

SUBMISSION ON THE CHILDRENS BILL TO THE DEPARTMENT OF SOCIAL DEVELOPMENT

Submitted by:

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RESOURCES AIMED AT THE PREVENTION OF CHILD ABUSE AND NEGLECT

7 June 2006

PROMOTING APPROPRIATE DISCIPLINE OF CHILDREN

We wish to achieve the following:

- Realisation of children's human and Constitutional Rights.
- Equal protection for children under the law
- Bring the South African law in line with our international obligations.
- To effect laws that bring across a clear message
- Broad-based education to develop knowledge and use of positive discipline methods by parents.
- That all reports of physical and psychological abuse of children are taken seriously, including cases where parents abuse their children in the name of correction.
- Preventing the prosecution of parents for trivial acts.
- That parents who use inappropriate forms of discipline are not prosecuted as a first option and they are provided with early intervention services that provide education on positive discipline and support to assist in the preservation of the family.

Clause	Proposed Amendment	Discussion
<p>Corporal punishment</p>	<p>Discipline of Children</p>	<p>This name change is suggested on the basis that children are subjected not only to physical punishment but also to psychological humiliation and degradation. Furthermore the primary goal of this provision must be to enhance the use of methods of appropriate discipline of children in South Africa.</p>
<p>139. (1) A person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect to the fullest extent possible the child's right to physical integrity as conferred by section 12 (1) (c), (d) and (e) of the Constitution.</p>	<p>139. (1) <u>Any persons,</u> including a person who has parental responsibilities and rights in respect of the child, must respect, <u>promote and protect</u> the child's right to physical and <u>psychological integrity</u> as conferred by sections 12 (1)(c), (d) and (e) of the Constitution <u>in that no child may be subjected to any form of violence, including corporal and other forms of humiliating punishment, from either public or private sources, torture or be punished in a cruel, inhuman or degrading way.</u></p>	<ol style="list-style-type: none"> 1. "Any person" – it is felt that every person must be covered by this clause and not only people who have control of a child. 2. It is suggested that the phrase, "to the fullest extent possible" be deleted. It is submitted that this phrase represents a limitation on the rights. It must also be noted that sections 12(1)(d) and (e) are non-derogable rights and therefore the phrase "the fullest extent possible" does not apply. 3. The word "promote and protect" have been included to ensure that not only must a child's rights be respected but they need to be promoted and protected. 4. "psychological integrity" – this term is included as children are not only physically punished but are also subjected to other forms of humiliating, cruel, inhuman and degrading treatment or punishment which can cause psychological harm. Eg. Verbal abuse, ridicule,

		<p>isolation or ignoring a child.</p> <p>5. The last phrase which has been added reiterates the contents of the sections mentioned but is also phrased in a way that prohibits any form of violence against children (mental and physical violence) and also prohibits the use of cruel, inhuman or degrading treatment. This clause would serve as a complete ban of all forms of corporal punishment, cruel inhuman and degrading treatment of punishment inflicted upon a child by anyone, including parents, educators, child care workers, etc.</p> <p>In other countries, where a law reform effecting a total ban on corporal and other forms of humiliating punishment has been effected, the wording is similarly along these lines. For example:</p> <p><u>Sweden</u>: Children and Parents Code (Civil Law) – “Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or other humiliating treatment”</p> <p><u>Finland</u>: Child Custody and Rights of Access Act (Family Law) – “A child shall be brought up in the spirit of understanding, security and love. He shall not be subdued, corporally punishment or otherwise humiliated.”</p> <p><u>Croatia</u> : The Family Act – “Parents and other family members must not subject the child to degrading treatment, mental or physical punishment and abuse.”</p> <p><u>Germany</u>: German Civil Law – “Children have a right to be brought up without the use of force. Physical punishment, the causing of psychological harm and</p>
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		<p>other degrading measures are forbidden.”</p> <p>It is suggested that this insertion to the clause will represent a prohibition of the use of corporal punishment and other forms of cruel inhuman or degrading punishment and will protect a child from these forms of punishment.</p>
<p>(2) Any legislation and any rule of common or customary law authorising corporal punishment of a child by a court, including the court of a traditional leader, is hereby repealed to the extent that it authorises such punishment.</p>	<p>A decision needs to be taken as to whether this clause remains in this Bill or whether it should stay in the Abolition of Corporal Punishment Act 33 of 1997.</p> <p>NOTE: It must be noted however that neither the Section 75 version of the Bill nor this version states whether, by the inclusion of this clause in this section, the Abolition of Corporal Punishment Act will be repealed. If it is not and this clause stays in here then there might be problems with regard to interpretation.</p>	<p>This clause is a restatement of the current law which confirms that judicial corporal punishment or corporal punishment in the penal system if abolished. In this respect, in 1997, the Abolition of Corporal Punishment Act (33 of 1997) was enacted following the decision in the S v Williams constitutional case (in 1995) which found judicial corporal to be unconstitutional on the basis that it was cruel, inhuman and degrading and that it violated the right to dignity.</p> <p>The Abolition of the Corporal Punishment Act repealed all statutory provisions or legislation which authorized the imposition of corporal punishment by courts of law by providing that “any law which authorizes corporal punishment by a court of law, including a court of traditional leaders, is hereby repealed to the extent that it authorizes such punishment”.</p> <p>Section 139(2) however extends to “any rule of common or customary law” while Act 33 of 1997 refers to only “any law” and does not include common and customary law.</p> <p>NOTE: It must be noted however that neither the</p>

