertaining to battered women syndrome should be allowed in murder trials involving abused women who kill their alleged batterers.[39] He further observed:

> Over the past twenty years the criminal justice system has come to recognize that abuse of women by men is a widespread societal problem . . . . [I]n most situations, the women are psychologically trapped in their abusive relationships. In spite of the numerous protective and counseling resources available, because they have been abused on a consistent basis over an extended period of time, the women in this situation often feel

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[35] NVAA, supra note 32, at 24.

[36] Evan Stark, Preparing for Expert Testimony in Domestic Violence Cases, in Handbook of Domestic Violence Strategies: Policies, Programs, and Legal Remedies 216, 221 (Albert R. Roberts ed., 2002).

[37] Hegadorn, supra note 10; Baldwin, supra note 26.

[38] Olla, supra note 5.

[39] Ewing, supra note 34.

> that they will never be safe from their abusers and that killing their abusers is their only viable means of escape.[40]

In a comprehensive trend analysis of 238 state and 31 federal case holdings and 12 state statutes, a National Institute of Justice special report found that "while much variation remains, expert testimony on battering and its effects is admissible or has been admitted without discussion in each of the 50 states plus the District of Columbia."[41] The report noted that ninety percent of states have accepted expert testimony in cases of traditional self-defense. In addition, and importantly, the analysis demonstrated that a substantial number of states have also allowed expert testimony for nontraditional (e.g., nonconfrontational) killings such as when a woman hires a killer or attacks her abuser while he is sleeping.[42] Nearly seventy percent of the states have also held that expert testimony is pertinent in explaining the defendant's state of mind at the time of the charged crime.

B. Legislative Responses to Battered Children Who Kill Parents

While states have been receptive to the plight of battered women, legislators have been much more hesitant to adopt statutes allowing the admission of battering evidence in parricide cases involving abuse. We found that three states—Texas,[43] Wisconsin,[44] and Louisiana[45] —specifically had legislation pertaining to the battered child syndrome. For example, Texas permits the jury to hear testimony about the history of abuse endured and provides jurors with an understanding of the abused child's circumstances.[46] This statute provides in relevant part:

> [I]n order to establish the defendant's reasonable belief that use of force or deadly force was immediately necessary, [the defendant] shall be permitted to offer: 1) relevant evidence that the defendant had been the victim of acts of family violence committed by the deceased and 2) relevant expert testimony regarding the condition of the defendant at the time of the offense, including those relevant facts and circumstances relating to the family violence that are the basis of the expert's opinion.[47]

Wisconsin enacted similar provisions for abused children that defined bat-

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[40] Carin C. Azarcon, Battered Child Defendants in California: The Admissibility of Evidence Regarding the Effects of Abuse on a Child's Honest and Reasonable Belief of Imminent Danger, 26 Pac. L.J. 831, 851 (1995).

[41] U.S. Dep't of Justice, supra note 29, at 7.

[42] U.S. Dep't of Justice, supra note 29, at 10.

[43] Vernon's Ann.Texas C.C.P. Art. 38.36 (2004).

[44] Wis. Laws 169 (1993) (cited in Baldwin, supra note 26, at 77 n.127).

[45] LSA-C.E. Art. 404A (cited in State v. Rodrigue, 734 So. 2d 608, 611 (La. 1999)).

[46] Tex. Code Crim. Proc. Art. 38.36 (2004).

[47] Tex. Code Crim. Proc. Art. 38.36 (2004).

tered child syndrome and allowed evidence of the effects of such battering to be admissible in cases where self-defense of oneself or others is at issue.[48]

Three additional states have statutes that have had battered child syndrome extended to them through court rulings. An Arizona statute references battered child syndrome, explaining that there was no error for a twelve-year-old defendant to be convicted of manslaughter where evidence of BCS was admitted.[49] Ohio Evidence Rule 702 has case notes which state that expert testimony on BCS is admissible when it is relevant and meets the requirements of the statute.[50] Lastly, a Washington statute provides that battered child syndrome evidence is admissible to help prove self-defense if relevant to the case.[51]

Some state statutes preclude children from using this defense as a justification for homicide. For example, Oklahoma[52] and Wyoming[53] have statutory provisions for expert testimony on battered woman syndrome that do not statutorily apply to cases of battered children.

