

Parental Rights: Corporal Punishment

While it would be inappropriate for The Rutherford Institute to provide you with legal advice at this time or under these circumstances, we are pleased to provide the following information regarding parental rights and corporal punishment.

INTRODUCTION

Parents generally have the legal right to discipline their children by using reasonable corporal punishment. This right, however, is not absolute and may be subject to scrutiny and restriction by the state. The questions of whether parents have the right to administer corporal punishment and whether a particular parent has inflicted excessive punishment usually arise in one of two circumstances: (a) criminal prosecution or (b) termination of parental rights.

CRIMINAL PROSECUTION: THE PARENTAL PRIVILEGE

Parents accused of inflicting excessive punishment on their children are sometimes prosecuted for crimes such as assault, battery, child abuse or murder.

The common law recognized that parents and persons acting *in loco parentis* (in the place of a parent) had the right to discipline their children by reasonable and timely punishment, including corporal punishment. In other words, if a parent were charged with a crime such as battery, the parent could raise the defense of parental privilege and avoid criminal liability by demonstrating that his use of force against his child was a reasonable exercise of the parental right to discipline.

A vast majority of states continue to recognize the common law rule of parental privilege. Twenty-nine states have expressly incorporated the parental privilege by statute, including Alabama,¹ Alaska,² Arizona,³ Arkansas,⁴ Colorado,⁵ Connecticut,⁶ Delaware,⁷ Georgia,⁸ Hawaii,⁹ Kentucky,¹⁰ Louisiana,¹¹ Maine,¹² Michigan,¹³ Minnesota,¹⁴ Missouri,¹⁵ Montana,¹⁶ Nebraska,¹⁷ New Hampshire,¹⁸ New Jersey,¹⁹ New York,²⁰ North Dakota,²¹ Oklahoma,²² Oregon,²³ Pennsylvania,²⁴ South Dakota,²⁵ Texas,²⁶ Utah,²⁷ Washington,²⁸ and Wisconsin.²⁹ Courts in fourteen other states have adopted the parental privilege by decision, including California,³⁰ Florida,³¹ Idaho,³² Illinois,³³ Indiana,³⁴ Iowa,³⁵ Kansas,³⁶ Maryland,³⁷ North Carolina,³⁸ Ohio,³⁹ Rhode Island,⁴⁰ Virginia,⁴¹ West Virginia,⁴² and Wyoming.⁴³ The versions of the privilege vary slightly among the states but not significantly. While no state has expressly declined to adopt the parental privilege and no state has outlawed corporal punishment, several states have not addressed the issue.⁴⁴

While the law has traditionally given broad discretion to parents in exercising the parental right to discipline their children, the parental privilege is limited, and exceeding those limits leaves the parent open to criminal liability. The limits of the parental privilege cannot be easily defined but rather are adjudicated on a case-by-case basis and stated in terms such as "reasonable under the circumstances."⁴⁵

Courts deciding criminal appeals that address the limits of the parental privilege usually focus on one of two issues. The first issue addresses who is qualified to assert the privilege. Clearly, parents or guardians with legal custody may assert the privilege in disciplining their own children. Persons acting *in loco parentis* may assert the privilege as well. Such persons are individuals who have voluntarily assumed the status of a parent, whether or not through formal legal means. While it is said that persons acting *in loco parentis* can discipline a child to the same extent as a parent, some courts do not give persons acting *in loco parentis* the same latitude in discretion to punish.⁴⁶ The states have traditionally offered the parental privilege to teachers as well, although some states in recent years have withdrawn that protection.

The second and more recurrent issue addressed by the courts is what constitutes reasonable punishment and, more importantly, what punishment exceeds what is reasonable. In determining reasonableness, the law considers all of the circumstances surrounding the punishment, including the age and physical condition of the child, the severity of the punishment inflicted on the child and the gravity of the offense committed by the child. A cursory review of the cases indicates that the courts are very deferential to moderate spankings on the buttocks but are more suspicious when permanent injuries or scars are inflicted, when objects such as glass bottles and baseball bats are used and when episodes of beatings continue for prolonged periods of time. The question of whether a parent's disciplinary action is reasonable is a question for the jury. A defendant's conviction will not be overturned on appeal unless there is no evidence to support the jury's verdict.

