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COMMENT

THE UNFOLDING LEGAL DILEMMA CREATED BY HONOR AND APOSTASY CRIMES IN THE UNITED STATES

Meredith I. Biggs[†]

I. INTRODUCTION

Honor and apostasy crimes have become increasingly prevalent in recent years and present the concern of how to effectively deal with them. Both crimes share the root of fundamental beliefs and are fueled by hatred and prejudice, but they stem from different motivations. Honor crimes are motivated by a person's desire to rid the family name of any shame caused by another member. Alternatively, killing an apostate is motivated by the desire to rid society of those who oppose a particular religion. While sometimes committed for different reasons, killing a family member who has converted from the family's religion could be motivated by both honor and apostasy. Moreover, both crimes have been similarly tied to patriarchal and fundamentalist societies and are not exclusive to any one culture or religion. However, there is an historical and religious link between fundamentalist Islam and the crimes of honor and apostasy killings, which have become increasingly prevalent in recent years alongside the global increase of fundamentalist Islam. Western governments have begun to acknowledge that these crimes are no longer limited to a geographic region of the world and are in the midst of determining the best method to combat them. However, the United States has yet to respond to this new trend, which has passed beyond the isolated and distant terror it was and has moved into a close and piercing reality.

In 2009, America watched the drama unfold as a young girl fled cross-country from a possible but uncertain apostasy killing, only to seek refuge in a Florida court. Rifqa, a seventeen-year-old minor, ran from her home in Ohio in fear that she would be the victim of an apostasy killing at the hands of her parents. Rifqa was born to a Muslim family in Sri Lanka and moved

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to the United States in 2000.¹ After moving to Ohio, her parents became very involved in a mosque called the “Noor Islamic Cultural Center,” known for its fundamentalist teachings and alleged ties to terrorist cells.² However, in 2005 Rifqa converted to Christianity and hid her faith from her parents. Her parents eventually discovered her conversion, and in June 2009, Rifqa escaped to Florida out of fear for her life. Reacting to her parents’ alleged threats and fundamentalist beliefs, Rifqa believed that her parents would either kill her or send her back to Sri Lanka to be “dealt with,” i.e., forced to convert or killed for apostasy.³ Without a legal decision, the case went to settlement before the Florida court and Rifqa remained in foster care until her eighteenth birthday in 2010.

Rifqa’s unprecedented story presented a unique challenge to the American legal system. Her crisis is exceptional for several reasons: it is rare enough that she is a minor and the crime springs from religious and ideological beliefs; however, the true phenomenon of her story is its preemptive nature and that the ominous possibility of her doom must be decidedly authentic or invented if the American legal system is to do anything about it. Furthermore, the fact that she is a minor exacerbates the dilemma because of her vulnerability due to lack of legal capacity.

Unfortunately, the laws of this country are unprepared to deal with prevention of religious honor killings, which are still a relatively new occurrence in this country. Rifqa’s case points to a real problem: at what point can the state constitutionally interfere with a parent/child relationship in order to prevent a religion-based crime? Is the fact that her parents are members of a mosque that has ties to fundamentalist ideology enough? At what point do the scales of justice tip from siding with the rights of parents to the protection of the child? The looming threat demands an answer, and our courts must be prepared to give one in the midst of high controversy and political divisiveness over the issue.

1. Affidavit [sic] of Rifqa Bary ¶ 2, dated Aug. 30, 2009, filed in *In re Fathima Rifqa Bary*, No. DP09-580 (Fla. Cir. Ct. Aug., 2009), available at <http://orlandolawyer.tv/documents/Rifqa%20Affidavit.pdf> (given while fighting a compulsory return to her parents’ custody) [hereinafter Bary Affidavit].

2. *Id.* ¶ 5-14, (claiming that Noor Center was picked specifically for its “Original Islam” teachings over eight other closer mosques); see Joshua Rhett Miller, *Attorney Targets Alleged Terror Ties in Case of Runaway Girl*, FOXNEWS.COM, (Aug. 31, 2009), <http://www.foxnews.com/story/0,2933,545020,00.html>.

3. Tim Padgett, *A Florida Culture-War Circus Over Rifqa Bary*, TIME, Aug. 24, 2009, available at <http://www.time.com/time/nation/article/0,8599,1918228,00.html> (last visited July 2, 2011).

This Comment is a modest attempt to answer the question of the state's authority in a preemptive intervention of a minor facing a religion-based crime at the hands of her parents. Against that backdrop, it will first explore the ties between fundamentalist Islam and honor crimes by discussing the historical and religious roots of fundamentalist Islam and honor crimes. This Comment will then address the legal problems inherent in preventing these crimes and how other governments are responding. Using Rifqa's case as a starting point, this comment will seek to shed light on what circumstances must exist to allow a state to step in and prevent a belief-based killing of a minor by a parent. Because this situation involves the exercise of religion, the comment will compare and contrast Rifqa's dilemma with prior state interferences in the Mormon practice of polygamy, specifically adjudicated in the case *In re Steed*, where a mass state intervention occurred at the Yearning for Zion Ranch.⁴ Ultimately, this Comment will suggest possible changes to the law that allows courts to consider certain prevalent factors in the termination of parental rights.

II. BACKGROUND: THE LINKS BETWEEN ISLAMIC FUNDAMENTALISM AND HONOR AND APOSTASY CRIMES

A. *Apostasy Killings Are Tied to Fundamentalist Islam*

Apostasy is the denial of or conversion from Islam, and it is a topic that breeds controversy both inside and outside the boundaries of the Islamic community. Currently, there are two main scholarly approaches to apostasy and its consequences under Islamic law. The first is usually classified as a fundamentalist or traditional approach. Its proponents point to certain verses in the Islamic holy book, the Qur'an, that reflect Allah's severe punishment for those who turn their backs on the religion, including death.⁵ The *hadith*, which are the oral traditions of the life of the Islamic prophet Muhammad and are looked to as sources of Islamic law, further support the

4. *In re Steed*, No. 03-08-00235-CV, 2008 Tex. App. LEXIS 3625 (Tex. App. May 22, 2008), *aff'd*, *In re Texas Dep't of Family & Protective Servs.*, 255 S.W.3d 613 (Tex. 2008) [hereinafter "Yearning for Zion Ranch"].

5. QUR'AN 4:89-90 (command to seize and kill those who blaspheme); 9:5 (command to kill polytheists); 9:11-12 (encouragement to fight polytheists); 9:68 (Allah's punishment for hypocrites and unbelievers); 9:73-74 (encouragement to punish unbelievers "harshly"); 88:23-24 (Allah will torment "he who turns away").

conclusion that Islam prescribes the death sentence for apostates: “Whoever changed his Islamic religion, then kill him.”⁶

Because apostasy is a crime against the nation state of Islam, it has historically been punishable by death in the traditional four schools of Islamic law: the Hanafites, Shafi’ites, Malikites, and the Hanbalites.⁷ The predominant differences between these schools of Islamic jurisprudence in this matter are the time, place, and procedure to be followed in killing an unrepentant apostate.⁸ Additionally, the traditional schools of law differed on treatment of apostate women and minors. Three of the schools would punish women with death and only two would do so to minors.⁹

B. Apostasy Killings Are Not Tied to Moderate Islam

Yet those that support the second, more moderate approach, often characterized as a “modern” approach, declare that Islam is a religion of peace and also point out Qur’anic verses to support this proposition.¹⁰ They suggest that the verses in the Qur’an commanding death for apostates and non-Muslims are only intended to apply to those making war against Allah and his people.¹¹ Their rationale is simply that the Qur’anic scripture, when taken in its textual and historical context, commands action only in the limited circumstance of self-defense.¹² This exegetical study of the Qur’an is an analytical approach to the study of scripture that determines in what circumstances the law was given, in other words focusing on its context, rather than taking the literal meaning of the scripture on its face.¹³ Simply

6. 9 SAHIH AL-BUKHARI, 84:57 (M. Muhsin Khan trans.) (quoting Muhammad), available at <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/bukhari/084.sbt.html> (last visited July 2, 2011). See ABDUL HAMID SIDDIQUE, SELECTION FROM HADITH 69, 132 (1993).

7. ABDULLA SAEED & HAIKAN SAEED, FREEDOM OF RELIGION, APOSTASY AND ISLAM 51 (2004); see also 5 ABDURRAHMANI’L-DJAZIRI, THE PENALTIES FOR APOSTASY IN ISLAM ACCORDING TO THE FOUR SCHOOLS OF ISLAMIC LAW 422-40 (Villach trans., 1997) (1934), available at <http://www.light-of-life.com/eng/ilaw/> (last visited July 2, 2011).

8. ABDURRAHMANI’L-DJAZIRI, *supra* note 7.

9. SAEED *supra* note 7, at 52, 59.

10. “If they incline to peace, incline thou also to it.” QUR’AN 8:61. See WAEL B. HALLAQ, A HISTORY OF ISLAMIC LEGAL THEORIES: AN INTRODUCTION TO SUNNI USUL AL-FIQH 237-238.

11. SAEED *supra* note 7, at 57.

12. HALLAQ, *supra* note 10, at 238.

13. See *id.*

put, these scholars would say that a literal reading of the Qur'an, like any religious text, is not enough.¹⁴

Other modern scholars deny the traditional harsh punishment and killing for apostasy by arguing that the *hadith* merely represent traditional values and political beliefs¹⁵ and are not automatically presumed to be binding Islam law.¹⁶ The theme of this modern approach is to return to the core principle of the law: "the purpose of the law is to promote the good life on earth, a life in which order, justice, and welfare are the prevailing norms."¹⁷ Therefore, any reaction to apostasy should be premised on this basis. These arguments juxtapose the traditional and fundamentalist positions with the moderate positions we see throughout the world today.¹⁸

C. Honor Crimes Are Tied to Fundamentalist Islam

There is also a parallel debate on whether Islam supports honor crimes and killings. An honor crime occurs when one family member hurts or kills another, typically a female, to cleanse the family of dishonor created by the victim's behavior. It is particularly prevalent when a female family member has been sexually impure, or has been rumored to be, even if she has been raped.¹⁹ Scholars who argue that Islam promotes honor crimes point to the Qur'an's punishment of one-hundred lashes for adultery,²⁰ and the *hadith*, some of which recognize death by stoning as the proper sentence for adultery.²¹ Beyond harsh punishment for the crime of adultery, there may

14. To further illustrate this point, Egyptian jurist Muhammed Ashmawi, who has served as professor, lawyer, and judge, discusses the two approaches as applied to the Qur'anic law prohibiting interest. While many Muslims have adopted the interest rule conclusively, he argues that the rule was given in the context of preventing economic exploitation and should be applied only for that reason today. *Id.* at 231, 238.

