THE YOUNG AND THE HELPLESS: RE-DEFINING

THE TERM “CHILD VICTIM OF CRIME”

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I. **Introduction**

Children under the age of majority interact with the criminal justice system on a daily basis in countless different ways. Inevitably, they are also deeply affected by legal decisions and policies. Nevertheless, these interactions, decisions and policies are very often governed by legal principles designed for adults that lack any meaningful consideration of the special developmental needs of children as a discrete group, and the substantive differences between children and adults. Consequently, applying to children legal principles and instruments that were designed to serve adults often yields ineffective results, poor quality of justice, and irreparable harm to children and society.¹ To remedy these injustices, it is essential to explore different methods to adapt our justice system, legal policies and legal concepts, to fit, and properly address, the specific needs and unique characteristics of children. To assure the efficacy of such revision, law and science must be synthesized, using interdisciplinary methodologies.

This paper marks the initiation of an endeavor to pursue such adaptation, by developing a new and innovative evidence-based legal definition to the term “child victim of crime.”

In recent years, the rising swell of the modern day children’s rights movement has resulted in growing attention to issues concerning child victims of crime by both domestic and international legal communities. As a result, policy and legislative proposals in the international, national, and local levels, as well as scholarly articles discussing the topic,  

have emerged. Despite this proliferation of laws and scholarship addressing specific forms of victimization, these documents have neglected to provide an explicit legal or normative definition to the term “child victim.” Moreover, they often overlook the inherent differences between children and adults and the unique and multidimensional ways in which crime affects children. The result is insufficient laws and policies that neither adequately protect this vulnerable group, nor address the full range of societal and public safety implications of child victimization.

This paper proposes a new framework for the development of a comprehensive and inclusive child-oriented definition to the term. Such definition should rest on scientific findings examining the distinct developmental characteristics of children, and the particular ways children are affected by crime due to their impressionability and vulnerability. The paper will explore the potential of expanding the definition of the term beyond the conventional direct victimization, to incorporate a broader range of indirect forms of victimization. These may include the impact on child witnesses, children intensively exposed to crime and violence, children with caregivers who themselves are victims of crime, and children of imprisoned caregivers. The implementation of the new definition will potentially enable the protections and treatment of millions of children crippled by crime, who currently fall beyond the scope of the narrowly defined policies designed for adults. It will also help enhance public safety, and facilitate fiscal efficiency.
II. The Problem

Children are one of the most highly victimized segments of our society.\(^2\) Despite the prevalence of this harmful phenomenon, so far, relatively little attention has been devoted to child victimization as one integrated and cohesive field of study. This is especially evident when compared to other related fields, such as Juvenile Delinquency. As a result, no systematic attempts have been made to define the legal term “child victim of crime.” Moreover, the extent and nature of child victimization as a public health and public safety problem, its cumulative effect on our society, and the role our legal system can\should play in addressing this problem, have not been fully explored.

Although tremendous progress was achieved over the past decade by the scientific community to advance our understanding of crime-induced trauma in children and its multidimensional ramifications, so far no significant efforts have been made to utilize this knowledge to inform legal policies in order to enhance protection, and to effectively address the distinct developmental needs and vulnerabilities of children.

Due to this gap, and absent an explicit definition stating otherwise, existing laws and policies addressing child victimization often rely on the misguided assumption that, like adult victims, a “child victim” is a minor directly subjected to an act defined by law as a criminal offense. This narrow and ill-informed interpretation fails to account for the inherent differences between children and adults and the unique ways in which crime affects children, which will be discussed in the following section.

Existing Definitions

Even when examining legal instruments that were meant to address the specific issue of child victimization, we can trace this same misguided definitional assumption, which implies that no profound attention was devoted to the question of “who is a child victim?”

One example is the UN Economic and Social Council Resolution on Justice in Matters Involving Child Victims and Witnesses of Crime. Section IV(9)(a) of this resolution defines “child victims and witnesses” as “children and adolescents, under the age of 18, who are victims of crime or witnesses to crime.” The emphasis here is on the age of the individual, rather than the scope and nature of the victimization.

Another telling example is the host of federal acts in the United States addressing issues relevant to child victimization. The primary piece of federal legislation governing services and compensation provided to crime victims is the Victims of Crime Act of 1984 (VOCA). § 10603(2)(A) and § 10603a of the act instruct that priority should be given to programs providing assistance to child victims, and particularly victims of child abuse. Nevertheless, no specific definition is provided in this act for the term “child victim.” § 10607(e) defines a “victim” as “a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime.” Presumably, the same definition, explicitly limited to direct victimization, also applies to children.

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3 Sec. IV(9)(a), UN Economic and Social Council, Resolution 2005/20 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (July 2005)
4 42 U.S.C.A. Ch. 112
5 42 USC § 10603(2)(A). Similar priority is mandated to services for child victims in Native American Indian tribes through 42 USC § 10601(g).
6 42 USC § 10607(e)
The Federal Child Abuse Prevention and Treatment Act (CAPTA) governs the treatment of child abuse and maltreatment cases. The act applies exclusively to maltreatment in the hands of a parent, a guardian or a legal caregiver. It does not cover victimization by other acquaintances or strangers. The CAPTA Reauthorization Act of 2010 amended the original act, and determined a minimum standard for states as to the set of acts or behaviors that comprise child abuse and neglect. The amendment defines ‘child abuse and neglect’ to mean “at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm”.

