

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1019
Judiciary

(Delegate Hixson)

Child Abuse and Neglect - Reasonable Corporal Punishment - Definition and Limitations

This bill establishes that for purposes of child abuse and neglect laws, “abuse” does not include 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: “Reasonable corporal punishment” is defined as a physical act that:

- is performed by a parent or other person who has permanent or temporary custody or responsibility for supervision of a child or by any household or family member;
- is intended to modify, control, or correct a child’s behavior;
- is not cruel or excessive and does not put a child at substantial risk of physical injury or neurological damage;
- does not cause bodily injuries, including bruises, abrasions, or lacerations that last more than 24 hours regardless of whether it is intended to injure the child; and
- is not otherwise prohibited by law.

Current Law: “Abuse” means the physical or mental injury of a child by any parent, household or family member, or other person with permanent or temporary care, custody, or responsibility for a child’s supervision, under circumstances that indicate the child’s health or welfare is harmed or at substantial risk of being harmed. Abuse also means the 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.

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.

A report of suspected child abuse triggers an investigation by the local department of social services or the appropriate law enforcement agency. If the local department finds that the abuse is “indicated” (*i.e.*, that there is credible evidence, which has not been satisfactorily refuted, that abuse did occur), the name of the individual found responsible may be entered into a central registry. The individual has a right to appeal the finding to the Office of Administrative Hearings. A finding of indicated child abuse may also result in the filing of a Child in Need of Assistance petition and the removal of the child from the home.

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: SB 689 of 2010, a similar bill, received a hearing in the Senate Judicial Proceedings Committee but was subsequently withdrawn. Its cross file, HB 1084, was also withdrawn after being referred to the House Judiciary Committee. Another similar bill, HB 325 of 2004, received an unfavorable report from the House Judiciary Committee.

Cross File: SB 594 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

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Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510