



Judge Leonard Edwards  
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## Corporal Punishment and The Law

**W**ere you spanked as a child? Do you spank your children? Do you scream at them when they misbehave? We all have our stories to tell and our opinions about spanking and screaming. Some advocates argue that spanking should be outlawed, while others believe that it is an effective means of disciplining one's children. Others resist any efforts made by the state to tell families how to rear their children. Others believe that spanking is supported by the Bible. California law permits parents to engage in "reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury."<sup>1</sup> There have been a few cases where the juvenile courts have been asked whether spanking was reasonable and age-appropriate, the most recent California case being *Gonzalez v Santa Clara County Dept. of Social Services*.<sup>2</sup> The spanking in that case involved striking the child with a wooden spoon that caused bruises. The agency concluded that it was a violation of the statute, but the Court of Appeals found that the parent applied reasonable physical discipline to the child. The fact that the spanking involved bruising was not conclusive since the parent did not intend to inflict bruises and did not know that the conduct would result in bruises. In the case of *In re Jasmine G.*<sup>3</sup>

the appellate court in dictum indicated that hitting a child with a belt and switch "crossed the line over into abuse." There are a few similar cases in other jurisdictions.<sup>4</sup>

All states permit spanking just as there is general public approval of reasonable corporal punishment by parents although the approval seems to be diminishing.<sup>5</sup> Some child development experts support the use of moderate corporal punishment.<sup>6</sup> Various religious teachings urge the use of spanking.<sup>7</sup>

In spite of this support for spanking, this paper takes the position that spanking is harmful to children, is an ineffective means of parental discipline, and should be outlawed in our state at least for our most vulnerable children.

Over 100 children die from physical abuse each year in California and almost 100 children suffer near fatalities, most by parents and most involving children five years of age or younger.<sup>8</sup> The United States Department of Health and Human Services concluded that "Violence towards very young children has reached the level of a public health crisis and is similar in scope to the destruction of teenagers by street gunfire."

Most of us would protest that our spanking is very moderate and has a positive disciplinary impact on our children. Yet research tells

a different story. As Elizabeth Gershoff, a University of Texas at Austin wrote in her meta-analysis of 50 years of research on spanking encompassing 160,000 children both boys and girls in the United States.

We found [spanking] linked to more aggression, more delinquent behavior, more mental health problems, worse relationships with parents, and putting the children at higher risk of physical abuse from their parents.<sup>9</sup>

The research concludes that "although spanking is traditionally supposed to teach a lesson to correct bad behavior, children who were spanked were neither more compliant nor better behaved."<sup>10</sup> Further support comes from studies that show that corporal punishment in schools leads to negative societal outcomes for the children.<sup>11</sup> Corporal punishment in schools is still legal in many states,<sup>12</sup> but not in California.

The American Academy of Pediatrics (AAP) has just released a policy statement advising parents against the use of spanking as a disciplinary tool. The AAP wrote that "[h]itting children increases their risk for multiple detrimental outcomes including brain development, social skills, and mental health."<sup>13</sup>

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Parents, other caregivers, and adults interacting with children and adolescents should not use corporal punishment (including hitting and spanking) either in anger or as a punishment for or consequence of misbehavior, nor should they use any disciplinary strategy, including verbal abuse, that causes shame or humiliation.<sup>14</sup>

The American Professional Society on the Abuse of Children (APSAC) supports the AAP's policy statement concluding that spanking "increases aggression in young children in the long run and is ineffective in teaching a child responsibility and self-control."<sup>15</sup>

**A PROPOSAL**

Perhaps we should consider ending some forms of corporal punishment. What about a proposal that adults be prohibited from using corporal punishment on children five years of age and under? The law would simply state that it is illegal to hit children under that age. There would be no crime, no punishment, just a law stating a societal goal. That is what happened in Sweden years ago. A similar law was passed over strong public opposition. It was followed by a public education program that accompanied the law explaining alternative ways to discipline children. Now, years later, people in Sweden strongly support that law and 53 additional countries have passed similar laws. These laws prohibit striking children of all ages, not just those five years of age and younger. Studies regarding the impact of these laws indicate that there are lower rates of physical fighting among adolescents compared to those that have not.<sup>16</sup>

Some may say "I was spanked as a child and look at me now." You may be a success now, but that

doesn't mean that it was beneficial to you or that alternative means of discipline would not have worked better in the long run. Maybe, in some cases, the corporal punishment has made our lives more precarious and unhappy, and maybe, we haven't turned out quite as well as we'd like to believe.<sup>17</sup>

Many people resisted mandatory seat belts when they were introduced. The same can be said for bicycle helmets. In the late 19th Century, it was legal to hit one's wife. It has taken us a long time as a society to take domestic violence seriously, but now it is against the law and rigorously enforced. Smoking was not perceived as a health risk until a few decades ago. Practices change over time in response to new health information. Isn't it time we declared that it is harmful to use corporal punishment on young children?