		<p>Section 75 version of the Bill nor this version states whether, by the inclusion of this clause in this section, the Abolition of Corporal Punishment Act will be repealed. If it is not and this clause stays in here then there might be problems with regard to interpretation.</p>
<p>(3) No person may administer corporal punishment to a child at any child and youth care centre, partial care facility or shelter or drop-in centre.</p>	<p>Section 139(3)- (a) No person may administer corporal punishment to a child, <u>or subject a child to any other form of cruel, inhuman or degrading treatment,</u> at any child and youth care centre, partial care facility or drop in centre.</p> <p><u>(b) No person may administer corporal punishment to a child, or subject a child to any other form of cruel, inhuman or degrading treatment, at any school.</u></p>	<p>(a) Regulation 32(3) to the Child Care Act – passed in 1998 in GG number 18770 Notice R 416- lists various prohibited behaviour management practices that shall not be used by any person in a children’s home, place of safety, school of industries, shelter or by a foster parent. These inter alia include humiliation or ridicule, physical punishment, deprivation of basic needs such as food, clothing, shelter, bedding and verbal, emotional or physical harm. To draft the clause as proposed will create clarity in our law that degrading treatment or physical punishment is prohibited as a behaviour management practice in child care institutions. Currently, this is only stated in the regulations to the Child Care Act and it is suggested that it be included in this section.</p> <p>(b) The SALRC version –section 142 (4) – included that no person may administer corporal punishment to a child at any school. However, reference to “school” in the current section 139 (3) has been omitted. If it is</p>

	<p>(c) <u>No foster parent may administer corporal punishment to a foster child within their care, or subject a foster child to any other form of cruel, inhuman or degrading treatment.</u></p>	<p>decided that the clause on corporal punishment in the penal system (section 139(2)) remains in this Bill then it is suggested that for the sake of consistency (i.e the prohibition in the penal system is restated in 139(2) above) that the prohibition of the use of corporal punishment in schools (as in the Schools Act) and the prohibition of psychological or physical abuse (as in the National Education Policy Act) be restated here to ensure the protection of children. A decision would then need to be taken to repeal the relevant sections in the Schools Act and the National Education Policy Act if included here.</p> <p>Section 10 of the South African Schools Act (84 of 1997) provides that “no person may administer corporal punishment at a school to a learner.” It should be noted that the validity of this section was upheld by the Constitutional Court in the Christians Education South Africa v the Minister of Education case of 2000 since it did not infringe upon the applicant’s rights to freedom of religion, belief and opinion and was a justifiable limitation of such right. The National Education Policy Act (27 of 1996) provides that “no person shall administer corporal punishment, or subject a student to psychological or physical abuse at any educational institution”.</p> <p>(c) Regulation 32(3) to the Child Care Act – passed in 1998 in GG number 18770 Notice R 416- lists various prohibited behaviour management practices that shall not be used by a foster parent. These inter alia include humiliation or ridicule, physical punishment, deprivation of basic needs such as food, clothing,</p>
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	<p><u>(d) No parent or person who has parental responsibilities and rights in respect of a child may administer corporal punishment to a child or subject a child to other forms of cruel, inhuman or degrading treatment.</u></p>	<p>shelter, bedding and verbal, emotional or physical harm. To draft the clause as proposed will create certainty in our law that foster parents are not allowed to impose such punishment on children.</p> <p>(d) Currently in South Africa, the use of corporal punishment on children is abolished in all aspects of their public life. However, the use of corporal punishment on children is still allowed in the home or by parents in terms of the common law in the form of moderate or reasonable chastisement. The general rule is that a parent may inflict moderate and reasonable chastisement on a child for misconduct provided that this is not done in a manner offensive to good morals or for other objects than correction and admonition.¹ This chastisement can include the imposition of corporal punishment that must be restrained and tenable.² If a parent or person acting in loco parentis (in the place of the parent, for example, a step-parent)³ exceeds the bounds of moderation or acts from improper or ulterior motives or from a sadistic propensity, such parent or person can face both criminal and civil liability.⁴ In deciding whether or not the punishment falls within</p>
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¹ *R v Janke and Janke* 1913 TPD 382 as quoted in *Corporal Punishment: The Perspective of the South African Law Commission*, paper presented by Gordon Hollomby at a National Workshop on Corporal Punishment held on 20-21 February 2002 page 2.