CAPTA does not provide any specific definitions for each type of maltreatment, such as ‘physical abuse’, ‘neglect’, ‘risk of serious harm’, or ‘emotional abuse’.

Each state that accepts CAPTA funding must enact its own definitions of maltreatment within state civil and criminal statutes, in consideration of the federal minimum standard as the lowest threshold. While some states enacted relatively narrow definitions of the term, others provided more inclusive ones. Some states also incorporated into their statutory definitions forms of indirect victimization, such as witnessing of domestic violence, and exposure to parental substance abuse.

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8 § 142 The CAPTA Reauthorization Act of 2010
9 Only the terms ‘sexual abuse’ and the special cases of neglect related to withholding or failing to provide medically indicated treatment are separately defined.
The Victims of Child Abuse Act of 1990\textsuperscript{11}, which was reauthorized in 2013, was specifically designed to improve the treatment of child abuse victims. § 13001 finds that “too often the system does not pay sufficient attention to the needs and welfare of the child victim, aggravating the trauma that the child victim has already experienced.”\textsuperscript{12} The act also recognizes that there is “a national need to enhance coordination among community agencies and professionals involved in the intervention system” is such cases,\textsuperscript{13} and mandates the institution of multidisciplinary programs designed to “reduce the trauma to the child victim.”\textsuperscript{14} Yet, the general section of the act provides only a fairly indistinct and vague definition of the term “child abuse” to mean “physical or sexual abuse or neglect of a child.”\textsuperscript{15}

The only definition that is more detailed, and more specifically geared towards the unique characteristics of children, is provided in the ‘Mandatory Reporting’ section of the Victims of Child Abuse Act.\textsuperscript{16} Under this definition, one of the listed categories that mandate reporting by the designated professionals is ‘Mental Injury.’ The act defines ‘Mental Injury’ as “harm to a child’s psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition.”\textsuperscript{17}

Although this definition recognizes a broader spectrum of adverse symptoms of child victimization, it is likely to cover only cases in which the mental injury is the result of acts directly intended towards the child, and therefore exclude most forms of indirect victimization.

\begin{thebibliography}{9}
\bibitem{note11} 42 U.S.C. Ch. 132
\bibitem{note12} 42 U.S.C § 13001(4)
\bibitem{note13} 42 U.S.C § 13001(5)
\bibitem{note14} 42 U.S.C § 13001(6)
\bibitem{note15} 42 U.S.C § 13001a
\bibitem{note16} 42 U.S.C § 13031(c)
\bibitem{note17} 42 U.S.C § 13031(c)(3)
\end{thebibliography}
Furthermore, this definition applies only to the Mandatory Reporting section, rather than the entire act. It is a telling fact that the category of ‘Mental Injury’ is completely absent from the general definition of § 13001 described above.

A similar definition to the one appearing in § 13001, which includes the ‘Mental Injury’ category, also appears in the Child Victims' and Child Witnesses' Rights section of the federal criminal code, which sets special evidentiary procedures for children under the age of 18 involved in federal cases. The special procedures mandated in this section also apply to child witnesses “to a crime committed against another person.”

A review of the relevant U.S. Federal legislation, as well as international law instruments, reveals the inexistence of a clear, explicit, and consistent definition of the term “child victim of crime.” Instead, we find relatively narrow and vague interpretations of the term, which limit the scope of policies and statutory protections relying on these interpretations. As a result, the great majority of children negatively affected by crime, and particularly those suffering from indirect forms of victimization, are not formally recognized as victims, and thus go largely ignored and untreated. This inadequacy has a multidimensional effect on the individual and societal levels.

**Harm to The Child**

On the individual level, existing research demonstrates that children affected by crime, due to direct or indirect victimization, exhibit an array of adverse symptoms. These include aggression; developmental and behavioral problems; attention disorders; attachment

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18 U.S.C.A. § 3509
19 U.S.C.A. § 3509(2)(B)
disorders; delays in educational development; and deficit social adaptation. These children also suffer from increased risk for repeat victimization, mental health problems, and greater likelihood to engage in substance abuse and/or criminal activity.\textsuperscript{20} Differently than adults, scientific studies demonstrate that indirect forms of victimization affect children in a very similar manner to direct victimization. These symptoms are particularly common and severe when the victimization is not acknowledged and the child does not receive treatment and services to facilitate rehabilitation.\textsuperscript{21}

The most comprehensive research into forms of childhood trauma, with over 17,000 surveyed participants, is the Adverse Childhood Experience (ACE) Studies.\textsuperscript{22} This series of studies link childhood experiences, including physical, sexual and emotional abuse, neglect, exposure to intimate partner violence, substance abuse in the household, and incarceration of a household member, with a multitude of short- and long-term physical and emotional health problems.\textsuperscript{23} Although the ACE project does not address crime-induced trauma exclusively, it demonstrates a close link between a wide variety of adverse health syndromes and direct and indirect forms of childhood victimization.