15. Magdi Abdelhadi, *What Islam Says on Religious Freedom*, BBC NEWS (Mar. 27, 2006, 7:40 PM), http://news.bbc.co.uk/2/hi/south_asia/4850080.stm.

16. SAEED, *supra* note 7, at 59-61.

17. HALLAQ, *supra* note 10, at 224.

18. Abdelhadi, *supra* note 15.

19. Vivienne Walt, Brian Bennett & Scott Macleod, *Marked Women*, TIME, July 26, 2004, available at <http://www.time.com/time/magazine/article/0,9171,994711,00.html> (last visited July 2, 2011).

20. QUR'AN 24:2.

21. For example, 8 SAHIH AL-BUKHARI 82:819, seems to align with the Qur'an in its sentence of one hundred stripes. (M. Muhsin Khan trans.), available at <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/bukhari/082.sbt.html> (last visited July 2, 2011). *But see* 2 SAHIH AL-BUKHARI, 23:413, vol. 8, 82:805 and 82:814 (M. Muhsin Khan trans.) (authorizing stoning). *See also* SAHIH MUSLIM, 17:4191

be additional support in the Qur'an for honor killings. For example, in one passage a boy is killed because he "was going to oppress [his parents with his] rebellion and disbelief," and instead the parents should be given a child who "is *better* in purity and nearer to mercy."²²

Yet there is no direct support in the Qur'an for this type of crime or killing. Some scholars believe that honor killings are not tied to Islam at all, but are instead tied to male-dominated societies.²³ The United Kingdom's Parliament goes so far as to emphasize that the crimes are not based on any particular religion.²⁴ Other scholars point to the prevalence of honor killings in poor, minority, and traditionalist communities, and argue that these communities cling to their identity as a safeguard against modern Western culture.²⁵ A 2007 Turkish report on human rights found that honor crimes were most prevalent in the Kurdish communities of the country, which are predominantly Sunni Muslim, and more specifically in those that were underdeveloped, poor, and uneducated.²⁶ Indeed, the Council of Europe has acknowledged that the drastic increase in honor crimes is concentrated in Muslim communities; but the Council finds that they occur in fundamental Christian, Hindu, and Sikh communities as well and, therefore, link the

(Abdul Hamid Siddiqui trans.) (containing the Hudud, or the Islamic penal law, that authorizes either lashes or stoning depending on whether the woman was married).

22. QUR'AN 18:74, 80-81 (emphasis added).

23. Q&A: *Honour Killings Explained*, BBCNEWS (June 22, 2004, 10:48 AM), http://news.bbc.co.uk/2/hi/uk_news/3829139.stm.

24. HOUSE OF COMMONS HOME AFFAIRS COMMITTEE, DOMESTIC VIOLENCE, FORCED MARRIAGE AND "HONOUR"-BASED VIOLENCE, 2007-8, H.C. 263-I, at 13 (U.K.) [hereinafter HOUSE OF COMMONS], available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmhaff/263/263i.pdf> (last visited July 2, 2011). Parliament's interpretation of "honor crime" is rather broad, including forced marriage, which also occurs in non-Muslim religions or cultures. *Id.* The United Kingdom contains 1.647 million Muslims as of 2001, a tremendous political presence. PEW RESEARCH CENTER, MAPPING THE GLOBAL MUSLIM POPULATION: A REPORT ON THE SIZE AND DISTRIBUTION OF THE WORLD'S MUSLIM POPULATION 32 (2009), available at <http://pewforum.org/newassets/images/reports/Muslimpopulation/Muslimpopulation.pdf> (last visited July 2, 2011).

25. EUR. CONSULT. ASS., *The Urgent Need To Combat So Called "Honour Crimes,"* 3rd Sess., Doc. No. 11943 (2009) available at <http://assembly.coe.int/Documents/WorkingDocs/Doc09/EDOC11943.pdf> (last visited July 2, 2011).

26. *Communication to the Commission on the Status of Women on the Status of Kurdish Women in Turkey*, KURDISH HUMAN RIGHTS PROJECT 10-13 (Aug. 12, 2009), http://www.khrp.org/khrp-news/human-rights-documents/2009publications/doc_details/227. The Kurdish people are mostly Sunni Muslim and live throughout southwest Asia in Turkey, Iran, Iraq, Syria, and Armenia. *Who Are the Kurds?*, WASHINGTONPOST.COM, <http://www.washingtonpost.com/wp-srv/inatl/daily/feb99/kurdprofile.htm> (last visited July 2, 2011).

crime to non-religious causal factors found in “patriarchal” and “fundamentalist” communities that embrace traditional belief systems.²⁷

D. The Dichotomy Between Moderate and Fundamental Islam

Fundamentalist Islamic communities embody all of these traditional characteristics and have been a known hotbed for honor and apostasy crimes.²⁸ Muslim fundamentalism is a combination of tradition and religion that particularly invites violence against women, including honor crimes, as well as other acts of terrorism with which the modern world has become all too familiar.²⁹ Fundamentalism has deep historical roots; some scholars trace it to an eighteenth-century revival movement, called the “Wahhabi” movement, which through time integrated radical religious and political beliefs with intolerance and violence.³⁰ One professor describes the relationship between Islam and its fundamentalist variation: “[A] fundamentalist is a motor that warms up and then turns around too fast. Do not forget that fundamentalists do not do anything that is against Islam. . . . A fundamentalist will not take into account other ways of thinking in public life. He is not tolerant.”³¹

The dichotomy between moderate and fundamentalist Islam is evident in the statements, lives, and viewpoints of the leaders of each group. From the moderate camp, the Muslim scholar Muqtedar Khan from Adrian College in Michigan illustrates the difference: “a moderate Muslim is therefore one who cherishes freedom of thought while recognizing the existential necessity of faith. She aspires for change, but through the power of mind and not through planting mines.”³² Abdurrahman Wahid personified this image as the first democratically elected president of Indonesia, the country with the largest Muslim population in the world. He wrote in 2005 that Muslim leaders need “the understanding and support of like-minded

27. Eur. Consult. Ass., *supra* note 25, at para. 21.

28. Sami Zemni, *Islam, European Identity and the Limits of Multiculturalism*, in RELIGIOUS FREEDOM AND THE NEUTRALITY OF THE STATE: THE POSITION OF ISLAM IN THE EUROPEAN UNION 168 (W.A.R. Shadid & P.S. Van Koningsveld eds., 2002).

29. SHERENE H. RAZACK, CASTING OUT: THE EVICTION OF MUSLIMS FROM WESTERN LAW & POLITICS 104 (2008).

30. Bruce Gourley, *Islamic Fundamentalism: A Brief Survey*, pt. 2 (2003), <http://www.brucegourley.com/fundamentalism/islamicfundamentalismintro.htm> (last visited July 2, 2011).

31. Zemni, *supra* note 28, at 168.

32. Muqtedar Khan, *Who are the “moderate Muslims”?*, ISLAM FOR TODAY, <http://www.islamfortoday.com/khan08.htm> (last visited July 2, 2011).

individuals, organizations and governments throughout the world . . . to offer a compelling alternate vision of Islam, one that banishes the fanatical ideology of hatred to the darkness from which it emerged.”³³

A well-known moderate Muslim scholar explains the distinction in terms of legal interpretation. Wael Hallaq, a professor at Columbia University, suggests that the complexity of the Islamic law is due to a long history of legal speculating and drawing upon sources external to those most pure to Islam.³⁴ The result is a highly technical law that has lost its focus and has sacrificed moderation and tolerance.³⁵ He urges, instead, that modern law should focus on the ultimate aim of Islam, which is peace and public welfare under the mercy of Allah.³⁶ “These are immutable . . . [b]ut the specific and individual rules that bring about the realization of these norms in society are mutable” and should take into account modern trends and real problems that occur with the “changing circumstances, locales, and times.”³⁷

Conversely, scholars in the fundamentalist camp have consistently condemned modern trends and have even violated human rights. For example, Ayatollah Khomeini of Iran denounced a bill to give women the right to vote and later became responsible for the deaths of thousands during his rise to power.³⁸ In fact, the Islamic Republic of Iran has been a consistent supporter of terrorism and has been heavily responsible for terrorist activities in the Middle East.³⁹

Fundamentalism also rejects freedom of thought that moderate Muslims embrace. In Iran, a moderate Muslim professor named Shari’ati argued that original Islam promotes democratic principles and that the people should

33. He is quoted in Paul Wolfowitz, *Wahid and the Voice of Moderate Islam*, WALL ST. J., Jan. 6, 2010, <http://online.wsj.com/article/SB10001424052748704842604574642353284811682.html>.

34. HALLAQ, *supra* note 10, at 215.

35. *Id.*

36. *Id.* at 224.

37. *Id.*

38. Milton Viorst, *Ayatullah Ruhollah Khomeini*, TIME, Apr. 13, 1998, <http://www.time.com/time/magazine/article/0,9171,988165-1,00.html>.

39. *See Flatow v. The Islamic Republic of Iran*, 999 F. Supp. 1 (D.D.C. 1998). The Islamic Republic of Iran had provided two million dollars to the Shafaqi faction of Palestine Islamic Jihad, which blew up a bus in Israel. *Id.* at 10-11. The Court also found that Iran had been designated a state sponsor of terrorism pursuant to section 6(j) of the Export Administration of 1979 continuously since 1984. *Id.* at 12.

reject the fascism and monarchy that permeated their government.⁴⁰ Khomeini later shut down the University where Shari'ati taught and imprisoned him.⁴¹ Another leader, the infamous terrorist Al-Zawahiri of Al-Qaeda, published a book condemning Pakistan for its constitutional government because, he found, it contradicted Islamic law in that it respected popular sovereignty, did not wage jihad, or holy war, against all unbelievers, and because it was "subservient to America."⁴²

E. The High Presence of Honor Crimes in Muslim Communities

The extremist nature of Muslim fundamentalism is borne out by the fact that honor killings and terrorism have occurred primarily in countries with a strong fundamentalist Muslim presence, such as Afghanistan, Iran, Palestinian areas, Pakistan, Turkey, and others.⁴³ The State Department lists four countries as being known sponsors of terrorism, three of them in the Middle East: Iran, Sudan, and Syria.⁴⁴ All three have strong ties to Fundamentalist Islam: Iran is governed by a theocratic democracy and has a 98% Muslim population; Sudan has had Islamic-oriented government since 1956, bases its legal system primarily on Islamic law, and has a 70% Muslim population; and Syria bases its legal system in part on Islamic law and has a 74% Muslim population.⁴⁵

The bulk of the known cases for honor and apostasy crimes also occurs most commonly in Muslim countries. For example, at the height of insurgency and instability in Iraq, honor killings surged to an "unprecedented rate," estimated in the hundreds.⁴⁶ In 2007, Turkey

40. BAQER MOIN, *KHOMEINI: LIFE OF THE AYATOLLAH 173* (Thomas Dunnes Books 2000) (1999).

41. *Id.* at 174.