² Pete, S “To smack or not to smack? Should the law prohibit South African parents from imposing corporal punishment on their children” in SAJHR (1998) p 444.

³ A parent has the right to delegate the authority to punish a child to a person in *loco parentis* and the decision whether and how to punish a child may also be delegated – *Du Preez v Conradie* 1990 (4) SA 46 (B). However, a parent may no longer delegate the power to administer corporal punishment to a child’s teacher as this form of punishment in schools has been forbidden by section 10 of the Schools Act 84 of 1996.

⁴ See *S v Lekghate* 1982 (3) SA 104 (B) and *Du Preez v Conradie* 1990 (4) SA 46 as quoted by G Hollomby in *Corporal Punishment: The Perspective of the South African Law Commission*, op cit, page 2 and also see “Hitting people is wrong-and children are people too” EPOCH South African Handbook, page 6.

		<p>the boundaries of being moderate, reasonable, fair and equitable, the court will take various factors into account. These include the nature of the offence; the physical and mental condition of the child; the motive of the person administering the punishment; the severity of the punishment (that is the degree of force applied); the object used to administer the punishment and the age, sex and build of the child.⁵ Even with the presence of these factors to guide magistrates hearing the matter, in practice, different courts hearing a case with similar facts can reach different conclusions thereby creating inconsistency within the judicial system.</p> <p>In order to bring our domestic law in line with our international obligations (UNCRC) and also our constitutional principles, it is proposed that a total ban of all forms of corporal punishment, even that which is imposed by parents, be abolished to ensure that the child's right to physical integrity is not infringed.</p> <p>If the proposed section 139(1) is accepted, then there might not be a reason to actually state this prohibition here.</p>
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	<p>Section 139(4) <u>The common law defence of reasonable chastisement available to persons referred to in subsection 139(1) and (3)(d) in any court proceeding is hereby abolished.</u></p>	<p>In most countries, eg Sweden, Finland and Austria, a first step in effecting law reform with regard to corporal punishment in the home included removing the defence of reasonable chastisement, which was available to the parents and this was then followed by</p>
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⁵ See Pete S, SAJHR 1998, op cit, page 444.

		<p>a more explicit prohibition being included in the civil legislation.⁶</p> <p>However, it is reported that merely removing the defence of reasonable chastisement (which indirectly had the effect of abolishing corporal punishment in the home) without also simultaneously explicitly prohibiting corporal punishment would lead to much confusion amongst professionals and the public and parents still believed that physical punishment was legal.⁷ Therefore, in order to bring about real and constructive change, it would be necessary to have an explicit provision stating that corporal punishment or any other cruel, inhuman or degrading treatment or punishment by parents is prohibited.</p>
<p>(4) The Department must take all reasonable steps to ensure that—</p> <p>(a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented across the country; and</p> <p>(b) programmes promoting appropriate discipline at home and at school are available across the country.</p>	<p>(5) The Department must take all reasonable steps to ensure that—</p> <p>(a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented across the country; and</p> <p>(b) programmes promoting appropriate discipline at home and at school are available across the country.</p>	<p>According to research⁸ the strongest factor leading to the use of corporal punishment is social and cultural support for corporal punishment as a parenting style. We therefore support the provisions in this bill relating to awareness raising relating to the effects of the bill.</p> <p>Many parents don't know how to discipline their children except through using corporal punishment, they fear that not using corporal punishment will result in a society without discipline. It is for these reasons that a ban on corporal punishment must be accompanied by broad based education programmes to provide parents with information and support in developing positive parenting skills.</p>