The studies unraveled very strong scientific evidence that children suffering from the aforementioned adverse experiences in childhood are more inclined to risk behaviors, including alcoholism, drug abuse, smoking, depression, suicide attempts, unintended

\textsuperscript{22} Centers for Disease Control and Prevention, Adverse Childhood Experience (ACE) Study, http://www.cdc.gov/ace/about.htm.
\textsuperscript{23} Centers for Disease Control and Prevention, Adverse Childhood Experience (ACE) Study, Prevalence of Individual Adverse Childhood Experiences, http://www.cdc.gov/ace/prevalence.htm#6
pregnancies, and intimate partner violence. Moreover, these children were found to be at greater risk for serious illnesses in adulthood, including cancer, lung, heart, liver and skeletal diseases, sexually transmitted diseases, depression, and obesity. Unfortunately, although the project validate the potential effect of direct and indirect child victimization with strong scientific evidence, considered to be the golden standard of the field, it does not proceed to translate this body of knowledge into concrete laws and policies that enhance the protection of children.

**Harm to Society**

Despite the prevailing misperceptions, the effect the phenomenon of childhood victimization goes far beyond the individual children, and impairs our society as a whole. With millions of children untreated and hampered from conducting a healthy and productive lifestyle, and with heightened risk for substance abuse, criminal behavior, and repeat victimization, community safety is inevitably compromised, and public funds are unnecessarily burdened.

The uneven demographic distribution of direct and indirect child victimization across society also aggravates existing socio-economic gaps, with disproportional impact on minority

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and economically disadvantaged communities. Some researchers estimate this phenomenon to be one of the most costly public health and public safety problems in the United States.\(^{27}\)

This multidimensional damaging effect is not effectively contained and addressed within the limited boundaries of the existing adult-oriented legal definitions. It leads to an undesirable situation, where millions of children severely affected by crime are not formally recognized as victims, and are ineligible to receive vital treatment and services to alleviate these debilitating symptoms. Revisiting the legal definition of child victimization in a systematic and profound manner can help address this problem and relieve the burden of its implications.

**Steps In The Right Direction**

Despite the lack of one inclusive child-oriented definitions, statutes and case law can be identified which indicate the budding of a broader understanding of child victimization, which begins to shutter the direct victimization paradigm. In many ways, these legal instruments can be seen as attempts by courts, legislatures and policy-makers to fill the void the existing narrow interpretation of child victimization has created.

Several federal and state legislatures have tied together the procedural rules aimed to protect child victims and child witnesses.\(^{28}\) These rules apply also in cases when the child witness is not a direct victim. By equating the protection of the two categories of children, recognition of the status of child witnesses as indirect victims of crime, and of their need for


special protection, is implied. Similar equivalence between child victims and child witnesses can be found in international instruments, like the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.²⁹

Statutory provisions and case law requiring the consideration of violence in the household in custody decisions also suggest a broader understanding of child victimization and the harm violence exposure inflicts on children. Most of these provisions apply in cases where the child was not physically harmed.³⁰ Many states’ statutes do not require proof that the child witnessed the violence firsthand, and some statutes go as far as to state that whether the child witnessed the violence at all is irrelevant.³¹ These provisions are extremely controversial as they often penalize victims of domestic violence instead of providing them with needed assistance, and the efficacy of the actual protection they provide the child with is questionable. Nonetheless, they do serve a purpose of acknowledging the harm to the child as an indirect victim of domestic violence in a broader range of circumstances.

At present, state laws are unclear and inconsistent about “whether exposure to domestic violence in the absence of injury or serious risk of injury to the child” would require mandated reporting to child protective services by the designated professionals.³² Recognizing the danger to the child resulted from indirect exposure to domestic violence, some states provide an explicit

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³¹ MICH. COMP. LAWS § 722.23(k); ARK. CODE ANN. § 9-13-101(c)(1); DEL. CODE ANN. tit. 13, § 706A(a).
statutory requirement for mandated reporters to notify child protection services whenever a child is has been exposed to a parent’s abuse in the home, whether or not the child has been directly injured. Yet, in more than half the states, the inherent harms cause by the exposure is not clearly and explicitly recognized. In these states, a child’s exposure to domestic violence does not automatically require mandatory reporting, and discretionary reporting depend on a case-by-case assessment of “the existence of direct injury to a child, the potential danger of the situation, and the capacity of the mother to keep her children safe.”

Criminal child endangerment and neglect laws in numerous states penalize the exposure of children to violence and illicit drug use. These statutory acts are based on the premise that witnessing such criminal behavior, even when the child is not the direct victim of the crime, is detrimental to the child. For example, in the state of Delaware, criminal endangerment of a child’s welfare is defined to include the commission of a violent felony with the knowledge that a child has witnessed the crime. In several states, including New York, California, and Texas, domestic batterers have been prosecuted under the child endangerment statutes based on children witnessing adult violence. Additionally, penalty enhancement provisions are available in some states, which apply when the crime was

34 CAL. FAM. CODE § 3020; CAL. FAM. CODE § 3011; NEB. REV. STAT. § 43-2921.
committed “in the presence of a child.”\textsuperscript{37} For example, in Washington, a crime involving domestic violence that is committed within the “sight or sound” of children can justify an increased sentence.\textsuperscript{38}

Similarly, some states address, in their definition of child abuse and neglect or in other criminal provisions, the issue of exposure of children to illegal drug activity.\textsuperscript{39} Sentencing enhancement provisions for drug offenses committed in the presence of children are also available.\textsuperscript{40}

Additionally, the US federal government allocates limited funds to the development and implementation of programs and services to address some categories of indirect victimization. For example, § 3797cc-2 provides grants to programs that aid children who are living in a home in which methamphetamine or other controlled substances are unlawfully manufactured, distributed, dispensed, or used.\textsuperscript{41} The Second Chance Act provides support to states in the development of best practices for children with incarcerated parents.\textsuperscript{42}

This multitude of scattered suggestive expansions of the interpretation of child victimization signifies a need for a unified inclusive definition of the term, to facilitate the system’s protection of children. Existing solutions reflect insufficient understanding by law and policy makers of the full impact of crime on children. The new definition will enable

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\textsuperscript{38} Wash. Rev. Code § 9.94A.390
\textsuperscript{41} Grants for programs for drug-endangered children 42 U.S.C.A. § 3797cc-2
\textsuperscript{42} Addressing the needs of children of incarcerated parents 42 U.S.C.A. § 17553
transformation of the existing isolated and inconsistent efforts into a scientifically informed, systematic, methodical, and strategic plan, which will enhance effectiveness and viability.

