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Lynne Olman Lourim
University of Michigan Law School

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PARENTS AND THE STATE: JOINING FORCES TO REPORT INCEST AND SUPPORT ITS VICTIMS

Lynne Olman Lourim*

As many as 60,000 to 100,000 children each year become victims of child sexual abuse in this country, according to some estimates. These children typically suffer long-lasting effects of the abuse. This Note, in focusing on (step)father-daughter incest, looks at the predominance of males as perpetrators, daughters as victims, and mothers as non-abusers. The Note examines the dynamics within incestuous families and the characteristics common to each member in these families. It particularly considers the position of mothers in these families, who often are subservient to and financially dependent on the incest perpetrator. This Note then discusses how these mothers' position often precludes them from protecting their daughters. This Note concludes, however, that mothers, armed with comprehensive and adequate support from the state, can be in the best position to protect their children from continuing abuse.

INTRODUCTION

With stories that are both unusually horrifying and chillingly commonplace, the popular news media reveal the painful lives of our nation's often-hidden victims: the victims of incest.¹ In reality, these stories may be far more commonplace than even the headlines suggest.² The American Humane Society's Clearinghouse on Child Abuse estimates that as many as 60,000 to

* Contributing Editor, *University of Michigan Journal of Law Reform*, Volume 28, 1994. B.A. 1988, Michigan State University; J.D. 1995, University of Michigan Law School. I would like to thank Professor Mary C. Dunlap for her courage and input on this Note and for sharing some of her life experiences with me; my note editors Mona Patel, Stacie Brown, and Rebecca Rokos for their helpful suggestions; and my family for a lifetime of support. I especially thank my husband, Bernie, for his unflappable support and encouragement and for the often endless conversations and insights that helped lead to this Note. Finally, I dedicate this Note to my son, Jacob, who provides countless daily reminders that children are our most precious resource and deserve to be treated accordingly.

1. See, e.g., Jack Kresnak, *Sexual Abuse Finally Punished*, DET. FREE PRESS, Nov. 11, 1994, at 1A (reporting that a victim had informed her adoptive mother and the police that she had been sexually abused by her adoptive father and that the victim consequently was admitted to a mental institution). This Note will refer to sexual abuse perpetrated by a family member as "incest."

2. Experts believe that a majority of incest cases go unreported. See, e.g., David Finkelhor, *How Widespread is Child Sexual Abuse?*, CHILDREN TODAY, July-Aug. 1984, at 18-19.

100,000 American children become victims of incest every year.³

Incest victims typically suffer long-lasting, life-threatening consequences which are unique to this type of sexual abuse.⁴ For example, approximately forty-four percent of female drug users have been incest victims,⁵ and thirty-eight percent of incest victims have, at some point in their lives, attempted suicide.⁶

This is not to suggest that incest victims are the only children harmed by sexual abuse. Indeed, all victims of child sexual abuse—regardless of the child's relationship to the perpetrator—suffer painful and lasting effects of the abuse. For example, women who have been sexually abused as children, regardless of their relationship to the perpetrator, experience a higher rate of subsequent sexual assault compared to women who have not been so abused.⁷

Accordingly, the concern about ending child sexual abuse should include, as an ultimate goal, ending all such abuse, not just incest. Because incest poses special problems for its victims,⁸ as well as unique potential solutions, this Note focuses specifically on incest and the incestuous family.⁹ This focus is, in many ways, particularly important because experts believe

3. See Camille W. Cook & Pamela K. Millsaps, *Redressing Wrongs of the Blamelessly Ignorant Survivor of Incest*, 26 U. RICH. L. REV. 1, 6 (1991).

4. See, e.g., Judith Herman et al., *Long-Term Effects of Incestuous Abuse in Childhood*, 143 AM. J. PSYCHIATRY 1293, 1295 (1986). Twenty-seven percent of incest survivors described the incest as having "great effect on their lives." *Id.* As adults, female victims experienced "negative feelings about men, sex, or themselves. Other complaints included generalized feelings of anxiety and distrust, difficulties in forming or maintaining intimate relationships, and sexual problems." *Id.* It is important to note that males also are victims of sexual abuse. See *infra* note 9.

5. JEAN RENVOIZE, *INCEST: A FAMILY PATTERN* 160 (1982).

6. JUDITH L. HERMAN, *FATHER-DAUGHTER INCEST* 99 (1981).

7. See Pamela C. Alexander & Shirley L. Lupfer, *Family Characteristics and Long-Term Consequences Associated with Sexual Abuse*, 16 ARCHIVES OF SEXUAL BEHAV. 235, 244 (1987).