In cases where battered spouses or children do have statutory protections, it is frequently difficult to get their state of mind presented into evidence if the court does not find sufficient cause of imminent danger in proximity to the homicide event. Missouri, for example, provides that "evidence that the actor suffering from the battered spouse syndrome shall be admissible upon the issue of whether the actor lawfully acted in self-defense or defense of another."[54] Another "crucial determination of whether a battering episode and commission of a homicide are reasonably proximate in time—makes the provisions of [the Missouri statute] difficult to invoke in a nonconfrontational situation."[55]

The Missouri statute is one example of how states hinder parricide offenders who use the self-defense justification. "Since state law remains inconsistent, or altogether silent on the issue, the state of a defendant's residence determines what kind of justice he receives. In most states, 'justice' is achieved without the introduction of battered child syndrome."[56] Statutes such as these leave no doubt that evidence of battered child syndrome does not in and of itself establish a claim of self-defense.

C. Judicial Responses to Battered Children Who Kill Parents

In a comprehensive review of the law on battered child syndrome, Baldwin noted that its physiological and psychological components have been

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[48] Wis. Laws 169 (1993) (cited in Baldwin, supra note 26, at 77 n.127).

[49] Arizona Revised Statutes § 13-1103(A)(1) (2001).

[50] Ohio Evid. R. 702 (2004).

[51] State v. Janes, 121 Wash. 2d 220, 850 P.2d 495, 501, 22 A.L.R.5th 921 1993).

[52] 21 Okl. St. Ann. § 22 (2004).

[53] Wy. St. § 6-1-203 (2004).

[54] V.A.M.S. 563.033.

[55] Hegadorn, supra note 10, at 5.

[56] Baldwin, supra note 26, at 78.

recognized in the legal community.[57] Battered child syndrome has been used by prosecutors and by defense attorneys in two very different ways. Courts have allowed prosecutors to use this syndrome, as initially identified by Kempe and his medical colleagues, as a vehicle to prove that parents had the intent to abuse a child who had been seriously injured. To a more limited extent, courts have begun to allow attorneys to introduce this syndrome as a defense to justify, excuse, or mitigate the use of deadly physical force by a juvenile against an abusive parent.

In 1993, the Washington Supreme Court in *State v. Janes*[58] recognized a self-defense justification. This landmark case was the first to sanction the use of the battered child syndrome justification in a murder case. The court reached this conclusion only after analogizing battered child syndrome to battered wife syndrome.[59] The Washington court "ruled that it was reversible error to exclude evidence of battered child syndrome, since admission of expert testimony on the syndrome would 'aid the jury in evaluating the manner in which a battered child perceived the imminence of danger and his or her tendency to use deadly force to repel that danger.'"[60] Advocates of using a justification defense in parricide cases such as this one hoped that the courts would begin to be more open to accepting expert testimony of battered child syndrome just as states had become for battered spouse syndrome.

A few other state courts have also held that testimony regarding battered child syndrome should be admissible in a murder case because it may be relevant to the mental status of the offender at the time of the killing. For example, the Ohio Supreme Court in *State v. Nemeth*[61] upheld an appellate court decision overturning a murder conviction based on the trial court's decision to exclude psychological testimony related to the battered child syndrome in the case of a man who killed his mother. The court noted that, even though battered child syndrome is not an independent defense in Ohio, it was an error to disallow expert testimony on the syndrome in support of a claim of self-defense or in terms of mitigating the degree of the offense.[62]

In an April 2003 case, the Court of Special Appeals in Maryland recognized the battered child syndrome as a legal defense and vacated the murder convictions of a teenager who killed his father.[63] Judge Hollander wrote in the 2-1 majority opinion that the court was "satisfied that Battered

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[57] Baldwin, supra note 26.

[58] State v. Janes, 121 Wash. 2d 220, 850 P.2d 495, 501, 22 A.L.R.5th 921 (1993).