⁶ For example, these countries include Sweden, Austria, Finland, Norway,

⁷ Rowan Boyson report, op cit, p 23.

⁸ Dawes A, De Sass Kropiwnicki Z, Kafaar Z & Richter L (2005), Corporal Punishment of Children, A South African National Survey and Thompson Gershoff, E. (2002). Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review

	<p><u>(6) The department of Education must take all reasonable steps to ensure that positive discipline methods and parenting skills are included in the school curriculum.</u></p> <p><u>(7) The department of Health must take all reasonable steps to ensure that information relating to positive discipline methods and parenting skills are available at primary health care centres.</u></p>	<p>The ban on corporal punishment in the Education sector failed to include a strategy to assist teachers in developing alternative and effective methods of discipline, thus in schools where corporal punishment was heavily relied upon and where teaching conditions are bad, teachers have been left feeling frustrated and disempowered⁹ and many continue to use corporal and humiliating forms of punishment¹⁰.</p> <p>Likewise parents who are no longer able to use physical punishment may resort to other forms of humiliating and degrading punishment unless they are provided with support and alternative methods of discipline.</p> <p>Educational measures should include the following:</p> <ul style="list-style-type: none"> • Public service announcements on national television and radio. • Public service announcements in local newspapers and community radio. • The development of specific curriculum by the Department of Education, designed to educate children on the methods and benefits of positive parenting. • Including the issue of corporal punishment and its effects within the curriculum of other subjects. • Family planning and community health care clinics must be utilized to provide people with information
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⁹ Salim Vally at the Southern African Regional Workshop on Ending Corporal Punishment 27 & 28 January 2006

¹⁰ Rapport 28 January 2006 reporting on research conducted by the University of the Free State, School of Education. 58% of teachers in the study believe that corporal punishment must be reinstated in schools and that 28% admit to still using corporal punishment