42. *New Book by Ayman Al-Zawahiri: 'The Morning and the Lamp: A Treatise Regarding the Claim that the Pakistani Constitution is Islamic'*, THE MIDDLE EAST MEDIA RESEARCH INSTITUTE, Dec. 18, 2009, <http://www.memritv.org/report/en/3852.htm>.

43. Zemni, *supra* note 28, at 164; Paul Marshall, *Apostates from Islam: The Case of the Afghan Convert is Not Unique*, THE WKLY STANDARD, Apr. 10, 2006, <http://www.weeklystandard.com/Content/Public/Articles/000/000/012/059fpgrn.asp>.

44. *See State Sponsors of Terrorism*, U.S. DEP'T. OF STATE, <http://www.state.gov/s/ct/c14151.htm> (last visited July 2, 2011) (listing Cuba as the fourth country).

45. *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/index.html> (last visited July 2, 2011).

46. Walt et al., *supra* note 19.

estimated a countrywide total of 231 honor crimes in that year alone.⁴⁷ Furthermore, there is evidence that fundamentalist communities do not act alone, but are supported by intolerant Middle Eastern governments that either promote honor and apostasy crimes, or at most rarely enforce a real punishment for them.⁴⁸ For example, many of these governments enact laws that provide a substantially lesser sentence for crimes like murder that have been committed out of “honorable” motives.⁴⁹

Some governments even carry out the punishments for honor or apostasy crimes. Testimonies of the extremism of fundamentalist regimes in the Middle East pour out of men and women who have escaped severe punishments for dishonor or apostasy. For example, one Middle Eastern man named Bassam was arrested, tortured, and confined in solitude for one year by security forces after his conversion to Christianity.⁵⁰ A Pakistani woman named Shahla was sentenced to life in prison because she was raped.⁵¹ While the moderate majority of Muslims do not engage in the atrocities produced by their fundamentalist counterparts, the trend reveals that there is a high correlation between a strong Muslim presence, a government that embraces Islamic law, and these types of crimes.

F. Honor and Apostasy Killings Increase With the Growth of the Muslim Population

With the increase in globalization and the strengthening of the European Union since the 1960s, Muslims have migrated in great numbers into the countries of the European Union.⁵² In Sweden, membership in recognized mosques grew by 26% from 1995 to 1999.⁵³ In Denmark, the Muslim

47. EUR. CONSULT. ASS., *supra* note 25, at para 22.

48. Marshall, *supra* note 43.

49. Syria’s penal code, Article 548, either completely exempts or substantially lessens the penalty for an honorable murder, such as one done to rectify a sexual immorality. See Diana Y. Vitoshka, *The Modern Face of Honor Killing: Factors, Legal Issues, and Policy Recommendations*, 22(2) BERKELEY UNDERGRADUATE J., 24 (2010), <http://escholarship.org/uc/item/401407hg> (last visited July 2, 2011).

50. SUSAN CRIMP & JOEL RICHARDSON, WHY WE LEFT ISLAM: FORMER MUSLIMS SPEAK OUT 120-21 (2008).

51. Shahla Haeri, *The Power of Dishonor: Rape and Power in Pakistan*, in FAITH & FREEDOM: WOMEN’S HUMAN RIGHTS IN THE MUSLIM WORLD 161 (Mahnaz Afkhami ed., 1995).

52. Zemni, *supra* note 28, at 158-59, 164.

53. Ake Sander & Goran Larssen, *The Mobilisation of Islam in Sweden 1990-2000: From Green to Blue and Yellow Islam?*, in RELIGIOUS FREEDOM AND THE NEUTRALITY OF

presence was essentially nonexistent in the 1960s; today it is the second largest religious group.⁵⁴ In Germany, the Muslim population rose to 3.2 million as of 2002.⁵⁵

Migration is not the only cause for the growth of Muslim communities in the West; the high conversion rate to Islam and high birth rates among Muslims also contribute. Experts estimate a 1.84% yearly growth rate of Islam as a religion, compared to the growth rate of Christianity at 1.32%.⁵⁶ Furthermore, a recent demographical study confirmed the higher birth rates among Muslims as compared to their Christian and Jewish counterparts, although that gap is shrinking.⁵⁷ In Austria, for example, the Muslim birthrate has decreased from 3.1% to 2.3% over the past twenty-five years, but both numbers still exceed the world population growth rate of only 1.12% and the Roman Catholic birthrate of 1.3%.⁵⁸ The above are just a few examples of the overall trend that is taking place across the European continent.

European countries are forced to analyze their political and legal framework, not merely to accommodate the growing presence of Muslims, but to effectively deal with the challenges and crimes presented by the Islamic religious movement when accompanied by fundamentalism.⁵⁹ Germany illustrated this point when it began to reexamine its social structure after a young Afghan immigrant killed his sixteen-year-old sister,

THE STATE: THE POSITION OF ISLAM IN THE EUROPEAN UNION 103 (W.A.R. Shadid & P.S. Van Koningsveld eds., 2002).

54. Jorgen Baek Simonsen, *Constitutional Rights and Religious Freedom in Practice: The Case of Islam in Denmark*, in RELIGIOUS FREEDOM AND THE NEUTRALITY OF THE STATE: THE POSITION OF ISLAM IN THE EUROPEAN UNION 20 (W.A.R. Shadid & P.S. Van Koningsveld eds., 2002).

55. Gerdien Jonker, *Muslim Emancipation? Germany's Struggle over Religious Pluralism*, in RELIGIOUS FREEDOM AND THE NEUTRALITY OF THE STATE: THE POSITION OF ISLAM IN THE EUROPEAN UNION 42 (W.A.R. Shadid & P.S. Van Koningsveld eds., 2002).

56. *The List: The World's Fastest Growing Religions*, FOREIGN POL'Y, May 14, 2007, http://www.ForeignPolicy.com/story/cms.php?story_id=3835 (noting growth rates based on a period from 2000 to 2005 by the nondenominational World Christian Database).

57. Mary Mederios Kent, *Do Muslims Have More Children Than Other Women in Western Europe?*, POPULATION REFERENCE BUREAU, Feb. 2008, <http://www.prb.org/Articles/2008/muslimsineurope.aspx>.

58. *Id.*; *The List*, *supra* note 57.

59. Silvio Ferrari, *Islam and the Western European Model of Church and State Relations*, in RELIGIOUS FREEDOM AND THE NEUTRALITY OF THE STATE: THE POSITION OF ISLAM IN THE EUROPEAN UNION 16 (W.A.R. Shadid & P.S. Van Koningsveld eds., 2002).

admittedly because she had become too westernized.⁶⁰ It is specifically these types of crimes that have acted as a catalyst to legal and non-legal efforts throughout Europe. However, the Council of Europe found that, despite various legal efforts to combat honor-based crimes, such crimes have drastically increased in recent years.⁶¹ It estimates that 5,000 honor killings occur each year, primarily in Muslim communities.⁶²

With more than 1.5 billion Muslims in the world in 2009, and with nearly 2.5 million living in the United States, it seems inevitable that honor and apostasy killings will increase within the U.S. as they have in Europe.⁶³ While the vast majority of Muslims in the U.S. are law-abiding and educated citizens,⁶⁴ more extreme forms of Islam including the Wahhabi sect also enjoy the religious freedom this country provides.⁶⁵

G. *The Increase of Honor Crimes in the U.S.*

Undeniably, honor crimes are no longer a merely hypothetical threat in the U.S.; instead, they have become a reality as stories continue to plague our headlines. There are four specific cases that have occurred in the U.S. that shed light on the motivation and evolution of an honor crime. The first of these occurred in 1989, when a Palestinian man suspected of links with a terrorist group called the Palestine Liberation Organization, stabbed his daughter in the chest with the help of his wife because she had defied his rules and become too westernized.⁶⁶ Zein Isa and his wife Maria had set stringent rules for all of their daughters, such as banning them from dating outside the faith, playing sports, or leaving the home without permission.⁶⁷ Yet, Tina had a black boyfriend, worked at Wendy's, played soccer, and went to a school dance.⁶⁸ Her rebellion caused continual family tension and

60. *Afghan Girl's 'Honor Killing' Sparks Debate in Germany*, FOX NEWS, May 27, 2008, <http://www.foxnews.com/story/0,2933,358661,00.html>.

61. EUR. CONSULT. ASS., *supra* note 25, at para. 14.

62. *Id.* at para. 19 (citation omitted).

63. PEW RESEARCH CENTER, *supra* note 24, at 32.

64. LAURA K. EGENDORF, *ISLAM IN AMERICA* 11 (2006).

65. Wahhabism is one strand of fundamentalist Islam that has been known to support terrorism. *Id.* at 15, 18-19.

66. *Terror and Death at Home Are Caught in F.B.I. Tape*, N.Y. TIMES, Oct. 28, 1991, <http://www.nytimes.com/1991/10/28/us/terror-and-death-at-home-are-caught-in-fbi-tape.html>; see also *Murder in the Family: Honor Killings in America*, FOXNEWS.COM (July 26, 2008), <http://www.foxnews.com/story/0,2933,391531,00.html>.