III. **Children Are Not Miniature Adults**

The need for a separate definition for child victimization rests on the argument that there is a relevant difference between children and adults in this context, and that children are not merely miniature adults. The Convention on the Rights of the Child recognizes that “childhood is entitled to special care and assistance” and that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protections.”\(^\text{43}\) The UN Economic and Social Council (ECOSOC) further elaborates in its resolutions addressing issues concerning child victims and witnesses that children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs, in order to prevent further hardship and trauma.\(^\text{44}\)

The developmental, physical, social, and cultural differences between children and adults make the former more vulnerable and susceptible to victimization. On average, the probability of a child suffering direct or indirect victimization is significantly higher than

\(^{43}\) Convention on the Rights of the Child (1990)

that of an adult. Furthermore, as a result of developmental differences, the harm caused to children by victimization is more severe and long-lasting.\textsuperscript{45}

The most obvious difference is that children are physically smaller and weaker than most adults, and therefore are an easy target for predators. This factor increases vulnerability for direct victimization. However, there is a multitude of additional distinctions that substantially broaden the damaging effect of crime on children, and calls for special treatment and protection.

Children are in critical stage of their emotional and cognitive development, their identity is not yet formed, and their personality traits are in transitory stages. As a result, they are considered to be significantly more vulnerable and susceptible to external influences and pressures.\textsuperscript{46} They are less mentally stable, and are extremely sensitive to psychological damage.\textsuperscript{47} Victimology experts like Dr. Linda Mills recognize that the child is at risk of developing a host of symptoms and reactions that become embedded in the individual’s core personality structure.\textsuperscript{48} The enhanced impressionability of children’s personality and character also overexposes them to different forms of indirect victimization. Furthermore, the underdeveloped cognitive capacity of most children and their emotional sensitivity limits their ability to process and cope with trauma and heal without external assistance.\textsuperscript{49}

\textsuperscript{45} David Finkelhor & Kathleen Kendall-Tackett, A Developmental Perspective on the Childhood Impact of Crime, Abuse & Violent Victimization, in D. Cicchetti & S. Toth (Eds.), Developmental Perspectives on Trauma: Theory, Research, and Intervention 1-32 (1997).
\textsuperscript{47} Roper v. Simmons, 543 U.S. 551, 569-70 (2005)
\textsuperscript{49} Jessica Feierman et al., The Eighth Amendment Evolves: Defining Cruel And Unusual Punishment Through The Lens Of Childhood And Adolescence, 15 University of Pennsylvania Journal of Law and Social Policy 285, 296 (2012).
Consequently, exposure to crime and violence is particularly harmful to children,\textsuperscript{50} and has a long-term, often permanent, impact.

As a factor of their social and psychological immaturity children are dependent on adults for their survival and basic needs.\textsuperscript{51} Experts in the field observe that “[a]lthough indirect victimization affects adults as well as children, the latter are particularly vulnerable to its effects, due to their dependency on those being victimized.”\textsuperscript{52} Thus, when a caregiver is subjected to victimization, illegal substance abuse, or incarceration, the dependent children are often deprived of the care, affection, guidance, and protection essential for their development into healthy, productive members of society.

Moreover, due to their dependency status, children have comparatively little choice over their living environment, and whom they associate with. Research presented in the American Psychological Association Amicus Brief submitted to the US Supreme Court in \textit{Graham v. Florida}\textsuperscript{53} finds that “Adolescents are dependent on living circumstances of their parents and families and hence are vulnerable to the impact of conditions well beyond their control.”\textsuperscript{54} Justice Kagan, delivering the Opinion of The Court in \textit{Miller v. Alabama}, reinforced the fact that juveniles have limited control over their own environment, and are

\textsuperscript{52} David Finkelhor , Developmental Victimology: The comprehensive study of childhood victimization, in R. C. David, et al. (Eds),Victims of crime (3rd ed.) 9,12 (2007)
\textsuperscript{54} Brief For The American Psychological Association, American Psychiatric Association, National Association Of Social Workers, And Mental Health America As Amici Curiae Supporting Petitioners at 15, Graham v. Florida, 130 S. Ct. 2011, 2017 (2010) (Nos. 08-7412, 08-7621), http://www.apa.org/about/offices/ogc/amicus/graham-v-florida-sullivan.pdf; Alan E. Kazdin, Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youths, in Youth on Trial 33, 47 (Thomas Grisso & Robert G. Schwartz eds., 2000). (Although this series of Supreme Court cases, including \textit{Roper, Graham and Miller}, dealt with juveniles offenders rather than victims, the court and amici’s analysis of scientific developmental psychology is useful for an understanding of the special needs of juvenile and their unique characteristics and behavioral traits).
usually unable to extricate themselves from their surrounding environment, no matter how brutal or dysfunctional it is.\textsuperscript{55} Thus, children do not have the capabilities or resources to remove themselves from harmful circumstances and escape victimization.\textsuperscript{56} Furthermore, they depend on the assistance and initiative of adults to seek help for their rehabilitation and recovery from trauma.

