

ACCESS TO JUSTICE

for Those Without Voice, Words, or Language



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Concerned citizens in Hawai'i have made it a state civic priority to improve access to justice for low-income and moderate-income people.¹ For an especially vulnerable group of Hawai'i's citizens—infants and toddlers under the age of three—access to justice can mean a world of difference for their future. Hawai'i's Zero to Three Court is working to make sure these infants and toddlers—without meaningful voice, words, or language—have access to justice to promote their best possible developmental outcomes.

The Problem. Nationally and in Hawai'i, infants under the age of one represent the largest group of children who

are removed from their parents because of parental abuse or neglect.^{2,3} For Hawai'i in 2012 (the most recent data available), 224 (16 percent) of the confirmed cases of child abuse and neglect that year were of infants under the age of one. Children under the age of three represented more than a third (37 percent) of confirmed cases.⁴ More alarming is that between 2001 and 2010, 39 children in Hawai'i died as a result of child abuse.⁵ The deaths of these children in Hawai'i might have been prevented.

The United States Department

of Health and Human Services documented that the annual number of such deaths has increased over the past decade.⁶ Well-documented research concludes the actual number of children who die from abuse and neglect is probably double the official government statistics.⁷ In recent years, child-fatality review teams have emerged across the country to address the concerns that systems of child protection, law enforcement, criminal justice, and medicine do not adequately assess the circumstances surrounding child fatalities that result from maltreatment.^{8,9}

Equally alarming is that the infants who survive abuse are often left with severe, permanent brain damage. The extreme vulnerability of this age group makes infants under the age of one the largest group sustaining permanent brain injury resulting from “Shaken Baby Syndrome.” Shaken Baby Syndrome is a

severe, inflicted brain injury caused by violent shaking of an infant, often a frustrated, inappropriate response to continued crying by the baby. Because a

baby's head is relatively large and heavy (making up 25 percent of body weight), the baby's neck muscles are too weak to support the head. Violent shaking causes blood vessels feeding the brain to tear, causing bleeding around the brain. The blood pools within the skull, sometimes creating more pressure and additional brain damage.¹⁰

Moreover, damage to the brain that does not result in death has long-term consequences: learning disabilities, physical disabilities, visual disabilities or blind-

ness, hearing impairment, speech disabilities, cerebral palsy, seizures, behavior disorders, and cognitive impairment. The Centers for Disease Control ("CDC") found that the highest rate of Shaken Baby Syndrome is among children under one year of age (32.3 per 100,000) with a peak of hospitalizations between 1 and 3 months of age.¹¹

Although no specific data on the incidence of Shaken Baby Syndrome in Hawai'i are available, there are anecdotal data from referrals to the Department of Health's Part C of the *Individuals with Disabilities Education Act* Early Intervention Program. Babies who survive Shaken Baby Syndrome represent those with the most significant, life-long disabilities. Thus, the economic burden to the community of child abuse is substantial.^{12,13}

Because abusive head trauma is a significant and tragic cause of morbidity and mortality, with a poor prognosis for

survivors, health care providers and parents are often faced with deciding whether to discontinue life support for a baby with brain damage. This decision is complicated if parents were the perpetrators. Removing life support could result in an escalation of criminal charges from assault to murder. The possibility of murder charges has sometimes resulted in children being kept alive, even when treatment is deemed futile or inhumane. Solutions are being proposed to give greater deference to civil justice for these critically ill children while still preserving parental rights.¹⁴