		<p>on effective parenting in written and other forms of public education such as educational video's and presentations.</p> <ul style="list-style-type: none"> • Positive discipline in schools and positive parenting must be included in the curriculum for teachers in training. • Positive parenting methods must be included in the curriculum of trainee nurses and doctors. • Discipline and positive parenting methods must be included in the training curriculum for social workers.
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	<p><u>(8) Reports of persons who subject children to inappropriate punishment must be referred to a designated social worker for an investigation contemplated in section 150(1)(i) in order to establish if the child is in need of care and protection.</u></p> <p><u>(9) A parent, care-giver, or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.</u></p> <p><u>(10) In decisions regarding instituting criminal proceedings against a parent or person holding parental responsibilities</u></p>	<p>In light of the close links between corporal punishment and the physical abuse of children, high levels of violence in our society, our international obligations and the provisions within the our Constitution it is necessary to ban the use of corporal punishment by parents and to remove the defence that exists in common law that allows for parents to use moderate and reasonable chastisement of their children.</p> <p>However recognizing children as human rights bearers, offering children equal protection under the law and protecting children from violation and abuse must be balanced with ensuring that children are raised in loving and respectful environments.</p> <p>The purpose of creating laws is to prevent undesirable behaviour in society, institution of criminal proceedings indicates that a law has failed to achieve its aim in a</p>
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	<p><u>and rights in respect of a child who is reported for subjecting a child to inappropriate punishment, the best interests of the child principle is paramount.</u></p> <p><u>(11) Prosecution of a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment should only be instituted-</u></p> <ul style="list-style-type: none"><u>(a) when early intervention services or family preservation programmes have failed; or</u><u>(b) when early intervention services or family preservation programmes are deemed by a designated social worker to be inappropriate</u>	<p>particular case. A legal ban makes a clear statement of the wrongfulness of this form of punishment and will provide a vehicle for changing attitudes and behaviour through education on the development of other methods of disciplining children.</p> <p>We are extremely concerned at the number of cases of physical abuse of children that are considered acceptable by other adults on the basis that a parent has a right to beat their child. The result is that adults including family members, teachers and police fail to protect a significant number of children from outright physical abuse on the basis that a parent can do to a child what they want to. In too many cases it is only once the child is permanently injured or killed that we respond to the situation seriously. Of course at that time it is too late, a legal ban on corporal punishment will help to prevent this.</p> <p>Given the nature of the parent child relationship, children are very unlikely to report child abuse by their parents. Thus once a report of inappropriate discipline is made it must be considered as possible maltreatment, abuse, deliberate neglect or degradation as set out in section 150(1)(i) of this Act and referred to a designated social worker for further investigation in line with the provisions of section 155(2)</p> <p>Corporal punishment is used more often because the parent is experiencing high levels of stress or for the benefit of the parent's release of frustration and anger than for discipline or teaching of the child, thus</p>
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		<p>corporal punishment tends to address the parent's needs, not that of the child. For this reason many parents and children will benefit from early intervention programmes set out in section 144.</p> <p>We submit that the fear often expressed by parents that they will be prosecuted for smacking or giving their child a hiding is unlikely in the extreme and wish to include safeguards against this within the framework of the ban. Countries that have instituted legal bans on the use of parental corporal punishment do not indicate an increase in the rate of prosecution of abuse¹¹.</p> <p>With regard to 2(a) of the act which states that an object of this act is to promote the preservation and strengthening of families, in light of this we submit that prosecution of parents is not always in the best interests of the child.</p> <p>Criminal prosecution of parents for using corporal punishment should be considered as a last resort and only instituted when early intervention and prevention strategies have been tried and have failed. We recommend the application of section 46(1)(g) of this act providing for the children's court to order a parent of caregiver to early intervention services and family preservation programmes.</p>
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¹¹ Research in Sweden indicates that an increase in reports of abuse but no increase in prosecution and an actual decrease in prosecutions for assault of young adults who grew up after corporal punishment was banned. JE Durrant (1999) *A Generation Without Smacking: The impact of Sweden's ban on physical punishment* Save the children pp11-16

Clause	Proposed Amendment	Discussion
<p>Purposes of prevention and early intervention services or programmes</p> <p>144. (1) Prevention and early intervention services or programmes must focus on:</p> <p>(a) Preserving a child’s family structure;</p> <p>(b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children;</p> <p>(c) establishing appropriate interpersonal relationships within the family;</p> <p>(d) promoting the well-being of children and the realisation of their full potential;</p> <p>(e) preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children’s needs;</p> <p>(f) preventing the recurrence of problems</p>	<p>Purposes of prevention and early intervention services or programmes</p> <p>144. (1) Prevention and early intervention services or programmes must focus on:</p> <p>(a) Preserving a child’s family structure;</p> <p>(b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children;</p> <p><u>(c) promoting positive discipline of children</u></p> <p><u>(d)</u> establishing appropriate interpersonal relationships within the family;</p> <p><u>(e)</u> promoting the well-being of children and the realisation of their full potential;</p> <p><u>(f)</u> preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family</p>	<p>At best, the use of corporal punishment has been shown to obtain immediate compliance of a child in a situation. This is usually the result of pain, fear or surprise in the child. There is no evidence to suggest that the use of corporal punishment results in the child not repeating that behaviour in the future and the use of corporal punishment is associated with a host of negative consequences for the child and for the relationship between the child and the parent.</p> <p>Conversely parents who use positive discipline methods which are consistent, promote self control and routines with children from an early age¹² indicate a high level of success. They report that the children develop the self discipline, understand the consequences of her/his actions and respect for others.</p> <p>Studies¹³ done with parents who had abused their children indicated that two thirds of the abusive incidents are started in an attempt to “teach the child a lesson”. Thus promoting the use of positive discipline methods through early intervention services will contribute to the prevention of abuse of children.</p> <p>Hitting children is generally easier for parents in the heat of the moment when the child has done wrong as</p>