8. See Hilda Parker & Seymour Parker, *Father-Daughter Sexual Abuse: An Emerging Perspective*, 56 AM. J. ORTHOPSYCHIATRY 531, 531 (1986) (encouraging that researchers focus on incest, particularly father-daughter incest, because it "occurs frequently, is relatively invisible and insidious, and perhaps is most damaging").

9. In some cases, incest perpetrators are women or extended family members, although fathers and stepfathers are the most frequent perpetrators of incest. See, e.g., Denise J. Gelinias, *The Persisting Negative Effects of Incest*, 46 PSYCHIATRY 312, 313 n.1 (1983) (noting that approximately 98% of incest perpetrators are male); see tbl. 1, *infra* p. 718. Accordingly, this Note focuses on (step)father-daughter incest and uses masculine pronouns, or the term "father," to identify the incest perpetrator. In addition, this Note refers to the non-abusive family member as the "mother" and the incest victim as the "daughter." This usage is not intended to ignore the fact that boys also are victimized by such abuse but merely reflects the reality that most incest victims are girls. See *infra* note 34 and accompanying text.

that the "overwhelming majority of sexually abused children are abused at home, usually by their fathers or stepfathers."¹⁰

This Note will argue that family dynamics and living arrangements may make it possible to prevent the second and continuing incidents of incest even if it is not possible to prevent the first incident. By identifying the particular dynamics involved with incestuous abuse, the legal system may offer a plausible and effective means to secure the protection of our children. Specifically, this Note will address those situations in which the incest occurs in the home, with both parents or a parent and a parent figure¹¹ present. Part I of this Note begins by considering the magnitude of the problem through an examination of the local incidence of incest. Part II examines common characteristics and dynamics within incestuous families. Part III of this Note considers how these unique characteristics inform the law and reveal ways to prevent the continuing incestuous victimization of children.

I. THE NATURE OF INCEST

Incest is a particularly unsettling crime, perhaps because it involves the breach of a child's most trusted relationship—the parental bond. National estimates suggest that a parent is the abuser in seventy-seven percent of reported child sexual abuse cases,¹² with fathers or father-figures constituting the largest group of perpetrators.¹³ Indeed, fathers perpetrate the abuse in

10. Meredith S. Fahn, *Allegations of Child Sexual Abuse in Custody Disputes: Getting to the Truth of the Matter*, 25 FAM. L.Q. 193, 194 n.5 (1991); see also J.S. LaFontaine, *Child Sexual Abuse and the Incest Taboo: Practical Problems and Theoretical Issues*, 23 MAN 1, 9 (1988); Parker & Parker, *supra* note 8, at 533. Statistics for the State of Michigan support this finding. See *infra* notes 12–13 and accompanying text.

11. A "parent figure" may include a domestic partner, boyfriend, or girlfriend of the parent.

12. Tina M. Whitehead, *Application of the Delayed Discovery Rule: The Only Hope for Justice for Sexual Abuse Survivors*, 16 LAW & PSYCHOL. REV. 153, 155 n.9 (1992) (citing National Committee for Prevention of Child Abuse Fact Sheet #17 (Oct. 1990)). Another study suggests, however, that only 47% of child sexual abuse offenders are family members. Note, *The Testimony of Child Victims in Sex Abuse Prosecutions: Two Legislative Innovations*, 98 HARV. L. REV. 806, 807 n.14 (1985).

In Michigan, parents commit the incest in approximately 55% of the substantiated child sexual abuse cases, and family members perpetrate the abuse in approximately 66% of all cases. See tbl. 1, *infra* p. 718.

13. Mark D. Everson et al., *Maternal Support Following Disclosure of Incest*, 59 AM. J. ORTHOPSYCHIATRY 197, 199 (1989). This study of 88 victims of child sexual abuse found that 30% of the perpetrators were biological fathers, 41% were stepfathers, 17%

thirty percent of the cases, and stepfathers commit the abuse in forty-one percent of the cases.¹⁴

It is difficult to discern the actual number of incest cases in Michigan during any given year.¹⁵ The records of public officials, however, suggest that the incidence of incest in Michigan is no less staggering than the national rate.¹⁶ For example, 2111 Michigan children were victimized by sexual abuse in 1993,¹⁷ while 1934 children were victimized in 1994.¹⁸ Table 1 below highlights the prominence of parental and in-home abuse in Michigan.