[59] Baldwin, supra note 26; Mark Hansen, Battered Child's Defense: Youths Who Killed Relatives Offer Evidence of Abuse with Mixed Reviews, 78 ABA J. 28 (1992).

[60] Hegadorn, supra note 10, at 6.

[61] Battered-Child Syndrome Valid in Self-Defense Claim, Nat'l L.J., July 13, 1998.

[62] See Battered-Child Syndrome Valid in Self-Defense Claim , supra note 61.

[63] Smullen v. State, Md. Spec. App., No. 1179, (April 1, 2003); C. Magnuson, Teen Wins Chance to Use Battered Child Syndrome, Daily Record (Baltimore, Md), April 2, 2003, available at http://web.lexis-nexis.com/universe.

Child Syndrome is, generally, the functional equivalent of Battered Spouse Syndrome. Further, even without legislative authorization, such evidence may be relevant to the state of mind in a parricide case.''[64] The court acknowledged that abused children might indeed suffer more trauma than adults and therefore are entitled to the protection of the defense. Judge Hollander noted that ''we cannot articulate any sensible reason why such evidence would be relevant and admissible when the battered person is a spouse, but irrelevant and inadmissible if the battered person is a child.''[65]

D. Legislation Enacted and Judicial Decisions Relevant to Battered Person Syndrome

In our statutory review, we found only Georgia to have enacted legislation that specifically allows courts to consider the effects of battered person syndrome in a larger context.[66] Other states have taken a broader approach and have statutorily allowed for the admissibility of abuse and its effects. Massachusetts permits ''evidence that the defendant is or has been the victim of acts of physical, sexual or psychological harm or abuse'' in criminal cases involving the use of force against another where the issue is self-defense of one self or another party.[67] Louisiana's statute allows the use of expert testimony in the context of self-defense to shed light on the use of physical force in cases in which the defendant and the victim live in ''a familial or intimate relationship,'' which includes parent and child, as well as husband and wife.[68]

The battered person syndrome is considered by the state of Georgia to be an analogous, gender neutral form of the battered woman's syndrome. Both syndromes are a collection of behavioral and psychological characteristics that specifically include symptoms of post-traumatic stress disorder and learned helplessness. They explain the long term effects that prolonged and repetitive patterns of physical and emotional abuse cause in the victim.[69] Many experts believe it is necessary to introduce expert testimony on the battered person syndrome at trial in order for the jury to understand the defendant's state of mind at the time of the killing. As the Georgia Supreme Court in *Chester v. State*[70] observed:

> [It is] unfair to hold a battered individual to the same standard as a typical reasonably prudent person, when at the time she uses defensive force, she may be existing in a dissociative state unsure of when the next attack

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[64] Magnuson, supra note 63.

[65] Magnuson, supra note 63.

[66] Ga. Code Ann., § 16-5-2 (2004).

[67] Baldwin, supra note 26 (citing Mass. Ann. Laws Ch. 233, 23F (2000)).

[68] Baldwin, supra note 26 (citing La. Code Evid. Ann. art. 404A(2)(a) (1994)).

[69] State v. Janes, 121 Wash. 2d 220, 850 P.2d 495, 501, 22 A.L.R.5th 921 (1993).

[70] Chester v. State, 267 Ga. 9, 471 S.E.2d 836 (1996).

> upon her may begin and is unable to discern between her present and past realities.[71]

Battered person syndrome is the means by which a defendant introduces the existence of "a mental state necessary for the defense of justification although the actual threat of harm did not immediately precede the homicide."[72] It is used by defense attorneys to help the juries understand the state of mind and behaviors of abused people. The situation in which this syndrome typically comes into play is one in which a woman is charged with the murder of her spouse or paramour and is claiming that she acted in self-defense. If she has proof that she was battered, then expert testimony on the battered person syndrome can be admitted as evidence. This evidence must demonstrate that she acted upon a reasonable belief of imminent danger to her, even though it occurred during a non-confrontational situation.[73]

Georgia statutory law also distinguishes itself by clearly delineating the elements necessary to establish a defense.[74] Section 16-5-2 of the state's statutory code states that evidence of battered person syndrome can be brought before the jury for the limited purpose of illustrating that the defendant reasonably believed that the use of deadly force was immediately necessary in order to defend himself or herself. This statute was enacted in response to the landmark case of *Smith v. State,*[75] in which a wife shot her abusive husband after an argument. Even though Vernita Smith was denied the use of battered person syndrome, this case has set precedents concerning the proper evidentiary use of this syndrome.

