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Prohibiting Procreation: A Step in the Right Direction to Protect the Children of Deadbeat Dads; an Analysis of the Court Decision in State v. Oakley

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PROHIBITING PROCREATION: A STEP IN THE RIGHT
DIRECTION TO PROTECT THE CHILDREN OF DEADBEAT
DADS; AN ANALYSIS OF THE COURT DECISION IN
*STATE v. OAKLEY*¹

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¹See *State v. Oakley*, 629 N.W.2d 200 (Wis. 2001) (holding that “the Constitution does not shield Oakley--whose record evidences consistent disregard for the law and ongoing victimization of his own nine children--from this unique probation condition [prohibiting Oakley from procreating] where he has intentionally refused to support his children”). *Id.* at 214, *aff’g* 619 N.W.2d 308 (Wis. Ct. App. 2000).

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I. INTRODUCTION

David Oakley was born in 1966, at Taycheedah Correctional Institution in Fond du Lac, Wisconsin.² He never knew his father and was raised by his grandparents and the State of Wisconsin in a home for delinquent boys.³ By the time he was twenty-one, Oakley had fathered four children with two different women.⁴ At the age of thirty-four, Oakley had been divorced twice and had nine children with four different women.⁵ Oakley amassed \$25 in unpaid child support and was charged as a repeat offender, with seven counts of intentionally refusing to provide child support.⁶ His repeat offender status resulted from a conviction for intimidating two witnesses in a child abuse case involving one of his children.⁷ Oakley’s criminal record also included convictions for disorderly conduct, receiving stolen property, and felony possession of a firearm.⁸

Oakley plead no contest to three counts of intentionally refusing to support his children and was sentenced to three years in prison on the first count, a stayed eight year sentence on the last two counts, and a five-year period of probation consecutive to his incarceration.⁹ The circuit court judge imposed as a condition of his probation that Oakley refrain from having any more children until he could show that he was supporting his current children, and that he could support an additional child.¹⁰ Oakley’s appeal of his probation order failed in the Wisconsin Court of Appeals, 2nd

²Nahal Toosi & Jessica McBride, *Ruling on Prolific Dad Divides His Family*, MILWAUKEE J. & SENTINEL, July 15, 2001, available at 2001 WL 9367270, (providing a summary of the life of David Oakley and the varying opinions of his family, the women he has been involved with and the children he has fathered, in regard to the sentence handed down by the Wisconsin Supreme Court).

³*Id.* at *5.

⁴*Id.*

⁵*Id.*

⁶*See Oakley*, 629 N.W.2d at 202.

⁷*Id.*

⁸*See Toosi & McBride, supra* note 2, at *5.

⁹*See Oakley*, 629 N.W.2d at 203.

¹⁰*Id.*

District, and in the Supreme Court of Wisconsin.¹¹ On December 2, 2002, the United States Supreme Court denied the petition for writ of certiorari.¹²

This note will entail an in-depth analysis of the Wisconsin Supreme Court's majority opinion and the dissent. This note will also provide support for the majority opinion by evaluating how the court's decision will help protect the children of individuals like Oakley, who intentionally refuse to support them. While some may claim that the probation condition to prohibit Oakley from procreating was a drastic measure, it was the appropriate measure for the court to take. This sentence will serve as a deterrent to Oakley and other fathers who intentionally refuse to support their children. The probation condition will prevent any future children from being subjected to Oakley's neglect. It will also help the nine children that he already has because Oakley will be able to work full-time and he will have the means to provide child support to the four mothers of these children. Based upon the fact that Oakley is not incarcerated, he has the opportunity to establish a relationship with his children, which is sorely needed. One of his daughters is so disgusted with him that she wishes to change her last name.¹³ Another child stated that she has never received any Christmas or birthday presents from her father.¹⁴

Children are our society's most important assets and they must be protected. The effect of failing to pay child support and neglecting one's children leads to dramatic results. This note will illustrate how this behavior contributes to childhood depression. This depression carries over into adulthood and repeats itself when depressed adults have children. Our courts and legislature must find a way to stop this cycle. The majority opinion in Oakley took a step in the right direction.

Part II of this note documents the policy considerations and reasoning behind the Manitowoc County's Circuit Court opinion, the Second District Court of Appeals of Wisconsin decision and the Wisconsin Supreme Court's majority opinion. Part III will analyze the reasoning of the two female justices who provided written dissents. Part IV will provide the most recent update on Oakley's case in the Wisconsin Supreme Court. Part V will discuss how a child's mental health is detrimentally affected when his or her parent intentionally refuses to support them. Part VI will propose ideas that could help the plight of children in these situations. Part VII will conclude with the proposition that the Oakley decision was necessary to protect his children from any further harm.

II. *STATE v. OAKLEY*

A. *Policy Considerations*

A parent who refuses to pay child support contributes to the likelihood that the child will suffer from poor health, behavioral problems, delinquency, low educational attainment, and childhood poverty.¹⁵ Statistics show that one third of all single parent

¹¹*Id.* at 200.

¹²*See* Oakley v. U.S., 123 S. Ct. 613 (2002)

¹³*See* Toosi & McBride, *supra* note 2, at *3.

¹⁴*Id.*

¹⁵Marsha Garrison, "The Goals and Limits of Child Support Policy," in CHILD SUPPORT: THE NEXT FRONTIER 16 (J. Thomas Oldham & Marygold S. Melli eds., 2000).

households with child support awards, or orders, do not receive any support from the other parent.¹⁶ In 1997, nonpayment of child support led to a deficit of \$10.6 billion dollars.¹⁷

In an effort to address this crisis, Congress passed the Deadbeat Parents Punishment Act¹⁸ in 1998, to establish felony violations for failure to pay legal child support obligations.¹⁹ The Wisconsin legislature also attached severe sanctions for those failing to pay child support.²⁰ A person who intentionally fails to provide child support will be charged with a Class E felony if 120 days or more have passed, and the person knows or reasonably should know that he or she has a legal obligation to pay support.²¹ The sentence for a Class E felony conviction is a fine not to exceed \$50, or incarceration not to exceed fifteen years, or both.²²

These recent legislative efforts and policy concerns to protect children from deadbeat dads or parents were the driving force behind the majority opinion detailed below.

B. Circuit Court Opinion

Originally, Oakley was charged with nine counts of intentionally failing to support his nine children, but per the prosecutor's information, he was only charged with failing to intentionally support seven of his children.²³ Oakley entered into a plea agreement in regard to these charges but this agreement was withdrawn when the court granted the State of Wisconsin's motion to withdraw the plea agreement. In a subsequent plea agreement, Oakley plead no contest to three counts of intentionally failing to support his children.²⁴ The other four counts were dismissed and the State of Wisconsin agreed to limit his sentence to a total of six years for all counts.²⁵ Circuit court Judge Hazlewood sentenced Oakley to a three-year period of incarceration on the first count, a stayed eight-year period of incarceration on the last two counts and a five-year period of probation consecutive to his incarceration, which barred Oakley from having any more children "until he could show the court that he had the means to support them and had been consistently supporting the children he already had."²⁶

¹⁶Timothy Grail, *Child Support for Custodial Mothers and Fathers*, CURRENT POPULATION REPORTS, UNITED STATES CENSUS BUREAU, October 2000 at 4.

¹⁷1998 U.S. Census Bureau, U.S. Dep't of Commerce, current population surv. Table 1 (indicating child support statistics for 1997).

¹⁸Deadbeat Parents Punishment Act of 1998, 18 U.S.C. § 228 (1998) *amended by* Pub. L. No. 105-187 (adding the title Deadbeat Parents Punishment Act to the statute).

¹⁹*Id.*

²⁰*See* State v. Oakley, 629 N.W.2d 200, 204 (Wis. 2001).

²¹WIS. STAT. § 948.22(2) (2001).

²²WIS. STAT. § 939.50(3)(e) (2001).

²³*See* State v. Oakley, No. 99-3328-CR, 2000 Wis. Ct. App. LEXIS 884, at *1 (Wis. Ct. App. Sept. 13, 2000).

²⁴*Id.* at *1.

²⁵*Id.*

²⁶*Id.* at *1.

Judge Hazlewood was well aware of the person he was dealing with: a man who intentionally intimidated his own child, the victim and witness, in a child abuse case, and a man who made many false promises to support his children.²⁷ This case did not involve a parent who could not pay child support; it involved a man who intentionally refused to provide any support to his nine children despite numerous court orders requiring him to do so.²⁸ These orders did not dictate an actual dollar amount, but a percentage of Oakley's income, so it was within his ability, regardless of his income and the number of children, to comply with these orders.²⁹

C. Second District Court of Appeals of Wisconsin Opinion

Oakley appealed the circuit court's decision on numerous grounds. One of Oakley's contentions was that his out of state prison transfer defeated the circuit court's intention to have him support his children while incarcerated, through a work-release program.³⁰ The Second District Court of Appeals of Wisconsin dismissed this argument³¹ because Oakley had erroneously relied upon a Dane County circuit court opinion that had been overruled in a Wisconsin appellate court.³² In addition to the fact that another circuit court's decision has no precedential effect on another circuit court, the court of appeals stated that it was apparent to the circuit court during Oakley's sentencing that there was a possibility he would be transferred to an out of state facility.³³ This new factor presented by Oakley was not enough to warrant being re-sentenced.³⁴

The court of appeals also stated that the circuit court did not contemplate that Oakley would support his children during his incarceration.³⁵ The circuit court's sentencing remarks provided that Oakley's incarceration was meant to serve other goals such as deterring other parents from failing to support their children and it was a means to punish Oakley for his intentional behavior.³⁶ The circuit court noted that Oakley would not be in a position to provide any meaningful support to his children

²⁷See Oakley, 629 N.W.2d at 206.