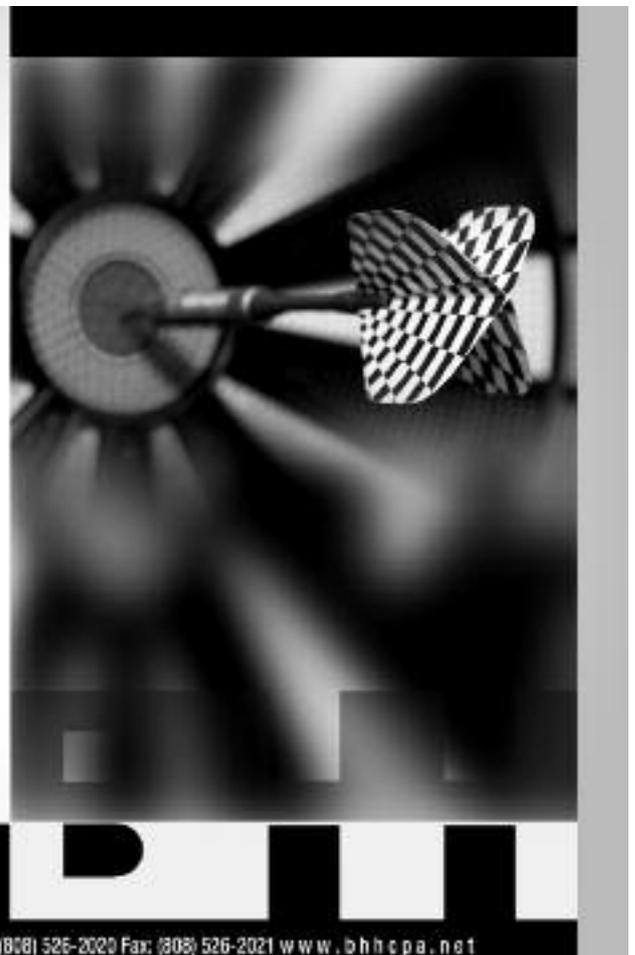
No ethnic or income group is immune to engaging in child abuse and neglect. However, researchers have identified some indicators of parents who are more likely than others to maltreat their children. As early as 1964, researchers identified a cluster of risk factors for parental abuse. The cluster included the following factors: a parent had been abused or neglected as a child; presence of poverty; presence of substance abuse; mental health issues; incarceration of

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parents; parent suspected of having committed prior abuse; marital and financial stressors; social isolation; lack of parental knowledge about child development; parental tendency toward violence; and difficulties in parent-infant bonding.¹⁵

These risk factors have been used to create a “Family Stress Checklist” for screening purposes.¹⁶ Prevention programs across the country have used that checklist to identify at-risk parents and qualify them for parent-support services such as Hawai‘i’s Healthy Start Program. These risk factors have been validated in follow-up studies.¹⁷ The CDC also conducted a large study of Adverse Childhood Experiences (ACE Study), which examined the more severe risk factors in the checklist.¹⁸ This study also found a strong relationship between having such adverse experiences in early childhood and developing chronic disease in adulthood.¹⁹

Poverty, substance abuse, domestic violence, and mental health challenges characterize a large portion of confirmed cases of child abuse and neglect in

Hawai‘i.²⁰ These stressors in a family can result in what is referred to as “intergenerational transmission of trauma and toxic stress.”²¹ Child abuse and neglect experienced by a child are likely to become part of that child’s behavior when the child becomes a parent. Breaking this intergenerational cycle through prevention and early intervention is critical.²²

Judicial Response to Problem.

In 2004, in an effort to address the civil-justice needs of those children, ZERO TO THREE, a national non-profit infant and toddler advocacy agency, established Safe Babies Court Teams at eight locations around the country. These courts were established in recognition of the critical importance of the first three years in the life of the child. Honolulu’s First Circuit Court Team (Hawai‘i Zero to Three Court) was added in 2008, with funding continuing through late 2012.

The primary purpose of the Hawai‘i Zero to Three Court is to focus attention on the fact that developmental needs of

infants and toddlers are significantly different from the needs of older children in foster care. For example, science on brain development has documented that 70 percent of the structure of the brain is complete by the first birthday. Healthy brain development is dependent on attachment and interaction with the parent or primary caregiver. Early experiences “wire” the brain for life.²³

Further, as compelling as the data is for the immediate prevention of child abuse and






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neglect, recent science has documented long-term effects of “toxic shock”—an effect that shows up later as chronic illness in adults.²⁴ Through its partnership with services aimed at promoting positive parent-child attachment and ensuring that children live in a nurturing, secure family placement, the Hawai'i Zero to Three Court is making significant progress in preventing the cycle of history repeating itself.