67. *Id.*

68. *Murder in the Family*, *supra* note 66.

disputes, which led to her parents' ultimate decision to kill her by stabbing her to death.⁶⁹

The second example occurred almost twenty years later, when a Pakistani man residing in the United States strangled his daughter, Sandeela, to protect the family's honor from the stain of divorce.⁷⁰ When she was nineteen, Sandeela was forced by her family to marry her cousin in Pakistan; soon after, she came back to the United States and they lived the rest of their married life apart.⁷¹ Eventually, she decided to end the marriage and, after filing the divorce papers, her relationship with her father deteriorated. The communication between them was severed for months before he killed her in their family's home.⁷²

The third example occurred within months of Sandeela's death, when a father shot his two teenage daughters because, as family and friends conjecture, the father was angry that they were dating against his will.⁷³ He had previous outbursts of anger regarding their choice to date outside of the religion; in fact, he had earlier moved the family to another city over the same issue.⁷⁴ In this case, the mother knew that at least a week beforehand he had threatened them.⁷⁵ Because the father is still a fugitive, his motive has not been proven; however, experts identify the shooting as a quintessential honor crime, arising out of the father's desire to purge the family from the shame of Muslim girls dating non-Muslim boys.⁷⁶

The last example took place in December of 2009, when an Iraqi man in Arizona ran over his daughter with his SUV, also because she had turned from her father's strict values.⁷⁷ Like Sandeela's story, Noor Faleh Almaleki was subject to an arranged marriage to a man in Iraq. Instead of divorce, Noor returned to Arizona to live with her boyfriend and his

69. *Id.*

70. David Schoetz, *Daughter Rejects Marriage, Ends Up Dead*, ABC NEWS, July 7, 2008, <http://abcnews.go.com/US/story?id=5322587>.

71. *Id.*

72. *Id.*

73. *Slain Teenage Girls' Brother Begs for Suspect Father to Turn Himself In*, FOX NEWS, Jan. 5, 2008, <http://www.foxnews.com/story/0,2933,320487,00.html>.

74. *Id.*

75. *Id.*

76. *Id.*

77. Dustin Gardiner, *Man Charged With Murder in 'Honor Killing'*, THE ARIZ. REPUBLIC, Dec. 22, 2009, <http://www.azcentral.com/arizonarepublic/local/articles/2009/12/22/20091222honorkill1222.html>.

mother.⁷⁸ Noor and her father had fought for years over her indiscretion, which led her father to the point of murder.⁷⁹

While these four cases vary in detail, they have many similarities. The motivating factors behind the four murders may be different in context, but they all stem from a perceived impropriety of the female victim and a desire to restore any honor lost from the impropriety. First, there is a very strict standard of conduct stemming from a combination of the Islamic faith and fundamentalist, anti-Western values. In these cases, that standard is seen in sets of behavioral and religious rules, such as a ban on dating or certain activities, and also in control over major life choices, such as forced marriage. The family friction builds as the daughter continues to defy these traditional rules. It is, however, difficult to pinpoint when the ultimate decision to harm or kill is made. In some cases it is a result of a clear and major defiance of an important Islamic principle, like divorce or fornication. However, in other cases, it is a result of many years of smaller rebellions. In Rifqa's case, it was her conversion to Christianity and rejection of Islam that prompted the alleged threat.

Regardless of the exact rules that have been broken, each case points toward the conclusion that the perceived moral wrong is deemed punishable outside of the judicial system, whether or not the person would have been found guilty under the laws of the country.⁸⁰ Rather than taking the matters to courts of law, the family takes it upon itself to determine the guilt or innocence of the victim, and determines the victim's fate based upon its own presuppositions.⁸¹ This pattern of extra-judicial criminal behavior must be isolated and punished to ensure freedom through the law.

H. The Difficulty Western Law Faces in Dealing with Honor Crimes

The international community has responded to the increase in honor crimes by recognizing the need for intervention before the crime is committed. Yet, the protection of law for those endangered for either apostasy or dishonoring the family is patchy at best.⁸² Typically, any

78. *Id.*

79. Pete Kotz, *Daughter Dies: Faleh Hassan Almaleki Now Faces Murder in Honor Killing*, TRUE CRIME REPORT (Nov. 6, 2009, 4:27 PM), http://www.truecrimereport.com/2009/11/daughter_dies_faleh_hassan_alm.php.

80. Diana Y. Vitoshka, *supra* note 49, at 4-5.

81. *Id.* at 5.

82. International law specifically tailored toward preventing honor killings is primarily in the form of punishment as deterrence. See David J. Western, *Islamic "Purse Strings"*:

preventative measure or protective facility is initiated by a non-governmental organization. In a recommendation, the European Parliament acknowledges that “[t]here is a desperate shortage of refuge space and emergency housing for those fleeing domestic or so-called ‘honour’-based violence or forced marriage. A concerted effort across Government is required to improve access to short-term emergency accommodation and longer-term housing for victims.”⁸³

One effort has come through the British government’s Forced Marriage Unit (FMU) that rescues young women in the country who are forced to marry.⁸⁴ While forced marriage is something the country wishes to eradicate, it is also the secondary crimes that result from forced marriage, such as rape, kidnapping, or murder, that, as seen in the above stories, provide the real threat. According to one Londoner of Indian descent, this relief finally came after the government had avoided the problem for years due to cultural sensitivity.⁸⁵

The FMU campaigns to raise awareness of forced marriage, works with embassies, and provides support to victims. In 2010, they helped 1,735 people.⁸⁶ While this supportive effort has had success, the United Kingdom has not declared forced marriage a criminal offense but instead bases any prosecution on either generic crimes, including assault and battery, kidnap, threats to kill and harassment, or more specialized legislation for domestic violence: the Domestic Violence, Crimes and Victims Act 2004.⁸⁷ However, in 2007, the United Kingdom created civil protection through the Forced Marriage Act, which protects those who are forced into marriage

The Key to the Amelioration of Women’s Legal Rights in the Middle East, 61 A.F. L. REV. 79, 102-04 (2008).

83. HOUSE OF COMMONS, *supra* note 24, at 7.

84. Cesar G. Soriano, *Groups Try to Break Bonds of Forced Marriage*, U.S.A. TODAY, April 19, 2006; *see also* FOREIGN AND COMMONWEALTH OFFICE, MULTI-AGENCY PRACTICE GUIDELINES: HANDLING CASES OF FORCED MARRIAGE, 2009, at 17, *available at* <http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf> (last visited July 2, 2011) (noting that relief from forced marriage finally came after the government had avoided the problem for years due to cultural sensitivity).

85. *Id.*

86. *Victims of Forced Marriage*, TRAVEL AND LIVING ABROAD, FOREIGN & COMMONWEALTH OFFICE, <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/> (last visited July 2, 2011).

87. FOREIGN AND COMMONWEALTH OFFICE, *supra* note 84; HOUSE OF COMMONS, *supra* note 24, ¶¶ 37, 38.

either in the past, present, or future through protective orders.⁸⁸ This Act also grants the power to arrest if there is a threat of violence.⁸⁹

III. THE AMERICAN POLITICAL AND LEGAL STATE

A. *The Conflict between the United States Constitution and Sharia Law*

The American legal system, like that of Europe, is often unprepared to effectively deal with honor or apostasy crimes, yet little effort has been made to adapt to the challenge of religious “justice” at the hands of the victim’s relatives.⁹⁰ America, like Europe, will be forced to respond to the challenge with changes to law and policy to prevent potential killings before they occur. In the face of a new era where these crimes become more common, the state has the obligation to protect children who are legitimately threatened with violence prompted by parental adherence to fundamentalist Islam.

However, America is unlikely to find support from the Obama Administration for any shift in law or policy that would recognize the evils stemming from fundamentalist Islam, since the Administration for political reasons refuses to acknowledge the existence of fundamentalist or radical Islam and its tendencies as being a threat.⁹¹ In fact, the Administration has turned away from terms like “radical Islam,” “Islamic terrorism,” and any other phrase that links terror with Islam as being politically incorrect.⁹² The reasoning for this shift in policy is that the Obama Administration does not want to fuel the idea that the United States is at war with the religion of Islam.⁹³ Yet, even Muslim-Americans in the community fear that he is missing the root cause: “[t]he ideology.”⁹⁴

88. Forced Marriage (Civil Protection) Act, 2007, c. 20, (U.K.), available at <http://www.legislation.gov.uk/ukpga/2007/20/introduction/enacted/> (last visited July 2, 2011).

89. *Id.*

90. *Murder in the Family: Honor Killings in America*, FOXNEWS.COM (July 26, 2008), <http://www.foxnews.com/story/0,2933,391531,00.html>.

91. See Michael Hirsh, *A Politically Correct War*, NEWSWEEK, June 17, 2010, available at <http://www.newsweek.com/2010/06/17/a-politically-correct-war.html>; Ryan Mauro, *See No Radical Islam, Hear No Radical Islam*, FRONTPAGEMAG.COM, May 17, 2010, <http://frontpagemag.com/2010/05/17/see-no-radical-islam-hear-no-radical-islam/>.

92. Mauro, *supra* note 91.

93. *Id.*

94. Hirsh, *supra* note 91.

Indeed, the problem stems from an irreconcilable conflict between the ideological foundations of Anglo-American law and the fundamental schools of Islamic law.⁹⁵ This conflict is made apparent in Rifqa Bary's case. Under two of the four traditional schools of Islamic law, the parent may actually have an obligation to kill an apostate child; the fundamentalist Islamic state, operating under that law, would support such a decree because upholding the principals of Islam takes precedence over individual liberty.⁹⁶ Conversely, in the United States, protecting human life and individual liberty is the bedrock of our Constitution; and while parental rights are among a citizen's most important rights under that Constitution, once parents compromise a child's safety, they risk losing those rights. This doctrine, called "termination of parental rights," will be explored in the next section as one possible preventative measure available to the states.

*B. Termination of Parental Rights as a Method of Prevention:
Two Doctrines*

In the United States, a state can intervene and terminate parental rights only in very limited situations. This is because parents have one of "the oldest of the fundamental liberty interests recognized by [the Supreme] Court:" an interest in caring for and rearing a child.⁹⁷ Two doctrines are available to give the state the authority to intervene: *in loco parentis* and *parens patriae*.

In loco parentis occurs when a non-parent citizen stands in the role of the parent over the child, in spite of any objection by the biological or adoptive parent.⁹⁸ *Parens patriae* occurs when the state steps in as a "wise, affectionate, and careful parent" over the child to determine the child's welfare and best interest.⁹⁹ The doctrines of *in loco parentis* and *parens patriae* require that any infringement on the parent's rights must be narrowly tailored to serve a compelling state interest.¹⁰⁰ Indeed, even the highest of state interests can be secondary when compared to parental

95. As opposed to moderate schools of Islamic law that are centered on peace. See *infra* text accompanying notes 34-37.

96. See *supra* text accompanying notes 7-9.

97. *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

98. See BLACK'S LAW DICTIONARY 803 (9th ed. 2009).

99. *Roussel v. State*, 274 A.2d 909, 925-26 (Me. 1971).