²⁸*Id.*

²⁹*Id.* at 205 (citing footnote 19).

³⁰See Oakley, 2000 Wisc. App. LEXIS 884, at *4.

³¹*Id.*

³²See *Evers v. Sullivan*, 615 N.W.2d 680, 681 (Wis. Ct. App. 2000) (holding that the trial court erred and that officials of the Department of Corrections do have legal authority to transfer inmates, without their consent, to prison facilities outside the state of Wisconsin). *Id.* at 681.

³³See Oakley, 2000 Wisc. App. LEXIS 884, at *4-5.

³⁴*Id.* at *5.

³⁵*Id.*

³⁶*Id.*

while incarcerated.³⁷ Again, Oakley failed to provide sufficient evidence warranting a new sentence.³⁸

Oakley's second contention on appeal was that the probation order, barring him from having additional children until he has the means to support them and is supporting the children that he already has, was unreasonable, inappropriate and a violation of his state and federal constitutional rights to procreation and privacy.³⁹ The court of appeals rejected this contention.⁴⁰

Oakley's post-conviction challenge to the probation condition was rejected by the circuit court.⁴¹ In accordance with *Krebs v. Schwartz*,⁴² a probation condition can impinge upon a constitutional right as long as it is reasonably related to an individual's rehabilitation and is not overly broad.⁴³ The circuit court stated that Oakley's probation condition was reasonably related to his crime of intentionally failing to support his children and it served the public's interest by preventing more children, of whom Oakley would not support, from being harmed.⁴⁴ The circuit court felt that Oakley's rehabilitation would not be served if he were hampered by additional familial obligations.⁴⁵

The circuit court, following the reasoning in *Krebs*, stated that Oakley was not prohibited from engaging in sexual activity, a prohibition that would be an elimination of his constitutional right to privacy.⁴⁶ Oakley was merely prohibited from having additional children.⁴⁷ Children that he would not support, as shown by his previous intentional failure to support, and his criminal convictions.⁴⁸

The Wisconsin court of appeals held that the decisions in *Krebs* and *State v. Garner*⁴⁹ supported its conclusion that Oakley's probation condition was both

³⁷*Id.*

³⁸*See* Oakley, 2000 Wisc. App. LEXIS 884, at *5.

³⁹*Id.* at *5-6.

⁴⁰*Id.* at *8.

⁴¹*Id.* at *6.

⁴²*See* *Krebs v. Schwartz*, 568 N.W.2d 26, 28 (Wis. Ct. App. 1997) (holding that the probation condition prohibiting the defendant from entering into an intimate or sexual relationship with any person without first discussing it with his probation officer was reasonable, not overly broad and only restricted, not eliminated, the defendant's constitutional right to privacy). *Id.*

⁴³*See* Oakley, 2000 Wisc. App. LEXIS 884, at *6.

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.* at *7.

⁴⁷*See* Oakley, 2000 Wisc. App. LEXIS 884, at *7.

⁴⁸*Id.*

⁴⁹*See* *State v. Garner*, 194 N.W.2d 649 (Wis. 1972) (holding that a "requirement that one support or make [a] good-faith effort to support his family was [a] justifiable condition of probation."). *Id.*

reasonable and not overly broad.⁵⁰ Additionally, the court noted that Oakley's refusal to pay his previous fines and his actions regarding victim intimidation revealed a "cavalier attitude toward the justice system."⁵¹ The court of appeals therefore upheld the circuit court's decision to sustain Oakley's probation condition.

D. The Wisconsin Supreme Court's Majority Opinion

Oakley presented two arguments in his appeal to the Wisconsin Supreme Court. The first was that the probation condition prohibiting him from procreating for five years was unconstitutional.⁵² The second argument was that the probation condition violated his constitutional right to procreate.⁵³

The court addressed the first issue by stating Wisconsin law was flexible enough to allow a form of punishment, other than incarceration, for an intentional failure to pay child support.⁵⁴ Judges are allowed to consider a broad array of factors, including but not limited to, the severity of the offense, and the need to protect the public and potential victims.⁵⁵ Other factors to be considered include an individual's criminal history, undesirable behavior patterns, personality, the nature of the crime, and the defendant's remorse, repentance, and cooperativeness.⁵⁶ After analyzing these factors, a Wisconsin judge could forgo incarceration in lieu of probation coupled with specified conditions.⁵⁷ The premise behind allowing probation is that it may help to rehabilitate the defendant and protect society without placing the defendant in jail.⁵⁸

The circuit court judge believed that this probation condition would rehabilitate Oakley and protect his children from any further injustice.⁵⁹

The United States Supreme Court has recognized that there is a fundamental right of every citizen to decide whether or not to procreate.⁶⁰ Oakley argued that because of this fundamental right, his probation condition prohibiting him from procreating, warrants use of the strict scrutiny test,⁶¹ and in applying it, the prohibition must be

⁵⁰See *Oakley*, 2000 Wisc. App. LEXIS 884, at *7-8.

⁵¹See *Oakley*, 629 N.W.2d at 205.

⁵²*Id.* at 203.

⁵³*Id.* at 207.

⁵⁴*Id.* at 205.

⁵⁵See *State v. Guzman*, 480 N.W.2d 446, 450 (Wis.1992) (holding that "when a convicted defendant is awaiting sentencing for a drug related offense and probation is a sentencing alternative, a judge may in his or her discretion order such defendant to submit to urinalysis or other appropriate tests to determine the presence of illegal drugs in his or her system."). *Id.* at 456.

⁵⁶See *Oakley*, 629 N.W.2d at 206.

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹*Id.* at 207.

⁶⁰See *In Re Guardianship of Eberhardy*, 307 N.W.2d 881 (Wis. Ct. App. 1981); *Skinner v. Oklahoma*, 316 U.S. 535, (recognizing the right to procreate as "one of the basic civil rights of man."). *Id.* at 541.

⁶¹See *Oakley*, 629 N.W.2d at 207.

“narrowly tailored to serve a compelling state interest.”⁶² While Oakley agreed that supporting one’s children is a compelling interest, he did not feel that the probation condition was narrowly tailored to fulfill the compelling interest.⁶³ This was based upon his claim that his right to procreate was virtually eliminated, because he would never be able to support his children.⁶⁴ If Oakley did engage in procreation, his probation would be revoked and he would have to go to prison for eight years.⁶⁵

Oakley’s strict scrutiny argument failed because, according to the Wisconsin Supreme Court, probation is not subject to strict scrutiny analysis.⁶⁶ If it were, incarceration that deprives an individual of the right to be free would also be subject to the test. In effect, this would be overly burdensome on the State.⁶⁷ The State would have to apply the strict scrutiny analysis to every person convicted of violating the law as well as demonstrating a defendant’s guilt beyond a reasonable doubt.⁶⁸

It is well-established law in Wisconsin that convicted individuals do not enjoy the same degree of liberty as citizens who have not violated the law.⁶⁹ Therefore, the majority emphatically rejected Oakley’s novel idea that even though he was convicted for intentionally refusing to support his children, he had a right to refuse to support these children, and any future children he may father.⁷⁰

The Oregon Court of Appeals upheld a similar probation condition, meant to protect the children of an abusive father, which prohibited the defendant from fathering any more children without the court’s permission after attending drug and anger management classes.⁷¹ The defendant argued, as did Oakley, that the strict scrutiny analysis should apply.⁷² The court rejected this argument stating “[t]he condition provides potential victims with protection from future injury and interferes with defendant’s fundamental rights to a permissible degree.”⁷³ The trial court was very concerned for the safety of any future children the defendant might have because of his

⁶²*Id.* at 208. *See also* Zablocki v. Redhail, 434 U.S. 374 (1978) (holding that a Wisconsin statute which prohibited a person with a court-ordered child support obligation from obtaining a marriage license without prior court approval was unconstitutional).

⁶³*See Oakley*, 629 N.W.2d at 208.

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶*Id.* at 208 (citing footnote 23).

⁶⁷*Id.* at 208.

⁶⁸*See Oakley*, 629 N.W.2d at 208.

⁶⁹*See* State v. Evans, 252 N.W.2d 664, 666 (Wis. 1977) (asserting that “liberty enjoyed by a probationer is, under any view, a conditional liberty”). *Id.*

⁷⁰*See Oakley*, 629 N.W.2d at 208.