TABLE 1

SUBSTANTIATED CHILD SEXUAL ABUSE CASES IN MICHIGAN

PERPETRATOR	1993	1994
Household member	67%*	64%**
Foster parent	1%	1%
Out-of-home parent	13%	13%
Unrelated perpetrator not living with the child	18%	23%

*This figure includes the child's parent (42% of all perpetrators), the child's sibling (5%), another relative (8%), and an unrelated household member (12%).

**This figure includes the child's parent (42% of all perpetrators), the child's sibling (4%), another relative (7%), and an unrelated household member (11%).

Sources: Data for 1993 is taken from 1992-1993 DEPT SOC. SERVS., PROTECTIVE AND PREVENTIVE SERVS. DIV. ANN. REP. Rep. No. PS-31H. Data for 1994 is taken from 1993-1994 DEPT SOCIAL SERVS., PROTECTIVE AND PREVENTIVE SERVS. DIV. ANN. REP. Rep. No. PS-31H.

were boyfriends of the child's mother, while in the remaining 12%, brothers, uncles, and cousins committed the sexual abuse. *Id.* at 198-99.

14. *Id.* at 199.

15. Although state agencies, such as the Michigan Department of Social Services, compile statistics, the problem of underreporting is pervasive. *See supra* note 2 and accompanying text.

16. *See supra* note 3 and accompanying text.

17. 1992-1993 DEPT SOCIAL SERVS., PROTECTIVE AND PREVENTIVE SERV. DIV. ANN. REP. 1.

18. 1993-1994 DEPT SOCIAL SERVS., PROTECTIVE AND PREVENTIVE SERV. DIV. ANN. REP. 1.

The devastation caused by parental and in-home abuse can be heightened when a non-abusing family member knows, or should know, of the abuse but fails to protect the child. This can leave the child without any avenue for aid and protection. Nonetheless, Michigan currently has no laws criminalizing a parent's failure to report suspected child sexual abuse.¹⁹

II. THE INCESTUOUS FAMILY: A CLOSER LOOK

Incest often consists of egregious sexual acts perpetrated on a child. One study found that approximately seventy percent of incest victims "had experienced penetration or oral-genital contact."²⁰ Generally, the abuse did not end with a single incident but rather persisted for several months or years.²¹ In fact, the mean length of incestuous abuse was twenty-three months.²²

The statistics reveal only a part of the incest story. The underlying question, however, remains unanswered: What kind of personal and familial characteristics permit this kind of abuse to occur and continue? The complex answer can help dispel myths surrounding incest and shape a course of action that will provide better protection for future victims and possibly decrease the number of victims.

A. The Overall Family Dynamics

The most common trait among incestuous families is a traditional, patriarchal structure in which the father maintains

19. Michigan does have a mandatory reporting statute which requires specifically designated professionals, but not parents, to report suspected abuse. MICH. COMP. LAWS § 722.622 (1995). Although a parent may risk losing her child temporarily pending a preliminary hearing, it is unclear how often state authorities use this avenue. *See id.* § 722.626(1) (stating that, when a child is admitted to a hospital or brought there for outpatient services and the attending physician suspects child abuse, the probate court may order that the child be detained pending a preliminary hearing).

20. Everson et al., *supra* note 13, at 199.

21. *Id.*

22. *Id.* Seven of the cases studied involved only one recent incident, but two of the cases involved abuse lasting for 12 years. *Id.* Sedelle Katz, however, cites studies which reveal that 71% of incestuous abuse continues one year or longer, with the average duration ranging from 4.5 to 8 years. SEDELLE KATZ, UNDERSTANDING THE RAPE VICTIM 256 (1979).

complete control over the family.²³ In this environment, children are viewed generally as subordinate to adults, and females are viewed as subordinate to males.²⁴ In addition, incestuous families are generally "less cohesive and adaptable" than families in which children do not suffer such abuse.²⁵ Typically, the members of these families suffer from "emotional distance," which promotes the parents' apathy toward their children and also prevents the child from disclosing the abuse to her mother.²⁶ An abused child in this environment simply may not feel a bond with her mother sufficient to prompt the child to reveal the father's abuse. Even if the child does disclose the abuse to her mother, she still may remain unprotected because the cohesion may not be strong enough to compel the mother to act.