TERMINATION OF PARENTAL RIGHTS: WHEN PUNISHMENT BECOMES ABUSE

Parents accused of inflicting excessive punishment on their children are sometimes determined to be abusive, and, as a result, the state terminates their parental rights.

The law in every state provides a procedure for the termination of the parent-child relationship where the parent is physically abusive to the child. While most of these statutes do not explicitly incorporate the parental privilege discussed above,⁴⁷ abuse is defined by the statutes and read by the courts in such a way that reasonable corporal punishment is not considered a ground for termination of the parent-child relationship. In reported cases where a parent's fitness is under attack based on excessive discipline, the common law parental privilege is sometimes discussed and is often alluded to.

The determination of whether a parent's actions are reasonable under the circumstances is a question to be decided by a jury, or by the court if there is no jury. As a general rule, juries do not find punishment to be excessive where a parent spans a child for disciplinary reasons.⁴⁸ In cases where a parent is found to be abusive and parental rights are terminated, the punishment administered clearly appears excessive or other aggravating factors are present.

For example, a Washington father temporarily lost custody of his eight-year-old daughter after a severe spanking that caused bruises and marks, but the court also found that the condition of the home was unacceptable.⁴⁹ Another court, recognizing that "paddling one's own children cannot be the basis of a charge of child abuse and neglect," upheld a lower court's termination of a mother's parental rights where the mother viciously whipped her seven-year-old son with a belt for other than disciplinary reasons leaving permanent scars across his back.⁵⁰ One father lost custody of his 15-year-old daughter when he kicked her and struck her repeatedly across the head, legs and backside with a leather belt upon discovering marijuana under her bed.⁵¹ A mother's relationship with her two children was severed when she refused to cease giving severe beatings that caused extensive bruises and, in one instance, a black eye where a therapist testified that the children's continued presence in the home was "potentially life threatening" and was causing the children psychological problems.⁵²

The Rutherford Institute hopes that this information has been helpful to you. If you desire additional information on this or other issues of religious liberty, or if you need personal legal assistance in any area regarding religious freedom, then please feel free to write us at The Rutherford Institute, P.O. Box 7482, Charlottesville, Virginia, 22906-7482, or visit our website at www.rutherford.org.

NOTES

1. Alabama Code ' 13A-3-24(1) (2000).
2. Alaska Statutes ' 11.81.430(a)(1) (2000).
3. Arizona Revised Statutes ' 13-403(1) (2000).
4. Arkansas Statutes Annotated ' 5-2-605(1) (2000).
5. Colorado Revised Statutes ' 18-1-703(1)(a) (2000).
6. Connecticut General Statutes Annotated ' 53a-18(1) (1999).
7. Delaware Code Annotated 11 ' 468(1) (2000).
8. Georgia Official Code Annotated ' 16-3-20(3) (2000).
9. Hawaii Revised Statutes Annotated ' 703-309(1) (2000).
10. Kentucky Revised Statutes Annotated ' 503.110(1) (2000).
11. Louisiana Revised Statutes 14:18(4) (2000).
12. Maine Revised Statutes 17-A ' 106(1) (1999).
13. Michigan Compiled Laws Annotated ' 750.136b(7) (2000).
14. Minnesota Statutes ' 609.06(6) (2000).
15. Missouri Revised Statutes ' 563.061(1) (1999).
16. Montana Code Annotated ' 45-3-107 (2000).
17. Revised Nebraska Statutes Annotated ' 28-1413(1) (2000).
18. New Hampshire Revised Statutes Annotated 627:6(I) (2000).
19. New Jersey Statutes 2C:3-8 (2000).
20. New York Penal Code ' 35.10(1) (2000).
21. North Dakota Century Code ' 12.1-05-05(1) (2000).