⁷¹*See* State v. Kline, 963 P.2d 697, 699 (Or. Ct. App. 1998) (upholding the lower court’s decision that as a condition of the defendant’s probation, he could not father any more children without the express permission of the court after partaking in treatment for drug and anger management). *Id.*

⁷²*Id.*

⁷³*Id.*

violent tendencies.⁷⁴ Similarly, the Wisconsin Supreme Court in *Oakley* was concerned with the welfare of Oakley's children and future children based upon his past record of child witness intimidation and his refusal to provide for the basic needs of his children.⁷⁵ The supreme court hoped that it was affording some measure of protection against any future detrimental acts of David Oakley.

It is well established in case law that a person who is incarcerated does not have the right to procreate.⁷⁶ Therefore, if the circuit court judge had incarcerated Oakley for the eight-year period, he would not have been able to exercise his fundamental right.⁷⁷

The majority was convinced, based upon the weight of authority, that strict scrutiny does not apply.⁷⁸ The reasonability standard was found to be a constitutionally valid approach to evaluate Oakley's probation condition, a condition that infringes upon a fundamental right.⁷⁹ The court stated that to hold otherwise would place the right to procreate above all other fundamental rights "such as free speech, free exercise of religion and the right to vote."⁸⁰ The court had no constitutional basis for doing this.⁸¹

Additionally, the majority held that this probation condition was not overly broad because it did not eliminate Oakley's fundamental right to procreate.⁸² If Oakley makes the effort to support his children and acknowledges the conditions of his probation, he will be able to have as many children as he wishes when his probation expires, provided he continues to support his children.⁸³ The probation condition was reasonably related to the goal of rehabilitation because it prevents Oakley from adding children that he will intentionally refuse to support, thereby assisting Oakley in conforming his conduct to the law.⁸⁴ Therefore, the majority indicated that the condition was narrowly tailored to serve the State's compelling interest of having parents support their children and rehabilitate the parent rather than incarcerate them.⁸⁵

⁷⁴*Id.*

⁷⁵*See Oakley*, 629 N.W.2d at 209.

⁷⁶*See Hernandez v. Coughlin*, 18 F.3d 133 (2nd Cir. 1994) (holding that "even though the right to marriage is constitutionally protected for inmates, the right to marital privacy and conjugal visits while incarcerated is not."). *Id.* at 137; *Goodwin v. Turner*, 908 F.2d 1395 (8th Cir. 1990) (asserting that the test to determine if a restriction of a prisoner's right to procreate is valid is determined by whether it is reasonably related to achieving "legitimate penological interests." Defendant's argument that strict scrutiny analysis should be applied was rejected). *Id.* at 1398.

⁷⁷*See Oakley*, 629 N.W.2d at 211 (citing footnote 25).

⁷⁸*Id.* at 212.

⁷⁹*Id.*

⁸⁰*Id.*

⁸¹*Id.*

⁸²*See Oakley*, 629 N.W.2d at 212.

⁸³*Id.*

⁸⁴*Id.* at 213.

⁸⁵*Id.* at 212.

In summary, both of Oakley's arguments failed.⁸⁶ The probation condition prohibiting Oakley from procreating for five years was constitutional and the condition did not violate his fundamental right to procreate.⁸⁷ The majority rejected Oakley's claim that a strict scrutiny test should be used.⁸⁸ The court, in relying upon a reasonability standard, concluded that the probation condition was reasonable and not overly broad, because Oakley's right to procreate was not eliminated.⁸⁹ The condition was found to be reasonably related to his crime and it was narrowly tailored to the state's interest in having parents provide child support to their children and the state's interest in rehabilitating those convicted of a crime.⁹⁰ Therefore, the circuit court judge correctly determined that incarceration of Oakley would only victimize his children further.⁹¹ He would have been unable to work and support his children for eight years. In his concurring opinion, Justice N. Patrick Crooks stated that "even though '[w]e have come to recognize that forces not within the control of the poor contribute to their poverty,' the law should do what it can to minimize the effects of poverty on children."⁹² "From its founding, the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders."⁹³

III. STATE v. OAKLEY: DISSENT

There were two female justices who provided written dissenting opinions in this case, Justice Ann Walsh Bradley and Justice Diane Sykes.⁹⁴ Chief Justice Shirley Abrahamson joined both dissenting opinions.⁹⁵ All three women believed that having children is a basic human right guaranteed by the Constitution.⁹⁶

A. Dissenting Justice Ann Walsh Bradley

Justice Bradley agreed with the majority that the government's interest in requiring parents to support their children is very important.⁹⁷ She did not agree that the

⁸⁶*Id.* at 214.

⁸⁷*See Oakley*, 629 N.W.2d at 214.

⁸⁸*Id.*

⁸⁹*Id.*

⁹⁰*Id.*

⁹¹*Id.*

⁹²*See also* Goldberg v. Kelly, 397 U.S. 254, 265 (1970) (holding that procedural due process requires that a pre-termination evidentiary hearing take place when public assistance payments to welfare recipients are discontinued. The Court also held that the City of New York's procedures in terminating public assistance payments to welfare recipients were constitutionally inadequate).

⁹³*Id.* at 264-65 (citing Justice Brennan).

⁹⁴*High Court Decides Fatherhood Rights Case*, MILWAUKEE J. SENTINEL, July 10, 2001 *2, available at <http://www.jsonline.com/news/State/jul01/father071001.asp> (summarizing the facts of *State v. Oakley* and quoting the different justices involved in the decision).

⁹⁵*See Oakley*, 629 N.W.2d at 221, 223.

⁹⁶*See High Court Decides Fatherhood Rights Case*, *supra* note 94, at *2.

⁹⁷*See Oakley*, 629 N.W.2d at 216.

probation condition, to prohibit Oakley from procreating for five years, as a means of carrying out this interest was narrowly drawn, as required by law.⁹⁸ Bradley stated that Oakley would not be able to meet the conditions of his probation, because he would not be able to establish that he has the ability to support his children. Therefore, the condition does not narrowly serve the government interest and prohibiting Oakley from having any children is unconstitutional.⁹⁹ Bradley stated that “[t]he right to have children is a basic human right and an aspect of the fundamental liberty which the Constitution jealously guards for all Americans.”¹⁰⁰

Justice Bradley did not agree with the majority that Oakley would fail to meet the probation condition if he only intentionally refused to pay child support. Bradley interpreted the condition to mean that until Oakley could establish the means to provide for all of his children, he could not procreate.¹⁰¹ It would be difficult to meet the condition because as Oakley stated, he would have to win the lottery, in order to establish this ability.¹⁰² Bradley stated that the circuit court recognized Oakley’s inability to meet the condition when it stated “in truth [Oakley] could not reasonably be expected to fully support them.”¹⁰³

The majority opinion countered Justice Bradley’s argument by stating that the circuit court judge had not said that Oakley would be unable to meet the condition.¹⁰⁴ The circuit court judge recognized Oakley might not produce a large income in the future but he was still expected to provide support based upon his ability to earn and pay.¹⁰⁵ The judge believed that this probation condition would prevent Oakley from committing any further crimes for which he was convicted.¹⁰⁶

Justice Bradley admits that if Oakley were imprisoned, he would be unable to exercise his procreative rights.¹⁰⁷ Bradley’s argument however, is that Oakley is not imprisoned and he is therefore entitled to a “significant degree of privacy, or liberty, under the Fourth, Fifth and Fourteenth Amendments to the federal Constitution.”¹⁰⁸ The State does not have a right to exercise an unlimited control over Oakley’s right to procreate.¹⁰⁹ The court could have chosen other alternatives to advance the

⁹⁸*Id.*

⁹⁹*Id.*

¹⁰⁰*Id.*

¹⁰¹*Id.* at 217.

¹⁰²*See Oakley*, 629 N.W.2d at 217.

¹⁰³*Id.*

¹⁰⁴*Id.* at 207 (citing footnote 21).

¹⁰⁵*Id.*

¹⁰⁶*Id.*

¹⁰⁷*See Oakley*, 629 N.W.2d at 218.

¹⁰⁸*See People v. Pointer*, 199 Cal. Rptr. 357, 363 (Cal. Ct. App. 1984) (holding that the defendant’s condition of probation to not conceive during the term of probation was overly broad and that there were alternative sentences available).

¹⁰⁹*See Oakley*, 629 N.W.2d at 218.

government's interest without impairing Oakley's fundamental right to procreate.¹¹⁰ The court could have imposed wage garnishment, civil contempt proceedings, or a lien on Oakley's personal property or criminal penalties.¹¹¹ Based upon the fact that Oakley had requested an opportunity to maintain full employment to provide for his children and put money towards his arrearage and that he was able to work, Justice Bradley suggested the following as alternatives to the probation condition that he was given: incarceration with work release privileges, a requirement that Oakley maintain two full-time jobs, a minimum work week of seventy hours, parenting classes and alcohol and drug assessment/counseling, if needed.¹¹² In light of these alternatives, she believed that the government and the majority failed to show that Oakley's probation condition was narrowly drawn or not overly broad.¹¹³

Justice Bradley stated that, in addition to the constitutional infirmities of the majority's decision, there are unacceptable collateral consequences and practical problems.¹¹⁴ Case law has established that prohibiting a person from having children, as a condition of probation, is "coercive of abortion."¹¹⁵ If Oakley were to impregnate a woman, there would be a strong incentive for her to heed to his demand for an abortion, so that he would not have to go to prison.¹¹⁶ Bradley firmly stated that she is against a probation order that would create an incentive to procure an abortion.¹¹⁷

Another problem that arises with Oakley's sentence is that it "imbues a fundamental liberty interest [the right to procreate] with a sliding scale of wealth."¹¹⁸ Bradley states that every person has a right to have a child and that this right should not be taken away because a person cannot afford to do so.¹¹⁹ The majority disagrees with Bradley's assertion because she is ignoring the fact that this case was in regard to an intentional refusal to pay child support.¹²⁰ This case is not about prohibiting a person from procreating because of his or her financial inability to pay child support. A person who does not have the means to pay child support will not be convicted of intentionally refusing to pay child support unless they have the requisite intent.

