

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1084
Judiciary

(Delegate Hixson, *et al.*)

Domestic Violence - Reasonable Corporal Punishment - Limitations

This bill establishes that in provisions of law relating to domestic violence protective orders, specified acts are not “reasonable corporal punishment.”

Fiscal Summary

State Effect: None. The bill is technical in nature and is not expected to materially affect State finances.

Local Effect: None. The bill is technical in nature and is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that reasonable corporal punishment does not include:

- striking a child with an instrument, including a stick, belt, electrical cord, switch, paddle, clothes hanger, kitchen implement, brush, shoe, ruler, leash, or strap;
- punching a child with a closed or partially closed fist;
- kicking, burning, shaking, biting, throwing, cutting, or choking a child;
- slapping a child on the face;
- causing a child to ingest noxious substances; or
- setting in motion a hard or sharp object toward a child.

Current Law: A person eligible for relief may file a petition for a protective order under the Family Law Article. The following individuals may seek relief from abuse on behalf of a minor or vulnerable adult:

- the State's Attorney for the county where the child or vulnerable adult lives, or if different, where the abuse is alleged to have taken place;
- the department of social services that has jurisdiction in the county where the child or vulnerable adult lives, or, if different, where the abuse is alleged to have taken place;
- a person related to the child or vulnerable adult by blood, marriage, or adoption; or
- an adult who resides in the home.

Abuse of a child is defined as: (1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care, custody, or responsibility for the supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk or being harmed or (2) sexual abuse of a child, whether physical injuries are sustained or not.

A parent or stepparent of the child is not prohibited from administering reasonable punishment, including reasonable corporal punishment, in light of the age and condition of the child.

Background: The Court of Appeals has held that reasonable corporal punishment, by definition, is not child abuse; therefore, no definition of child abuse can include reasonable corporal punishment. *Charles County Department of Social Services v. Vann*, 382 Md. 286 (2004). In *Vann*, the Court of Special Appeals reversed an administrative decision that upheld a finding that a father was responsible for indicated child abuse after his son inadvertently sustained a bruise on his back after attempting to get away from his father who was striking his son with a belt. The Court of Special Appeals reasoned that the father's exercise of corporal punishment could not be transformed into unlawful child abuse simply because the child would not obey his parents and stand still to accept the punishment. However, the Court of Appeals disagreed, and stated that an analysis of whether or not corporal punishment is reasonable must look not only at the misbehavior of the child and the amount of force used in the punishment from the parent's perspective, but also factors such as the child's age, size, and ability to understand the punishment, as well as the appropriateness of the decision to use force in circumstances that may increase the potential for serious injury.

Recent decisions of the Office of Administrative Hearings have also examined whether or not certain actions are reasonable corporal punishment. In one Prince George's County case, an appellant disciplined his eight-year old child by paddling him with a 10 ½-inch

bamboo cooking spoon. As the father and son sat down afterwards to discuss the incident, the son began acting disrespectfully, causing the father to raise the spoon to tap the son on the head. Instead, the son quickly moved his head and the spoon struck the son on his face below his right eye, leaving splotches. Following an investigation, the local department of social services notified the father that it had found him to be a person allegedly responsible for child abuse and the father appealed. Although the local department of social services argued that any act that causes injury to the face cannot be considered reasonable, the Administrative Law judge found that the injury to the face occurred unintentionally in the course of reasonable corporal punishment and was therefore not abuse. *Appellant v. Prince George's County Department of Social Services* OAH No. DHR-PGEO-51-09-08261 (2009).

In another case, a mother struck her eight-year old son, who had been diagnosed with attention deficit hyperactivity disorder and had a history of disciplinary problems, with an extension cord from a clock. Although she attempted to hit him on his buttocks through his clothing, as the son moved around to avoid being hit he was instead struck on the hands, arms, and leg, leaving visible red marks. Following an investigation, the Anne Arundel County Department of Social Services notified the mother that it had found her to be a person allegedly responsible for indicated child abuse and the mother appealed. The Administrative Law Judge noted that there was no evidence that the mother swung the extension cord at or near the son's head, and found that the punishment in this case was reasonable. *Appellant v. Anne Arundel County Department of Social Services* OAH No. DHMH-AARU-51-09 (2009).

Additional Information

Prior Introductions: None.

Cross File: SB 689 (Senators Raskin and Madaleno) - Judicial Proceedings.

Information Source(s): Kent County, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Legislative Services

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