

STATES OF JERSEY



CHILDREN (JERSEY) LAW 2002: REPEAL OF ARTICLE 79

Lodged au Greffe on 13th December 2018
by Deputy M.R. Le Hegarat of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) that Article 79 of the Children (Jersey) Law 2002 should be repealed, together with any other statutory or customary provision of similar effect;
- (b) to request the Council of Ministers to bring forward the necessary legislative amendments; and
- (c) to request the Council of Ministers to implement awareness-raising, guidance and training measures in respect of the prohibition of corporal punishment in conjunction with the introduction of the legislative amendments.

DEPUTY M.R. LE HEGARAT OF ST. HELIER

REPORT

Background

Corporal punishment, the use of physical force with the intention of causing a child to experience bodily pain or discomfort, is the most common form of violence experienced by children worldwide. In extreme cases, it can lead to injury and even death, but overwhelming evidence shows even so-called “light” corporal punishment is associated with a variety of negative outcomes, including poorer mental health, cognitive development and educational outcomes, as well as increased aggression and antisocial behaviour.

Corporal punishment has also been linked to increased approval and use of other forms of violence and criminal behaviour in later life, including domestic violence.

International law

The United Nations Convention on the Rights of the Child (“[UNCRC](#)”) places an obligation on state parties to implement measures to combat violence against the child, including corporal punishment. Article 19 states that: “*States Parties shall take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*”.

The [Committee on the Rights of the Child](#) and other UN human rights treaty bodies, such as the [Committee against Torture](#), systematically address states’ legal obligations to prohibit all corporal punishment of children. At the regional level, the *European Court of Human Rights* has condemned corporal punishment and handled its first [case](#) on physical punishment in the home in 1982.

International position

Sweden became the first country to [outlaw corporal punishment](#) in 1979. And as of 2018, a total of 53 countries have followed, with numerous other countries committed to doing so. Most recently, Scotland has announced plans to amend the law in 2019.

The attached **Appendix** provides a list of countries in which corporal punishment is not a valid defence to assaulting a child.

Position in Jersey

Reasonable corporal punishment is lawful under the [Children \(Jersey\) Law 2002](#) (“the 2002 Law”).

Article 79 states –

“79 Limitation of defence of reasonable corporal punishment

- (1) *Any defence of reasonable corporal punishment of a child shall only be available to a person who was at the time of the punishment –*
 - (a) *a person with parental responsibility for the child; or*

- (b) *a person without parental responsibility for the child who –*
- (i) *is the father or relative of the child;*
 - (ii) *had care of the child; and*
 - (iii) *had the consent of a person with parental responsibility for the child to administer such punishment.*
- (2) *Any defence of reasonable corporal punishment of a child shall not be available if the punishment involved any means other than the use of a hand.”.*

The States agreed (see [P.108/2017](#) “*Independent Jersey Care Inquiry Report: implementation of recommendations*”, page 21) to undertake a wholesale review of key pieces of children’s legislation, including the 2002 Law.

The States also agreed [P.63/2017](#) (“*United Nations Convention on the Rights of the Child: compliance of draft Laws and training of States of Jersey employees*”). Since that time, significant legislative and policy work has been undertaken *with a view to giving further effect to the UNCRC*. It is intended that the outcome of that work will, in time, yield greater recognition for children’s rights, including, one might anticipate, greater recognition of Article 19 of the UNCRC (child’s right to protection from all forms of violence).

Summary

Ending corporal punishment is key to ending violence against children and reducing violence across society more broadly.

Prohibition of corporal punishment in law, combined with effective implementation, is the essential foundation for reducing its use. Children must be seen as full holders of human rights who cannot be hit and hurt in the guise of “discipline”.

Whilst a longer-term review of the 2002 Law would undoubtedly encapsulate a consideration of the appropriateness and legality of the corporal punishment defence to assaulting a child, given IJCI recommendations, commitments to the UNCRC, and developments in other jurisdictions, revising the law in this fundamental aspect should not be delayed. Article 79 should be repealed.

Financial and manpower implications

It is not anticipated that there should be significant financial implications arising from this proposition.

Introduction of the prohibition on corporal punishment requires the States to commit to awareness-raising, implemented through Government agencies.

Data provided by the States of Jersey Police shows 33 cases in 2018¹ where the term “lawful chastisement” was used in a child protection notification, and 46 cases in 2017.

Dip sampling 10 of these cases, in one case parents were offered advice on lawful chastisement for a teenager out of control, with no assault being reported.

¹ At the time of preparing the proposition – October 2018.

The other 9 cases were where a child reported to a teacher that he/she had been slapped at home. Following investigation, the matters were filed as lawful chastisement.

The UNCRC provides statements and interpretation of Article 19 UNCRC, setting out that states should not only pursue legal reform, but also accompany such reform by awareness-raising, guidance, and training where applicable.

The provision of guidance to parents so as to refrain from corporal punishment as a form of parental chastisement, and guidance and training to teachers is required to accompany the legislative changes.

The States of Jersey Government has given an undertaking to take the rights of the child seriously. Repealing Article 79 and affording children the same rights as adults demonstrates this commitment.

APPENDIX

Countries with a ban on corporal punishment in order of when made unlawful –

1. Sweden (1979)
2. Finland (1983)
3. Norway (1987)
4. Austria (1989)
5. Cyprus (1994)
6. Denmark (1997)
7. Latvia (1998)
8. Croatia (1999)
9. Bulgaria (2000)
10. Israel (2000)
11. Germany (2000)
12. Turkmenistan (2002)
13. Iceland (2003)
14. Ukraine (2004)
15. Romania (2004)
16. Hungary (2005)
17. Greece (2006)
18. Netherlands (2007)
19. New Zealand (2007)
20. Portugal (2007)
21. Uruguay (2007)
22. Venezuela (2007)
23. Spain (2007)
24. Togo (2007)
25. Costa Rica (2008)
26. Moldova (2008)
27. Luxembourg (2008)
28. Liechtenstein (2008)
29. Poland (2010)
30. Tunisia (2010)
31. Kenya (2010)
32. Congo (2010)
33. Albania (2010)
34. South Sudan (2011)
35. Macedonia (2013)
36. Honduras (2013)
37. Malta (2014)
38. Brazil (2014)
39. Bolivia (2014)
40. Cape Verde (2014)
41. Argentina (2014)
42. San Marino (2014)
43. Estonia (2014)
44. Nicaragua (2014)
45. Andorra (2015)
46. Benin (2015)
47. Ireland (2015)
48. Peru (2015)
49. Mongolia (2016)
50. Paraguay (2016)
51. Slovenia (2016)
52. Lithuania (2017)
53. Montenegro (2017)