Lastly, Justice Bradley stated that Oakley's probation condition was unworkable because there is no way to monitor him and prevent him from fathering another

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²*Id.* at 218 n.37.

¹¹³*Id.* at 219.

¹¹⁴*See Oakley*, 629 N.W.2d at 219.

¹¹⁵*See Pointer*, 199 Cal. Rptr. at 366.

¹¹⁶*See Oakley*, 629 N.W.2d at 219.

¹¹⁷*Id.*

¹¹⁸*Id.* at 205.

¹¹⁹*Id.* at 219.

¹²⁰*Id.* at 205.

unsupported child.¹²¹ If this happened, he would go to prison and he would be unable to support his children.¹²²

In summary, Justice Bradley did not condone Oakley's irresponsible and criminal behavior but she could not partake in the majority's opinion because of her belief that the probation condition was overly broad and not narrowly drawn to the state's compelling interest in having parents support their children.¹²³ Justice Bradley erroneously concluded that the probation condition meant that Oakley could not procreate until he could establish the means to support all of his children, which in her opinion, he would never be able to accomplish.¹²⁴ Justice Bradley provided alternatives that the majority could have used as a way of fulfilling the state's interest.¹²⁵ These alternatives would eliminate her perceived problems of increased abortions, judgments made on a sliding scale of wealth and a lack of control over Oakley fathering any more children.¹²⁶ Justice Bradley held that an alternative sentence was necessary because a state cannot control a person's right to procreate.¹²⁷ Justice Bradley stated that the fundamental right to have children was damaged by the majority's decision.¹²⁸ She had no choice but to dissent because of the majority's disregard of that right.¹²⁹

B. Dissenting Justice Diane S. Sykes

Justice Sykes did not agree with the majority's opinion that a State can criminalize the birth of a child to a person who was unable or unwilling to adequately support his or her child financially.¹³⁰ Justice Sykes, like Justice Bradley, wrongly concluded that the majority's opinion would apply to a person who is unable to support his or her child- as opposed to an individual who intentionally refuses to support his or her child.¹³¹ In her dissenting opinion, Justice Sykes stated that Oakley's probation condition was a "compulsory, state-sponsored, court-enforced financial test for future parenthood."¹³²

Justice Sykes referred to the United State Supreme Court's opinion in *Zablocki*¹³³ to illustrate that a state's objective in protecting the interests of children entitled to financial support from non-custodial parents could be achieved by less restrictive

¹²¹See *Oakley*, 629 N.W.2d at 220.

¹²²*Id.*

¹²³*Id.* at 218, 221.

¹²⁴*Id.* at 217.

¹²⁵*Id.* at 218.

¹²⁶See *Oakley*, 629 N.W.2d at 219, 220.

¹²⁷*Id.* at 219.

¹²⁸*Id.*

¹²⁹*Id.* at 221.

¹³⁰See *Oakley*, 629 N.W.2d at 221-23.

¹³¹*Id.* at 222.

¹³²*Id.* at 221.

¹³³See *Zablocki v. Redhail*, 434 U.S. 374, 390 (1978).

means.¹³⁴ In *Zablocki*, the plaintiff filed a class action suit after being denied a marriage license in the State of Wisconsin.¹³⁵ Wisconsin statute¹³⁶ dictated that a person could not acquire a marriage license without court permission, if he or she was under a court-ordered child support obligation.¹³⁷ The plaintiff, who disobeyed a child support order, wished to marry another woman who was pregnant with his child.¹³⁸ The Supreme Court stated that it is a fundamental right to marry in the United States and therefore, any statute infringing upon that right is subject to critical examination.¹³⁹ The Court found that the Wisconsin statute was not “closely tailored” to meet Wisconsin’s interests in protecting the interests of children because there were less restrictive means available to achieve this goal.¹⁴⁰ The means mentioned by the Court were the same proposed by Justice Bradley in her dissent— wage assignments, civil contempt proceedings and criminal penalties.¹⁴¹ Justice Sykes also suggested that under Wisconsin law,¹⁴² Oakley’s tax refunds could be intercepted annually.¹⁴³

In summary, Justice Sykes does not believe that a State can make it illegal for a person to have a child if that person cannot or will not support that child.¹⁴⁴ She agrees with Justice Bradley’s erroneous conclusion that the majority’s holding applies to those who cannot afford to support his or her child.¹⁴⁵ This is in error because the majority meant the condition to apply to a person who intentionally refused to support his children, not an inability to support his children.¹⁴⁶ Finally, in relying on a U.S. Supreme Court case that began in the state of Wisconsin, Justice Sykes illustrated that the majority could have achieved its goal by using less restrictive means.¹⁴⁷

IV. RECENT DEVELOPMENTS IN *STATE v. OAKLEY*

In an opinion filed on November 23, 2001, the Wisconsin Supreme Court denied reconsideration of Oakley’s probation condition and clarified the decision delivered on

¹³⁴See *Oakley*, 629 N.W.2d at 221-22.

¹³⁵See *Zablocki*, 434 U.S. at 376.

¹³⁶WIS. STAT. ANN. § 245.10 (1973) (repealed 1978).

¹³⁷*Id.*

¹³⁸See *Zablocki*, 434 U.S. at 377-78.

¹³⁹*Id.* at 388.

¹⁴⁰See *Oakley*, 629 N.W.2d at 222.

¹⁴¹See *Zablocki*, 434 U.S. at 390.

¹⁴²WIS. STAT. § 49.855(1) (2001) *amended by* Executive Budget Act, 2001 Wis. Legis. Serv. 16 (2001).

¹⁴³See *Oakley*, 629 N.W.2d at 222.

¹⁴⁴*Id.*

¹⁴⁵*Id.* at 221.

¹⁴⁶*Id.* at 213.

¹⁴⁷*Id.* at 222.

July 10, 2001.¹⁴⁸ The court removed certain language from three sentences pertaining to the victim/witness intimidation by Oakley, regarding his own child.¹⁴⁹

The court reiterated that this case was not about an inability to pay child support.¹⁵⁰ The per curiam opinion emphasized that the court's holding was based on extraordinary circumstances.¹⁵¹ These circumstances included the fact that Oakley had a criminal record and that he intentionally failed to support his children.¹⁵² Additionally, he owed \$25, in child support payments for the nine children that he fathered and he was convicted for this criminal offense.¹⁵³ The court once again stated that the probation condition was reasonably related to the goal of Oakley's rehabilitation and it was "narrowly tailored to serve the compelling state interest in requiring parents to support their children."¹⁵⁴

Chief Justice Shirley Abrahamson, who had dissented with this majority opinion delivered on July 10, 2001, agreed that Oakley's motion for reconsideration should be denied, but stated that the per curiam opinion of November 23, 2001 was inadequate.¹⁵⁵ Justice Diane S. Sykes and Justice Ann Walsh Bradley (dissenters of the July 10, 2001 decision) joined the Chief Justice in her opinion.¹⁵⁶

Oakley's motion for reconsideration was based upon his belief that the majority misapprehended two important facts in his case.¹⁵⁷ The first misapprehension was in regard to Oakley's intentional failure to pay child support.¹⁵⁸ The court record contained evidence that Oakley had in fact made child support payments, payments that constituted in excess of 70% of his child support obligations.¹⁵⁹ Oakley contended that his extraordinary probation condition was not warranted because there was no persistent and stubborn refusal to pay child support.¹⁶⁰ To determine if there had been a persistent and stubborn refusal to pay child support, the court looked to the single 120-day period (from January 1, 1998 to April 30, 1998) for which Oakley was charged and convicted.¹⁶¹ Oakley did make child support payments during this time frame but the

¹⁴⁸*See* State v. Oakley, No. 99-3328-CR, 2001 Wisc. LEXIS 1597, at *1 (Wis. Nov. 23, 2001) (holding that the Wisconsin Supreme Court did not misconstrue significant facts in its decision dated July 10, 2001 and denying David Oakley's motion for reconsideration without costs).

¹⁴⁹*Id.*

¹⁵⁰*Id.* at *2.

¹⁵¹*Id.*

¹⁵²*Id.*

¹⁵³*See* State v. Oakley, 2001 Wisc. LEXIS 1597, at *2.

¹⁵⁴*Id.*

¹⁵⁵*Id.* at *2.

¹⁵⁶*Id.* at *6.

¹⁵⁷*Id.* at *4.

¹⁵⁸*See* State v. Oakley, 2001 Wisc. LEXIS 1597, at *4.