The concept of emotional distance may help explain some of the apparent inconsistencies reported about sexual relationship between the parents before incestuous behavior begins. The distant and incohesive nature of each relationship within the incestuous family may manifest itself in a lack of spousal affection. For example, one study revealed that twenty-six percent of incest perpetrators had unsatisfactory sexual relations with their wives before initiating any sexual relations with their daughters.²⁷ In another study, the perpetrators said they had frequent sexual relations with their wives, while their wives reported that those relations lacked affection.²⁸ These unsatisfactory sexual relations between the parents may prompt the husbands to turn to their vulnerable, dependent daughters for a sexual outlet. This distance also may prevent both spouses from relying on each other to foster their spousal relationship or to protect their children.

Emotional distance between family members may explain how the incestuous relationship occurs, at least in some cases. The father's dominance in patriarchal families may combine with the doubly-submissive role of the female child to permit the incest to begin and continue. Dependent on the father, and lacking a close bond with any family member in this incohesive

23. Cook & Millsaps, *supra* note 3, at 8; *see also* Alexander & Lupfer, *supra* note 7, at 235 (stating that "father-daughter incest is associated with a traditional patriarchal family structure").

24. Alexander & Lupfer, *supra* note 7, at 242.

25. *Id.* at 243; *see also* KATZ, *supra* note 22, at 68-69 (citing studies finding that child sexual abuse victims have indicated a high degree of familial pathology).

26. Alexander & Lupfer, *supra* note 7, at 243.

27. HERBERT MAISCH, *INCEST* 139 (Colin Bearne trans., 1972).

28. *Id.*

unit, the daughter may be unable to do anything to stop the abuse. The complete dominance of the father combined with the mother's submission to him—both financially and emotionally—may prevent the mother from recognizing her ability or duty to prevent the continuing abuse of her daughter.²⁹ The mother may believe that the abuse is the “lesser evil” in a situation in which the choice is between having food on the table and a home in which to live or taking action to prevent further incest and completely destroying the family unit and its source of financial support.

B. The Incest Offender

At the outset of a discussion of characteristics common to the incest offender, it is important to note that the “causes of child sexual abuse in the family remain elusive.”³⁰ Although particular characteristics do not lead an individual to commit incest, it may be possible to identify characteristics which are common to incest offenders. One source indicates that many are highly educated, upper-class men with non-patriarchal beliefs.³¹ Other sources, however, indicate that incest offenders are the product of a childhood during which they were maltreated by one or both parents.³² The findings of several studies suggest that “[t]he incestuous father usually came from a disorganized or broken home . . . characterized by poverty, alcoholism, little education, inadequate housing, and little warmth or understanding As a child the father was often deprived emotionally and came from a family wrought with separations and desertions.”³³ While these contradictory findings suggest that the causes of incest are elusive, it is important to note that:

[T]here is agreement in the literature on several points: 1) perpetrators are overwhelmingly male, while victims are

29. Though mothers often do not know of the abuse, many studies suggest that a relatively large percentage of mothers are aware of the situation. See *infra* notes 52–55 and accompanying text. These studies suggest that some mothers in fact see many indicators of the abuse but choose to ignore them, or fail to inquire further, in order to avoid having to confront the situation. See *infra* notes 50–54 and accompanying text.

30. Parker & Parker, *supra* note 8, at 532 (emphasis added).

31. See *id.*

32. See, e.g., KATZ, *supra* note 22, at 260; Parker & Parker, *supra* note 8, at 545.

33. KATZ, *supra* note 22, at 260.

mainly female; 2) parental deprivation in the perpetrator's family of origin has led to his low self-esteem and massive social inadequacy; 3) perpetrators generally do not suffer from serious psychopathology or mental retardation; 4) intrafamilial child sexual abuse is generally not accompanied by physical abuse; 5) stepfathers or other father-surrogates are overrepresented among abusers.³⁴

One study found that a father's perception of maltreatment by his own parents is strongly correlated to his subsequent incestuous abuse of his daughter.³⁵ This study also found that one of the most common characteristics of incestuous fathers was their absence—or virtual absence—from the home during their child's early years.³⁶ Statistically, then, "the risk of abuse increases dramatically with [the father's] absence from the home."³⁷ Even if the incestuous fathers were present during the early childhood years, they typically spent less time in the home than did non-abusers.³⁸

Therefore, a stepfather's lack of a biological relationship to his stepdaughter was not the correlative factor to his acts of incest according to this study.³⁹ In fact, a stepfather who was present in the home during early childhood was not significantly more likely to commit incest than a biological father who was present in the home during those years.⁴⁰ It is the absence of the father or stepfather from the home during the child's early years that increases the likelihood of incestuous abuse.