Although this statute specifically references battered woman syndrome but not battered person syndrome, it recognizes the latter as analogous. Therefore, this statute is cited extensively in Georgia case law concerning battered person syndrome as evidence of justifiable homicide by self-defense. A subsection (d) was added to this statute that states that the defendant may offer the following:

> (1) Relevant evidence that the defendant had been the victim of acts of family violence or child abuse committed by the deceased, and (2) Relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to the family violence or child abuse that are the basis of the expert's opinion.[76]

When battered person syndrome is advanced by the defendant for justifiable

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[71] Chester, 471 S.E.2d at 842.

[72] Smith v. State, 268 Ga. 196, 486 S.E.2d 819, 821 (1997) (quoting Chapman v. State, 259 Ga. 706, 708, 386 S.E.2d 129 (1989)).

[73] A. Snow, Battered Person Syndrome: A Research Guide to Common Evidentiary Issues & Specific Treatment in Georgia. (Georgia State University College of Law; Advanced Legal Research 2003).

[74] The Georgia statute also states that "the Battered Woman Syndrome does not stand as a separate defense but rather is evidentiary support for a claim of justification." Ga. Code Ann., § 16-2-21 (2004).

[75] Smith v. State, 268 Ga. 196, 486 S.E.2d 819 (1997).

[76] Ga. Code Ann., § 16-3-21 (d) (2004).

homicide by self-defense, it is necessary that the defendant request that specific instructions be given to the jury to explain to them the relevancy of such evidence.[77]

Smith v. State proved useful shortly after it was decided in the case of James Freeman, who, without immediate provocation, shot to death his stepfather and his stepfather's friend. At his initial trial Freeman was denied the use of the battered person syndrome, despite his claims of continual abuse at the hands of his stepfather. Freeman was convicted on both counts of murder. Appellate review of the Freeman prosecution was directly influenced by the decision of the Georgia Supreme Court in *State v. Freeman*.[78] The *Freeman* ruling reversed the conviction for the murder of Freeman's stepfather, holding that the denial of use of battered person syndrome was an error by the lower court. Freeman could not, however, use that as a defense in the murder of his stepfather's friend because there was no evidence that the man had a history of abusing Freeman.

In order for battered person syndrome to be allowed into evidence, the accused must establish a prima facie case of self-defense. Furthermore, there has to be documented evidence of the abuse, whether physical or emotional, and expert testimony on the validity of the syndrome and its symptoms. Several defendants were barred from introducing the defense because they failed to provide adequate documentation; to wit, the defendant could not prove a history of abuse or a personal or intimate relationship with the alleged abuser. Other cases have failed because battered person syndrome was improperly introduced as a defense in itself. When the BPS is successfully introduced but fails to sway the jury, fault most frequently lies with the court's exclusion of expert testimony or the court's failure to provide the jury with specific instructions about its application.

V. Observations

Battered child syndrome (BCS) shares many similarities with battered wife syndrome (BWS) and its name variants, battered spouse syndrome and battered women syndrome. Our review of case law and state statutes, however, revealed that BCS differs from BWS in a very fundamental way. Unlike BWS, BCS has not been widely recognized in case law or state statutes.

Given that abused children would appear to be more vulnerable and even less culpable than their adult female counterparts, as others have rightly pointed out, why have legislators and judges been slow to bring relief to abused youths who kill their parents? We offer seven explanations for the reluctance of legislative bodies and courts to recognize BCS as a defense: (1) the fear that the existence of this defense will result in more parricides; (2) legal alternatives, such as factors in mitigation, are deemed more appropriate; (3) the rare occurrence of parents slain by youths; (4) the reality

[77] Smith, 486 S.E.2d 819.