¹² Cronan M, (2005) *Discipline is Not a Dirty Word*

¹³ Coontz, P.D., & Martin, J.A. (1998). Understanding Violent Mothers and Fathers: Assessing explanations offered by mothers and fathers of their use of control punishment. In G.T. Hotaling, D. Finkelhor, J.T. Kirkpatrick, & M. A. Straus (Eds), *Family abuse and its consequences: New directions in research* Newbury Park, CA:

Gil, D.G. (1973). *Violence against children: Physical abuse in the United States*. Cambridge, MA: Harvard University Press

<p>in the family environment that may harm children or adversely affect their development;</p> <p>(g) diverting children away from the child and youth care system and the criminal justice system; and</p> <p>(h) avoiding the removal of a child from the family environment.</p> <p>(2) Prevention and early intervention services or programmes may include –</p> <p>(a) assisting families to obtain the basic necessities of life;</p> <p>(b) empowering families to obtain such necessities for themselves.</p> <p>(3) Prevention and early intervention services must involve and promote the participation of families, parents, care-givers and children in identifying and resolving their problems.</p>	<p>environment to meet children’s needs;</p> <p><u>(g)</u> preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;</p> <p><u>(h)</u> diverting children away from the child and youth care system and the criminal justice system; and</p> <p><u>(i)</u> avoiding the removal of a child from the family environment.</p> <p>(2) Prevention and early intervention services or programmes may include –</p> <p>(a) assisting families to obtain the basic necessities of life;</p> <p>(b) empowering families to obtain such necessities for themselves.</p> <p>(3) Prevention and early intervention services must involve and promote the participation of families, parents, care-givers and children in identifying and resolving their problems.</p>	<p>it is immediate. However in the long term positive parenting methods are more beneficial to the child, the parent and to society in general.</p> <p>Research¹⁴ indicates that corporal punishment tends to be supported and used more frequently by parents in the following circumstances:</p> <ul style="list-style-type: none"> • When parents were beaten and hit when they were children • When parents are experiencing high levels of stress • In single parent families • By younger, less experienced parents • Where there is marital and relationship conflict • Where domestic violence and other abuse is present • By parents who are depressed or experiencing anxiety • In families with larger numbers of children • Where there is social and cultural support for corporal punishment <p>These factors all indicate that corporal punishment is used more often for the benefit of the parent’s release of frustration and anger than for discipline or teaching of the child, thus corporal punishment tends to address the parent’s needs, not that of the child. Many of these underlying factors will be addressed by parenting and positive discipline skills developed through early intervention services described in section 144.</p>
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¹⁴ Dawes A, De Sass Kropiwnicki Z, Kafaar Z & Richter L (2005), Corporal Punishment of Children, A South African National Survey and Thompson Gershoff, E. (2002). Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review

SUMMARY OF OPTIONS FOR THE CLAUSE:

OPTION 1 – COMPLETE PROHIBITION (If section 139(1) is accepted as proposed in entirety)

Section 139

(1) Any persons, including a person who has parental responsibilities and rights in respect of the child, must respect, promote and protect the child's right to physical and psychological integrity as conferred by sections 12 (1)(c), (d) and (e) of the Constitution in that no child may be subjected to any form of violence, including corporal or other forms of humiliating punishment, from either public or private sources, torture or be punished in a cruel, inhuman or degrading way.

(2) The common law defence of reasonable chastisement available to persons referred to in subsection 139(1) in any court proceeding is hereby abolished.

(3) The Department must take all reasonable steps to ensure that—

- (a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented across the country; and
- (b) programmes promoting appropriate discipline at home and at school are available across the country.

(4) The department of Education must take all reasonable steps to ensure that positive discipline methods and parenting skills are included in the school curriculum.

(5) The department of Health must take all reasonable steps to ensure that information relating to positive discipline methods and parenting skills are available at primary health care centres.

(6) Reports of persons who subject children to inappropriate punishment must be referred to a designated social worker for an investigation contemplated in section 155(1)(i) in order to establish if the child is in need of care and protection.

(7) A parent, care-giver, or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.

(8) In decisions regarding instituting criminal proceedings against a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate punishment, the best interests of the child principle is paramount.