Compared with regular dependency court cases, Zero to Three courts invest greater time on each case, with the court team assessing how well the local delivery system is functioning. When gaps are identified, the court team works to develop supportive approaches and community services. Court teams take what has been proven through science and clinical experience to be good for abused and neglected infants and toddlers and translate that knowledge into practices that advance healthy development. A major function of this model is providing physical, developmental, and mental health services to abused infants and toddlers.

Participation is voluntary for parents, requiring a strong commitment by the parents and/or family members. Under the Zero to Three Court, children in foster care and their families have increased parental visitation opportunities, as well as increased relative/kinship placements, both of which increase the likelihood of a child's reunification with family within 12 months of removal from the home. The court teams thoroughly consider all aspects of a child's development to ensure the healthiest and most sustainable placements and decisions are made right from the start for each individual child, thereby avoiding corrective changes later.

Two evaluations of the Zero to Three Courts on the mainland have been overwhelmingly positive. (Hawai'i's program was not included in the evaluations.) These evaluations include the following key findings: "Control your destiny or somebody else will."

•99.05 percent of children "Control your destiny or somebody else will." were protected from further maltreatment while under court supervision, and 97 percent

received needed services;²⁵ and •Children monitored reached “permanency” 2.67 times faster than the national comparison group.²⁶

Five core components guide each court team: 1) local judicial leadership; 2) local community coordinator; 3) local court team; 4) monthly reviews; and, 5) child-focused services and mental health interventions. Increased knowledge and understanding of early childhood development by child welfare workers, judges, and members of the court teams have resulted in children and families receiving appropriate services, including development screening, early intervention, and parenting classes.

The Hawai'i Zero to Three Court provides “voice, words, and language” for these children to give them the opportunity for access to justice. For them, “justice” is defined as freedom from abuse and neglect by their caregivers. The court strives to provide safe, stable, loving, and nurturing homes for successful growth and development, and to sever the cycle of intergenerational abuse and neglect.

One of the most important of the five core components is monthly judicial reviews. State and federal regulations require court reviews of children in the child welfare system at least every six months. However, for children under the age of three, when physical and mental development is so rapid, a six-month time interval is too long to ensure adequate attention is given to enhancing the child's brain development and fostering the child's secure attachment to a parent or significant care giver.

Each Zero to Three case comes to court once a month. Before the scheduled hearings begin, each family's court team (composed of the Zero to Three Case Manager, the child's guardian ad litem, parents' counsel, Deputy Attorney General, and Child Welfare Services social worker) meets with the judge to discuss the child's and family's needs and progress in services, the parents' contact with the child, and any other areas of concern.

Hawai'i has been extremely fortu-

nate in its local judicial leadership. Senior Judge R. Mark Browning of the First Circuit Family Court has been extremely supportive of the need for this special court. The court team has been strengthened by continuity in the judicial appointment for the Hawai'i Zero to Three Court since its beginning in 2008. When funding for Hawai'i's program ended in late 2012, the Family Court expressed a commitment to continue the program, using support from the First Circuit Family Drug Court.

In 2013, the Legislature introduced a resolution to provide continued funding for the program. However, another potential federal funding source was identified through the United States Substance Abuse and Mental Health Services Administration. With strong community support, an application was developed and submitted. In late 2013, notification was received of funding of the Zero to Three Court for a three-year period in the amount of \$324,786 for each of the three years. Thus, funding for the Zero to Three Court in the First Circuit is now guaranteed through September 30, 2016.