[78] Freeman v. State, 269 Ga. 337, 496 S.E.2d 716 (1998).

that the most egregious cases of abused children killing their parents will be accommodated by the legal system; (5) the lack of information available on the most appropriate and best cases; (6) executive clemency will be a safety valve; and (7) the lack of a significant lobby group. Each explanation is discussed below.

A. Fear of an Open Season on Killing Parents

Many states have been reluctant to depart from a traditional self-defense theory because this type of familial homicide amounts to "retribution in disguise."[79] Traditional self-defense theory posits that a person who is unlawfully attacked by another should be able to take reasonable steps to protect himself or herself. To prove that self-defense was necessary, "one must show that he acted with an objectively reasonable belief that death or serious bodily harm was imminent and that it was necessary to use force to protect himself; additionally, the force used must be in proportion to the threatened harm."[80]

Most states have adopted wholly or partially objective standards as their criterion for self-defense. They typically employ a "reasonable person standard," that is, holding defendants to conduct consistent with a man "possessing the intelligence, educational background, level of prudence, and temperament of an average person."[81] This definition is significant because the standard takes the perspective of an adult male. Accordingly, it assumes intellect, education, and wisdom that is typically unreasonable from a developmental perspective for a child or adolescent in general, and even more unreasonable for a youth who comes from a severely abusive background.[82]

Many battered children who kill their parents, as we have seen, do so in nonconfrontational circumstances. Many courts have been hesitant to recognize these situations as meeting the imminent danger requirement necessary to enter a plea of self-defense under the traditional model. The use of battered child syndrome as a justification, for example, was struck down in Wyoming in the 1984 case of *Jahnke v. State*,[83] where a sixteen year-old boy shot and killed his abusive father as he returned home from dinner. As the "record contained no evidence that the appellant was under actual or threatened assault by his father at the time of the shooting . . . the reasonableness of appellant's conduct at the time was not an issue in this

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[79] Baldwin, supra note 26, at 72.

[80] Baldwin, supra note 26, at 73. As discussed previously, the finding of self-defense by a jury completely exonerates the defendant and finds them not guilty of any crime. Merrilee R. Goodwin, Comment, Parricide: States Are Beginning to Recognize that Abused Children Who Kill Their Parents Should Be Afforded the Right to Assert a Claim of Self-Defense, 25 Sw. U. L. Rev. 429 (1996).

[81] Goodwin, supra note 80, at 442.

[82] Heide, supra note 5.

[83] 682 P.2d 991.

case.''[84] Other courts in Indiana[85] and Kansas[86] have also resisted endorsing battered child syndrome as an affirmative defense because it violates traditional objective criteria of self-defense and ''because it allows the jury to consider the self-defense claim based on a child's emotional state and not that of an ordinary person in a similar situation.''[87]

B. Battered Child Syndrome as a Factor in Mitigation

Some commentators have argued that the use of battered child syndrome is inappropriate as an element of an objective standard of self-defense in nonconfrontational killings. They contend that BCS is better suited as a framework of excuse.[88] Mitigation in this context emphasizes the subjective state of mind of the defendant for purposes of excusing his or her behaviors and reducing the punishment deemed appropriate for the crime in question. These commentators posit:

> [A] partial or total excuse of the killing based on an analysis of the subjective state of mind and moral culpability of the battered child, coupled with mitigation at the sentencing state of the criminal process, appropriately allows society to focus on the actor rather than the act and exercise for the battered child without undermining the purposes of the narrow self-defense doctrine.[89]

The reader will recall that excuses, in contrast to justification defenses, hold the youth accountable for his parricidal behavior, while seeking to lessen the moral and legal culpability of the defendant by taking the abusive history between the youth and the homicide victim into consideration before determining the appropriate sanction to impose. In sum, the use of the excuses allows ''society to express its belief in the criminality of the battered child's act while still recognizing the extreme forces that led the child to act and providing compassion and individual justice to the actor.''[90]

Partial excuses include arguments concerning imperfect self-defense (an honest but unreasonable belief that deadly force was necessary), diminished capacity (some mental defect that lowered the defendant's culpability for his or her crime), diminished responsibility (defendant's inability to regulate moral and criminal actions due to reduced mental state), and provocation of the victim in his or her own death.[91] Total excuses—such as legal insanity—are difficult to prove and carry lingering social stigmas that might prohibit some defendants from using them. These excuses and the introduction of evidence of battered child syndrome ''can form an appropriate basis of mitiga-

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[84] Jahnke, 682 P.2d at 1006-07.