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22. Oklahoma Statutes 21 ' 643(4) (1999).
 23. Oregon Revised Statutes 161.205(1) (1999).
 24. Pennsylvania Statutes and Consolidated Statutes 18 ' 509(1) (2000).
 25. South Dakota Codified Laws ' 22-18-5 (2000).
 26. Texas Statutes and Codes, Penal Code ' 9.61 (2000).
 27. Utah Code Annotated ' 76-2-401(i)(c) (2000).
 28. Washington Annotated Revised Code 9A.16.100 (2000).
 29. Wisconsin Statutes 939.45(5)(b) (1999).
 30. In *People v. Whitehurst*, 12 Cal.Rptr.2d 33 (Cal.App.4 Dist. 1992), the court held that the legislature had codified the common law privilege in enacting a statute prohibiting unlawful corporal punishment, *See West's Annotated California Penal Code ' 273d*.
 31. *Karma v. State*, 507 So.2d 154 (Fla.App.1 Dist. 1987), superceded by statute as stated in *Raford v. State*, 2001 Fla. App. Lexis 287 (2001); *Herbert v. State*, 526 So.2d 711 (Fla.App.4 Dist. 1988).
 32. *State v. Peters*, 780 P.2d 602 (Idaho App. 1989).
 33. *People v. Turner*, 619 N.E.2d 781 (Ill.App.2 Dist. 1993); *People v. Ball*, 317 N.E.2d 54 (Ill. 1974).
 34. In *Smith v. State*, 489 N.E.2d 140 (Ind. 1986), the court held that a statute justifying the use of force if such force is "legally authorized" encompasses the common law parental privilege, *See Indiana Statutes Annotated ' 35-41-3-1 (1993)*.
 35. *In the Interests of W.G.*, 349 N.W.2d 487 (Iowa 1984), cert. den. 469 U.S. 1222; *Hildreth v. Iowa Dep=t. of Human Servs.*, 550 N.W.2d 157 (Iowa 1996).
 36. *State v. Severns*, 148 P.2d 488 (Kan. 1944).
 37. *Anderson v. State*, 487 A.2d 294 (Md. App. 1985), pet. den. 493 A.2d 349 (Md. 1985); *Bowers v. State*, 389 A.2d 341 (Md. 1978); *State v. Taylor*, 347 Md. 363 (1997).
 38. *State v. Bost*, 34 S.E. 650 (NC 1899).
 39. *State v. Hicks*, 624 N.E.2d 332 (Ohio App.10 Dist. 1993); *State v. Suchomski*, 567 N.E.2d 1304 (Ohio 1991); *State v. Jones*, 2000 Ohio App. Lexis 5719; *Thompson v. Koontz*, 2000 Ohio App. Lexis 5474; *State v. Howard*, 1999 Ohio App. Lexis 5767.

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40. *State v. Thorpe*, 429 A.2d 785 (RI 1981).
 41. *Campbell v. Commonwealth*, 405 S.E.2d 1 (Va. App. 1991); *Carpenter v. Commonwealth*, 44 S.E. 2d 419 (Va. 1947).
 42. *State V. McDonie*, 123 S.E. 405 (WV 1924).
 43. *Keser v. State*, 706 P.2d 263 (Wyo. 1985).
 44. Mississippi, Nevada, New Mexico, Tennessee and Vermont have not addressed the issue. While South Carolina has not directly addressed the question of the common law parental privilege, the legislature has expressly excluded reasonable corporal punishment from its domestic relations statute defining child abuse. See South Carolina Code Annotated ' 20-7-490(3)(a) (2000). The Massachusetts Supreme Judicial Court, noting in a recent decision that no statute or decision in that state has incorporated the parental privilege, reserved the issue to be decided at a later time. *Commonwealth v. O'Connor*, 555 N.E.2d 865 (Mass. 1990); *In re F.P.*, 665 A.2d 597 (Vt. 1995) (reasonable discipline standard); *State v. Martin*, 751 A.2d 769 (Vt. 2000).
 45. Most states have not adopted a broader formulation of the parental privilege that would hold parents criminally liable only if the corporal punishment was inflicted with malice or if the punishment resulted in permanent injury or death.
 46. See 59 Am.Jur.2d ' 76 (1994).
 47. *But see* Illinois compiled Statutes Annotated 705 ' 405/2-3(2)(v) (2000); South Carolina Code Annotated ' 20-7-490(3)(a) (2000).
 48. See *State v. E.B.*, 504 So.2d 162 (La.App.2d Cir. 1987); *In the Matter of Shawn G.*, 428 N.Y.S.2d 713 (1980); *People in the Interest of M.A.L.*, 553 P.2d 103 (Colo.App. 1976).
 50. *In the Interest of L.M.*, 545 N.E.2d 319 (Ill.App.1 Dist. 1989), *distinguishing In re Aaronson*, 382 N.E.2d 853, 855 (Ill.App.1 Dist. 1978).
 51. *In the Interest of S.W.*, 290 N.W.2d 675 (N.D. 1980).
 52. *In the Matter of D.C.*, 596 P.2d 22 (Alaska 1979).