100. *Moriarty v. Bradt*, 827 A.2d 203, 214 (N.J. 2003).

rights.¹⁰¹ But this scale will always be tipped in favor of the state when a parent's actions constitute a substantial threat to the child.¹⁰²

If a Muslim's parental rights can be infringed based upon his commitment to fundamentalist Islam, would a state be violating one of the most foundational rights in the Constitution: the free exercise of religion? The First Amendment requires a deep probing into how far the state can interfere with the family relationship; the parents' free exercise of religion must be balanced against the state interest in protecting the child.¹⁰³ A variety of early cases discussed in the next section illustrate when the state interests weigh in favor of interference and when they prohibit it.

C. History of Constitutional Protection of Parental Rights

In the United States, parental rights have been consistently ranked among the highest of all protected liberties, and have significant insulation from the interference of the State.¹⁰⁴ Nevertheless, this right was qualified in *Prince v. Massachusetts*, when the Court found in favor of the state by

101. *Wisconsin v. Yoder*, 406 U.S. 205, 213-14 (1972) ("Providing public schools ranks at the very apex of the function of a State. Yet even this paramount responsibility was . . . made to yield to the right of parents to provide an equivalent education in a privately operated system. . . . Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of the parents with respect to the religious upbringing of their children . . .").

102. *Shepp v. Shepp*, 906 A.2d 1165, 1174 (Pa. 2006) (finding the parental right to teach a child a faith with illegal practices, i.e., polygamy, was greater than the state interest in monogamy so long as the teachings "would [not] jeopardize the physical or mental health or safety of the child").

103. *Prince v. Massachusetts*, 321 U.S. 158 (1944). The court will balance the "freedom of conscience and religious practice . . . [and] the parent's claim to authority . . . in the rearing of her children . . . [against] the interest of society to protect the welfare of children, and the state's assertion of authority to that end . . ." *Id.* at 165.

104. *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000). The Court originally developed parental rights doctrines in three cases. In *Meyer v. Nebraska*, the Court struck down a Nebraska law that prohibited the teaching of German to children before the eighth grade because the Court acknowledged one's right to "establish a home and bring up children" as being fundamental under the Fourteenth Amendment. 262 U.S. 390, 399 (1923). That right was confirmed in *Pierce v. Society of Sisters*, when an Oregon statute prohibiting parents from sending their children to private schools was overturned because the parental interest in their child's education weighed more heavily than that of the state. 268 U.S. 510, 534-35 (1925).

upholding the state's authority under *parens patriae*¹⁰⁵ to limit parental rights, even if those rights are protected under the First Amendment.¹⁰⁶ The Court cited various instances where that power is legitimate,¹⁰⁷ but noted that if the state's interference also involves an issue of freedom of religion, it would only be upheld to protect a child from danger.¹⁰⁸ That standard has since been defined: if "it appears that parental decisions will jeopardize the health or safety of the child," parental rights will be subject to limitation even if tied to a First Amendment right.¹⁰⁹

Before any state intervention is possible, however, those parental rights must be vigorously protected by fundamentally fair proceedings, meaning that a parent cannot be deprived of custody of his child without due process of law.¹¹⁰ The Due Process Clause under the Fourteenth Amendment to the United States Constitution requires notice to the parents, a chance for them to be heard, and some standard of evidence, such as clear and convincing, of the state's basis for the termination of parental rights.¹¹¹

In a termination proceeding, the first inquiry the court must make is whether the parent is "at fault," which is usually defined in terms of unfitness to raise his child.¹¹² The state must always presume that the parent is fit and acting in the best interest of the child,¹¹³ and must prove unfitness

105. *Parens patriae* is when the state acts as the parent to the child in its capacity "as a sovereign . . . and as provider of protection to those unable to care for themselves." BLACK'S LAW DICTIONARY 1144 (9th ed. 2004).

106. *Prince v. Massachusetts*, 321 U.S. 158 (1944) (holding that the state interest in prohibiting distribution of literature by minors was greater than the guardian's right to practice religion).

107. Such instances include required school attendance, prohibition of the child's labor, and compulsory vaccinations. *Id.* at 166.

108. *Id.* at 167.

109. *Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972) (finding that the state interest in universal education was secondary to the parental right to educate children at home).

110. *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982); *see also Stanley v. Illinois*, 405 U.S. 645, 645 (1972).

111. Caroll J. Miller, Annotation, *Validity and Application of Statute Allowing Endangered Child to be Temporarily Removed from Parental Custody*, 38 A.L.R.4th 756 (2009); *see also In re Willis*, 207 S.E.2d 129, 138, 140 (W. Va. 1973) (explaining that the Constitution guarantees parents notice and an opportunity to be heard; furthermore, "in order to separate a child from its parents on the ground of their unfitness, there must be clear, cogent and convincing proof.").

112. *Santosky v. Kramer*, 455 U.S. 745, 759-60 (1982).

113. *Troxel v. Granville*, 530 U.S. 57, 68 (2000).

by at least clear and convincing evidence.¹¹⁴ Adhering to these constitutional minimums, states are free to enact statutes that regulate parental rights and determine the grounds for a finding of parental unfitness that leads to a termination of rights, e.g., abandonment, neglect, or abuse.¹¹⁵

These Due Process procedures point to the underlying policy: that the court's primary focus is the interest of the parents; the child's interest is only relevant once some parental fault is determined.¹¹⁶ The Supreme Court emphasized this point in *Santosky v. Kramer*: "The factfinding [hearing] does not purport—and is not intended—to balance the child's interest in a normal family home against the parents' interest in raising the child. . . . Rather, the factfinding hearing pits the state directly against the parents."¹¹⁷ Indeed, only after the state proves unfitness may the court even ask what is in the best interest of the child, either to continue living with the parents or to be placed in foster care or adopted.¹¹⁸ In applying this concept to a case like Rifqa's, before any state intervention is possible, the state must prove by clear and convincing evidence that the parents pose enough of a threat to the child to make them unfit. If a state fails to protect the parent's procedural and substantive due process rights by acting rashly, or without sufficient evidence, the child could be exposed to even more instability and danger by being forced back into an unhealthy situation.¹¹⁹

D. Various State Approaches To Protection Of Children Against Abusive Parents

Many states have enacted statutes that allow them to temporarily remove a child when there is an imminent danger or threat to that child's physical

114. *Santosky*, 455 U.S. at 747-48.

115. See N.C. GEN. STAT. § 7B-1111 (2003) (enumerating the grounds for termination of parental rights).

116. This policy is based on the assumption that the parents have the child's best interest at heart. Catherine J. Ross, *Legal Constraints on Child Saving: The Strange Case of the Fundamental Latter-Day Saints at Yearning for Zion Ranch*, 37 CAP. U. L. REV. 361, 373 (2008).

117. *Santosky v. Kramer*, 455 U.S. 745, 759 (1982).

118. Ross, *supra* note 116, at 374 (citing S.L. v. C.A., 995 P.2d 17, 29-30 (Utah Ct. App. 1999) (Wilkins, J., concurring) and MINN. STAT. ANN. § 260C.301(7) (West 2007) (considering the child's best interests only after at least one statutory ground for terminating the parental rights was established)).

119. *Id.* at 377 (providing two cases where, due to the failure of the trial courts to fully protect the parental due process rights, the children were forced back into the parents' house even though the circumstances were unfortunate for the children).

well being. Because these “emergency” statutes only authorize temporary removal, which eventually can lead to permanent termination of parental rights, they do not require the same level of due process.¹²⁰ If removal is planned in advance, it will require a court order or some form of procedure and approval; but, if it meets that statute’s definition of emergency, the state need not seek approval before taking action, although it will be subject to review shortly thereafter.¹²¹

Emergency removal statutes have been upheld as constitutional because, if an imminent danger exists and removal is immediately necessary, the state’s interest in the protection of the child becomes compelling.¹²² Yet the interest only remains compelling for a short period of time, and the parent’s due process interests require a timely judicial hearing to determine whether the child remains in such danger that parental rights should be terminated.¹²³

These statutes differ slightly in each state, but retain some consistencies in their language and character. For example, in West Virginia, the state can temporarily take a child from the custody of her parents if there is “an imminent danger to the physical well-being of the child” and no reasonable alternative to removing the child from the home.¹²⁴ Florida’s emergency removal statute similarly provides for temporary removal of children who

120. See, e.g., *Mabe v. San Bernardino Cnty.*, 237 F.3d 1101, 1106 (9th Cir. 2001) (“Government officials are required to obtain prior judicial authorization before intruding on a parent’s custody of her child unless they possess . . . ‘reasonable cause to believe that the child is in imminent danger’ . . .”) (citation omitted); *Tenenbaum v. Williams*, 193 F.3d 581, 594 (2d Cir. 1999) (“In ‘emergency circumstances,’ a child may be taken into custody by a responsible State official without court authorization or parental consent.”) (citation omitted).

121. *Tenenbaum*, 193 F.3d at 594; see also *Ross*, *supra* note 116, at 380.

122. *Carroll J. Miller*, Annotation, *Validity and Application of Statute Allowing Endangered Child to Be Temporarily Removed From Parental Custody*, 38 A.L.R.4th 757-63 (1985); *State ex rel. Miller v. Locke*, 253 S.E.2d 540, 541 (W. Va. 1979) (upholding a statute that gave the state the power to remove a child from his home for up to ten days if there was (1) an imminent danger to the physical well-being of the child, and (2) no reasonably available alternatives to the child’s removal).

123. Judicial hearings have been upheld as timely in statutes that required them five days after removal, *Newton v. Burgin*, 363 F. Supp. 782 (W.D.N.C. 1973), *aff’d* by 414 U.S. 1139 (1974), and even up to forty-five days, *State in re Alexander*, 384 So. 2d 1003 (La. App. 4 Cir. 1980). But procedural due process is violated if a judicial hearing is not given at all or not given “as soon as practicable.” *Roe v. Conn*, 417 F. Supp. 769 (M.D. Ala. 1976).