Another recognized difference, acknowledged in several recent decisions of the U.S. Supreme Court,\textsuperscript{57} is children’s diminished decision-making capacities. This is due to children’s level of cognitive development, immature judgment, and lack of life experiences.\textsuperscript{58} Under these circumstances, adults are usually charged with the task of making important decisions affecting children’s lives. When parents and caregivers are incapacitated by violence, victimization, or incarceration, their ability to make coherent decision on behalf of their children, and to fully consider their best interests, is inevitably diminished. This dynamic increases the vulnerability of children to indirect forms of victimization.

Lastly, children are in the midst of their Legal Socialization. Tom Tyler and Jeffrey Fagan define Legal Socialization as a process that unfolds during childhood and adolescence, through which children develop an inclination towards compliance with the law and

\textsuperscript{55} Miller v. Alabama, 132 S. Ct. 2455 (2012) \\
cooperation with legal actors. The process is highly affected by children’s exposure to
crime, and their childhood experiences with legal actors, law enforcement, and the justice
system. Inferring from the research findings of Tyler and Fagan, it can be asserted that
indirect victimization, exposure to crime and violence, and the failure of the legal system to
protect children from these harmful experiences, can interfere with the Legal Socialization
process of affected children. This developmental process may explain the proclivity towards
criminal behavior and illicit substance abuse in individuals affected by direct and indirect
childhood victimization.

Due to this range of vulnerabilities and characteristics unique to children the
definition of adult victimization is not suitable for children. Hence, a separate definition of
child victimization, which reflects the relevant differences between the two groups and
addresses the distinct attributes and needs of children, is justifiable and necessary. As
recently stated Professor Martin Guggenheim, “[t]he more we know about what children
need, the further along we will be in doing right by children. But, of course, in our
complicated world, knowledge of children's needs, however vital to our work, is not enough.
We need to translate our knowledge into real policy and law.” The creation of a new child-
oriented definition necessitates the development of such interdisciplinary understanding of
the discrete attributes and needs of children affected by crime and to translate this knowledge
into effective laws and policies.

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59 Jeffrey Fagan & Tom R. Tyler, Legal Socialization of Children and Adolescent, 18 Social Justice Research 217, 219-222
(2005). See also: Jeffrey Fagan, et al., Developmental Trajectories of Legal Socialization among Adolescent Offenders 96
61 Martin Guggenheim, Maximizing Strategies for Pressuring Adults to do Right By Children, 45 ARIZONA LAW REVIEW 765, 765
(2003).
IV. A New Legal Definition – “Child Victim of Crime”

The creation of a concrete child-oriented legal definition should emerge from a profound understanding of the complex and acute problem described above, which compromises the wellbeing of children and our society, and the inadequacy of the application of our current perception of victimization to children. Additionally, it must be evidence-based and rooted in comprehensive legal as well as social science research, rather than mere political whims, as is too often the case.

The new definition must reflect the fact that due to their unique characteristics, vulnerabilities and needs, the injurious effect of crime to children goes far beyond direct victimization. Accordingly, a broader definition of the term “child victim of crime” is necessary, in order to provide a more realistic reflection of the full scope and scale of this multidimensional effect. This will also enable the provision better protections and services to members of this vulnerable group.

Hence, the new definition proposed in this paper will stretch the boundaries of the existing adult-oriented legal definition to encompass indirectly victimized groups, which are currently largely ignored by the system. This expansion will provide formal recognition of several forms of indirect victimization which are shown by scientific evidence to pose a substantial threat to the healthy development, safety, and wellbeing of children. These include children’s chronic exposure to crime and violence, parental victimization, child witnessing, and parental incarceration. Although each of these forms of indirect victimization, and the justification for its inclusion in the new definition, will be discussed independently below, it is important to understand that these categories are not mutually exclusive. It is often the case that children
experience poly-victimization, and suffer from multiple forms of direct or indirect victimization, which aggravates the harmful effect to the child.\textsuperscript{62}

**Children Exposed to Crime and Violence\textsuperscript{63}**

Children are exposed to crime and violence at the home, school, and the community. Children were found to be more likely to be exposed to violence and crime than their adult counterparts.\textsuperscript{64} The prevalence of child exposure to crime and violence in our society is expansive. Data collected in 2011 shows that 60 percent of children under the age of 17 in the United States were exposed to violence within the past year.\textsuperscript{65}

Exposure to crime and violence is an extremely traumatic, frightening and confusing event. Processing, interpreting, and attributing meaning to the observed incident is a challenging process for a child. Violence creates an environment of uncertainty, anxiety, and helplessness that interrupts the experience of unconditional safety and care necessary for the healthy development of a child.

The extreme stress caused by chronic exposure of a child to crime and violence was found to disrupt the development of specific brain structures, therefore impairing executive functions, including “planning, memory, focusing attention, impulse control, and using new


\textsuperscript{63} Exposure normally occurs when the child sees, hears or experiences the aftermath of a criminal or violent incident.