(9) Prosecution of a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment should only be instituted-

(a) when early intervention services or family preservation programmes have failed; or

(b) when early intervention services or family preservation programmes are deemed by a designated social worker to be inappropriate

OPTION 2 (If proposed section 139(1) is not accepted in entirety and if a decision taken to exclude reference to school and penal system)

139(1) Any persons, including a person who has parental responsibilities and rights in respect of the child, must respect, promote and protect the child's right to physical and psychological integrity as conferred by sections 12 (1)(c), (d) and (e) of the Constitution.

139(2) (a) No person may administer corporal punishment to a child, or subject a child to any other form of cruel, inhuman or degrading treatment, at any child and youth care centre, partial care facility or drop in centre.

(b) No foster parent may administer corporal punishment to a foster child within their care, or subject a foster child to any other form of cruel, inhuman or degrading treatment.

(c) No parent or person who has parental responsibilities and rights in respect of a child may administer corporal punishment to a child or subject a child to other forms of cruel, inhuman or degrading treatment.

139(3) The common law defence of reasonable chastisement available to persons referred to in subsection 139(1) or 139(2)(c) in any court proceeding is hereby abolished.

(4) The Department must take all reasonable steps to ensure that—

(a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented across the country; and

(b) programmes promoting appropriate discipline at home and at school are available across the country.

(5) The department of Education must take all reasonable steps to ensure that positive discipline methods and parenting skills are included in the school curriculum.

(6) The department of Health must take all reasonable steps to ensure that information relating to positive discipline methods and parenting skills are available at primary health care centres.

(7) Reports of persons who subject children to inappropriate punishment must be referred to a designated social worker for an investigation contemplated in section 155(1)(i) in order to establish if the child is in need of care and protection.

(8) A parent, care-giver, or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.

(9) In decisions regarding instituting criminal proceedings against a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate punishment, the best interests of the child principle is paramount.

(10) Prosecution of a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment should only be instituted-

(a) when early intervention services or family preservation programmes have failed; or

(b) when early intervention services or family preservation programmes are deemed by a designated social worker to be inappropriate

OPTION 3 (If section 139(1) is not accepted in entirety and reference to penal system and school is included)

139(1) Any persons, including a person who has parental responsibilities and rights in respect of the child, must respect, promote and protect the child's right to physical and psychological integrity as conferred by sections 12 (1)(c), (d) and (e) of the Constitution.

139(2) Any legislation and any rule of common or customary law authorizing corporal punishment of a child by a court, including the court of a traditional leader, is hereby repealed to the extent that it authorizes such punishment.

139(3) (a) No person may administer corporal punishment to a child, or subject a child to any other form of cruel, inhuman or degrading treatment, at any child and youth care centre, partial care facility or drop in centre.

(b) No person may administer corporal punishment to a child, or subject a child to any other form of cruel, inhuman or degrading treatment, at any school.

(c) No foster parent may administer corporal punishment to a foster child within their care, or subject a foster child to any other form of cruel, inhuman or degrading treatment.

(d) No parent or person who has parental responsibilities and rights in respect of a child may administer corporal punishment to a child or subject a child to other forms of cruel, inhuman or degrading treatment.

139(4) The common law defence of reasonable chastisement available to persons referred to in subsection 139(1) and (3)(d) in any court proceeding is hereby abolished.

- (5) The Department must take all reasonable steps to ensure that—
- (a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented across the country; and
 - (b) programmes promoting appropriate discipline at home and at school are available across the country.
- (6) The department of Education must take all reasonable steps to ensure that positive discipline methods and parenting skills are included in the school curriculum.
- (7) The department of Health must take all reasonable steps to ensure that information relating to positive discipline methods and parenting skills are available at primary health care centres.
- (8) Reports of persons who subject children to inappropriate punishment must be referred to a designated social worker for an investigation contemplated in section 155(1)(i) in order to establish if the child is in need of care and protection.
- (9) A parent, care-giver, or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment must be referred to an early intervention service as contemplated in section 144.
- (10) In decisions regarding instituting criminal proceedings against a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate punishment, the best interests of the child principle is paramount.
- (11) Prosecution of a parent or person holding parental responsibilities and rights in respect of a child who is reported for subjecting a child to inappropriate forms of punishment should only be instituted-
- (a) when early intervention services or family preservation programmes have failed; or
 - (b) when early intervention services or family preservation programmes are deemed by a designated social worker to be inappropriate