124. W. VA. CODE § 49-6-3 (2009).

are in “imminent danger of illness or injury,” but only if it is “a result of abuse, neglect, or abandonment.”¹²⁵

The state must meet its burden of proof that imminent danger¹²⁶ exists according to the statute, regardless of whether it seeks a court order before removal or conducts an emergency removal without a court order.¹²⁷ While the standard of proof for *permanent* termination of parental rights must be at least clear and convincing,¹²⁸ the standard for the initial *temporary* removal need only be based on a fair preponderance of the evidence.¹²⁹ To meet the state’s standard of proof, the state may rely on both direct and circumstantial evidence.¹³⁰ That evidence, under the Fourth Amendment’s search and seizure clause, must be more than a mere abstract government interest in protecting children generally; it requires case-specific evidence. Seizure by a child welfare official must be based on “some definite and articulable evidence giving rise to a reasonable suspicion that a child has been abused or is in imminent danger of abuse.”¹³¹

Cases resolving what constitutes imminent danger generally look first for evidence of past physical abuse of the child.¹³² Courts have relied on circumstantial evidence to determine the likelihood of physical abuse, often

125. FLA. STAT. § 39.401 (2010). In addition, a parent’s rights can eventually be permanently terminated if the child is “at substantial risk of imminent abuse . . . by the parent or parents or legal custodians,” and the parent fails to comply with the case plan. FLA. STAT. § 39.806(1)(e) (2009); FLA. STAT. § 39.01(15)(f) (2009).

126. Imminent danger, harm, or threat are hereafter used interchangeably.

127. Some statutes, like New York’s, require that if a child welfare agent decides to remove a child without a court order, he or she must first have probable cause to believe that a threat of harm is imminent. N.Y. SOC. SERV. LAW § 417 (Consol. 2009); N.Y. FAMILY CT. ACT § 1024 (Consol. 2009). West Virginia requires probable cause before emergency removal. W. VA. CODE § 49-6-3(c) (2009).

128. *Santosky v. Kramer*, 455 U.S. 745 (1982).

129. *In re Juvenile Appeal* (83-CD), 455 A.2d 1313, 1325 (Conn. 1983). Some states, however, including West Virginia, maintain a higher standard. *In re Willis*, 207 S.E.2d 129, 140 (W. Va. 1973) (stating that the burden of proof is clear, convincing, and cogent).

130. *See In re Jonathan Michael D.*, 459 S.E.2d 131, 137 (W. Va. 1995); *State v. Adams*, 557 P.2d 586, 589 (N.M. 1976).

131. *Doe v. Heck*, 327 F.3d 492, 515 (7th Cir. 2003).

132. *Tenenbaum v. Williams*, 139 F.3d 581 (2nd Cir. 1999). For example, one West Virginia court held that there was no imminent danger in a case initiated by a grandmother who alleged that her daughter was not providing medical or financial care for the child. *State ex rel. Virginia M. v. Virgil S.*, 475 S.E.2d 548 (W. Va. 1996).

without any direct evidence.¹³³ Some states have even found imminent danger to a child who has never been abused if the parent had abused a sibling.¹³⁴ Yet, past abuse is not a necessary requirement, and many other factors that expose a risk of harm to the child do have weight.¹³⁵ Furthermore, some courts find that a parent's course of conduct in totality poses an imminent threat to the child.¹³⁶

These cases are grounded on present or past action that points to the substantial likelihood of danger, even if that action is not itself abuse. Applying this principle in the context of the threat of an honor or apostasy crime, it appears in most cases the only past action that would support the likelihood of danger is twofold: first, the past acts of adherence to a belief system that encourages the crime; second, threats or threatening conduct indicating that the belief will be carried out. Recent honor killings in the United States provide helpful illustration. In many of the cases, the parent urges the child to adhere to particular fundamentalist Islamic principles and takes away the child's freedom of choice by actions such as forced marriage or a prohibition against working, playing sports, etc. The child then rebels against those standards, creating family tension and fighting that ultimately lead to the parent's intent to harm. If the intent to harm translates into spoken threats, those threats could provide evidence of imminent danger to the child.

Even if temporary removal is successful, however, unless such threats meet the high burden for permanent removal, which is detailed below, the child will be returned to the home. Conversely, if the intent to harm arises is the parent's mind *without* an overt threat, it will have to be proven using other circumstantial evidence which will likely prove insufficient, because

133. In Connecticut, the unexplained death of one child combined with questionable marks on his body provided sufficient evidence of the possibility that his siblings were in imminent danger. *In re Juvenile Appeal* (83-CD), 455 A.2d 1313, 1325 (Conn. 1983).

134. See *In re George B.*, 518 S.E.2d 863, 871 (W. Va. 1999). *Contra In re M.F. v. Fla. Dep't of Children & Families*, 770 So. 2d 1189 (Fla. 2000).

135. *J.O. v. Dep't of Children & Family Servs.*, 970 So. 2d 395 (Fla. Dist. Ct. App. 3d Dist. 2007) (finding a parent's use and sale of illegal drugs created imminent harm); *Cooper v. Wiley*, 128 A.2d 455 (N.Y. 1987) (finding a failure to give adequate medical treatment could constitute imminent harm if that treatment is necessary and the parents have not provided an acceptable course of treatment).

136. In Texas, a parent's acts, omissions, and failures to act may create a "voluntary, deliberate, and conscious course of conduct" that endangers the child, but more than just one act or omission is required. *In re J.J.S.*, 272 S.W.3d 74, 78 (Tex. App. 2008) (finding a mother's involvement in numerous abusive relationships constituted a course of conduct that exposed her children to a threat of danger, and forfeited her parental rights).

the link between the belief system and a threat to the child in question must be proven. A recent Texas case illustrates this point when tension between Texas law and fundamentalist Mormonism resulted in an illegal temporary removal of children.

E. Yearning for Zion Ranch: A Case Study

In *Yearning for Zion Ranch*, the state stepped in to protect children from a pervasive belief system that condoned certain destructive and illegal practices.¹³⁷ The Texas Department of Family and Protective Services removed over 450 children from Yearning for Zion Ranch. The ranch was a compound associated with the Fundamentalist Church of Jesus Christ of Latter-Day Saints,¹³⁸ which splintered from the national LDS church when the latter officially renounced polygamy. The Fundamentalists' belief system recognizes polygamy and underage marriage. As one online poster explained,

if God had meant a [thirteen] year old girl not to be pregnant he would not have given her the gift of the ability to conceive a child. If God had meant only young men to father children . . . he would have . . . stopped their production of sperm when they became [twenty-five] years of age.¹³⁹

The Department acted under the Texas emergency statute to remove the children after receiving a distress call from one sixteen-year-old female and discovering five pregnant teenagers through an investigation. The Department determined that all 466 children were at risk of underage marriage and/or pregnancy due to the oppressive nature of a belief system that would condone such action.

Under the Texas statute, immediate danger to the physical health or safety of the child warrants removal of the child by the Department.¹⁴⁰ The statute authorizes the action without a court order only “[i]f there is no time to obtain a temporary restraining order or attachment” from the court before removal,¹⁴¹ and only “when the circumstances indicate a danger to the physical health . . . of the children and the need for protection is so urgent

137. *In re Steed*, No. 03-08-00235-CV, 2008 Tex. App. LEXIS 3652 (Tex. App. May 22, 2008), *aff'd*, *In re Tex. Dep't of Family & Protective Servs.*, 255 S.W.3d 613 (Tex. 2008).

138. 2008 Tex. App. LEXIS 3652 at *1.

139. Ross, *supra* note 116, at 392 (citations omitted).

140. TEX. FAM. CODE Ann. § 262.104(a) (West 2008).

141. *Id.*

that immediate removal . . . is necessary.”¹⁴² The Court of Appeals found that the state failed to meet its burden of proving immediate danger to the children.¹⁴³ The only evidence proffered was the five pregnant teenagers and the existence of a belief system that condoned the alleged sexual activity, which was insufficient to prove immediate danger under the statute.

First, the pregnancy of the five teenagers was not evidence of imminent danger of sexual abuse to the other 461 children, especially the boys in the group. Second, and more on point, it is not the mere existence of the belief system, the court said, that places the children in physical danger. Rather, it is the “imposition of certain alleged tenets of that system on *specific individuals* that may put them in physical danger.”¹⁴⁴ This analysis is consistent with the cases interpreting the Fourth Amendment search and seizure rules in regard to children, which require “individualized suspicion.”¹⁴⁵ While failing to further define or elaborate this holding, the court points to a lack of evidence that the practice is likely to be carried out on the individual children. The court did indicate that appropriate evidence would have shown that someone in each child’s house was proven likely to subject the child to underage sex or marriage, or that a specific and established threat existed to pubescent females beyond a mere religious belief.¹⁴⁶ The Supreme Court of Texas affirmed the holding, but declined to address the constitutional issues and remanded the case based on other options available to the Department under Texas law.¹⁴⁷

A minor in Rifqa’s position may find solace in the Texas holding. Under this framework, there is some evidence that Rifqa, as an individual rather than as a member of a community, was in imminent danger of physical harm. Yet, her case might still fail the Texas test because the danger inherently stems from her parents’ fundamentalist Islamic religious belief.¹⁴⁸ In her affidavit, given while fighting a compulsory return to her

142. *In re Steed*, 2008 Tex. App. LEXIS 3652 at *3.

143. *Id.* at *14.

144. *Id.* at *10 (emphasis added).

145. Ross, *supra* note 116, at 399.

146. *In re Steed*, 2008 Tex. App. LEXIS 3652 at *10.

147. *In re Tex. Dep’t of Family & Protective Servs.*, 255 S.W.3d 613 (Tex. 2008).

148. See Bary’s affidavit and the memorandum submitted by her attorney: Bary Affidavit, *supra* note 1; Investigation and Intelligence Memorandum in Support of Petition for Dependency, *In re Fathima Rifqa Bary*, No. DP09-580 (Fla. Cir. Ct. Aug., 2009), available at <http://orlandolawyer.tv/documents/Noor%20Memo%20of%20Law.pdf> (last visited July 2, 2011).

parents' custody, paragraphs four through fourteen are statements regarding her parents' faith, especially that of her father.¹⁴⁹ They describe the devotion of her father, the fundamentalism of his mosque, and his strict imposition of the faith on the children. This "belief" evidence alone is insufficient for the state to interfere. As in *Yearning for Zion Ranch*, the existence of a pervasive belief system in and of itself would not be sufficient evidence because there is an indeterminate possibility of harm, and not necessarily evidence of imminent danger.

