Corporal punishment of children in the US Virgin Islands

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Child population (0-14) 21,356 (CIA World Factbook, 2011 est.)

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 Virgin Islands Code confirms the right of parents and others to use "reasonable" physical discipline/correction (14 VIC s293, s502, s507, s2502, 2014) and states that principals and teachers in public schools have the same authority to discipline children as parents and guardians (17 VIC s87, s130, 2014). These provisions should be repealed, and prohibition enacted of all corporal punishment, however light, by all persons with authority over children.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, institution, 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: The US Virgin Islands is an Unincorporated Territory of the US.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Section 293 of the Virgin Islands Code (14 VIC s293, 2014, "Lawful violence"), in Chapter 13 on Assault and Battery, sets out what constitutes lawful violence and states: "(a) Violence used to the person does not amount to an assault or an assault and battery – (1) in the exercise of the right of moderate restraint or correction given by the law to the parents over the child, the guardian over the ward, the master over his apprentice or minor servant, whenever the former be authorized by the parent or guardian of the latter to do so…."

Section 502 of the Code (14 VIC s502, 2014, "Legislative findings"), in Chapter 24 on Child Protection, states: "The Legislature of the Virgin Islands finds and declares that: … (c) it is the policy of the Government of the Virgin Islands to protect children from assault, abuse and neglect, and to encourage parents, teachers and others to use methods of correction, restraint and discipline that are not dangerous to children…."

Section 507 (14 VIC s507, 2014, "Reasonable and moderate physical discipline") states: "Nothing in this chapter shall be interpreted to prevent a parent, guardian, or person acting at the direction of a child's parent or guardian, from using reasonable and moderate physical discipline to correct, restrain of discipline a child. The following are examples of unreasonable conduct when used by any person to correct, restrain or discipline a child: (1) throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) wilful and violent shaking of a child in such a way as to cause physical injury to the child; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and that does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether physical discipline is reasonable and moderate. The list of unreasonable actions is illustrative and is not intended to be exclusive."

The Code defines "legal custody" in relation to matters of delinquency, persons in need of supervision and abuse and neglect matters, with reference to a custodian which has, among other things, "the right and duty to protect, train and discipline him" (5 VIC s2502, 2014, "Definitions").

Alternative care settings

Corporal punishment is lawful in alternative care settings under the provisions for correction and discipline of a child in the Virgin Islands Code (14 VIC s293, 2014; 14 VIC s507, 2014) (see under "Home").

Day care

Corporal punishment is lawful in early childhood care and in day care for older children under the provisions for correction and discipline of a child in the Virgin Islands Code (14 VIC s293, 2014; 14 VIC s507, 2014) (see under "Home").

Schools

Corporal punishment is lawful in schools. Section 87 of the Virgin Islands Code states (17 VIC s87, 2014, "Punishment of pupils by school authorities"): "All principals and teachers in the public schools in the Virgin Islands shall have the right to exercise the same authority, as to conduct and behavior, over pupils attending their schools during the time they are in attendance, including the time required in going to and from their homes, as parents, guardians, or persons in parental relation to such pupils." This provision is repeated in section 130 (17 VIC s130, 2014, "Authority to discipline children").

In 2013, a bill to repeal these provisions and prohibit corporal punishment was introduced but it failed to progress through parliament. Another Bill to repeal the above provisions and prohibit corporal

punishment in public schools was introduced in 2019 – as of January 2020 it is still in the Committee stage.[1] In October 2020, the Bill which aimed to prohibit corporal punishment in the Virgin Islands' public schools (Bill No. 33-0103) was rejected by the Virgin Islands' Senate. The Bill was reintroduced in 2021 under Bill No. 34-0097 and was adopted in December 2021 as Act 8516.[2] With the enactment of Act 8516, corporal punishment is prohibited in the Virgin Islands' public schools. We are seeking confirmation that the prohibition is also applicable to private schools in the Virgin Islands.

Penal institutions

Corporal punishment is considered unlawful as a disciplinary measure in penal institutions under the provision for humane treatment of detainees in correctional institutions in the Virgin Islands Code (5 VIC s4508, 2014, "Classification, treatment and discipline"), but there is no explicit prohibition.

Sentence for crime

There is no provision for judicial corporal punishment in the Virgin Islands Code.

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.[3]

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:[4]

> "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."[5] The Government again accepted recommendations to ratify the Convention on the Rights of the Child.[6]

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

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[1] See http://legvi.org:82/Detail.aspx?docentry=26964, last accessed 13 February 2020
[2] https://stthomassource.com/content/2021/12/11/legislature-corner-almost-10-years-later-persistence-sees-corporal-punishment-banned-in-usvi-schools/ (accessed 17 December 2021)
[3] 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)
[4] 20 July 2015, A/HRC/30/12, Report of the working group, para. 176(265)
[5] 14 September 2015, A/HRC/30/12/Add.1, Report of the working group: Addendum, para. 18
[6] 1 October 2015, Future A/HRC/30/2 Advance unedited version, Draft report of the Human Rights Council on its 30th session, para. 226

Covenant on Civil and Political Rights and the UN Convention Against Torture appear to apply in the US Virgin Islands.

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.

End Corporal Punishment acts as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We support and analyse national progress, monitor legality and implementation worldwide, partner with organisations at all levels, and engage with human rights treaty body systems. End Corporal Punishment is hosted by the World Health Organization and supported by a multi-partner Advisory Committee.