\textsuperscript{64} Gayla Margolin & Elana B. Gordis, Children's Exposure to Violence In The Family and Community, 13(4) *Current Directions in Psychological Science* 152 (2004).

information to make decisions.” 66 Additionally, the real and perceived threats associated with chronic exposure to violence may condition a child to “react with fear and anxiety to a broad range of circumstances.”67 It can diminish the child’s capacity to differentiate between genuine threats and objectively safe or neutral situations, impair the ability to learn and interact with others, and lead to serious anxiety disorders. Unlearning such conditioning embedded early in life is a challenging task that requires “active work and evidence-based treatment.”68

Research found that children exposed to violence are more likely to suffer from attachment problems, regressive behavior, anxiety, and depression, aggression, conduct problems, academic and cognitive problems, delinquency, and other health-related problems.69 Some studies go as far as showing that even community violence that children do not directly witness can negatively affect children's attentional abilities and cognitive performance.70

The severity of exposure and its effect may vary depending on the degree of violence, its proximity to the child, its frequency, and the relationship between the child, the victimizer and the victim. Based on these criteria, exposure to violence within the home, including intimate partner violence, and physical or sexual abuse of a sibling, is considered to have the most

adverse effect to the child. However, exposure to other forms of crime and violence has significant and long-term repercussions as well.

Ultimately, absent the element of physical injury, the short and long term effect of intense exposure to high levels of crime and violence is very similar to the effect direct victimization has on children. Nevertheless, due to the high prevalence of exposure to violence in our society, it is vital to make a distinction between different levels and types of exposure when setting the boundaries of the new definition. Otherwise, there is a risk that the breadth of the definition will expand to a scale that deems it impractical, economically unsounds, and ineffective.

**Children of Victimized Caregivers**

The most extreme scenario of parental victimization is murder cases, where a child loses a parent or caregiver to crime. The more common situation is of parents who experience violent victimization in childhood or adulthood, and suffer harmful implications as a result, which have a spillover effect to their children.

Victimized parents have an increased probability to suffer from a range of mental health problems, including emotional deficiencies, depression, and low self-esteem. Poorer state of physical health was also found in victimized, in comparison to non-victimized, caregivers. Some evidence shows that victimization may also affect parenting skills and the interaction between parent and child. Survivors of victimization may have difficulties

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establishing clear generational boundaries with their children, may be more permissive as parents, and more likely to use harsh physical discipline.\textsuperscript{73}

When experiencing trauma, a parent’s ability to play a stable, consistent role in the child’s life and, therefore, to support the child, may be compromised.\textsuperscript{74} Furthermore, victimization causes parents themselves to be numbed, frightened, and depressed, unable to deal with their own trauma and/or grief, and have difficulty being emotionally available, sensitive, and responsive to their children.\textsuperscript{75} The effect of parental victimization is most severe when the parent does not receive treatment and services to facilitate recovery.\textsuperscript{76}

As a result, parental victimization has considerable detrimental consequences to child development, outcomes, behavior, and the child’s relationship with the parent, even in cases where the child is not aware of, or directly exposed to, the victimization.

**Child Witnesses**

Children participate in the criminal justice process as witnesses in a variety of circumstances. Although most attention is devoted to child victims who testify against their own perpetrators, there is also an extensive use of children as witnesses and informants in the prosecution of crimes committed against others at the home, school, and in the community. In fact, in cases of peer bullying, teen drug-dealing, and gang violence, using child witnesses can sometimes be the only window “into a world where only minors are trusted and adults


\textsuperscript{74} Joy D. Osofsky, The Impact of Violence on Children, 9 DOMESTIC VIOLENCE AND CHILDREN 33, 40 (1999).


cannot infiltrate.”77 The necessity of use of children as witnesses in criminal procedures in order to achieve effective prosecution was further emphasized by the UN ECOSOC in its resolutions addressing criminal matters involving child victims and witnesses.78

Child witnessing is a form of indirect victimization that rarely stands alone. It is normally coupled with other forms of victimization, such as exposure to crime and violence, parental victimization, or direct victimization. Yet, it presents a discrete set of harms and challenges to the child, which ought to be addresses independently.

Court testimony is an extremely stressful, frightening and formidable event, especially for a vulnerable young child. The child is placed in the unfamiliar and intimidating environment of a courtroom, and asked to participate in a process that is foreign and perplexing. She has to face the defendant, who the child often perceives as a threatening and dangerous figure. The child is required to answer difficult questions in public, and to go through forceful questioning by unsympathetic strangers. The child’s truthfulness is repeatedly doubted and questioned throughout the process, which is often perceived as a humiliating experience. Moreover, the child has to repeatedly re-live the traumatic events she witnessed through recurring interrogations by law enforcement and in court. When the defendant is familiar or related to the child witness, further difficulties, including intense guilt and loyalty conflicts, may arise. The multitude of

stressors involved in this experience can trigger extreme levels of anxiety and psychological strain, which is often referred to as “Secondary Victimization.”

**Children with Incarcerated Caregivers**

Incarceration of a parent normally causes major negative economic, social and psychological consequences to the child, and may have life-long repercussions. Children are affected by the incarceration of either parent, but they typically experience greater harm when their mother is imprisoned, due to the central role a mother plays in the life of a young child.

When the incarcerated parent is the primary caregiver, the family life is fundamentally disrupted. The child is usually uprooted, and may be separated, not only from the incarcerated parent, but also from his siblings, other relatives, and friends. The child is at risk of being moved frequently among caregivers and even becoming a ward of the state.