¹⁵⁹*Id.*

¹⁶⁰*Id.*

¹⁶¹*Id.* at *5.

majority opinion never addressed this fact when it was considering the extraordinary circumstances allowing for the probation condition.¹⁶² Justice Abrahamson therefore concluded that because the majority and the per curiam decision failed to address all of facts, the facts were not properly considered prior to issuing the court's holding.¹⁶³

The second misapprehension was in regard to Oakley's claim that the majority failed to take account of his child support payments before issuing the probation condition prohibiting him from procreating for five years.¹⁶⁴ The state of Wisconsin and Chief Justice Abrahamson both agreed that this matter should be brought before the circuit court, not the state supreme court.¹⁶⁵

In summary, Justice Abrahamson stated that the per curiam opinion failed to address important facts regarding Oakley's child support payment history.¹⁶⁶ She believed that his motion for reconsideration was correctly denied but that the per curiam opinion should have addressed both the majority's holding and Oakley's record of making and not making child support payments.¹⁶⁷

V. THE DETRIMENTAL EFFECT OF FAILURE TO PAY CHILD SUPPORT ON CHILDREN

A. *The Relationship Between Neglect and Depression*

Studies indicate that children and adolescents who experience low levels of parental warmth and support are more likely to exhibit depressive symptoms and clinical depression.¹⁶⁸ Depressive symptoms have also been linked to low family cohesion, family conflict, parental rejection and extreme forms of parental behavior such as severe punishment and maltreatment.¹⁶⁹ The purpose of this note in evaluating *State v. Oakley*, is to demonstrate that a parent's intentional failure to support his or her child financially, is a form of rejection that can be a contributing factor of childhood depression. This is a serious consequence and it justifies the majority opinion.

B. *The Background of Depression*

According to the World Health Organization's World Health Report 2, depression claims more years of useful life in America than war, cancer and AIDS put together.¹⁷⁰ Of the 13.7% of Americans living below the poverty line, 42% of heads of households

¹⁶²*Id.*

¹⁶³*See* *State v. Oakley*, 2001 Wisc. LEXIS 1597, at *5.

¹⁶⁴*Id.* at *5-6.

¹⁶⁵*Id.* at *6.

¹⁶⁶*Id.*

¹⁶⁷*Id.*

¹⁶⁸Elizabeth McCauley, Karen Pavlidis & Kim Kendall, *Developmental Precursors of Depression: the Child and the Social Environment*, in *THE DEPRESSED CHILD AND ADOLESCENT* 49 (Ian M. Goodyer ed., 2001).

¹⁶⁹*Id.* at 49-50.

¹⁷⁰Andrew Solomon, *Case Study: The Depressed Poor; Location: Washington, D.C.; A Cure for Poverty*, N.Y. TIMES, May 6, 2001 112 (describing the life of a woman named Wendy who experienced major depression due her impoverished childhood and sexual abuse).

receiving Aid to Families With Dependent Children¹⁷¹ have been diagnosed with clinical depression.¹⁷² This is three times the national average.¹⁷³ Three million children on any given day meet the diagnostic criteria for mood disorders.¹⁷⁴

C. The Definition of Depression

Research on childhood depression has only been a recent phenomenon.¹⁷⁵ This has been attributed to the recognition that children and adolescents display many of the same depressive symptoms as adults.¹⁷⁶ These symptoms include severe mood swings¹⁷⁷ of sadness, emptiness or anxiousness, excessive feelings of guilt, worthlessness, helplessness, hopelessness and pessimism, a loss of interest in daily activities, eating and sleeping problems, decreased energy, thoughts of death and suicide, restlessness, irritability and decreased concentration and memory.¹⁷⁸ Depression has become so prevalent in our society today, that it is referred to as the “common cold of emotional problems.”¹⁷⁹

D. The Effects of Depression on Children & Adolescents

A child afflicted by depressive symptoms is at an increased risk of having problems associated with school.¹⁸⁰ Depression has been deemed responsible for lowering the social and academic functioning of children, negative peer evaluation, poor self-esteem, feelings of hopelessness about lessons and tests, conduct disorder, social withdrawal, school refusal and learning difficulties.¹⁸¹

Studies have shown that depression in teenagers is often linked to other psychiatric disorders such as drug abuse, anxiety and eating disorders.¹⁸² It has not been

¹⁷¹*Welcome to the Office of Family Assistance Home Page* (establishing that Aid to Families With Dependent Children (AFDC) and the Job Opportunities and Basic Skills training programs (JOBS) were replaced on July 1, 1997 by the Temporary Assistance for Needy Families Program (TANF) overseen by the Office of Family Assistance, located within the United States Department of Health and Human Services, The Administration for Children and Families) available at <http://www.acf.hhs.gov/programs/ofa/> (last visited February 16, 2002).

¹⁷²*See* Solomon, *supra* note 170, at *2.

¹⁷³*Id.*

¹⁷⁴*Id.*

¹⁷⁵JOHNNY L. MATSON, *TREATING DEPRESSION IN CHILDREN AND ADOLESCENTS*, ix (1989).

¹⁷⁶KEDAR NATH DWIVEDI & VED PRAKASH VARMA, *DEPRESSION IN CHILDREN AND ADOLESCENTS*, 1 (1997).

¹⁷⁷*Id.* at 1.

¹⁷⁸GERALD D. OSTER & SARAH S. MONTGOMERY, *HELPING YOUR DEPRESSED TEENAGER: A GUIDE FOR PARENTS AND CAREGIVERS*, 45 (1995).

¹⁷⁹*See* MATSON, *supra* note 175, at 1.

¹⁸⁰*See* DWIVEDI & VARMA, *supra* note 176, at 1.

¹⁸¹*Id.*

¹⁸²*See* OSTER & MONTGOMERY, *supra* note 178, at 61.

determined if depression causes these other disorders or if the other disorders cause the depression.¹⁸³ What is important to recognize is that when these disorders occur together, successful treatment becomes harder to achieve.¹⁸⁴

E. The Causes of Depression

There are many different theories regarding the causes of depression, including but not limited to psychological and biological contributing factors.¹⁸⁵ Some social scientists however, believe that interpersonal factors, as opposed to individual characteristics, play a bigger role in contributing to depression.¹⁸⁶ The family poses as one such interpersonal factor.¹⁸⁷ Studies show that adolescents who perceive themselves as receiving “low parental support have higher levels of depressive symptoms” and that depressed children often report a lack of communication between the child and his or her mother.¹⁸⁸

1. Parental Practices & Personality

In a study conducted by Dr. James Perrin,¹⁸⁹ it was determined that one of the six major determinants influencing a child’s development is parental practices and personality.¹⁹⁰ Dr. Perrin and co-author Dr. Kagan believe that parents affect their child’s psychological growth through direct interaction, emotional identification and family stories.¹⁹¹ Under the emotional identification category, a ten-year old who identifies with poor families because of his own family’s economic condition, will tend to feel shameful and may attribute his or her family’s status to the fact that his or her parents are lazy or incompetent.¹⁹² “Because identification with a poor family can generate anxiety, shame, or anger, it can represent a chronic psychological stress that might contribute to the generally poorer health of the economically disadvantaged.”¹⁹³

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 94.

¹⁸⁶ *Id.*

¹⁸⁷ See OSTER & MONTGOMERY, *supra* note 178, at 95.

¹⁸⁸ See McCauley, Pavlidis & Kendall, *supra* note 168, at 49.

¹⁸⁹ James M. Perrin & Jerome Kagan, *The Role of Parents in Children’s Psychological Development*, PEDIATRICS, July 1999 at *1 (agreeing with attachment theorists who believe that parents do affect their child’s psychological growth through three different mechanisms: direct interactions, emotional identification and family stories).

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at *2-4.

¹⁹² *Id.* at *3, 4.

¹⁹³ *Id.*

2. Genetic Vulnerability

One author stated that depression is caused by a combination of genetic vulnerability and external stress.¹⁹⁴ Examples of external stress include but are not limited to being on welfare,¹⁹⁵ multigenerational poverty, caregiver separation, neglect and a family history of mental and addictive disorders.¹⁹⁶ Genetic vulnerability has been tested on twins and adopted children.¹⁹⁷ These studies have confirmed long held beliefs that depression is more frequent in blood relatives of depressed individuals than in the population at large.¹⁹⁸ High rates of depression have been found in the children of depressed parents.¹⁹⁹

3. Divorce & Parental Separation

Children do not want to be the victims of any ongoing emotional strife between their parents; they want “both parents and they want to feel good about both parents.”²⁰⁰ Statistics show that within two years of divorce, a high percentage of fathers fall out of their children’s lives by failing to meet their financial obligations and emotional commitments.²⁰¹ As a result, “children often experience a variety of psychological disturbances, ranging from lowered self-esteem to depression, behavioral or social problems, and academic difficulties.”²⁰²

4. Actual Case Studies Signifying the Cause & Effect of Depression

The following case studies indicate that parental neglect and low socioeconomic status contribute to childhood depression:

Single mothers and their children fill many of the homes in the inner city of Buffalo, New York.²⁰³ In one particular home, a thirty-one year old mother resides

¹⁹⁴See Solomon, *supra* note 170, at *6.

