

# Corporal punishment of children in Puerto Rico

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**Child population (0-14)** 751,232 (CIA World Factbook, 2011 est.)



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 and day care.

Article 208 of the Civil Code 1930 confirms the right of those with parental authority to “moderately correct” children, article 36 of the Act for Safeguarding of Minors in the 21st Century 1999 confirms that those with parental responsibility have the “right and obligation” to “protect, educate and discipline the minor” and there is a similar provision in article 44 of the Comprehensive Child Well-being and Protection Act 2003. The near universal acceptance of a certain degree of violence in childrearing necessitates clarity in law that no amount or kind of corporal punishment is lawful or acceptable. These provisions should be repealed/amended so as to leave no legal justification for the use of corporal punishment in childrearing, and prohibition enacted of all corporal punishment, however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).

**Note:** Puerto Rico is an Unincorporated Territory of the US.

## **Current legality of corporal punishment**

### **Home**

Corporal punishment is lawful in the home. Article 208 of the Civil Code 1930 confirms the right of those with parental authority to “moderately correct” children. The Act for Safeguarding of Minors in the 21<sup>st</sup> Century 1999 confirms that those with parental responsibility for children have the “right and obligation” to “protect, educate and discipline the minor” (s36(d)(2)). The same duty is specified in article 44 of the Comprehensive Child Well-being and Protection Act 2003. That Act aims to protect children from all forms of violence in the home, both “domestic violence” and “child abuse”, to facilitate their development in a violence free environment and with respect for their human dignity (preamble), and article 14 (Prevention of Violence) puts a duty on the Government Department of the Family to “develop and offer educational programs on peaceful and harmonious living and the rearing of children for individuals of all ages and social groups, to be disseminated through the mean communication media”; the programs shall aim at “enabling and promoting harmonious living, child rearing, and discipline without violence, based on the values of love, solidarity, and peace, compatible with respect for the human rights of all, including children”. However, there is no explicit prohibition of corporal punishment and it is unclear whether or not the law is interpreted as prohibiting all forms of corporal punishment in childrearing, however light.

### **Alternative care settings**

Corporal punishment is lawful in alternative care settings under the right and obligation of those with authority over the child to “discipline the minor” in the Act for Safeguarding of Minors in the 21<sup>st</sup> Century 1999 (see under “Home”). The Act prohibits abuse in all institutions, but does not explicitly prohibit corporal punishment. The right of discipline/correction in article 208 of the Civil Code 1930 and article 44 of the Comprehensive Child Well-being and Protection Act 2003 also apply (see under “Home”).

### **Day care**

Corporal punishment is lawful in early childhood care and in day care for older children under the right and obligation of those with authority over the child to “discipline the minor” in the Act for Safeguarding of Minors in the 21<sup>st</sup> Century 1999 (see under “Home”). The Act prohibits abuse in all institutions, but does not explicitly prohibit corporal punishment. The right of discipline/correction in article 208 of the Civil Code 1930 and article 44 of the Comprehensive Child Well-being and Protection Act 2003 also apply (see under “Home”).

### **Schools**

Corporal punishment is prohibited in schools in article 3.09 (Disciplinary Measures) of the Organic Act of the Department of Education of Puerto Rico 1999: “Students shall observe the standards of behavior that are promulgated to ensure the orderly performance of the school. The violation of these standards will bring about the imposition of sanctions that will vary from a slight admonishment, to expelling the student. The sanction of suspension and expelling the student shall not be imposed without undergoing due process of law, except in those cases indicated in Section 3.10 of this Act. Corporal punishment is forbidden.”

## **Penal institutions**

Corporal punishment is explicitly prohibited as a disciplinary measure in penal institutions under the regulations of the Corrections Administration (art. 1255, “Rights of Inmates, Women Prisoners and Minors”).

## **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime. There is no provision for judicial corporal punishment in the Criminal Code 2004 or the Minors Act 1986.

## **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.<sup>1</sup>

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:<sup>2</sup>

“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.”<sup>3</sup> The Government again accepted recommendations to ratify the Convention on the Rights of the Child.<sup>4</sup>

## **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

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<sup>1</sup> 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)

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

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

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

International Covenant on Civil and Political Rights and the UN Convention Against Torture appear to apply in Puerto Rico.

### ***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.