

Corporal punishment of children in Guam

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Child population (0-19) 57,727 (US Census Bureau, 2010)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

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.

The Parent and Child Act confirms the right of parents to “train and discipline” the child, providing a legal defence for the use of corporal punishment in childrearing. The near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that no form or degree of corporal punishment is lawful. This provision should be explicitly repealed, and prohibition enacted of all corporal punishment, however light, by all persons with authority over children.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 (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – Prohibition should be enacted in legislation applicable to all educational settings, public and private.

Penal institutions – Prohibition of corporal punishment should be enacted in relation to disciplinary measures in all institutions accommodating children in conflict with the law.

Note: Guam is an organised, unincorporated territory of the US.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Provisions against violence and abuse in the Guam Code (Ch.30, “Family Violence”, 1994, and Ch.31 “Offenses Against the Family”) are not interpreted as prohibiting corporal punishment in childrearing. The Parent and Child Act defines “legal custody” as “a status created by court order embodying the following rights and responsibilities: (1) the right to have the physical possession of the child; (2) the right and the duty to protect, train and discipline the child” (s4202 (d)).

The Child Protective Act protects children only from excessive corporal punishment, as it protects children from harm and threatened harm defined in article 1 in relation to evidence of physical or psychological injury, including “disfigurement or impairment of any bodily organ, and such injury is inflicted by other than accidental means, by excessive corporal punishment or where the history given concerning such condition or death is at variance with the degree or type of such condition or death”. The Family Violence Act defines family violence as “attempting to cause or causing bodily injury to another family or household member” or “placing a family or household member in fear of bodily injury” (s30.10). The Offenses Against the Family Act punishes child abuse, defined as cruel treatment of a child or “unreasonable” endangerment of a child’s physical or emotional health (s31.30).

Alternative care settings

Corporal punishment is prohibited in some but not all forms of alternative care. The Rules and Regulations for Licensed Child Care Centers and Group Child Care Homes 2011, pursuant to the Child Welfare Services Act, punish “the use of corporal punishment or frightening or humiliating methods of control or discipline” (s1118.1). The Act defines a child care facility as “any center or home licensed by the Department to provide care, education, and supervision for a child for all or part of the twenty-four (24) hour day, whether or not the facility is operated for profit, or charges for the services it offers” (s1101.5).

Day care

Corporal punishment is unlawful in some day care settings under the prohibition in the Rules and Regulations for Licensed Child Care Centers and Group Child Care Homes 2011 (see under “alternative care settings”).

Schools

Corporal punishment is lawful in schools. The Teaching Act s5114 Guam Code states (17GCA 2.5114): “Every teacher in the public schools shall hold pupils to strict account for their conduct while on school premises and when authorized off-campus school activities.” It is the responsibility of the Board of Education to establish student discipline policy Guam Public School System Act (17GCA 2.3112(5)). The policy published by the Education Policy Board (last amended 1991) states that it must be used only as a last resort, only by the principal, and only for children whose parents sign a notarised consent form. In 2003, the Board was considering revising the policy such that enrolment into the public school system would itself constitute consent by parents for corporal punishment. A

management and curriculum audit for the public school system under discussion in 2009 made provision for the use of corporal punishment.¹

Penal institutions

There appears to be no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, though it is possibly discouraged as a matter of policy. The Corrections Act states (Guam Code 9.90.30 (9GCA 90.30)): “The Director subject to the approval of the Governor by Executive Order, is authorized to make rules and regulations for the administration of correctional institutions and other places of confinement, including, but not limited to, necessary disciplinary measures for inmates thereof and for their treatment, care, labor, rehabilitation and reformation.” The Corrections Act (Guam Code Ch. 90) and the Youth Correction Act (Guam Code Ch.83, 1965 (9GCA 83)) are silent on the issue.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in criminal law.

Universal Periodic Review of the US’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.²

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:³

“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.”⁴ The Government again accepted recommendations to ratify the Convention on the Rights of the Child.⁵

¹ *Management and Curriculum Audit for the Guam Public School System*, DRAFT FINAL REPORT, Submitted by Evergreen Solutions, Florida, 23 March 2009

² 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)

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

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

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

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 Guam.

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 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.