¹⁹⁵*Id.*

¹⁹⁶Monica Preboth, *Surgeon General Releases Mental Health Report; Mental Health: A Report of the Surgeon General*, AMERICAN FAMILY PHYSICIAN, June 15, 2000 at *3 (stating the goals of the Surgeon General’s report and summarizing the report’s lifespan approach to mental health and mental illness through childhood, adolescence, adulthood, and later life).

¹⁹⁷See OSTER & MONTGOMERY, *supra* note 178, at 57.

¹⁹⁸See DWIVEDI & VARMA, *supra* note 176, at 23, 24.

¹⁹⁹*Id.* at 24.

²⁰⁰Jack M. Maslow, *The Dilemma of the Divorced Father*, MOTHERING, Sept. 22, 1991 at *1 (explaining that society must support the involvement of fathers and work towards reversing the trend of absent fathers by developing services, programs and skills needed to maintain a father’s role as an active parent).

²⁰¹*Id.*

²⁰²*Id.*

²⁰³Telephone Interview with Christine V. Heimerl, Senior Caseworker, County of Erie, Dep’t of Soc. Services, in Buffalo, N.Y. (November 10, 2001) (providing the author with insight and information from actual pending cases to help demonstrate the harmful effects of a parent’s failure to pay child support).

with her fourteen-year old daughter.²⁰⁴ The child's father refuses to pay any child support and this mother and daughter have had to deal with the trauma of eviction on more than one occasion.²⁰⁵ Welfare will only pay a portion of an individual's rent and, if a family such as this one, desires to live in a safer neighborhood, there is usually no money available for the higher rent payment.²⁰⁶ One day, this mother met a man who said he would help her.²⁰⁷ The three of them moved in together and the mother became pregnant. She did not know that this man was sexually molesting her daughter.²⁰⁸

As a result of the molestation and the fact that her father won't have anything to do with her, except for spite, the daughter is now on medication for depression.²⁰⁹ The mother and daughter were recently informed by the daughter's father that he would pay child support, if he were given full custody of the daughter.²¹⁰ The daughter has no desire to live with a strange man who has had nothing to do with her for the last fourteen years.²¹¹ She is now having problems with her schoolwork and is constantly ridiculed by classmates because of her dire situation.²¹²

In another Buffalo, New York neighborhood, a mother, suffering from posttraumatic stress disorder and depression with psychotic tendencies, lived with her two children.²¹³ The mother's mental state is attributed to her own childhood, where she lived with eleven brothers and sisters, all of whom had different fathers.²¹⁴ The fathers of her two children refuse to provide any child support.²¹⁵ When the county became aware of this family's situation, neither child had a single toy to play with.²¹⁶

As a result of not receiving any child support, the mother moved in with a family friend.²¹⁷ Unfortunately, the friend had dogs and he let them defecate in the house.²¹⁸ One of the two children, who was eight months old at the time, was found crawling through the filth.²¹⁹

²⁰⁴*Id.*

²⁰⁵*Id.*

²⁰⁶*Id.*

²⁰⁷*Id.*

²⁰⁸*See* Telephone Interview with Christine V. Heimerl, *supra* note 203.

²⁰⁹*Id.*

²¹⁰*Id.*

²¹¹*Id.*

²¹²*Id.*

²¹³*See* Telephone Interview with Christine V. Heimerl, *supra* note 203.

²¹⁴*Id.*

²¹⁵*Id.*

²¹⁶*Id.*

²¹⁷*Id.*

²¹⁸*See* Telephone Interview with Christine V. Heimerl, *supra* note 203.

²¹⁹*Id.*

The children growing up in these single parent households harbor a lot of anger.²²⁰ They are jealous of children from two-parent households who have what they do not have.²²¹ In many cases, these children have witnessed their parents fighting and have seen the hate that many of these men have for their mothers.²²² Most of these children live in bad neighborhoods where prostitution and drugs are abundant.²²³ Many girls, in need of a father figure, are enticed by the well-dressed, attentive drug dealers that live in their neighborhoods.²²⁴

One particular girl, who is fourteen years old, has been in trouble lately for skipping school.²²⁵ Her father, with whom she had been close to, was killed in a motorcycle accident.²²⁶ Because her family failed to help her address her grief, she is angry and acting out.²²⁷ The only person to give her any attention was a seventeen-year old neighborhood drug dealer, who is currently incarcerated for possession of crack cocaine.²²⁸ The lure of his nice car and clothes drew her to him and, at the age of fourteen, she is taking birth control.²²⁹

F. Preventative Measures & Treatment

Childhood is characterized by periods of transition and it is therefore imperative that a child's mental health be assessed as he or she grows into adolescence and adulthood.²³⁰ This assessment could be made in the context of "familial, social and cultural expectations about age-appropriate thoughts, emotions and behavior."²³¹ While children of any social class or background can be affected by mental disorder, the children most at risk are those who experience multigenerational poverty, caregiver separation, abuse or neglect as well as children with physical problems, intellectual disabilities, low birth weight and a family history of mental disorders.²³² Preventative intervention of the aforementioned risk factors can reduce the chances of a child becoming mentally ill.²³³

²²⁰*Id.*

²²¹*Id.*

²²²*Id.*

²²³See Telephone Interview with Christine V. Heimerl, *supra* note 203.

²²⁴*Id.*

²²⁵*Id.*

²²⁶*Id.*

²²⁷*Id.*

²²⁸See Telephone Interview with Christine V. Heimerl, *supra* note 203.

²²⁹*Id.*

²³⁰See Preboth, *supra* note 196, at *2.

²³¹*Id.* at *2,3.

²³²*Id.* at 3.

²³³*Id.*

Children already suffering from depression may be helped by psychosocial and pharmacologic treatments.²³⁴ One of the most popular psychological procedures to treat depression is cognitive behavior therapy.²³⁵ Cognitive behavior therapy consists of structured treatments of short duration that help depressed individuals change their attitude about the world in which they live.²³⁶ The best approach for a child is to have the child be seen three to five times a week by a school psychologist or two to three times a week by a psychologist outside of the school system.²³⁷ The number of sessions can decrease as therapy progresses and it is common for a parent or both parents to be involved in some of the therapy sessions.²³⁸ It is important for parents to get involved because this type of therapy also requires that the child perform work at home.²³⁹

There are a number of different approaches that a psychologist can take when using cognitive behavior therapy.²⁴⁰ The approaches can be “directive, structured, goal-directed, time-limited, learning theory based” and the approaches can emphasize covert along with overt behavior, employ homework, the practice of skills as specified by the therapist, increased problem-solving skills and an emphasis on cognitions as defined as behavioral events which are important in the therapy process.²⁴¹ Cognitive behavior therapy is different from other treatment, because it incorporates thinking and evaluation as a means of understanding the problem of depression.²⁴² This is unlike social learning strategies that emphasize the performance of discrete behavior.²⁴³

Social learning strategies may yield a better response in younger children, although these strategies can be used for any age group.²⁴⁴ Social learning strategies are designed to treat depression by emphasizing the importance of the environment, social skillfulness of the person and mechanisms for providing social reinforcement to the child.²⁴⁵ The treatment’s focus is educational and homework plays a major role.²⁴⁶ Both cognitive behavior therapy and social learning strategies are favored over pharmacological treatment because there are no adverse side effects.²⁴⁷

²³⁴*Id.*

²³⁵*See* MATSON, *supra* note 175, at 60.

²³⁶*Id.* at 61.

²³⁷*Id.*

²³⁸*Id.*

²³⁹*Id.*

²⁴⁰*See* MATSON, *supra* note 175, at 63.

²⁴¹*Id.*

²⁴²*Id.* at 64.

²⁴³*Id.*

²⁴⁴*Id.* at 75.

²⁴⁵*See* MATSON, *supra* note 175, at 76.

²⁴⁶*Id.*

²⁴⁷*Id.* at 92.

Tricyclic antidepressants are the most common drug group used for treating children afflicted with depression.²⁴⁸ Once a drug treatment plan is established, it often takes several weeks before its effectiveness can be evaluated.²⁴⁹ At that time, an individual's blood is tested.²⁵⁰ This can be an expensive test and many times, mental health centers do not have the resources to evaluate the blood sample.²⁵¹ In addition to the negative side effects of tricyclic antidepressants,²⁵² studies show that these drugs are not as effective in children, as they are in adults.²⁵³ One reason may be that children who exhibit early onset depression, have a more severe form of depression, and therefore, are more resistant to drug therapy than an adult.²⁵⁴ Another explanation may be attributed to a difference in brain neurochemistry between children and adults that prevents these drugs from working properly.²⁵⁵

While cognitive behavior therapy has been deemed the most effective treatment of childhood depression, the choice of treatment depends upon the nature of the depression and its associated problems, the agreement and involvement of the adolescent and his or her family and the skills and inclination of the person administering the treatment.²⁵⁶ Treatment during childhood is important because without it, a depressed adult may experience "lost productivity, unsuccessful relationships and significant distress and dysfunction."²⁵⁷ A mentally ill adult will have an effect on the children in his or her care.²⁵⁸

G. *The Effects of a Depressed Parent on a Child*

A cross-sectional survey was conducted on inner-city mothers to determine factors associated with depression.²⁵⁹ The survey and resulting study found that mothers of small children were at risk for depression and that "inner-city residence, poverty, low socioeconomic status, unemployment, and lower levels of education" exacerbated this risk.²⁶⁰ Young children are then placed at risk for developmental, behavioral and emotional problems because of the mother's depression.²⁶¹

²⁴⁸*Id.* at 91.