Nevertheless, neither parental maltreatment experienced by the incestuous father during his own childhood nor the father's absence from the home during the victim's early childhood should be sufficient to cause the father's abusive behavior.⁴¹ Other factors which may contribute to incestuous tendencies include "class differences, the larger system of family relationships, personality characteristics, and perhaps subcultural differences in the strength of the incest taboo."⁴² Other authors

34. Parker & Parker, *supra* note 8, at 533.

35. *See id.* at 545.

36. *Id.* at 541.

37. *Id.* at 539.

38. *Id.*

39. *Id.* at 541.

40. *See id.* (finding that the "nonbiological status of father was not significantly associated with abuse among those who were with their stepdaughters during the early socialization period").

41. *Id.* at 544-45.

42. *Id.*

similarly have found such common characteristics,⁴³ though the question of whether these characteristics actually cause the abuse remains unanswered.

C. The Incest Victim

Most studies suggest that the incest victim is ordinary, both in strength and intelligence.⁴⁴ In addition, although incest victims generally want the abuse to end, they often fail to disclose the abuse because they are unaware of their legal rights.⁴⁵ A victim may have an instinctive feeling that the abuse is wrong, but she often does not know that it is a crime that the authorities can stop.

Incest victims generally are sensitive to the needs of others.⁴⁶ When the victim does learn about her legal right to prevent a family member from sexually abusing her, her sensitivity may inhibit her from disrupting the family by disclosing the incest to others. Indeed, while the victim wants the incest to end, she may simultaneously fear what will happen to everyone involved if she reveals the incest to outsiders.⁴⁷ She may worry about the potential inability of her dependent mother to care for the family without the father's presence in the home, and she also may worry about what the loss of contact with her father will mean to her.⁴⁸

D. The Mother of the Incest Victim

The mother⁴⁹ of the incest victim is characterized by low self-esteem and dependence on her spouse.⁵⁰ Perhaps these charac-

43. See generally KATZ, *supra* note 22, at 256-62 (presenting the findings of several researchers which reflect the same factors).

44. See, e.g., *id.* at 264-65 (noting studies which indicate that the majority of incest victims are of normal intelligence and perform adequately in school and that some were employed during the period of abuse).

45. See *id.* at 268.

46. Cynthia A. Solin, *Displacement of Affect in Families Following Incest Disclosure*, 56 AM. J. ORTHOPSYCHIATRY 570, 571 (1986) (explaining that the victim does not want either parent to suffer).

47. *Id.*

48. *Id.*

49. Because this Note focuses on (step)father-daughter incest to reflect the most common occurrences of incest, it refers to the non-abusive parent as the mother. See *supra* note 9.

50. Solin, *supra* note 46, at 571.

teristics help explain why many mothers who are aware of the abuse fail to report it or to seek other means to protect their daughters from continuing abuse. "The dynamics of intrafamily sexual abuses are such that the passive parent typically refuses to face the occurrence of abuses while the family is together."⁵¹

In many studies, a striking number of mothers knew the abuse was occurring but failed to act in any way to protect their children.⁵² Similarly, another study found that only twenty-nine percent of the mothers took action which involved disclosure of the abuse.⁵³ These dependent women may have believed that they faced too great a risk of losing their husbands if they disclosed the abuse.⁵⁴ In addition, mothers who were at least partially aware of the abuse generally were jealous of her daughter's new role in the family and blamed the girl for the abusive relationship.⁵⁵

E. Family Dynamics Following Disclosure of Incest

Upon detection by an outsider, such as a child protective services agency or a teacher, the incestuous family often creates a shield around itself as protection against the seeming "invasion" of the family by the outsider.⁵⁶ For this usually incohesive family, the shield actually creates the opposite appearance for outsiders; the family appears to be well-bonded and tight-knit.

51. Fahn, *supra* note 10, at 203.

52. See KATZ, *supra* note 22, at 269. Katz reports that:

[M]others were at least partially aware of the situation and tolerated it. At least 10 of the 29 mothers in Lukianowicz' study (1972) were fully aware of the incest taking place between their husbands and children, but they chose not to report it. . . . In Maisch's sample (1972), however, only 12% of mothers knew about the incest and tolerated it. In 5% more . . . she was in collusion with or participating in the incest.

Id. (citations omitted).

53. Margaret Elbow & Judy Mayfield, *Mothers of Incest Victims: Villains, Victims, or Protectors?*, 72 FAMILIES IN SOC'Y 78, 79 (1991) (finding that at least some mothers who knew about the abuse failed to protect their children, although not clearly indicating the number of such mothers).