But what can we do with out-of-control children who need some form of discipline? Fortunately, there are proven interventions that help parents control their children without using corporal punishment. Triple P is one example of an evidence-based parent education program,<sup>18</sup> and there are others.<sup>19</sup> A study of the effectiveness of the Triple P program concluded that

"[t]he real-world magnitude of the observed effects can be derived from the data. In a community with 100,000 children under 8 years of age, these effects would translate into 688 fewer cases of CM (child maltreatment), 250 fewer out-of-home placements and 60 fewer children with injuries requiring hospitalization or emergency room treatment."<sup>20</sup>

Several California counties including Santa Clara, Santa Cruz,

and San Francisco now use the Triple P program when working with families.

Times change, and cultures also change, but sometimes the law and education can help make those changes. By letting adults know that it is not legal to strike young children, we, as a society, will begin to set a standard that will reduce the numbers of children who suffer from parental abuse.

No other state has passed similar legislation. California can be the first. Now is the time to recognize what science has informed us. Let's end corporal punishment of our most vulnerable children. 🍎

**Endnotes:**

- 1 Welfare and Institutions Code §300(a).
- 2 223 Cal. App. 4th 72 (2014). The result is consistent with the case of *In re D.M.*, (2015) 2422 Cal. App. 4th 634.
- 3 183 Cal. App. 4th 282, 291 (2000); see also *In re A.E.*, (2008), 168 Cal. App.4th 1.
- 4 *In re J.P.*, 294 Ill. App. 3d 991, 692 N.E. 2d 338, 346 (1998); *Johnson v Smith*, 374 N.W. 2nd 317m 329 (1985).
- 5 Strauss, M., and Donnelly, D. "Corporal Punishment of Adolescents by American Parents," 24 *Youth and Society* 420 (1993).
- 6 Dobson, James, *The New Dare to Discipline*, 23, 44 (1992). Carson, Barbara, "Parents Who Don't Spank: Deviation in the Legitimation of Physical Force" (1996) (unpublished Ph.D. dissertation, University of New Hampshire) cited in Murray Strauss and Carol Yodanis "Corporal Punishment by Parents: Implication for Primary Prevention of Assaults on Spouses and Children," 2 *Roundtable* 23, 44 (1992);
- 7 "Regardless of governmental laws, God's law states that spanking is necessary for the proper development of a child." La Vista Church of Christ, Omaha, NE. "... attacks on spanking are thinly disguised attacks on parental authority. If current trends continue, Christian parents may find themselves forced to choose between obeying the law of the land or the law of God. Who knew that parenting in the 21st century would require such courage?" R.

- Albert Mohler, Jr., president of The Southern Baptist Theological Seminary, Louisville, KY.
- 8 California Department of Social Services, "California Child Fatality and Near Fatality Annual Report, Calendar Year, 2017.
- 9 Gershoff, E., "Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review," *Psychological Bulletin*, 2002, Vol. 128, No. 4, 539-579.
- 10 *Id.*; Strauss, M., Donnelly, *Beating the Devil Out of Them*, Taylor & Frances, N.Y. (1993); Riak, J., "Plain Talk about Spanking," Parents and Teachers Against Violence in Education ([www.nospank.net](http://www.nospank.net)).
- 11 Guthrow, J., "Correlation Between High Rates of Corporal Punishment in Public Schools and Social Pathologies," December 2002; <http://nospank.net/correlationstudy.htm>.
- 12 *Ingraham v Wright*, 430 U.S. 651 (1977)
- 13 Sege, R.D., and Siegel, B.S., "Effective Discipline to Raise Healthy Children," *American Academy of Pediatrics, Pediatrics*, 2018;142(6). E20183112.
- 14 *Id.* at p. 6,
- 15 <https://www.championsforchildrenhr.org/apsac-position-statement-corporal-punishment-children/>. The National Association of Pediatric Nurses agrees with both policy statements. [www.jpeds.org](http://www.jpeds.org).
- 16 Cole, D., "What Happens When A Country Bans Spanking?" <http://npr.org/sections/goatsandsodas/2018/10/25/660191806/what-happens-when-a-country-bans-spanking>.
- 17 Coulson, J., "The Fallacy of the 'I Turned Out Fine' Argument," *The New York Times*, <https://www.nytimes.com/2018/11/27/well/family/the-fallacy-of-the-i-turned-out-fine-argument.html>.
- 18 Sanders, M.R., Kirby, J.N., Tellegen, C.L., & Day, J.J., "The Triple P-Positive Parenting Program: A Systematic Review and Meta-Analysis of a Multi-Level System of Parenting Support," *Clin. Psychol. Review*, 2014; 34(4): 337-357.
- 19 *Op.cit.*, footnote 18 at p. 5. See also "What's the Best Way to Discipline My Child?" *American Academy of Pediatrics, "Guidance for Effective Discipline Pediatrics April 1998, VOLUME 101 / ISSUE 4.*
- 20 *Op.cit.* footnote 18