



Global Initiative to
**End All Corporal Punishment
of Children**

BRIEFING ON USA FOR THE COMMITTEE AGAINST TORTURE – 53rd session November 2014

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This briefing describes the legality of corporal punishment of children in the USA. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary-General’s Study on Violence against Children, the recommendations to the USA by the Human Rights Committee and the question raised in the LOIPR for the USA adopted by the Committee Against Torture, we hope the Committee, in its concluding observations on the USA’s third to fifth report, will:

- **express concern at the continued legality of corporal punishment of children in the home and schools and recommend the enactment of legislation at federal level to prohibit all corporal punishment in schools, homes and other settings, including the passage of the Ending Corporal Punishment in Schools Bill as a matter of priority.**

1 The USA’s report to the Committee

1.1 The USA’s third to fifth report to the Committee Against Torture is written in response to the List of Issues Prior to Reporting adopted by the Committee.¹ The LOIPR asks the state party to “describe the steps taken to end the practice of corporal punishment in schools, in particular of mentally and/or physically disabled students”. In reply, the Government notes that there is a “significant trend away from corporal punishment”, that case law confirms a constitutional right of students to be free from “excessive” or “arbitrary” corporal punishment and that efforts are under way to ensure corporal punishment is inflicted in a “non-discriminatory” way.² However, there is no reference to law reform to ensure that corporal punishment is prohibited in all schools throughout the state party; neither is it acknowledged that all children in the USA may lawfully be physically punished in their homes and other care settings.

1.2 Children in the USA – like adults – have a fundamental human right not to be subjected to corporal

¹ 20 January 2010, CAT/C/USA/Q/5, List of issues prior to reporting

² 4 December 2013, CAT/C/USA/3-5, Third-fifth state party report, paras. 226-229

punishment. In failing to enact legislation that prohibits all forms of corporal punishment in the home, schools and all settings, the Government is preventing children from enjoying this right and is condoning widespread violation of this right by parents, teachers and other adults. We note that a federal bill to prohibit corporal punishment in schools is currently under discussion (see below, para. 2.7).

1.3 We hope the Committee will recommend to the USA the enactment of legislation at federal level to prohibit all corporal punishment in schools, homes and other settings, including the passage of the Ending Corporal Punishment in Schools Bill as a matter of priority.

2 The legality and practice of corporal punishment of children in the USA

2.1 **Summary:** Corporal punishment of children in the USA is unlawful as a sentence for crime but it is not prohibited in all states in all alternative care settings, day care, schools or penal institutions. It is lawful in the home throughout the USA.

2.2 **Home (lawful):** State laws confirm the right of parents to inflict physical punishment on their children; legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing.

2.3 Numerous studies have documented a high prevalence of corporal punishment, including of very young children. A study that tracked corporal punishment of 3-11 year olds from 1975 to 2002 found that in 2002 79% of preschool-aged children were spanked, and nearly half of 8-9 year olds were hit with an object such as a paddle or switch.³ Sixty-five per cent of 3 year olds in a sample of nearly 2,000 families had been “spanked” by one or both parents in the previous month.⁴ In a survey in North Carolina of nearly 3,000 mothers of children aged 3-27 months, 30% said they had spanked their child in the past year: 11% of those had done so more than 20 times; 5% of mothers of 3 month olds said they had spanked them, and more than 70% of mothers of 23 month olds.⁵

2.4 **Alternative care settings (prohibited in some states):** Corporal punishment is prohibited in all alternative care settings in 40 states and in the District of Columbia (see Annex).

2.5 **Day care (prohibited in some states):** Corporal punishment is prohibited in all early childhood care and in day care for older children in 36 states (see Annex).

2.6 **Schools (prohibited in some states):** There is no prohibition at federal level of corporal punishment in all public and private schools. In 1977, the US Supreme Court found that the Eighth Amendment, which prohibits cruel and unusual punishment, did not apply to school students, and that teachers could punish children without parental permission.⁶ Corporal punishment is unlawful in public schools in 31 states and in the District of Columbia, though in some states there is no explicit prohibition. Corporal punishment is unlawful in public and private schools in Iowa and New Jersey. It is lawful in public and private schools in 19 states (see Annex).

