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# Abolishing the Corporal Punishment Exception to Child Abuse in New York

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# Abolishing the Corporal Punishment Exception to Child Abuse in New York

Updated: Nov 30, 2021

Do you condone child abuse? Upon hearing the question, the presumably immediate answer is an unequivocal “no.” This presumption would further flow into the expected answers of the general public. This is a firm notion that we expect most people to hold: Child abuse is bad. Yet, according to a 2021 American Family Survey, forty-seven percent of the United States population supports child abuse in some circumstances.[1] While it is true that the child abuse described in the survey had a different name, it is nonetheless child abuse. This “other name” is corporal punishment, which consists of using physical force upon a child to maintain discipline.[2]

So, why exactly is corporal punishment equitable to child abuse? Unsurprisingly, there are many studies that showcase the negative emotional consequences and life outcomes for children who were physically and/or emotionally abused in childhood.[3] Moreover, very similar results have been found in people that were corporally punished in childhood.[4] For example, a recent study found that spanking children as punishment, “was associated with increased likelihood suicide attempts, moderate to heavy drinking, and street drug use in adulthood.”[5] Consequently the long-term effects of corporal punishment are strikingly similar to those of an abused child. Substantively, the difference between corporal punishment and child abuse is one of degree delineated by law. Both involve injuring a child and both have negative long-term consequences for the child, yet one is criminalized and the other is not.

Granted, not all forms and instances of corporal punishment can rise to the level of criminal culpability. New York State has a few different crimes that encompass the possibilities of criminal liability in regard to child abuse, ranging from the misdemeanor of Endangering the Welfare of a Child[6] to the felony of “Depraved Heart” Murder in the Second Degree[7]. As a baseline, New York Penal Law requires that the abuser knowingly acts in a way likely to be physically, mentally, or morally injurious to a child under the age of 17.[8] Any form of corporal punishment appears to fit this requirement when looking at surface level. However, finding the threshold is a difficult task that is only exacerbated by one specific section of New York’s Penal Law. Essentially, this “corporal punishment exception” carves out a justification for parents and guardians to harm their children physically or emotionally if they deem it a reasonably necessary form of punishment.[9] Again, this justification creates a large issue in determining the line of what is and what is not criminal use of force against a child. Quite frankly, there should be no line to consider. As stated at the outset, corporal punishment is child abuse, and there should be no legal justification differentiating the two in the State of New York.

Troublingly, the crux of successfully arguing that the physical abuse of a child is justified as corporal punishment partially relies upon the subjective viewpoint of the abuser. The law says the jury must decide if the defendant believed the force was necessary for discipline and if that belief was reasonable under the circumstances.[10] While it is true that New York Family Court has expressed certain factors in deciding what is reasonable, they truly do nothing in expressing where the line between excessive and reasonable is. Some of the factors to consider are the age, sex, physical and mental condition of the child, method of punishment, the child's capacity to understand the punishment and correct their behaviors, and whether any less severe actions would have been equally effective.[11] But again, these factors only serve to make a blurred line slightly more comprehensible. This antiquated "parenting style" of corporal punishment is proven ineffective, yet the State continues to excuse behaviors injurious to children in cases that are not flagrant enough to warrant immediate outside attention as excessive. Partially, the evaluation standard of corporal punishment is reasonable objectiveness, but what form of injury to children can be said to be reasonable when the conduct is proven ineffective and leads to long-term harm to the child?[12]

All in all, the use of corporal punishment has proven negative consequences equitable to the negative consequences of criminalized behavior that constitutes child abuse. The two acts are differentiated based on what can be called objectively reasonable punishment to correct behaviors, yet corporal punishment is not effective in long-term behavioral change in children.[13] Based on the well-founded scientific data regarding the ineffectiveness of corporal punishment and its long-term negative consequences, there is no reason to continue to criminally excuse this behavior as different than child abuse under New York law. Physical and emotional injury to children at the hands of the adults they trust to take care of them should be criminalized without exception. Abolishing the corporal punishment exception to child abuse would remove an unnecessary barrier to discovering and helping injured children by eliminating the need to qualify injury as excessive before intervention is possible.

[1]THE CTR. FOR THE STUDY OF ELECTIONS AND DEMOCRACY AT BRIGHAM YOUNG UNIVERSITY, DESERET NEWS & YOUNG, AMERICAN FAMILY SURVEY SUMMARY REPORT: RESILIENCE IN THE FACE OF CHALLENGES, 61 (2021). The American Family Survey is an annual national survey to, "understand the state of public opinion about the American family and the experiences of American families."

[2] N. Y. PENAL LAW § 35.10(1) (Consol. 2014).

[3] See Lane Strathearn, Michelle Giannotti, Ryan Mills, Steve Kisely, Jake Najman & Amanuel Abajobir, *Long-term Cognitive, Psychological, and Health Outcomes Associated With Child Abuse and Neglect*, 146, AM. ACADEMY OF PEDIATRICS, 389, 398 (2020); Tracie O. Afifi, Derek Ford, Elizabeth T. Gershoff, Melissa Merrick, Andrew Grogan-Kaylor, Katie A. Ports, Harriet L. MacMillan, George W. Holden, Catherine A. Taylor, Shawna J. Lee & Robbyn Peters Bennett, *Spanking and adult mental health impairment: The case for the designation of spanking as an adverse childhood experience*, 71 CHILD ABUSE & NEGLECT 24, 28-29 (2017).

[4] Afifi, *supra* note 2 at 29.

[5]*Id.*

[6] N. Y. PENAL LAW § 260.10 (Consol. 2014).

[7] N. Y. PENAL LAW § 125.25(4) (Consol. 2019).

[8] N. Y. PENAL LAW § 260.10(1) (Consol. 2014).

[9] N. Y. PENAL LAW § 35.10(1) (Consol. 2014). Notably, the corporal punishment exception does not apply to Endangering the Welfare of a Child. *People v. Fields*, 134 A.D.2d 365 (1987), *People v Williams*, 102 A.D.3d 566 (2013).

[10] *People v. Franklin*, 433 N.Y.S.2d 482 (1980).

[11] *In re C.*, 91 Misc. 2d 677 (1977).

[12] NEW YORK STATE CHILD PROTECTIVE SERVICES MANUAL, CHAPTER 14: APPENDICES, A-1, E-7 (2017) (detailing factors to consider in determining excessive corporal punishment such as, “[t]he child's age, sex, physical and mental condition, and capacity to understand correction; The nature of the punishment; The seriousness of injury to the child or risk of serious injury; The means of punishment used - is it appropriate to correct the child's behavior are less severe alternatives available; The purpose of the punishment; The child's behavior which requires correction; • The character of the punishment, whether it is degrading or brutal; Duration of punishment, whether it is protracted beyond the child's endurance”).

[13] Brendan L. Smith, Physical discipline is slowly declining as some studies reveal lasting harms for children, 43 AM. PSYCH. ASS'N. 60 (2012).