[85] Whipple v. State, 523 N.E.2d 1363 (Ind. 1988).

[86] State v. Crabtree, 248 Kan. 33, 805 P.2d 1 (1991).

[87] Baldwin, supra note 26, at 76.

[88] Goldman, supra note 15.

[89] Goldman, supra note 15, at 213.

[90] Goldman, supra note 15, at 218.

[91] Goldman, supra note 15.

tion of the child's culpability within the framework of excuse, which focuses on the unique characteristics and circumstances of the individual defendant."[92]

C. Rare Occurrence of Parricides

Parricide, as highlighted earlier, is a very rare event.[93] Crime data collected by the Federal Bureau of Investigation (FBI) indicates that the number of homicides that occurred over the ten year period 1977 and 1986, for example, averaged 19,090 per year. The average number of biological mothers and fathers slain by their offspring per year during this time frame was 306. The number of parents slain comprised 1.7% of all homicides that occurred. The percentage of parents slain rose slightly to 2.3% of homicides when the analyses were restricted to homicide cases in which the victim-offender relationships were known.[94]

When the analyses are restricted to juveniles, the number of cases is substantially diminished. Heide estimated the average number of parents slain by youth under 18 during this period by analyzing single-incident, single-offender data collected by the FBI as part of the Supplementary Homicide Report Data (SHR). Close inspection of these data suggested that at the upper limit, 65 natural parents—45 fathers and 20 mothers—might have been slain by youths under 18 per year across the time frame under examination. More recent analyses of SHR data by Heide and Petee for the twenty-four year period—1976 through 1999—have indicated that the phenomenon of parricide, including the relatively low involvement of youth in these killings, has remained quite stable.[95]

This estimate underscores the rarity of parental killings by youth. If this estimate is further restricted to severely abused youths who kill their parents, the number of cases gets smaller. If we then look at the cases where a decision is made to prosecute APOs for first-degree murder, the sample of cases of allegedly battered children is unquestionably even smaller.

D. The Most Egregious Cases of Abuse Will Likely Be Accommodated

Legal experts opine that in cases where severely abused youths kill parents, accommodations will likely be made if strong corroborative data are available and the youth, in contrast to the deceased parent, is perceived as a sympathetic victim. In these cases, prosecutors may agree to retain the defendant in the juvenile system. In some cases, prosecutors offer plea bargains whereby the youth is adjudicated delinquent in the juvenile justice system or pleads guilty to a lesser charge, such as manslaughter or second-degree murder, in the adult criminal justice system. In either of these venues, the youth

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[92] Goldman, supra note 15, at 249.

[93] Ewing, supra note 34; Charles P. Ewing, When Children Kill (1990).

[94] Heide, supra note 2.

[95] Heide & Petee, supra note 4.

typically spends a few years in confinement or on probation obtaining treatment while under sentence.

Diana Goodykoontz provides a good example of an abused child retained in the juvenile justice system. In June 1989, a circuit court judge presiding over juvenile matters in Pensacola, Florida, found fifteen-year-old Diana Goodykoontz not guilty of second-degree murder in the shooting death of her father. During the four-day bench trial held in juvenile court, the court had heard testimony that the father had a history of drinking heavily and physically abusing his wife and three children. On one occasion, he threatened to kill the entire family. Diana testified that her father had made sexual advances to her and she feared he might rape her. On the day of the homicide her father was drunk and ordered the family into the living room. Believing another violent confrontation was about to occur, Diana refused and retreated into her parents' bedroom, where her father's .357 magnum revolver was kept. She quickly dismissed the idea of escaping through the bedroom window as unfeasible, advancing instead from the bedroom into the hall and firing one shot into her father's chest.