²⁴⁹*Id.*

²⁵⁰See MATSON, *supra* note 175, at 91.

²⁵¹*Id.*

²⁵²See DWIVEDI & VARMA, *supra* note 176, at 133.

²⁵³*Id.* at 46.

²⁵⁴*Id.*

²⁵⁵*Id.*

²⁵⁶*Id.*

²⁵⁷See Preboth, *supra* note 196, at *3.

²⁵⁸*Id.*

²⁵⁹AMY M. HENEGHAN, ET AL., *Depressive Symptoms in Inner-City Mothers of Young Children: Who Is At Risk?*, PEDIATRICS, Dec. 1998 at *1 (concluding that inner-city mothers of young children commonly exhibit symptoms of depression).

²⁶⁰*Id.* at *2.

²⁶¹*Id.*

In a study conducted by Tiffany Field, chair of the Touch Research Institute, infants of depressed mothers were found to have different brain-wave patterns than infants of mentally healthy mothers.²⁶² The study found that the altered brain-wave patterns were due to essential brain circuits closing down and that if a mother's depression was left untreated, there was a high probability that these circuits would not function later on in the child's life.²⁶³ "When a depressed mother is not treated, her children tend to end up in the welfare and prison systems: the sons of mothers with untreated depression are eight times more likely to become juvenile delinquents as are other children."²⁶⁴ In a writing conducted by Bruce Ellis and Judy Garber in the journal, *Child Development*, it was found that daughters of depressed mothers are more likely to experience early puberty, which is often associated with "promiscuity, early pregnancy and mood disorders."²⁶⁵

H. Childhood Depression and Suicide

"[T]he most severe aspect of depression in children and youth is the potential for suicide."²⁶⁶ Suicide refers to death that is caused either directly or indirectly by a victim who knows or believes that his or her action will cause this result.²⁶⁷ Depression and suicide overlap but they are also distinct from one another.²⁶⁸ Suicidal adolescents are not always depressed and depressed adolescents do not always commit suicide.²⁶⁹

Suicide is one of the top three causes of death among teenagers, along with accidents and homicides.²⁷⁰ "Isolated teens who have poor social ties, abuse alcohol or other drugs, or have a history of physical and emotional difficulties are at an even higher suicide risk when in the throes of depression."²⁷¹

The events that trigger a suicide attempt often include such factors as intense family altercations, reduction in school performance, sudden disappointments, legal or work-related problems, experienced or threatened loss and relationship failure.²⁷² The most commonly cited reasons for suicide are: escape from feelings of hopelessness, to find relief from an intolerable situation, to punish loved ones, to gain attention, to change another person's behavior or circumstances, to join a deceased loved one and to pursue an irrational, impulsive whim.²⁷³ Hopelessness has been used as an attractive

²⁶²See Solomon, *supra* note 170, at *5.

²⁶³*Id.*

²⁶⁴*Id.*

²⁶⁵*Id.*

²⁶⁶See MATSON, *supra* note 175, at 9.

²⁶⁷Erik Jan de Wilde, Ineke C.W.M. Kienhorst & Rene F.W. Diekstra, *Suicidal Behavior In Adolescents*, in *THE DEPRESSED CHILD AND ADOLESCENT* 267 (Ian M. Goodyer ed., 2001).

²⁶⁸*Id.*

²⁶⁹*Id.*

²⁷⁰See OSTER & MONTGOMERY, *supra* note 178, at 79.

²⁷¹*Id.* at 83.

²⁷²*Id.* at 81, 82.

²⁷³*Id.* at 80.

concept to explain the transition from depression to suicide.²⁷⁴ Hopelessness occurs when depression becomes unbearable and there is no expectation of becoming less depressed.²⁷⁵

Studies have shown that older adolescents are more prone to suicide than their younger children and females are more likely to attempt suicide whereas males are more likely to complete a suicide.²⁷⁶

In a Dutch study, adolescent suicide attempters reported that the primary reason for their suicide attempt was attributed to problems with their parents.²⁷⁷ Most of the attempters claimed that their family unit lacked cohesion.²⁷⁸ Another study revealed that children who attempted suicide were more likely to come from broken homes, either by divorce or death, were more likely to experience many changes in his or her living situation, experience unemployment of a father, psychopathology, drug addiction and the death of a parent by suicide.²⁷⁹ Sociologists believe that social and economic factors lead to alienation, which drive people to suicide.²⁸⁰

The most common method of suicide for adolescents is by self-poisoning, such as overdosing on a drug.²⁸¹ Other methods include “self-mutilation, hanging, jumping from a height and jumping in front of a moving vehicle.”²⁸²

One of the most effective ways to prevent suicidal behavior in both adolescents and adults is to prevent or treat depression.²⁸³ In the 1980’s, suicide-related primary prevention programs were developed and introduced in the United States.²⁸⁴ The primary goals of the programs were to raise awareness of suicide in young adults, train program participants to identify individuals who were at risk and to educate participants about mental health resources in the community.²⁸⁵ The programs, which were presented by mental health professionals or teachers, were most often directed to high school students, their parents and educators. Unfortunately, these programs have had minimal success.²⁸⁶

Another form of suicide prevention for adolescents, suggested by author Kienhorst, was to focus on three main areas: addressing the adolescent’s problematic life situation by way of family therapy or giving attention to traumatic experiences like sexual and

²⁷⁴See DE WILDE, KIENHORST & DIEKSTRA, *supra* note 267, at 279.

²⁷⁵*Id.*

²⁷⁶See OSTER & MONTGOMERY, *supra* note 178, at 84, 85.

²⁷⁷See DE WILDE, KIENHORST & DIEKSTRA, *supra* note 267, at 273, 274.

²⁷⁸*Id.* at 274.

²⁷⁹*Id.* at 273.

²⁸⁰*Id.*

²⁸¹*Id.* at 271.

²⁸²See DE WILDE, KIENHORST & DIEKSTRA, *supra* note 267, at 272.

²⁸³*Id.* at 283.

²⁸⁴*Id.*

²⁸⁵*Id.* at 283, 284.

²⁸⁶*Id.* at 284.

physical abuse, changing the adolescent's negative view of hopelessness and replacing problem-solving and/or coping strategies with more adequate strategies.²⁸⁷

Suicidal behavior creates a tremendous emotional, social and financial burden, which mandates that methods of prevention be continually explored.²⁸⁸ Understanding adolescent suicidal depression is one important avenue of exploration.²⁸⁹

I. Summarization of Parental Neglect and Childhood Depression

Childhood depression is caused by many different factors. Studies, however, indicate that children are at risk if they live in a poor single-parent household, usually due to the fact that one parent has chosen to neglect, physically and/or financially, his or her children. A child is also at risk if his or her parent is depressed. Childhood depression robs a child of the benefits of school, which therefore prevents the child from ever being able to escape from low socioeconomic status. Enticing escape devices such as drugs and alcohol, which are prominent in poorer neighborhoods, do not help a depressed individual's situation. Before too long, a depressed young girl seeking the love and attention of a male, of which she was deprived during her childhood, will become pregnant. Or, a depressed young man, who has only learned how to be a man by observing the neglectful ways of his father, will become a father himself. If the depression is not passed along to that infant genetically, or if the depression does not affect that infant's brain waves, there is still a good chance that depression will rear its ugly head at some point in that child's life. The possibility of a greater risk of suicide makes the prevention of childhood depression even more compelling. The majority opinion in *State v. Oakley* made a step in the right direction by helping to break this endless cycle and prevent such a destructive end.

VI. REMEDIES

A. Societal

Why would a father abandon his relationship with his child and refuse to support that child financially? One possible reason is that the non-custodial father cannot cope with his own thoughts and emotions during visitation.²⁹⁰ One father stated that he would become so depressed, that he felt he would be better off if he never visited with his daughter again.²⁹¹ The author of this article suggested that this could be resolved if society supported the involvement of fathers by developing services and programs offering fathers "the encouragement and skills need to maintain their role as active parents."²⁹² Fathers need to be valued as competent and willing caregivers.²⁹³ Unfortunately, this will not help fathers who do not want to bother with their children.

²⁸⁷See DE WILDE, KIENHORST & DIEKSTRA, *supra* note 267, at 284.

²⁸⁸*Id.* at 285.

²⁸⁹*Id.*

²⁹⁰See Maslow, *supra* note 200, at *2.

²⁹¹*Id.*

²⁹²*Id.* at *5.

²⁹³*Id.*

Therefore, society must find a way to help the mothers and children that are negatively affected by the actions of the absent father.

