



End Violence
Against Children



End Corporal
Punishment

Corporal punishment of children in American Samoa

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Also available online at

www.endcorporalpunishment.org

Child population (0-19) 25,721 (US Census Bureau, 2010)

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools and penal institutions.

A number of provisions in the Juvenile Justice Law confirm the right of parents and others to impose “reasonable discipline”, as does section 46.3311 of the Criminal Law. The near universal acceptance of corporal punishment in “disciplining” children necessitates clarity in law that all corporal punishment, however light, is prohibited. These provisions should be repealed and explicit prohibition enacted of all forms of corporal punishment by parents and others with authority over children.

Alternative care settings – Prohibition should be enacted in legislation applicable to all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (crèches, nurseries, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition should be enacted of corporal punishment in all education settings, public and private, full and part time.

Penal institutions – Prohibition should be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Note: American Samoa is an Unincorporated Territory of the US.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. The Juvenile Justice Law provides for “reasonable” corporal punishment by parents. Subsection 20 of section 45.0103 defines “normal parental discipline” as “all actions by parents, such as administration of blows by hand, strap, or light switch upon the buttocks, or any firm handling, scolding or light taps, insufficient to seriously bruise or produce medical injury or disability”. Under subsection 18, legal custody of a child entails the duty to discipline. According to section 45.0361, this duty applies to “any individual, agency, or institution vested by the court with legal custody of a child”. The Juvenile Justice Law also covers child abuse (s45.2001) but states that in investigating reports of child abuse “accepted child rearing practices of the culture” must be taken into account, and nothing contained in the child abuse provisions “refers to acts which could be construed to be a reasonable exercise of parental discipline as defined in subsection (20) of 45.0103”. Section 45.2032 states that the Child Abuse Commission cooperates with the Child Protection Agency “to train parents regarding the differences between normal parental discipline and child abuse”.

Under section 46.3311 of the Criminal Law, the use of force is permitted “to promote the welfare of a minor” or “to maintain reasonable discipline in a school, class or other group”. This applies to “a parent, guardian, or other person entrusted with the care and supervision of a minor” and to “a teacher or other person entrusted with the care and supervision of a minor for a special purpose”. The force used should not risk “causing death, serious physical injury, disfigurement, extreme pain, or extreme emotional distress”.

Children have limited protection from violence and abuse under provisions in the Criminal Justice Law on assault (s46.3520, s46.3521 and s46.3522) and on endangerment and abuse (s46.3810 and s46.3811). The Domestic Violence Law 2004 includes in its definition of domestic or family violence “attempting to cause or causing physical harm to another family or household member” and “placing a family or household member in fear of physical harm” (s47.0102) but it does not prohibit all corporal punishment in childrearing.

Alternative care settings

Corporal punishment is lawful in alternative care settings under section 45.0361 of the Juvenile Justice Law applying to those with legal custody of the child (see under “Home”).

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under section 45.0361 of the Juvenile Justice Law applying to those with legal custody of the child (see under “Home”).

Schools

Corporal punishment is lawful in schools under the provision for “reasonable discipline” in the Criminal Law, section 46.3311 (see under “Home”). It was prohibited in public schools by Education Department policy in 1998.

Penal institutions

Corporal punishment is not a listed disciplinary measure in prisons under the Criminal Justice Law, but there would appear to be no explicit prohibition of all corporal punishment in penal institutions for young offenders. Section 46.3311 states that “a warden or other authorized official of a jail, prison, or

correctional facility may, in order to maintain order and discipline, use whatever physical force, is authorized by law, including deadly force”.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. Article I (Bill of Rights), section 6 of the Constitution prohibits “cruel or unusual punishments”, and corporal punishment is not a permitted punishment for crime under the Criminal Justice Law.

Universal Periodic Review of the USA’s human rights record

The US was examined in the first cycle of the Universal Periodic Review in 2010 (session 9). No recommendations were made specifically concerning corporal punishment of children. However, recommendations were made to ratify and incorporate into law the UN Convention on the Rights of the Child and to withdraw the reservation to the International Covenant on Civil and Political Rights, and the Government accepted these recommendations.¹

Examination in the second cycle took place in 2015 (session 22). In its national report, the Government noted efforts to address “disproportionate” discipline of African-American students but did not refer to ending all corporal punishment. During the review:²

“Prohibit corporal punishment of children in all settings, including the home and schools, and ensure that the United States encourages non-violent forms of discipline as alternatives to corporal punishment (Liechtenstein)”

The Government accepted only the part of the recommendation concerning the promotion of non-violent discipline, stating: “We support this recommendation insofar as it encourages non-violent forms of discipline. Excessive or arbitrary corporal punishment is prohibited under our Constitution, and we take effective measures to help ensure non-discrimination in school discipline policies and practices.”³ The Government again accepted recommendations to ratify the Convention on the Rights of the Child.⁴

Recommendations by human rights treaty bodies

Note: The USA has signed but not ratified the UN Convention on the Rights of the Child. In ratifying the International Covenant on Civil and Political Rights, the US entered a reservation stating that “the United States considers itself bound by article 7 to the extent that ‘cruel, inhuman or degrading treatment or punishment’ means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States”. Only the International Covenant on Civil and Political Rights and the UN Convention Against Torture appear to apply in the American Samoa.

Human Rights Committee

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

“The Committee is concerned about the use of corporal punishment of children in schools, penal institutions, the home, and all forms of child care at federal, state and local levels. It is also concerned

¹ 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)

² 20 July 2015, A/HRC/30/12, Report of the working group, para. 176(265)

³ 14 September 2015, A/HRC/30/12/Add.1, Report of the working group: Addendum, para. 18

⁴ 1 October 2015, Future A/HRC/30/2 Advance unedited version, Draft report of the Human Rights Council on its 30th session, para. 226

about the increasing criminalization of students to tackle disciplinary issues arising in schools (arts. 7, 10, and 24).

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment and should conduct public information campaigns to raise awareness about its harmful effects. The State party should also promote the use of alternatives to the application of criminal law to address disciplinary issues in schools.”

Prevalence/attitudinal research in the last ten years

None identified.

[End Corporal Punishment](#) is a critical initiative of the [Global Partnership to End Violence Against Children](#). Previously known as The Global Initiative to End All Corporal Punishment of Children, we act as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We track global progress, support and hold governments to account, partner with organisations at all levels, and engage with human rights treaty body systems.