In handing down the verdict, the judge agreed with the testimony of the defendant's expert witnesses that the adolescent was a battered child and suffered from post-traumatic stress disorder. He held that this syndrome caused Diana to have a reasonable belief, based on past interactions with her father, that she was "in imminent danger of great bodily harm" when she shot and killed him.[96] The judge found that Diana "further reasonably believed that the use of deadly force was necessary to prevent that harm from occurring."[97] According to co-counsel Paul Mones, the Goodykoontz case was the first one in which the battered-child defense was accepted by a juvenile court in a bench trial in the United States.[98]

Cheryl Pierson and George Burns provide examples of youths who pled guilty to reduced charges in adult court and received substantially less sanctions that they could have obtained by law. Cheryl Pierson pleaded guilty in 1987 in Long Island, New York to manslaughter for making arrangements when she was sixteen to have her forty-two-year-old father killed. Cheryl admitted to offering one of her classmates $1000 to kill her father. The girl testified at the pre-sentencing hearing that her father began sexually abusing her when she was eleven-years-old. After her mother died, the sexual abuse continued. Cheryl feared that her father would begin sexually molesting her younger sister. At the hearing many people, including Cheryl's stepbrother, her neighbors and friends, testified that they had suspected Mr. Pearson was sexually abusing his daughter, but had not helped her. Cheryl was sentenced to six months in jail, followed by five years on probation. Cheryl was released after serving less than four months. The boy Cheryl hired, in contrast, was sentenced to twenty-four years in prison. Cheryl's boyfriend

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[96] Heide, supra note 5, at 18.

[97] Heide, supra note 5, at 18.

[98] Heide, supra note 5; Paul A. Mones, personal communication with Kathleen M. Heide, Feb. 24, 1989, July 13, 1989.

pleaded guilty to criminal solicitation for giving the "hit man" $400 at Cheryl's request and was sentenced to probation.[99]

George Burns, Jr., a seventeen-year-old boy, was sentenced to fifteen years probation following his plea to the second-degree murder of his father by a trial judge in Jacksonville, Florida in 1983. At sentencing, the judge accepted the recommendations of the prosecutor and the state agency counselor who wrote the pre-sentencing report. George had shot his father six times in the chest and back immediately following a long evening of arguments and after years of substantiated abuse. Authorities had known for years that Mr. Burns had physically and psychologically abused his wife and children. The judge stated explicitly that the state in no way condoned the youth's behavior. In imposing sentence, however, the judge indicated that he believed that the chain of violence and abuse that resulted in the father's death were caused more by the father's actions than the boy's.[100]

E. Information on the Most Appropriate or Best Cases is Lacking

Arguably, information on the "best" parricide cases involving battered child syndrome is lacking. When cases involving extreme abuse are handled by dropped charges, retention in the juvenile justice system, pleas to lesser crimes, truncated terms of incarceration, and probation dispositions, the concept of "battered child syndrome" is not litigated in the lower courts. In addition, appeals are not taken to higher courts and consequently case law is not made.

By contrast, the cases that go to trial and subsequently appealed are often prosecutions where the facts do not "add up." These cases, for example, include uncorroborated abuse. In other cases, abuse may be substantiated, but appears limited to psychological or verbal abuse; and remote or unconvincing threats of death or serious injury. In still other cases, even though evidence of abuse may be established, the circumstances surrounding the crime are distasteful, suggesting that the youth is antisocial and acting to further his or her own selfish ends. For instance, in the last example, upon killing her father a severely abused youth invited her friends to see the deceased, then sat and ate pizza with them, and later spent the rest of the day palling around and trying to figure out how to dispose of the body.[101]

F. Executive Clemency Believed to Be a Safety Valve

Some have argued that executive clemency is a mechanism whereby justice can be extended to severely abused children who were wrongly convicted of the murders of their parents, presumably because they were not allowed to introduce evidence of battered child syndrome at their trials. This argument parallels the practice that has been used in cases of battered women who were not allowed to introduce evidence of battered wife syndrome in

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[99] Heide, supra note 5.

[100] Heide, supra note 5.