2.7 A federal bill that would prohibit corporal punishment in schools is under consideration. The Ending Corporal Punishment in Schools Bill (H. R. 5005) would prohibit all corporal punishment, defined as “paddling, spanking, or other forms of physical punishment, however light, imposed

³ Zolotor, A. J. et al (2010), “Corporal punishment and physical abuse: population-based trends for three-to-11-year-old children in the United States”, *Child Abuse Review*, 20(1), 57-66

⁴ Taylor C.A. et al (2010), “Use of spanking for 3-year-old children and associated intimate partner aggression or violence”, *Pediatrics* 126, 415-424

⁵ Zolotor, A. J. et al. (2011), “The emergence of spanking among a representative sample of children under 2 years of age in North [Carolina](#)”, *Frontiers in Child and Neurodevelopmental Psychiatry*, 2(36), 1-8

⁶ *Ingraham v Wright*, 430 U.S. 651 (1977)

upon a student” (s12); it was sent to the Committee on Education and the Workforce on 26 June 2014.

2.8 Thousands of school children are “paddled” (hit with a wooden bat) in the guise of “discipline” every year. Analysis of data on corporal punishment from the Office of Civil Rights, relating to the 2009-2010 school year, revealed that on average, 838 children experience corporal punishment in public schools every day, the equivalent of one every 30 seconds.⁷

2.9 **Penal institutions (*prohibited in some states*)**: The 1977 Supreme Court ruling (see para. 2.6, above) stated that the Eighth Amendment protected convicted criminals from corporal punishment. However, we have been able to identify only around 30 states that have prohibited by law all corporal punishment as a disciplinary measure in juvenile detention. In many others, policy states that corporal punishment should not be used but this has not been confirmed in legislation. The American Correctional Association’s standards for juvenile detention facilities call for “written policy, procedure, and practice [that] protect juveniles from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment”. The comment to the standard states: “In situations where physical force or disciplinary detention is required, only the least drastic means necessary to secure order or control should be used.” The National Juvenile Detention Association has passed a resolution that “opposes any policy or related procedure which advocates, promotes, or authorizes the use of offensive physical intervention techniques that allows staff to hit, kick, or strike juveniles”. The Detainee Treatment Act 2005 prohibits cruel, inhuman or degrading treatment and punishment of any person under the physical control of the state.

2.10 **Sentence for crime (*unlawful*)**: There is no provision for judicial corporal punishment in federal or state law.

3 Recommendations by human rights treaty bodies and during the UPR

3.1 **CRC**: The USA has signed but not ratified the Convention on the Rights of the Child.

3.2 **HRC**: In April 2014, following examination of the fourth periodic report of the USA, the Human Rights Committee expressed concern at corporal punishment of children in schools, penal institutions, the home and child care facilities. The Committee recommended that steps be taken, including law reform, to end corporal punishment in all settings.⁸

3.3 **UPR**: The USA was reviewed in the first cycle of the Universal Periodic Review in 2010 (session 9). The issue of corporal punishment of children was raised in the summary of stakeholders’ information.⁹ No recommendations were made specifically concerning corporal punishment of children but recommendations to ratify and incorporate into law the UN Convention on the Rights of the Child were accepted by the Government.¹⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children

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⁷ Children’s Defense Fund (2014), *The State of America’s Children 2014*, Washington DC: Children’s Defense Fund

⁸ [April 2014], CCPR/C/USA/CO/4 Advance Unedited Version, Concluding observations on fourth report, para. 17

⁹ 14 October 2010, A/HRC/WG.6/9/USA/3/Rev.1, Summary of stakeholders information, para. 40

¹⁰ 4 January 2011, A/HRC/16/11, Report of the Working Group, paras. 92(1)-(11), 92(13)-(25), 92(27), 92(34), 92(37)-(45) and 92(47)-(49)

Annex: State-by-state analysis of the legality of corporal punishment in the US

Notes on schools:

- (i) Unless noted otherwise, state level prohibitions apply only to public schools.
- (ii) Unless noted otherwise, in states in which there is no state level prohibition of corporal punishment, such punishment is permitted unless banned by local boards. In most of these states, it is up to local boards and schools to establish policies regulating the use of corporal punishment.
- (iii) Information in square brackets is unconfirmed.