Maintaining a close relationship and regular contact with the imprisoned parent overtime is a significant challenge.

Empirical evidence shows that the separation of a young child from a primary caregiver, and particularly a mother, is associated with a host of adverse symptoms, including impaired ability to sympathize or show concern for others; aggression and anger; developmental and behavioral problems; sleeping, eating, or attention disorders; delays in educational development and achievement; excessive hostile behaviors toward peers; problems with social adaptation;

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greater likelihood to develop addiction to drugs or alcohol or engage in criminal activity; and manifestation of sexually promiscuous behavior.\textsuperscript{83}

Courts have also recognized the harms caused to children due to parental incarceration, stating that “[c]hildren who have stable, predictable care ‘can overcome great adversity,’ . . . Conversely, adults who grow up in temporary homes often suffer . . . . The majority hold low-skilled jobs; up to 50% spend some time on public assistance. Drug use is common. Nearly one third of males commit crimes as adults. Among the homeless, as many as 39% spent years in foster care as kids.”\textsuperscript{84}

When the child is too young to fully understand the reasons for the parent’s “disappearance”, destructive feelings of self-blame and anger emerge. The remaining caregiver is often unable to find the right way of conveying the information to the child in an age-appropriate manner and to render necessary support. Economic hardship is another likely possibility, due to the added legal expenses involved and the loss of income or social benefits.\textsuperscript{85}

The child left behind is also subjected to negative stigma and shame associated with parental incarceration.\textsuperscript{86}

Children suffering from parental incarceration are often referred to as the “invisible victims” of crime, as they are forced to bear the consequences of their parent’s criminal behavior and the system’s inability to address their needs.

\textsuperscript{84} Bean, supra note 37, at 337. See also In re Lilley, 719 A.2d 327, 335 (Pa. Super. Ct. 1998).
\textsuperscript{85} Donald Braman, Doing Time On The Outside: Incarceration And Family Life In Urban America (2004); Nell Bernstein, All Alone In The World: Children Of The Incarcerated 109-42 (2005)
\textsuperscript{86} See; Sarah Abramowicz, Rethinking Parental Incarceration, 82 U. COLO. L. REV. 793 (2011); Denise Johnston, Services For Children of Incarcerated Parents, 50 FAM. CT. REV. 91 (2012); Donna K. Metzler, Neglected By The System: Children of Incarcerated Mothers, 82 ILL. B.J. 428 (1994); Julie Poehlmann, Children of Incarcerated Mothers And Fathers, 24 WIS. J.L. GENDER & SOC'y 331 (2009).
V. **The Intended Effect**

The development of a clear and concise legal definition can direct laws and policies, affect their scope, substance, application, and ultimately shape their overall outcome. In the case of child victims, the implementation of a more inclusive definition of the term, which addresses the special needs of children, is expected to offer several practical benefits.

First, as mentioned, the development of a valid and viable definition necessitates extensive multidisciplinary review and analysis of law and science, with careful examination of all facets of the issue. This comprehensive work will facilitate a better understanding of the true scope and nature of the problem in its entirety, and the full range of consequences it entails to individuals and to society, which are currently unknown.

Second, the proposed definition will help establish, in a more accurate and foreseeable manner, who will be recognized as a victim and receive protections and services, what will be the nature and scope of the services and protections offered, and under what circumstances they will be provided. It will enable the recognition of the full range of affected children in need of intervention, enhancing protection, and facilitating rehabilitation. It is important to clarify that the objective of the proposed definition is not to criminalize new acts or to broaden criminal responsibility. The intention is merely to design a definition that will capture the full effect, in terms of nature and scope, of acts readily recognized as criminal offences.

Third, once the extent of the problem is realized, effective solutions can be devised to address the issue on both the individual and public level. The ultimate goal of setting an explicit child-oriented definition that encompasses the above mentioned indirect forms of child victimization, is to leverage the full range of children’s interactions with the legal system and
authorities to enable effective identification of those severely affected by crime and in need for intervention and services.

On the individual level, allowing for effective identification and early intervention for affected children will promote rehabilitation, alleviate the harmful physical and emotional symptoms of direct and indirect victimization, and facilitate healthy child development. It is also expected to improve the educational and employment outcome of these children, and their ability to conduct a healthy and productive lifestyle. Thus, the adoption of the broader legal definition will promote the best interests of the child, and influence the fate of millions of children affected by crime. It will also allow government agencies to meet their “parens patriae” obligations, as well as international human rights standards prompted by the Convention on the Rights of the Child and other international instruments.

From a broader public perspective, by addressing the needs of individual children and alleviating the risk for debilitating health problems, repeat victimization, addictions, and future delinquency and criminal offending, prime societal interests are also advanced. The proposed definition will allow for a more efficient and scientifically-informed utilization of the available public funds. It will also enable the formulation of a coherent long-term budgetary planning and cost-effective investments that will take into account all fiscal costs associated with the harm associated with child victimization.

In addition to significantly advancing public safety, reducing the potential involvement of untreated victimized children in future criminal activity, as repeat victims or offenders, can also save fiscal spending on law enforcement, prosecution, judicial processing and court operation, detention and incarceration, re-entry, parole and probation. All these function incur extremely high costs on tax payers. To give one example, the daily cost of
holding a minor in a juvenile detention facility is approximately $300, on the other hand, the most elaborate and expensive treatment program for a victimized child is estimated at $100 a day.\textsuperscript{87} Hence, investment in early intervention can result in substantial long-term savings of public resources.