54. KATZ, *supra* note 22, at 269.

55. See *id.*; see also Kresnak, *supra* note 1, at 12A (noting that at the sentencing for her husband's almost daily rapes of their adopted daughter, the mother flatly blamed her adopted daughter for the abuse, claiming that "men are weak").

56. See Solin, *supra* note 46, at 572.

One researcher explains this phenomenon as the defense by "displacement of affect."⁵⁷ In this process, the angry family members direct their negative feelings onto the social service system which is trying to come to their aid.⁵⁸ This occurs because "[i]ncest disclosure in long-term families reveals monumental betrayal and transgression; it rifles through the identity and foundation of the family, threatening dissolution and destruction."⁵⁹

The incest victim, while wanting the abuse to end, frequently fears that the removal of the father from the family will be a loss to her and will render her mother incapable of meeting the basic needs of the family.⁶⁰ Similarly, the mother's dependence and low self-esteem "lead her to make a distinction between her husband's abusive behavior and his 'true' character. . . . The mother, depleted and often depressed, concludes that her husband's rehabilitation is more feasible than her own independent survival."⁶¹ The net result is that both victim and mother desire to retain the father in the family.⁶²

The anger and fear arising from the disclosure of incest still exist within the family; however, the members simply project those emotions onto the "outsiders."⁶³ Releasing negative emotions on the social service system allows the family to stay intact while also providing an avenue for the family members to express their emotions.⁶⁴ Some family members even change their testimony in order to preserve the family unit.⁶⁵ As a result, the potential for continuing incestuous abuse exists because the father is protected by the family.

In other cases, the incest victim additionally is victimized by her mother, who refuses to believe that the abuse has occurred. This is particularly likely when the mother is involved in a relationship with the perpetrator at the time of the incest disclosure.⁶⁶ Fewer than fifty percent of all mothers of incest

57. *Id.*

58. *Id.*

59. *Id.* at 571.

60. *Id.*

61. *Id.* at 571-72.

62. *Id.*

63. *Id.* at 575.

64. *Id.* at 572.

65. See, e.g., KATZ, *supra* note 22, at 272.

66. Everson et al., *supra* note 13, at 200. Mothers having a current relationship with the perpetrator are the least supportive mothers of incest victims. *Id.* at 201. Conversely, mothers who no longer are involved with the perpetrators are much more supportive and willing to take action to protect the child. *Id.* at 205.

victims are consistently supportive of their daughters upon disclosure of the incest.⁶⁷ Furthermore, approximately twenty-five percent of the mothers clearly side with the spouse upon disclosure.⁶⁸ This lack of maternal support inflicts significant additional harm on the incest victim. Children in such an unsupportive environment have significantly higher levels of psychopathology than children whose mothers are supportive or even ambivalent.⁶⁹ Statistically, the absence of maternal support correlates more directly with the child's psychological problems following incest than do the length or type of abuse or the child's relationship with the perpetrator.⁷⁰

Whether the family engages in the displacement of affect on third parties or the mother fails to support the child upon disclosure of the incestuous relationship, the child faces the threat of continuing abuse. In either case, the family structure remains, with the father's role—possibly as a continuing abuser—in the family preserved. One study reveals that nearly half of the mothers “unhesitatingly kept the marriage going” following disclosure.⁷¹ Other studies similarly find that most incestuous fathers returned to live in the home.⁷² Clearly, preservation of the family unit, without any intervention to help end the abuse, will subject the daughter to continuing abuse by the father.

III. TOWARD A BETTER SOLUTION: OPTIONS FOR A NEW LEGAL FRAMEWORK TO PROTECT CHILDREN

Proposed legal and social options to help protect incest victims should focus on mothers of sexually abused children, as well as on a more comprehensive treatment of the abusers. This is not intended to suggest that mothers are responsible for the

67. *Id.* at 204; see also KATZ, *supra* note 22, at 272 (noting that, although most mothers expressed disbelief upon learning of the reported incest, most knew of the incest but “were not willing or able to fight the father-daughter relationship”).

68. See Everson et al., *supra* note 13, at 205.

69. *Id.* at 202.

70. *Id.* at 205.