As of the end of 2013, the Zero to Three Court had accepted 34 cases involving 39 infants and toddlers in addition to seven siblings. Six children were reunited with a parent or parents, and permanency had been achieved through the adoption of 22 children and one legal guardianship. As of January 1, 2014, the court was serving 13 active cases.²⁷ *This number represented only about three percent of the infants and toddlers under the age of three on O'ahu who were in foster care as a result of abuse or neglect.*

The Future. Now is not too early to begin planning to sustain this critically important community resource for infants and toddlers. Hopefully, funding for the court will eventually become part of the Judiciary Budget. Ideally, the program needs to expand to cover all infants and toddlers on O'ahu, not just the current three percent.

The Zero to Three Court is now only available in the First Circuit. However, a review of the data suggests the services are greatly needed in the other counties of



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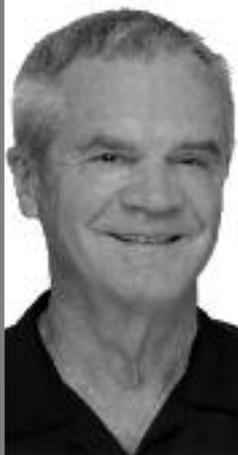


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the State. Table 1 shows the 2012 estimated population for each county and the percentage of the state's total child abuse and neglect confirmed reports for that county.

Data is not available on the percentage of the State's population composed of children ages three and under by county. Also not available is data on the number of cases of child abuse and neglect by age by county. However, a comparison of the percentage of population by county and the percentage of confirmed cases of child abuse and neglect by county suggests the problem may be worse in the neighbor islands than in Honolulu County. Honolulu was the only county with a smaller percentage of cases of confirmed abuse and neglect than its percentage of the total State population. Thus, the need for expansion of the Zero to Three Court to other Circuits is crucial.

Summary. In the best of all possible worlds, every baby would be welcomed into a family of mature, loving, and nurturing parents. Unfortunately, too many babies are born to parents unprepared to provide the care needed for their child's optimal development. Many of these parents are dealing with their own personal challenges, whether from poverty, addictions, or domestic violence. Too often, the parents themselves were raised in families that did not provide good parenting models or were themselves victims of abuse and neglect as children.

Most people are shocked and sad-

dened whenever the media report details of physical or sexual abuse or descriptions of neglect of a young child by those responsible for the child's care. To work toward the best of all possible worlds, that "village" where young people are taught parenting skills and where there is support for families raising young children while living in stressful situations is needed. The community's safety net of primary prevention of child abuse and neglect has gaping holes that allow too many young children and families to fall into the child welfare system and come under jurisdiction of the courts.

Until that safety net is repaired and the community is more successful with primary prevention, the need for the Zero to Three Court is critical. This court addresses needs of many of the most vulnerable children and families. To expand access to justice for those without meaningful voice, words, or language, the Zero to Three Court in the First Circuit must be continued and eventually expanded to the Second, Third, and Fifth Circuits.

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"Control your destiny or somebody else will."
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County	State's Projected 2012 Population	Percentage of the State's Total Population	Total Number of 2012 Confirmed Cases of Child Abuse and Neglect ²	Percentage of State's Total Number of Cases of Child Abuse and Neglect
Hawai'i	188,595	13.50%	301	22%
Honolulu	974,990	70.10%	740	54%
Kaua'i	68,395	4.90%	98	7%
Maui	158,040	11.40%	229	17%
Total	1,390,090	100.00%	1,368	100%

Table 1. 2012 Project State Population by County and by Percentage of Confirmed Child Abuse and Neglect

³ Hawaii State Department of Human Services, A Statistical Report on Child Abuse and Neglect in Hawaii, 2000-2012.

⁴ *Id.*

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The authors wish to acknowledge: The Hawai'i Zero to Three Court Staff—Christine Y. Mäwa-Mendoza, James Lutte, and Faye Kimura; Malia Taum-Deenik for serving as the Project Coordinator, 2009-2012, for the first Hawai'i Zero-to-Three Court funded by national ZERO TO THREE; Gail Breakey for her life-long advocacy on behalf of the prevention of child abuse and neglect in Hawai'i's keiki; Robert C. Johnson for his editorial assistance.