Yet, unlike the facts in *Yearning for Zion Ranch*, Rifqa does allege some evidence of the specific and individualized imposition of the faith that would result in her harm or death. She states that her father "had a serious talk" with her, "confronted her," and displayed a "fit of anger."¹⁵⁰ Parental anger and volatility seems to proliferate the past cases of honor killings, and points to the possibility of an honor crime. Mere arguments and family tension, however, are not enough evidence of an actual threat. But, Rifqa also claims that her father threatened to kill her, and her mother threatened to send her back to Sri Lanka.¹⁵¹ Would these types of alleged threats point to specific and imminent harm that would be enough for a state agent to find an emergency basis to interfere? Even if emergency removal is qualified, would it translate into permanent termination of rights?

F. Texas Standards for Emergency Removal and Permanent Termination

In Texas, if a child welfare agent removes a child without a court order, the child must be returned to the parents in the initial hearing, occurring within one to three business days after the removal,¹⁵² unless the court finds by the civil standard there is "a continuing danger to the physical health or safety of the child."¹⁵³ Then, the law requires a second hearing called a "full adversarial hearing" within fourteen days of the removal.¹⁵⁴ In that hearing, a court must determine by the civil standard that:

(1) there was a danger to the physical health or safety of the child which was caused by *an act or failure to act* of the person

149. Bary Affidavit, *supra* note 1, ¶ 4-14.

150. *Id.* ¶ 17, 18, and 20.

151. *Id.* ¶ 20-21.

152. The state has a five-day period before it legally takes possession of the child. TEX. FAM. CODE ANN. § 262.106(d) (West 2008).

153. TEX. FAM. CODE ANN. §§ 262.106–107 (West 2008) (one of three elements the court must find at the initial hearing).

154. TEX. FAM. CODE ANN. § 262.201 (West 2008).

entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

(2) *the urgent need for protection required the immediate removal* of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and

(3) reasonable efforts have been made to enable the child to return home, but there is a *substantial risk of a continuing danger* if the child is returned home.¹⁵⁵

To determine whether “continuing danger” exists under the third prong, the court may consider whether the child’s household contains a person who:

(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) has sexually abused another child.¹⁵⁶

Under this framework, the state must prove by a preponderance of the evidence that the particular parents have actually threatened the child’s life or health by an act or failure to act, so much so that the child should not be returned to the home because of the continuing danger. This imposes the burden to prove that a substantial risk of a *continuing* danger and an *urgent* need for protection have become outwardly evident before a temporary order of removal is given. If it cannot do so, the state will fail and the child could possibly become another victim.

If the state succeeds in obtaining a temporary order under the above statutes, the state must then file for a permanent termination of rights within forty-five days.¹⁵⁷ This requires the state to prove by clear and convincing evidence one of the grounds for termination, which includes “engag[ing] in conduct . . . which endangers the physical or emotional well-being of the child.”¹⁵⁸

155. *Id.* (emphasis added).

156. TEX. FAM. CODE § 262.201(d) (West 2008).

157. TEX. FAM. CODE § 262.105 (West 2008).

158. TEX. FAM. CODE § 161.206 (West 2008); TEX. FAM. CODE § 161.001(1)(E) (West 2008).

For the initial hearing, the full adversary hearing, and the suit for involuntary termination of parental rights, proof may be difficult to ascertain because family members and close friends who may know of the threat may choose to conceal it if they adhere also to the ideology, want to protect the potential killer, or are terrified for their own life. To illustrate this point, the mother of the two girls who were killed in Texas knew about the father's threat but chose not report it to authorities.¹⁵⁹ In addition, the Palestinian man in St. Louis had not only the support of his other daughters, who knew about his plan to kill his daughter, but also the help of his wife in the slaying.¹⁶⁰ This protectionism is exacerbated by the fact that Muslim fundamentalists typically only associate within their communities and require the same of their children, so the people who could potentially know about the situation are of the same belief system.¹⁶¹

Moreover, during the termination suit, the state may have no evidence that the parents have “*engaged* in conduct . . . which endangers the physical or emotional well-being of the child,” if there has been no past abuse.¹⁶² Yet, as we have seen, the lack of past abuse does not negate the true criminal intent of the parent.

IV. PROPOSAL: ADOPTING METHODS TO FACE THE CHALLENGES OF HONOR CRIMES

It is clear that the United States faces the problem of honor killings within families, and that the law is not equipped to fully combat it. But the question remains: what should the states do about it? At what point can the Rifqa Bary's of our communities, whose parent legitimately threatens her security and her life, find solace in the law? It is plainly a hard question to ask, because the problem is complex and involves belief systems, which are so vital and esteemed in this country. But hard questions shouldn't be avoided. In fact, there may be a variety of possible solutions.

The first category of solutions, which will not be thoroughly discussed, is non-legal. It would be remiss not to at least suggest the possibility for state legislatures to take steps by raising awareness within the law enforcement community. They can do so by simply accounting for these

159. FOX NEWS, *supra* note 60.

160. *Terror and Death at Home Are Caught in F.B.I. Tape*, *supra* note 66.

161. For example, one of the strict rules of the Palestinian father was that his daughters were forbidden from dating outside the faith or even from leaving home without permission, preventing their communication and interaction with the outside world. *Id.*

162. TEX. FAM. CODE § 161.001(1)(E) (West 2008) (emphasis added).

types of crimes in their state and training the police force in ways to recognize apostasy and honor crimes and the motives behind them. In addition, states could partner with NGOs to provide a number of resources for women and children who feel threatened by such a crime. Sharing of information and education can be achieved by offering a website or hotline for potential victims to network, talk to someone they can trust, learn about their legal rights, obtain legal support, and report the situation in a safe and confidential matter. Finally, the ultimate non-legal protection would come in the form of a safe house, providing temporary housing either for children who have been removed from their home or for those who have fled their home in fear.

It is the ultimate authority of the state to ensure the welfare, morals, safety, and health of its citizens.¹⁶³ The primary mechanism for achieving that is through the arm of the law. Therefore, legislatures should not shy away from enacting law to directly and effectively stop fundamentalist parents who want to harm or slay their child for their religious disobedience. This is not the type of religious practice that the First Amendment meant to protect, and it is within the state's realm of authority to prevent it.¹⁶⁴ Even more, it is the state's duty to protect it.¹⁶⁵

A. Emergency Removal When Criminal Intent Is Present

Among the different methods available to a state, one solution is to expand the authority of temporary state intervention when a child claims to be threatened by this type of crime. The ultimate question is: what can the courts constitutionally consider to be an immediate danger that poses an individualized threat to the child? Past honor crimes illustrate the tendency of fundamentalist parents to kill or harm their child after a series of minor rebellions against traditional, anti-western rules or practices (i.e., western social behavior such as dating, working, or playing sports), or after a major rebellion (i.e, rejecting a forced marriage), because of the impropriety of the behavior and the desire to rid the family name of dishonor.¹⁶⁶

While the law cannot target any particular belief system, it can target criminal intent. Furthermore, the law can take motive into account. Creating

163. BLACK'S LAW DICTIONARY 1446 (9th ed. 2004) (defining "state police power").

164. See *supra* text accompanying footnotes 106-09.

165. See FREDERIC BASTIAT, THE LAW 3 (3rd ed. 2007) (defining and confining the role of law "to protect persons, liberties, and properties; to maintain the right of each, and to cause *justice* to reign over us all").

166. See *supra* text accompanying notes 66-76.

a motive-based provision within the emergency removal laws is un-chartered territory; motive-based crimes, however, are not new to the justice system. For example, conspiracy law, unlawful purpose statutes, race-based and hate-crimes all mandate a harsher sentence due to the motive of the crime.¹⁶⁷ While not in the penal code, this law would similarly target a motive-based intent before the crime has taken place.

A model statute, based on Texas' emergency removal provision with italics indicating what has been added, could read:¹⁶⁸

(d) In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which the child would be returned includes a person who:

(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) has sexually abused another child; or

(3) *threatened the child, by words or acts, with the intent to commit a specified offense against a child for the purpose of removing a perceived dishonor that the child's behavior has brought upon the household. A removal under this section must not be conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States.*

(e) *A "specified offense" is an offense defined by any of the following provisions of this chapter: . . .*¹⁶⁹

In practice, this would mean that an officer is authorized to remove a child without a warrant when the elements are met: (1) a parent's specific intent to commit a crime, (2) motivated by the desire to restore family honor by removing the culprit's dishonor, and (3) specific action, in the form or words or acts, that indicates their willingness to act on such beliefs. As far as the first element is concerned, specific intent crimes are pervasive in our legal code and therefore this requirement should not pose a problem to law enforcement officials or judges. This element is essential because it limits the reach of law to remove a child only when the parent intends to

167. Joshua S. Geller, *A Dangerous Mix: Mandatory Sentence Enhancements and the Use of Motive*, 32 *FORDHAM URB. L.J.* 623, 623 (2005). *See also* 18 U.S.C. § 242 (2003).

168. TEX. FAM. CODE § 262.201(d) (West 2008).

169. The clause would then include any crime already within the penal code, and their section number. For a hate crime law that uses similar structure, see N.Y. PENAL LAW § 485.05(3) (McKinney 2003).

commit a criminal offense as defined in the statute; the provision will not apply to common parental discipline.

However, the second element will admittedly be more problematic, given the uncertainty of what would constitute a “perceived dishonor.” The purpose of this element is to require a showing to the magistrate judge by a preponderance of the evidence that the motive to commit an honor crime exists. Therefore, in order for a magistrate judge to sign the court order authorizing removal, the state would have to provide evidence of the perceived dishonor. That evidence would come in the form of testimony by the child, or by a person close with either the child or the child’s parents, and must state two conditions. First, the testimony must show what behavioral expectations were placed on the child as a result of extreme ideological beliefs, and second, what actions were taken by the child that failed to meet those expectations.

To reiterate, these two conditions are based on the pattern of past honor crimes, where the parents create extreme limitations on the child, such as a forced marriage, the prohibition of the child to fraternize with those outside of the religion, and other rules significantly limiting the child’s freedom. In Rifqa’s case, it was her inability to choose her own religion freely that caused the parent’s intent to harm. It is not these “rules” that this Comment seeks to punish, because parents of all religions and cultures have the right to raise their child as they best see fit. Rather, it is the intent of the parent to harm their child in the event that the child breaks the rules that needs to be prevented. Therefore, when evaluating the evidence, the judge must use discretion in determining whether the ideological beliefs that lead a person to commit an honor crime, regardless of what religion the person is, truly exist. That is why the judge and the law enforcement officials must be students of honor crimes in order to understand the extreme nature of the beliefs that lead to the crimes and how they reveal themselves practically.