71. KATZ, *supra* note 22, at 272.

72. *Id.* at 273 (citing one study which concluded that “[i]n 14 cases that were followed up, 12 of the father offenders returned to the home, either soon after the initial complaint was filed or after conviction” and another study which found that, of the 51 offenders who left the home, 25 later returned).

actions of incest perpetrators, nor is it meant to suggest that all mothers fail to protect their children from continuing abuse. Rather, the options outlined below assume that the most responsible individuals are the incest perpetrators themselves. Perpetrators are responsible for their actions, and they alone are capable of preventing the abuse. Society should regard their actions as a heinous crime, punishable by imprisonment and removal from the family until successful rehabilitation is achieved.

Many incestuous families, however, also include a passive parent who is fully aware of the incestuous abuse but fails to act in any way to protect her children.⁷³ In such cases, the legal system should require that the parent protect her child and should protect the child when the parent fails to act. The children in our society are among the most helpless, and they cannot simply leave the family to end the abuse. Therefore, abused children must rely on the state to ensure their safety.

The law should recognize that an abuser is not likely to come to the aid of the abused child, and thus should encourage mothers to do so and provide a meaningful way for them to accomplish this. With a true understanding of the dynamics in incestuous families, it is unrealistic and insensitive for a state simply to require a mother to protect her children, with the hope that such a requirement will wash away years of dependence on the abuser and prompt the mother to take protective action. It is the fear of financial and psychological repercussions which often prevents a woman from taking protective action.⁷⁴ Accordingly, states should create a comprehensive scheme that will simultaneously encourage a mother to protect her children from ongoing abuse and protect her from this feared financial predicament.

A. Recognizing the Role of the Abuser

The states must continue to regard incestuous abuse as criminal conduct to help prevent every incident of abuse. Upon discovering any instances of such abuse, a state should punish

73. See *supra* notes 49–55 and accompanying text. Cases in which the mother suffers from battered woman's syndrome and is, therefore, unable to act to protect herself or her children are not included in this category.

74. See *supra* notes 54, 61 and accompanying text.

the abuser, as well as provide comprehensive rehabilitative counseling, to help prevent similar future behavior.

In light of research which suggests that the abuser often returns to the family unit after discovery of his incestuous behavior,⁷⁵ rehabilitation is vital. Given the likelihood of the father's return, the states also must acknowledge that abuse may recur. While studies suggest that incestuous abuse has the lowest recidivism rate among sexual crimes,⁷⁶ the chance of recurrence should be sufficient to warrant rehabilitative counseling for abusers. Accordingly, the states should attempt to prevent such recurrence by establishing comprehensive rehabilitative programs and continuing to monitor and aid the family.

B. Recognizing the Role of the Passive Parent

The ultimate responsibility for the acts of incest lies solely with the abuser, not with the passive parent. Nevertheless, in the interest of protecting children from ongoing incestuous abuse, states should recognize the role of non-abusers who know that such abuse is occurring but fail to act to protect the child. States should impose a duty upon parents to report suspected sexual abuse of their children.⁷⁷ A parent who suspects such abuse but fails to protect the child is a facilitator who is often in the best position to prevent continued abuse. Therefore, creating a duty to report and protect could help end the abuse in a child's life. Only a parent who fails to report suspected abuse or protect the child should be criminally liable.⁷⁸ A parent

75. See *supra* notes 71-72 and accompanying text.

76. See KATZ, *supra* note 22, at 273.

77. Parents could be informed of this duty when they file a birth certificate for their child.

78. The argument that women are already vulnerable, in general, because of their "lower" position in society and, therefore, should not be punished for being in a dependent relationship that prevents them from protecting their children is not a compelling one. This "special vulnerability" argument suggests that women are weak and unable to take responsibility for their actions. It implicitly asserts that "women don't mean what they do" and that the state should protect them from their own conduct because women are simply incapable of making a decision and accepting responsibility for that choice. Women must be regarded as intelligent persons capable of making decisions and accepting responsibility for the consequences of their actions. Suggesting that they may need some assistance to take such action does not defeat this theory. Rather, it recognizes the reality that the state has played a role in preserving the subordination of women in all spheres of society and, as a result, some women need

who truly is unaware of the incest is incapable of helping the child and, therefore, would not violate the duty to report suspected abuse. However, the passive parent's willful blindness should not preclude prosecution in any case.

