

Corporal punishment of children in St Maarten

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Child population (0-19) 11,529 (Department of Statistics, St Maarten, 2010)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

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

Note: Sint Maarten is a country within the Kingdom of the Netherlands. It was a part of the Netherlands Antilles but this was dismantled in October 2010 following constitutional reforms within the Kingdom of the Netherlands and Sint Maarten became autonomous. The law of the Netherlands Antilles applies until new legislation is enacted by the Sint Maarten parliament.

Prohibition of corporal punishment

Home

Corporal punishment is prohibited in the home. Law reform following the achievement of autonomy in 2010 included the Joint Custody Ordinance 2013, which amends article 247 of the Civil Code to state (unofficial translation): (1) Parental authority includes the duty and right of the parent to care for and raise his or her minor child. (2) Caring for and raising the child includes care and responsibility for the mental and physical wellbeing and safety of the child and the development of his or her personality. In the care and upbringing of the child the parents will not use mental or physical violence or any other degrading treatment.” The article applies to all persons acting *in loco parentis*. The new provisions mirror those in the Civil Code in the Netherlands (Europe), where prohibition in all settings was achieved in 2007. Corporal punishment is punishable under the Penal Code 2012.

In May 2012 the Joint Court of Justice of Aruba, Curaçao and St Maarten, in a case in which a crèche employee had been summarily dismissed after striking a child with the permission of the mother, ruled that hitting children will not be tolerated, and that anyone who does so will be punished.¹

Alternative care settings

Corporal punishment is prohibited in alternative care settings under the 2013 amendments to the Civil Code (see under “Home”).

¹ BW8379, Joint Court of Justice of Aruba, Curaçao and St Maarten, and of Bonaire, St Eustatius and Saba, EJ 50447/11 – H 24/12

Day care

Corporal punishment is prohibited in early childhood care and in day care for older children under the 2013 amendments to the Civil Code (see under “Home”).

Schools

Corporal punishment is unlawful in schools under the Civil Code as amended in 2013.

Penal institutions

Corporal punishment is unlawful as a disciplinary measure in penal institutions, but we have no details of prohibiting legislation other than the Civil Code provision (see under “Home”).

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 Netherlands’ human rights record

The Kingdom of the Netherlands was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendation was made specifically concerning corporal punishment of children.

Examination in the second cycle of the UPR took place in 2012 (session 13). The following recommendations were made:²

“Prohibit corporal punishment in all settings through the Kingdom of the Netherlands (Slovenia);

“Build on this success (achieving a total prohibition of corporal punishment of children in all settings in the European part of the Dutch territory) and ensure that this prohibition is also duly implemented in Aruba and the Netherlands Antilles by enacting the necessary legislation in this regard (Hungary)”

The Government responded to the recommendations by stating: “Violence in parenting has been formally prohibited in the Netherlands for several years. In Aruba corporal punishment is prohibited by law in schools, and legislation to extend the prohibition to the family setting is expected in 2012. In Curaçao, the Civil Code was amended to define parents’ role as that of caregivers and educators, prohibiting them from employing emotional or physical violence or any other form of humiliating treatment in parenting their children. The same goes for Sint Maarten since passing of the National Ordinance on Parental Authority in 2011 amending the Civil Code.”³

² 9 July 2012, A/HRC/21/15, Report of the working group, paras. 98(18) and 98(75)

³ 12 October 2012, A/HRC/21/15/Add.1/Rev.1, Report of the working group: Addendum, page 3

The Netherlands' third cycle examination took place in 2017 (session 27). The following recommendations were made:⁴

“Ensure that its legislation addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the Kingdom, in particular in Aruba as well as in the Caribbean Netherlands (Liechtenstein)”

“Intensify its efforts in relation to children’s rights including particularly the Caribbean countries forming part of the State, including to prohibit corporal punishment in all settings; to develop and implement public awareness programmes; to reduce the rate of school drop-out and intensify efforts to eradicate child labour; to raise the minimum age of recruitment in the military to 18 years and to ratify the Optional protocol to the CRC on a communications procedure without reservations (Ireland)”

The Government accepted both recommendations, stating in regards to the first one: “Violence has already been made punishable by law in the Penal Code of Bonaire, St Eustatius, and Saba. In addition, the punishment can be increased by one-third if the offender committed the criminal offence against his or her child (among other parties). Corporal punishment in schools is prohibited by Aruban law. The New Civil Code includes a prohibition of corporal punishment in the family setting. In Curaçao, legislation addressing corporal punishment already exists.”⁵

Recommendations by human rights treaty bodies

Note: It appears the Convention on the Rights of the Child, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities all apply in St Maarten, as they do in the Netherlands. Article 17 of the European Social Charter, on which states’ obligation to prohibit is based, does not apply.

Committee on the Rights of the Child

(8 June 2015, CRC/C/NDL/CO/4 Advance Unedited Version, Concluding observations on fourth report, paras. 36 and 37)

“The Committee welcomes the State party’s efforts aimed at combatting child violence and abuse, but is concerned about: ...

e) absence of legal provisions expressly prohibiting corporal punishment in all settings, including at home, in Aruba; and

f) absence of legal provisions prohibiting corporal punishment of children in the home, alternative care settings, day care and schools in the Caribbean Netherlands.

“In the light of its General comments No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee recommends that the State party: ...

⁴ 18 May 2017, A/HRC/WG.6/27/L.13, Draft report of the Working Group, paras. 5(117) and 5(154)

⁵ 14 September 2017, A/HRC/36/15/Add.1, Report of the working group: Addendum, page 6

e) ensure that the State party's legislation addresses all forms of violence, explicitly prohibits corporal punishment in all settings and includes measures to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the Kingdom, in particular in Aruba as well as in the Caribbean Netherlands."

Committee on the Rights of the Child

(27 March 2009, CRC/C/NLD/CO/3, Concluding observations on the third report of the Netherlands, paras. 36 and 37)

"The Committee is concerned that corporal punishment in the home is not prohibited in Aruba, and that it is still being used at schools, day-care centres and in the home in the Netherlands Antilles.

"The Committee recommends that the State party prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, the schools and out of home placements. It also recommends that the State party conduct awareness-raising campaigns and parenting education programmes to ensure that alternative forms of discipline are used, in a manner consistent with the child's human dignity and in conformity with the Convention, especially article 28, paragraph 2, while taking due account of general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment."

Committee on the Rights of the Child

(7 June 2002, CRC/C/15/Add.186, Concluding observations on initial report, paras. 36 and 37)

"... The Committee is concerned, however, that there is insufficient information and awareness of the ill-treatment and abuse of children and that whilst corporal punishment has been formally banned and made a punishable offence in schools as a matter of policy, this form of punishment continues to be practised in schools, as well as in the home and in other public institutions such as prisons and in alternative care contexts.

"The Committee recommends that the Netherlands Antilles:

- a) take all legislative measure to prohibit all forms of physical and mental violence, including corporal punishment against children (boys as well as girls) in the home, schools and in all other contexts;
- b) conduct a study to assess the nature and extent of ill-treatment and abuse of children, and design policies and programmes to address it;
- c) carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment....
- g) take into consideration the recommendations of the Committee adopted on its days of general discussion on children and violence in September 2000 (CRC/C/100, para.688) and September 2001 (CRC/C/111, paras.701-745)."

Prevalence/attitudinal research in the last ten years

None identified.