

Corporal punishment of children in San Marino

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Child population 6,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Prohibition of corporal punishment

Home

Corporal punishment is unlawful in the home. In September 2014, amendments were made to criminal and family law which prohibit all corporal punishment of children. The Law of 5 September 2014 No. 140 amends article 57 of the Law of 26 April 1986 No. 49 on Family Law Reform to state (unofficial translation): “Children have the right to protection and security, and shall not be subjected to corporal punishment or other treatment harmful to their physical and psychological integrity.” Article 234 of the Penal Code was also amended: “(Prohibition of corporal punishment). Whosoever in the exercise of the power to correct or discipline inflicts corporal punishment or uses other coercive or repressive means, shall be punished with first-degree imprisonment or disqualification from exercising parental power, office, occupation or profession, where the punishment or means employed result in danger to body or mind or illness to the person under the authority of or entrusted to the perpetrator, or third-degree imprisonment if the act results in one of the events specified in Article 156, or fifth-degree if its results in death.”

Alternative care settings

Corporal punishment is unlawful in alternative care settings under the 2014 amendments to criminal and family law (see under “Home”).

Day care

Corporal punishment is unlawful in early childhood care and in day care for older children under the 2014 amendments to criminal and family law (see under “Home”).

Schools

Corporal punishment is unlawful in schools under article 4 of the General Provisions on Education 1998.¹ It is punishable under the 2014 amendments to article 234 of the Penal Code (see under “Home”).

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions. Article 26 of the Penitentiary Law 1997 states: “The use of physical force on detainees and interned people is not allowed except when indispensable to prevent or impede acts of violence, attempts of jailbreak, to overcome resistance, also of a passive nature, to the execution of orders or to guarantee the safety of the detainee.” Article 234 of the Penal Code, as amended in 2014, punishes abuse of power/authority, which includes the use of corporal punishment.

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 San Marino’s human rights record

San Marino was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). The following recommendations were made:²

“To take further measures to ensure the freedom of children from all physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, in accordance with the Convention on the Rights of the Child, including by ensuring the full legal prohibition of all corporal punishment of children (Sweden);

“To adopt specific legislative measures to criminalize corporal punishment (not only abuse) in all settings, together with major awarenessraising campaigns to promote an overall culture of non-violence ‘through education, dialogue and cooperation’ (Spain);

“To abolish corporal punishment by law and in practice, by enacting specific national legislation prohibiting corporal punishment in all environments (Israel);

“To explicitly prohibit corporal punishment, under any circumstances, for boys and girls (Chile)”

The Government accepted the recommendations, stating that it would amend the Criminal Code to achieve this.³

Examination in the second cycle took place in 2014 (session 20). In its national report to the UPR, the Government confirmed that it had approved a Draft Law which would prohibit corporal punishment,

¹ Law No. 21/1998

² 10 March 2010, A/HRC/ 14/9, Report of the working group, paras. 71(23), 71(24), 71(25) and 71(26)

³ 1 June 2010, A/HRC/14/9/Add.1, Report of the working group: Addendum, para. 13

due for its first reading in the Great and General Council in July 2014.⁴ During the review the following recommendation was made:⁵

“Promulgate laws which expressly prohibit all forms of corporal punishment of minors at home as well as in kindergartens, schools and other institutions caring for children (Mexico)”

The Government accepted the recommendation and confirmed that the law prohibiting corporal punishment had been passed.⁶

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(27 October 2003, CRC/C/15/Add.214, Concluding observations on initial report, paras. 21 and 22)

“The Committee welcomes the information that article 234 of the Penal Code also includes the prohibition of corporal punishment, but is concerned at the lack of any concrete statistical data and other information on the prevention and prevalence of and intervention in cases of child abuse and neglect.

“The Committee recommends that the State party undertake awareness-raising campaigns on the negative impact of corporal punishment. Furthermore, the State party should undertake studies to assess the prevalence and nature of violence against children and develop a comprehensive plan of action based on this study for the prevention of and intervention in cases of child abuse and neglect, including the provision of services for recovery and social reintegration of victims, taking into account the recommendations of the Committee adopted at its days of general discussion on children and violence (see CRC/C/100, para. 688 and CRC/C/111, paras. 701-745).”

Human Rights Committee

([November 2015], CCPR/C/SMR/CO/3 Advance Unedited Version, Concluding observations on third report, para. 3)

“The Committee welcomes the legislative steps taken by the State party to protect human rights, including: ...

b) The adoption of Law No. 140 of 4 September 2014, which provides that children are entitled to protection and security and shall not be subject to corporal punishment or other treatment damaging their physical and psychological integrity...”

Prevalence/attitudinal research in the last ten years

None identified.

⁴ 21 July 2014, A/HRC/WG.6/20/SMR/1 National report to the UPR, paras. 45 and 48

⁵ 24 December 2014, A/HRC/28/9, Report of the working group, para. 78(34)

⁶ 24 December 2014, A/HRC/28/9, Report of the working group, para. 15; see also the Government’s Opening Statement to the review