At the same time, the states should recognize the reality of the lives of many mothers in families in which incest occurs. These women often live in a subordinate, financially dependent environment.⁷⁹ Their only real options include: 1) continuing to live in the incestuous environment so that their children will be minimally fed, housed, and clothed or 2) taking protective action to end the incest, which may result in a total loss of financial support and, correspondingly, a loss of food, housing, and clothing for their children. Neither choice is acceptable, because both will harm the children. States should not expect these women to leave—or lose through protective action—their financially dependent environment and immediately locate employment which will meet even basic family needs. Rather, states should recognize the fact that these women are most likely to be relegated to the lower-paying, least-promising employment opportunities.⁸⁰ If the state does not recognize these realities, any attempt to encourage mothers to take steps to stop abuse may result in the financial doom of women forced to take action.

Accordingly, states should develop comprehensive programs that will provide financial assistance and job training to women who report abuse of their children to the designated public authority. Upon reporting the incest, a mother should be eligible for training and financial support until her family achieves an established minimum level of financial independence.⁸¹ The state's established standard should not be merely the poverty level, which would hardly present a real, viable solution for these women. The guarantee that her family will live in poverty

"equalizing" tools to permit them to take advantage of their right—and ability—to choose to make responsible decisions. *See generally* MACKINNON, *infra* note 80.

The proposed program recognizes that our society accepts inequality, while also recognizing that women may sometimes need assistance to allow them to make responsible decisions to protect themselves and their families. A comprehensive program would give mothers a realistic opportunity to help their children without forcing their families into a life of poverty.

79. *See supra* notes 23–24 and 50 and accompanying text.

80. *See* CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* 41 (1987).

81. This part of the program is tailored to the needs of financially dependent mothers. The criminal penalties of the proposed reform program should provide an incentive for financially independent women to take protective action, without additional assurances of financial support from a state.

if she reports suspected abuse could negate any realistic incentive for a mother to risk losing her financially dependent environment to protect her children.

The argument that such a program may result in a new class of welfare recipients is not compelling because it undervalues the state and societal interests in preventing child sexual abuse. The program's requirement of job training and placement for these women will help prevent the creation of a new welfare class. State support will end when a program participant has achieved an established level of financial independence.

The argument that such a program will encourage "false reporting" of sexual abuse by women seeking to use the law to provide financial support to help them out of an unhappy marriage also is not compelling. At best, this is an argument for continued thorough screening of reported abuse by a state before it seeks criminal prosecution of the alleged abuser. State social services agencies and prosecutors are trained to identify false reports of child sexual abuse, providing a safeguard against false prosecutions.

With such a program in place, a state can—and should—criminalize a parent's failure to report child sexual abuse. In Michigan, for example, several categories of non-family members are required to report suspected child sexual abuse.⁸² Failure to do so results in criminal penalties.⁸³ Parents currently are not required to report suspected abuse.⁸⁴ The proposed reform would create a duty for parents, who know or have reason to know that their child is being sexually abused, to report the abuse to the designated public authority. Failure to do so would constitute a felony.⁸⁵ Inflicting criminal penalties on an unprotecting mother may seem harsh because it would potentially result in the child losing both parents. Without such a measure, however, the child will continue to live in a potentially abusive environment.

82. See MICH. COMP. LAWS § 722.623 (1995) (defining child abuse and neglect); *id.* § 722.622 (listing categories of medical and social service workers required to report abuse).

83. *Id.* § 722.633.

84. See *id.* § 722.623.

85. The state should codify an exception to this requirement for any mother who is physically unable to act to protect her children because of spousal abuse. This exception would amount to state recognition of the "battered spouse syndrome." See generally LENORE E. WALKER, *THE BATTERED WOMAN* (1979) (discussing battered spouse syndrome).

CONCLUSION

Children are among the most powerless individuals in our society. They are dependent on their parents for life's basic needs, including protection from danger. Perhaps this dependence is part of the egregious nature of incest: it is the sexual victimization of children, often by the very family members who have been entrusted with the child's well-being. The victimization is compounded when a mother suspects that her child is being harmed but fails to protect the child. As a result, she does not act, and the abuse continues, with long-lasting consequences for the child.

Understanding the real dynamics of the incestuous family would provide states with the ability to help end abuse. By continuing to criminalize child sexual abuse, a state can help prevent the first incident of abuse. Requiring mandatory rehabilitative counseling of an abuser can help prevent future similar behavior by that individual.

In addition, a state should adopt a more comprehensive, proactive program both to encourage and require mothers to protect their children. By requiring mandatory parental reporting of suspected child abuse and providing financial assistance and job training, when necessary, upon reporting, a state can take effective action to end incest. Such a program can help a mother protect her children without risking financial ruin. Each state ultimately has the resources to provide a feasible way for a mother, who is in the best position to protect her child, to do just that.