Under the third element, the individualized threat must be manifested and evidenced by the words or acts of the parent. This also may be shown by testimony by the child or by a person who is close with the either child or the child’s parents. This element is essential because it requires that the parent’s words or actions amount to a threat of harm, thereby protecting parents who may have strong beliefs, but pose no actual risk to a child. Child testimony should be sufficient in proving all three elements under the proposed temporary removal statute, as others in the community tend to hide the criminal intent of the parents.

Finally, the model statute contains the provision that no removal may be made “solely on the basis of activities protected by the first amendment to the Constitution of the United States.” While case law governing parental

rights already protect parental freedom under the first amendment, it is important for law enforcement officials and magistrate judges to understand that even in this particular query, they cannot undertake investigations leading to the removal of a child by simply identifying members of certain religions that might lead to an honor crime. The individualized suspicion must be grounded on the parent's manifested intent to commit a crime.

B. Permanent Termination When Criminal Intent Is Present

Emergency removal will only be effective in these cases if it leads to permanent termination of parental rights. However, as seen in Texas' involuntary termination statute, the parent will only lose his or her rights if they have already "engaged" in conduct that endangers the child. While a liberal court may find threatening statements to meet this element, judges who keep close to the text would likely not. Therefore, the involuntary termination statute should include a provision for cases when the child is in danger based on the parent's intent to harm with an honor-based motive, similar to the model emergency statute. A model termination statute, again based on the Texas statute with italics indicating what has been added, would read:

The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

.....

(F) threatened the child, by words or acts, with the intent to commit a specified offense against a child for the purpose of removing a perceived dishonor that the child's behavior has brought upon the household. A termination under this section must not be conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States.

(i) A "specified offense" is an offense defined by any of the following provisions of this chapter: . . .

This language mimics the proposed language in the temporary removal statute because the evidence needed to prove a legitimate threat exists essentially revolves around the same three elements.¹⁷⁰ However, as previously explained, a termination requires *more* proof of danger to the child because constitutionally there is a higher burden when dealing with permanent termination of parental rights; it must rise to the level of clear

170. See *supra* text accompanying note 169.

and convincing.¹⁷¹ This makes sense, as a court would not want to infringe upon parental rights unless there is certain to be an actual danger to the child. While in a temporary removal, the child's testimony alone should suffice to meet the preponderance standard, in a termination hearing the state would want corroborating evidence, such as testimony by a sibling, the other parent, a relative, or a close friend of the family. Again, it will be a difficult burden to meet because of the hidden nature of the threats and the closed-off nature of the community. Therefore, police and law enforcement officials should be trained in how to look for evidence in this type of environment.

C. *Extending Time Allotted for Voluntary Leave of Children*

Some children, like Rifqa, run away from their homes because of the intense fear of losing their life, rather than simply notifying the police of potential harm. Indeed, this reaction seems somewhat likely, especially if a child is threatened by more than one person in the family, like Zein Isa.¹⁷² Therefore, a legal option for states to consider in addition to the above amendments is to extend the legal time allowed for children who voluntarily leave their homes in fear of an honor or apostasy crime. Many states grant authority for state custody when the child has run away from home.¹⁷³ In Texas, the state only has fourteen days to prove that there is a substantial risk of continuing danger to the child in order to obtain a temporary order.¹⁷⁴ This allotment may not be enough time for the state to find sufficient evidence to prove their case, since as the trend illustrates, the threats will be concealed under the parents' belief in extrajudicial action and the community support for it. Therefore, this safety measure would provide children with an extended escape if the threat were legitimate, while allowing the state an additional time to investigate whether or not the threat is real.¹⁷⁵ But this time extension would only be valuable if the temporary removal and termination statutes already include language like the proposed above, in order to give judges the authority to protect children faced with apostasy or honor-based crimes.

171. *See supra* text accompanying note 114.

172. *See supra* text accompanying notes 66-69.

173. *See* ALASKA STAT. ANN. § 12.15.125 (West 2008); COLO. REV. STAT. ANN. § 19-3-401 (2009); GA. CODE ANN. § 15-11-45 (2010); 43 PA. CONS. STAT. ANN. § 6324 (West 2010);.

174. TEX. FAM. CODE § 262.201 (West 2008).

175. In any state, federal law requires that a permanency hearing must be within twelve months of the child entering foster care. 42 U.S.C. § 675 (2010).

V. CONCLUSION

Honor and apostasy crimes have arrived. They are no longer a distant dilemma, but are a reality that Americans are facing across the country. They stem from a number of factors, some religious and some not. They flourish in communities characterized by control and oppression. These closed communities fight against the freedom and openness of the West, the liberty promoted through democracy. They embrace violence if necessary to promote their beliefs, even violence against their own family members. This extremism is in direct opposition to the liberty upon which this country was founded, a freedom that protects each individual's right to choose his or her own religion.¹⁷⁶

Communities that embrace fundamentalist Islam are a breeding ground for these crimes because they embody all of these characteristics. Moreover, there are Islamic scriptures and principles that have been interpreted, at least traditionally, to support harming or killing for apostasy and cleansing the family for honor.¹⁷⁷ While there is a significant amount of controversy in regards to whether or not the religion actually authorizes or commands these crimes, the trend is made evident that killing for honor or apostasy occurs most commonly in fundamentalist Muslim families, communities, and countries.¹⁷⁸ In fact, the crimes have increased drastically in Europe in direct relation to the increase of the Muslim population.¹⁷⁹

European countries are beginning to dialogue on how to best attack the prevalence of crimes. For them, the wait is over because too many people have been harmed or killed. What was once too culturally sensitive has become a top priority.¹⁸⁰ Some countries have legislated, some have created government agencies, and some have merely begun to track the occurrences of the crimes. But, they have begun the fight, and now it is America's turn.

America has seen its share of honor killings in recent years, as they have become increasingly common. Most recently, America was drawn into the story of Rifqa Bary's conversion from Islam to Christianity, and her subsequent escape to find safety from her allegedly threatening parents. While her case has been settled privately, her legacy remains: what can a

176. U.S. CONST. amend. I. This right is also protected by the Universal Declaration of Human Rights, which was enacted in 22 U.S.C. § 6401 (2000) and § 6402 (1998).

177. *See supra* text accompanying notes 5-9.

178. *See supra* text accompanying notes 43-50.

179. *See supra* text accompanying notes 61-62.

180. *See supra* text accompanying note 83.

state do to protect children from parents whose belief system would tell them to harm or kill their child for disobedience or conversion?

This Comment has presented a discussion of various legal solutions as the law exists and has suggested some potential changes to better deal with this question. Currently, a state can initiate its temporary removal power to extract a child from its home when there is an imminent danger to the child. The state agents must take care to follow the state and constitutional requirements for due process, which requires notice, hearing and a chance to be heard.¹⁸¹ But because due process is less stringent for temporary removal than for permanent removal, an agent can even interfere without a warrant if requiring prior notice and a hearing would put the child in danger.¹⁸² This presents an opportunity for the state to extract a child when the threat is communicated. However, if the threat is not clearly communicated but is based on circumstantial evidence, which will likely be the case based on the trend exposed in past honor killings, such circumstantial evidence may not be enough under our current framework to prove that the threat truly exists.

While few states can utilize the “course of conduct” test and point to the entirety of a parent’s course of conduct that shows the threat exists, many states do not have such a statute.¹⁸³ Even using that test, the search and seizure clause of the Fourth Amendment as interpreted in *Yearning for Zion Ranch* requires the individualized suspicion that demands more than a pervasive belief system of the parents to establish imminent danger.¹⁸⁴ The state must prove the imposition of the tenets of that belief system upon the child in custody.¹⁸⁵ Yet, this belief system does not merely impose the crime of underage marriage or polygamy, like fundamentalist Mormonism. It threatens the death of a child who is determined to live her life in accordance with beliefs that differ from her parents. Therefore, the state

181. See Carol J. Miller, Annotation, *Validity and Application of Statute Allowing Endangered Child to be Temporarily Removed from Parental Custody*, 38 A.L.R. 756 (2009). See also *In re Willis*, 207 S.E.2d 129, 138, 140 (W. Va. 1973) (explaining that the Constitution guarantees parents notice and an opportunity to be heard; furthermore, “in order to separate a child from its parents on the ground of their unfitness, there must be clear, cogent and convincing proof”).

182. Temporary removal requires only the preponderance of the evidence, while permanent removal requires clear and convincing evidence. See *supra* text accompanying notes 124-125.

183. See *In re J.J.S.*, 272 S.W.3d 74, 78 (Tex. App. 2008).

184. *In re Steed*, No. 03-08-00235-CV, 2008 Tex. App. LEXIS 3652 (Tex. App. May 22, 2008), *aff’d*, *In re Tex. Dep’t of Family & Protective Servs.*, 255 S.W.3d 613 (Tex. 2008).

185. See *supra* text accompanying note 146.

should take this threat seriously and truly consider what it can do to protect threatened children.

An effective solution may be to account for such occurrences in the law, by giving the state authority to remove a child in the instance that a parent who adheres to a fundamentalist belief system would carry out his or her beliefs to the extent of harming the child. While our law as it stands gives the courts deference to determine whether or not an imminent threat of harm exists, the statute may not be enough to sort out these types of threats that grow from deep within isolated communities who prefer to avenge grievances with crime and without the court system.

Another alternative may be to grant extended time before a termination hearing for cases where the threat of an honor or apostasy crime may be present. This would give the state agents an extension to determine the probability of the threat and provide an increased protection to the threatened child. Regardless of what method a state chooses to employ, whether through the law or other means, the state should not avoid the realities that these crimes are happening with some regularity, and are likely to continue. This was Europe's position for many years, until governments realized that cultural sensitivity is not enough of an excuse to deny the existence and prevalence of honor and apostasy crimes.¹⁸⁶ To reuse the popular maxim, "all that is necessary for evil to triumph is for good men to do nothing."¹⁸⁷

186. See HOUSE OF COMMONS, *supra* note 24; EUR. PARL. ASS., *supra* note 25; and Kurdish Human Rights Project, *supra* note 26.

187. Although it is often attributed to English political philosopher, Edmund Burke, its source is actually unknown. See Martin Porter, 'All that is necessary for the triumph of evil is that good men do nothing' (or words to that effect): A Study of Web Quotation, TARTARUS (Jan. 2002), <http://tartarus.org/~martin/essays/burkequote.html>.