Considering the broad spectrum of adverse symptoms exhibited by directly and indirectly victimized children, investment in early intervention that facilitates productive independent living is estimated to generate similar savings of the costs associated with public health and mental health services, social services, child welfare, foster care, public assistance, and unemployment.

Implementation of the proposed definition also opens an opportunity for the development and improvement of laws and policies advancing the protection of children. Existing federal and state legislation dedicate resources for the development of crime victim services and victim compensation funds. The utilization of this category of services to respond to the needs of children suffering from direct and indirect crime victimization can be extremely effective. Crime victim service programs are not associated with the same negative stigma as Child Protective Services and the Child Welfare system. These programs are geared to address a broader spectrum of victimization, beyond that inflicted by the child’s caregiver. Moreover, in contrast with Child Protective Services, referral to crime victim services does not normally carry the risk of forced removal of the child from the home, which can discourage disclosure of the child’s victimization to authorities.

\textsuperscript{87} Interview with Robert D. Macy, founder and President of the International Trauma Center (May 2, 2014).
As earlier described, The Victim of Crime Act already recognizes children as a priority group that requires special attention, and dedicated services and resources. Yet, the act lacks any definition of the specific group of children that should be entitled to benefit from crime victim services and victim compensation programs. As a result, at present time only a small fraction of the children debilitated by crime can benefit from the resources and services mandated by the act. A similar problem was identified with other legislative acts appropriating funds for children affected by crime. Implementation of the proposed definition will clarify the criteria of eligibility for services and compensation. It will also enable channeling the resources and funds appropriated, mostly comprised of fines and penalties collected from convicted criminal offenders, to provide necessary treatment for the full range of affected children.

Another example for potential policy improvement is the development of clear, accurate, and effective identification protocols relying on the proposed definition. Under existing policies it is often the case that even when criminal cases are reviewed by a multitude of professionals and service providers, the affected children, and particularly those suffering from indirect victimization, are completely overlooked.88 Identification protocols can be used by criminal justice professionals such as law enforcement agents, victim advocates, forensic medical examiners, prosecutors, and judges to actively seek and identify the full range of affected children associated with each case under their supervision. Similar protocols can also be used by other professionals who regularly interact with children, such as pediatricians, child welfare

caseworkers, daycare workers, and school personnel, to screen for signs of direct and indirect victimization.

Such identification mechanisms should be paired with referral systems that enable distribution of relevant information to the identified children and their caregivers, and will mandate referral of the child to relevant services and treatment programs. Systemic and coordinated response efforts of this nature will significantly increase access to services and treatment programs for affected children. It will also help raise awareness to the harm caused by direct and indirect childhood victimization, and the vital need for treatment to facilitate rehabilitation.

It is clear that implementation of the proposed child-oriented definition is expected breed a range of public benefits. It has the potential to promote the utilitarian objectives of the criminal justice system, improve child protection mechanisms, advance fiscal efficiency, enhance public safety, mitigate the socio-economic gaps across our society, and better communities’ quality of life. It is important to note that the aforementioned implications and benefits go far beyond the United States. Child victimization is a global epidemic infesting developing as well as developed nation across the globe. Thus, implementation of the proposed definition could offer substantial advantages to other nations facing similar obstacles due to the lack of a well-informed definition of the term “child victim of crime.”

VI. The Challenges

It is crucial to keep in mind that the construction of a new child-oriented definition involves an intricate matrix of issues, which require careful attention and consideration: What should be the boundaries of childhood in this particular context? How should we address the
developmental differences across childhood? How should children be distinguished from adolescents? Considering the highly personalized effect of crime on children, can a purely objective definition suffice, or may there be a need to incorporate a subjective prong in the definition? The term child victim is currently used in a range of legal contexts. Can a single definition fit all these frameworks, or could there be a need for more than one definition of child victimization? Once a victim is recognized, is it necessary to also identify a specific predator responsible for the victimization, or can a form of “victimization by circumstances” also exist?

Another set of considerations emerge from a public policy perspective. The budgetary effect of the definition is a paramount issue. The broader scope of the envisioned definition and its associated policies is expected to increase the cost of protection and care due to the inclusion of a larger group of children that are currently not recognized as victims of crime. This will have to be balanced against potential savings on government welfare and health services, juvenile and criminal justice expenses, and lost earnings and productivity. Moreover, the different stakeholders on this issue will have to be identified and mapped, and their interests will be calculated and considered.

All these issues are pending for further analysis and interdisciplinary review in future work, in order to reach a balanced formula that is both effective, practical, and economically feasible.

VII. Conclusion

Cliché quotes like “Children are our future” and “Children are the world's most valuable resource” became undisputable landmarks of our culture. But reality does not always
conform to the clichés. The muffled voices of our children and their inherent vulnerability often turn them into invisible victims easily ignored and neglected by “the system.” Interdisciplinary research that takes into account developmental variables and the unique attributes of children can help bridge this gap, and improve the ability of our legal system to protect this tender and valuable resource.

In our modern world, law, society, and politics intermingle and are often inseparable. This is particularly true in the highly-charged field of criminal law. In this reality, legal definitions often leap beyond the pages of dictionaries and scholarly books and serve as guideposts for public policies and laws that profoundly affect the lives of each and every one of us. This project has the potential to generate an interdisciplinary body of work that will create such impact by better informing laws, policies, scholarship, and our collective knowledge of this evolving field.