State	Prohibited in the home	Prohibited in alternative care settings	Prohibited in day care	Prohibited in schools	Prohibited in penal institutions	Prohibited as sentence for crime
Alabama	NO	YES	SOME ¹¹	NO	NO ¹²	YES
Alaska	NO	YES	YES	YES	YES	YES
Arizona	NO	YES	YES	NO	NO	YES
Arkansas	NO	SOME ¹³	SOME ¹⁴	NO	NO ¹⁵	YES
California	NO	YES	YES	YES	YES	YES
Colorado	NO	YES	YES	NO	YES	YES
Connecticut	NO	[YES]	SOME ¹⁶	YES ¹⁷	[NO]	YES
Delaware	NO	[SOME] ¹⁸	YES	YES	NO	YES
District of Columbia	NO	YES	SOME ¹⁹	YES	NO ²⁰	YES
Florida	NO	YES	SOME ²¹	NO	YES	YES
Georgia	NO	YES	YES	NO	NO ²²	YES
Hawaii	NO	YES	YES	YES	[YES] ²³	YES
Idaho	NO	YES	NO	NO	YES	YES
Illinois	NO	YES	SOME ²⁴	YES	YES	YES
Indiana	NO	SOME ²⁵	SOME ²⁶	NO	[NO]	YES
Iowa	NO	YES	YES	YES ²⁷	YES	YES

¹¹ Preschool programmes operated by churches or religious non-profit schools exempt from licensing

¹² But policy states it should not be used

¹³ Prohibited in group homes/institutions and foster care homes licensed by the Arkansas Department of Human Services; not prohibited in private group homes/institutions licensed by the Arkansas Child Welfare Agency Review Board; child care facilities operated by churches possibly exempt from licensing requirements

¹⁴ Prohibited by licensing requirements in family day care and in day care centres; child care facilities operated by churches possibly exempt from licensing requirements

¹⁵ Prohibited for adult prisoners but permitted for juveniles

¹⁶ Some religious based arrangements exempt from child care licensing

¹⁷ But no explicit prohibition

¹⁸ Prohibited in family day care and in day care centres; in foster care, agency policy states corporal punishment should not be used but possibly no prohibition in law

¹⁹ In day care centres, policy states corporal punishment should not be used but no prohibition in law; not prohibited in family day care, but prohibition proposed

²⁰ Policy states corporal punishment should not be used but no prohibition in law

²¹ Child care facilities in church or parochial schools exempt from licensing regulations

²² Policy states corporal punishment should not be used but no prohibition in law

²³ Prohibited in Administrative Rules 17-201-19 (2000), but this provision has been repealed and prohibition in current law unconfirmed

²⁴ Prohibited in all settings except church-sponsored part-day child care programmes for children over 3 years of age

²⁵ Prohibited in day care centres and home foster care; not prohibited in group homes/institutions, but strongly discouraged through training and legal interpretation; prohibited in family day care by agency policy, but as at June 2005 a rule was being promulgated which would include prohibition; possibly not prohibited in unlicensed child care programmes with religious affiliation

²⁶ Prohibited in day care centres and home foster care; not prohibited in group homes/institutions, but strongly discouraged through training and legal interpretation; prohibited in family day care by agency policy, but as at June 2005 a rule was being promulgated which would include prohibition; possibly not prohibited in unlicensed child care programmes with religious affiliation

State	Prohibited in the home	Prohibited in alternative care settings	Prohibited in day care	Prohibited in schools	Prohibited in penal institutions	Prohibited as sentence for crime
Kansas	NO	YES	YES	NO	YES	YES
Kentucky	NO	YES	YES	NO	YES	YES
Louisiana	NO	SOME ²⁸	SOME ²⁹	NO	YES	YES
Maine	NO	YES	YES	YES ³⁰	YES	YES
Maryland	NO	[SOME] ³¹	SOME ³²	YES	NO ³³	YES
Massachusetts	NO	SOME ³⁴	YES	YES	[NO]	YES
Michigan	NO	YES	YES	YES	YES	YES
Minnesota	NO ³⁵	YES	YES	YES	[YES]	YES
Mississippi	NO	SOME ³⁶	SOME ³⁷	NO	NO	YES
Missouri	NO	[YES]	SOME ³⁸	NO ³⁹	YES	YES
Montana	NO	SOME ⁴⁰	[YES]	YES	YES	YES
Nebraska	NO	YES	YES	YES	YES	YES
Nevada	NO	YES	YES	YES	YES	YES
New Hampshire	NO	YES	YES	YES ⁴¹	[NO]	YES
New Jersey	NO	YES	YES	YES ⁴²	YES	YES
New Mexico	NO	YES	YES	YES	YES	YES
New York	NO	YES	YES	YES	[YES]	YES
North Carolina	NO	YES	SOME ⁴³	NO	YES	YES
North Dakota	NO	YES	YES	YES	NO ⁴⁴	YES
Ohio	NO	YES	YES	YES	YES	YES
Oklahoma	NO ⁴⁵	YES	YES	NO	YES	YES
Oregon	NO	YES	YES	YES	YES	YES
Pennsylvania	NO	YES	YES	YES	[YES]	YES
Rhode Island	NO	YES	YES	YES	???	YES
South Carolina	NO	YES	NO	NO	[NO] ⁴⁶	YES