Pediatricians have an important role in identifying mothers and children with depressive symptoms.²⁹⁴ Mothers who can afford to bring their children in for regular physical examinations, may find it easier to speak to a pediatrician about any depressive symptoms that they may be experiencing.²⁹⁵ This is a great opportunity for the mother who does not have a primary caregiver of her own²⁹⁶ and it is necessary for pediatricians to take on this role because of the awareness of how a mother's mental illness can affect a child.²⁹⁷

Another idea proposed to help mothers with depressive symptoms would be to incorporate screening for depression into the job description of welfare officers.²⁹⁸ Depression is caused by stress and welfare recipients are often very stressed.²⁹⁹ If a welfare officer determined that a recipient exhibited symptoms of depression, he or she may be more tolerable toward that individual's noncompliance with the welfare system.³⁰⁰ The welfare officer may even be able to provide the recipient with literature about depression and information about local doctors who could help them. Many women in these situations do not realize that they are not alone.³⁰¹

B. Special Programs

At the current time, there are pilot programs in place for the treatment of depression among the poor.³⁰² The treatment administered through the programs consists of therapy, medication or a combination of the two.³⁰³ The pilot programs have demonstrated consistent results.³⁰⁴

C. Government Intervention

Once it is established that an individual is depressed, the government could do its part to help with the situation.³⁰⁵ If a person is successfully treated for depression, there is a good chance that that person can become a productive member of society and begin employment, at least on a part-time basis.³⁰⁶ If the government allocated funding

²⁹⁴See Heneghan, *supra* note 259, at *10.

²⁹⁵*Id.*

²⁹⁶*Id.*

²⁹⁷*Id.*

²⁹⁸See Solomon, *supra* note 170, at *6.

²⁹⁹*Id.*

³⁰⁰*Id.*

³⁰¹*Id.* at *3.

³⁰²*Id.* at *7.

³⁰³See Solomon, *supra* note 170, at *7.

³⁰⁴*Id.*

³⁰⁵*Id.* at *5.

³⁰⁶*Id.*

for the treatment of depression, it is likely that welfare costs could be reduced.³⁰⁷ As one authority stated, “The dollar cost of interventionist treatment of depression is really quite small; the dollar cost of not treating depression is enormous.”³⁰⁸

D. Legislation

There are different views on child welfare in Congress.³⁰⁹ The liberal legislators would like to see the government spend more money on childcare, health care and education.³¹⁰ One of their goals for 2001 was to convince the government to expand child support measures by increased enforcement.³¹¹ Another liberal proposal involves having the United States government match the non-custodial parent’s child support payment so that the single residential parent will have even more income to live on.³¹²

The conservatives, on the other hand, would like to see more money spent on policies that “emphasize work and reduce the number of single parent families, whose children are far more likely to be poor.”³¹³

Former Republican Ron Haskins, who was working with the Brookings Institution, a research group in Washington, D.C., stated, “[t]he best thing we can do is promote two-parent families.”³¹⁴ Haskins believes that it is possible to help single mothers stay and advance in the employment sector.³¹⁵ Rebecca Blank, an economist and dean of public policy at the University of Michigan, believes that the minimum wage must be addressed, due to the large number of single mothers working at or near the minimum wage.³¹⁶

Lastly, legislators can help secure the health of the poor children in the United States by promoting public policies that strengthen the “four essential forms of capital: human (education), economic, social (relationship) and natural (environment).”³¹⁷ The medical care burden could decrease by increasing minimum wage and raising tax credits for childcare for working parents.³¹⁸ The citizens of the United States could do

³⁰⁷*Id.*

³⁰⁸ See Solomon, *supra* note 170, at *5.

³⁰⁹Somini Sengupta, *The Nation; How Many Poor Children Is Too Many?*, N.Y. TIMES, July 8, 2001 at *2 (stating that as of 1999, over 12 million children lived in poverty in the United States, that the nation today is about where it was in 1979 and that compared to the rest of the industrialized world, the United States is at the bottom of the pile).

³¹⁰*Id.*

³¹¹*Id.*

³¹²*Id.*

³¹³*Id.* at *2, 3.

³¹⁴See Sengupta, *supra* note 309, at *3.

³¹⁵*Id.*

³¹⁶*Id.* at *2, 3.

³¹⁷Peter A. Gorski, *Caring Relationships: An Investment in Health?*, PUB. HEALTH REP. (2000) at *5 (arguing that while the United States has the “most expensive, technologically advanced medical system in the world, health outcomes are not commensurate with investment”).

³¹⁸*Id.*

their part by influencing legislators “to create policies that will nurture the essential building blocks for health: social and economic justice, environmental protection, peace and a national spirit of human kindness.”³¹⁹

E. Summarization of Remedies to Childhood Depression

There are many different ways to help control the number of children who will be afflicted by childhood depression. Society for example, could provide services and programs to fathers so that they could gain confidence in their parenting skills. Fathers would therefore be less inclined to ignore their children. Pediatricians could help by taking the time and energy to become aware of any familial situation that may lead that child into depression. This could include establishing a relationship with the child’s parent to see if that parent exhibits signs of depression, which could be carried over to the child. Welfare officers, who are also in a good position to be aware of a family’s situation could help by being more tolerant and providing helpful literature to a person with depressive symptoms. The continuation of special treatment programs for the poor, legislative efforts and governmental assistance for treatment are also remedies currently in place in our society today. Unfortunately, these efforts are not enough.

A recent study by Columbia University and the New York State Psychiatric Institute revealed that the number of Americans treated for depression soared from 1.7 million in 1987 to 6.3 million in 1997.³²⁰ The study also found that usage of antidepressant medication rose from 37% to 75% while the proportion of those receiving psychotherapy declined from 71% to 60%.³²¹ The researchers believe that the increase in using drugs to treat depression can be linked to the increased advertising of antidepressants that have fewer side effects and the reduced cost of the medication due to the rise in managed care.³²² The rise can also be attributed to the fact that taking a prescription is less time-consuming than psychotherapy, even though evidence shows that combining medication with psychotherapy is the most effective way to treat depression.³²³

The best way to remedy childhood depression is to take preventative measures so that a child is not at risk for depression. By preventing Oakley from procreating for five years, the circuit court judge protected any more of Oakley’s children from being subjected to the risk. The circuit court judge was protecting future children from a lifetime of parental neglect and poverty. Therefore, the majority opinion was justified.

VII. CONCLUSION

Families in the United States are profoundly affected when a parent intentionally refuses to pay child support. Often, a mother who is left with children to raise on her

³¹⁹*Id.*

³²⁰Lindsey Tanner, *Dramatic Rise In Americans Using Drugs For Depression*, THE PLAIN DEALER, January 9, 2002 at A1 (attributing “the sharp increases [in depressed individuals] to the emergence of aggressively marketed new drugs like Prozac, the rise in managed care and an easing of the stigma attached to the disease.”). *Id.*

³²¹*Id.*

³²²*Id.*

³²³*Id.* (providing insight from Ronald Kessler, a law professor of health care policy at Harvard University, who did not participate in the study).

own is left impoverished. A lack of sufficient income combined with other factors in a mother's life such as an absence of a father figure while she was growing up, childhood poverty, sexual abuse, drug abuse, and a poor education are linked to depression in adulthood. Unfortunately, the mother's depression and inability to fully partake in the lives of her children without proper treatment, can cause depression in her children. A child living in a poor household with a depressed mother and an absent father will often resort to drugs and alcohol as a means of dealing with his or her own misery. Women without fathers in their lives will usually eagerly respond to the first man that makes an expression of love to them. Many times, this leads to teenage pregnancies and the disappearance of the once attentive male. The cycle of depression begins all over again. If preventative measures are not taken to protect children from this mental illness, the only other way that the cycle is broken is by suicide.

David Oakley deserved the sentence that he received, which deprived him from procreating for five years. He had already produced nine children, many of whom were undoubtedly and significantly affected by his lack of participation in their lives and his lack of financial support. All of his children are susceptible to depression. As noted earlier, Oakley's children are angry with him, one angry enough to want to change her name.

The condition of probation given to Oakley, prohibiting him from procreating, was the best way of preventing Oakley from harming any more children. It allows him to work and provide some income to the four mothers of his children. This would not be possible if Oakley were incarcerated for his felony conviction of intentionally refusing to support his children.

The sentence also provides an opportunity for Oakley to spend time with his children, so that he could learn who they are and play an emotional role in their lives. Of course, this would only work if Oakley wanted to achieve this end. The court could have helped in this aspect by requiring parenting classes and supervised visitation. Parenting classes and supervised visitation have been known to help many parents who wish to become more involved in the lives of their children.³²⁴ The classes teach parents how to properly discipline children by using time-outs and parents are taught how to maintain a child's self esteem.³²⁵ Supervised visitation teaches a parent how to be a mother or a father through the guidance of a third party, who observes the parent and child interacting with one another.³²⁶

We can only hope that Oakley will abide by his sentence and not bring any more future victims into this world. Hopefully the mothers of Oakley's nine children will take appropriate action if they witness any of their children displaying depressive symptoms. There is help available for depressed children and mothers, but unfortunately without vmedical check-ups and an awareness of depression symptoms,

³²⁴See Telephone Interview with Christine V. Heimerl, *supra* note 203.

³²⁵*Id.*

³²⁶*Id.*

many people will not be properly treated and their lives will continue on a downward slide.

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