[101] Heide, supra note 5.

their trials for murder.[102] Beginning in the late 1970s, nationwide attention focused on battered women who were convicted of killing their abusive husbands and given lengthy prison terms. Governors from across the country were asked to review cases of abused women who had been denied the opportunity to introduce the battered women syndrome at their trial and to grant clemency to these women when justice warranted this action.

The precise number of women whose sentences were commuted under the governors' executive powers and released from prison is not known. As of spring 2002, the National Clearinghouse for the Defense of Battered Women reported that the sentences of at least 124 women in 23 states had been commuted. Many of these commutations occurred in the early 1990s as a result of several large clemency actions. Interestingly, over the last ten years, successful clemency petitions for battered women have been few.[103]

Executive clemency has been used in instances of severely abused children. In the case of Richard and Deborah Jahnke, Wyoming Governor Ed Herschler commuted both sentences in 1984. This case received extensive national attention. After the two teens were convicted of killing their father and as appeals of their prison sentences were pending, a crew from ''60 Minutes'' arrived in Cheyenne to investigate the story. The two siblings were on bail at the time waiting for the outcome of their appeals. Their case was the lead story when aired on ''60 Minutes'' the night of the 1984 Super Bowl, when an estimated forty-six million viewers watched. Correspondent Ed Bradley described the abuse that the adolescents had endured, the inability of Mrs. Jahnke to protect her children, and the failure of the state social services agency to investigate the child abuse report filed six months before the killing. Of the more than one-thousand letters written to the studio after the broadcast, only ten objected to the sympathetic portrayal of the Jahnke siblings.[104]

The adolescents' convictions and sentences were upheld by the Wyoming Supreme Court in separate appeals later that year. The Governor's decision to grant clemency in what clearly was a premeditated and nonconfrontational killing was a direct response to public sentiment. Richard, who was initially sentenced to five-to-fifteen years in prison for the voluntary manslaughter of his father, was ordered to be sent to a hospital for a few months for psychiatric evaluation and then was placed in a juvenile facility until age twenty-one. His sentence totaled three years and thirteen days. Deborah's sentence was commuted to one year of probation to be preceded by one month of intensive psychiatric intervention. Deborah had been initially sentenced to three to eight years.[105]

Since that time, cases of executive clemency of battered children who kill abusive parents have been few. Unlike cases of battered women, there

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[102] Hegadorn, supra note 10.

[103] P. Burke, Gov. Davis Commutes Battered Woman's Sentence, Women's E News (May 17, 2002), available at http://www.feminist.com/news/news41.html.

[104] Heide, supra note 5.

[105] Heide, supra note 5.

have been no gubernatorial efforts to systematically review cases of youths sentenced to long prison sentences for killing their abusive parents.

G. The Lack of a Significant Lobby Group

Given the rarity of the event, few parties feel compelled to lobby on behalf of abused children who kill their parents. In contrast, legislation pertaining to battered women's syndrome has had the interest and endorsement of women's groups for more than three decades. Women in the United States, unlike children, have a powerful lobby fighting for their rights.

It is important to note that the killing of husbands by their wives is far more common that the killing of parents by their offspring. During the period 1977 through 1986, referenced earlier, 703 husbands were killed by their wives every year on the average. This number constituted 3.7% of all homicides during this period. If the total homicide case pool is restricted to those in which the victim-offender relationship was known, the percent of husbands killed by wives averaged 5.3% over the time frame. Put simply, the number of women who killed their husbands over the ten-year period on the average appears to have been more than ten times the number of juveniles who killed their parents.

VI. Conclusion

Our review of the literature, state statutes, and case law for all fifty states reveals that the concept of battered child syndrome in cases of adolescent parricide offenders remains open to judicial interpretation amid often vague legislation. Few legislatures have been willing to use language that overtly recognizes BCS and BPS. Thus, challenges in courts have been more likely to address the admissibility of these syndromes and expert testimony pertaining to them. Clearly, more attention is needed to ensure that children who are victimized in their homes are dealt with justly by the courts and the legislatures, particularly when parents, the larger community, and child welfare agencies have failed to protect them in their time of need.