²⁷ Prohibited in public and private schools

²⁸ Prohibited in home foster care, Class A (federally funded) residential centres and emergency shelters; not prohibited in Class B residential centres

²⁹ Prohibited in Class A (federally funded) day; not prohibited in family day care and Class B day care

³⁰ But no explicit prohibition

³¹ Prohibited in all state-regulated child care facilities but possibly lawful in private facilities

³² Prohibited in all state-regulated child care facilities but possibly lawful in private facilities; nursery schools and child care centres operated by tax-exempt religious organisations exempt from licensing standards

³³ Policy states corporal punishment should not be used (information unconfirmed) but no prohibition in law

³⁴ Prohibited in group homes/institutions; discouraged in home foster care through training and legal interpretation but no prohibition in law

³⁵ Examination of several laws of Minnesota has led some legal experts to conclude that corporal punishment is not permitted, but according to the legislation, a parent/legal guardian/caretaker can use reasonable force to restrain or correct a child (Sec. 609.379.[Cr.])

³⁶ Prohibited in home foster care and licensed group homes/institutions; not prohibited in unlicensed group homes/institutions

³⁷ Prohibited in family day care and day care centres

³⁸ Child care facilities of religious organisations exempt from licensing

³⁹ Bill which would prohibit under discussion (2014)

⁴⁰ In home foster care prohibited in agency policy and law states that foster parents may not use “unusual, severe, cruel, capricious, humiliating or unnecessary punishment” and foster parents must show evidence of being able to care “without recourse to physical punishment”, but as at June 2005 regulation carrying a more explicit prohibition was being promulgated

⁴¹ Considered unlawful but no explicit prohibition and law allows the use of force for the maintenance of discipline

⁴² Prohibited in public and private schools

⁴³ Prohibited in family day care and in licensed day care centres; permitted in religious-sponsored day care centres; religious child care facilities, including summer day camps, exempt from licensing

⁴⁴ Law prohibits only “excessive corporal punishment”

⁴⁵ Bill which would confirm parental right to use “reasonable and ordinary force as a means of discipline including, but not limited to, spanking, switching or paddling” under discussion (2014)

⁴⁶ Law prohibits “excessive corporal punishment”

State	Prohibited in the home	Prohibited in alternative care settings	Prohibited in day care	Prohibited in schools	Prohibited in penal institutions	Prohibited as sentence for crime
South Dakota	NO	YES	YES	YES ⁴⁷	[YES]	YES
Tennessee	NO	SOME ⁴⁸	SOME ⁴⁹	NO	NO ⁵⁰	YES
Texas	NO	YES	YES	NO	YES	YES
Utah	NO	YES	SOME ⁵¹	YES	YES	YES
Vermont	NO	YES	YES	YES	?? ⁵²	YES
Virginia	NO	SOME ⁵³	[YES]	YES	YES	YES
Washington	NO	YES	YES	YES	?? ⁵⁴	YES
West Virginia	NO	YES	YES	YES	YES	YES
Wisconsin	NO	YES	YES	YES	YES	YES
Wyoming	NO	YES	YES	NO	[NO] ⁵⁵	YES

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⁴⁷ But no explicit prohibition

⁴⁸ Prohibited in child welfare licensed group homes/institutions and foster care; permitted in Residential Child Care Agencies group homes/institutions (information unconfirmed)

⁴⁹ Prohibited in family day care and day care centres; child care centres run by religious schools exempt

⁵⁰ Permitted in schools for children in detention run by the penal system but prohibited out of school hours

⁵¹ Parochial institutions providing educational care exempt from licensing

⁵² Prohibited by law for adult inmates, but possibly only discouraged by policy for juveniles

⁵³ Prohibited in home foster care; permitted by law in seven licensed group homes/institutions, though policy in all seven states corporal punishment should not be used

⁵⁴ Prohibited by law for adult inmates, but possibly only discouraged by policy for juveniles

⁵⁵ Law prohibits “excessive or unreasonable” corporal punishment