



Physical abuse of children in the context of punishment¹

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This information sheet describes current legislation across Canada pertaining to physical punishment and provides national statistics on the incidence and characteristics of physical abuse in the context of physical punishment.

Provincial and territorial child welfare laws

Laws and services pertaining to child welfare fall under provincial and territorial jurisdiction. Although provincial and territorial child welfare statutes do not directly address physical punishment in defining maltreatment, they all include suspicion of physical harm or risk of harm of a child by a parent or caregiver as grounds for making a report to a child welfare authority.

In Ontario, for example, protection from physical harm is considered necessary when “the child has suffered physical harm, inflicted by the person having charge of the child... [or when] there is substantial risk that the child will suffer physical harm.”²

In British Columbia, the child requires protection from physical abuse “if the child has been, or is likely to be, physically harmed by the child’s parent.”³

In Quebec, the Youth Protection Act states that the security or development of a child is considered to be in danger and thus, the child requires protection if “he is subject to physical ill-treatment through violence or neglect.”⁴

Child welfare laws in British Columbia, Manitoba, and Ontario explicitly forbid physical punishment by foster parents.

Ontario prohibits physical punishment of all children receiving services from a child protection agency or other service provider licensed or approved by the Province.

Other provincial/territorial statutes and regulations

Physical punishment is prohibited by day care legislation in British Columbia, Alberta,

Saskatchewan, Manitoba, Ontario, Nova Scotia, Prince Edward Island, Newfoundland, Northwest Territories, Yukon, and Nunavut, as well as by education acts in British Columbia, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, Quebec, Yukon, Northwest Territories, and Nunavut.

Quebec removed references to a “right of correction” from its Civil Code in 1994.

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The Criminal Code

The Criminal Code establishes laws regarding the crime of physical assault that apply in all provinces and territories. Section 43 specifically excuses the use of physical punishment:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.⁵

On January 30, 2004, the Supreme Court of Canada ruled on a constitutional challenge

to this law. The challenge was based on several arguments:

- that the law violates three sections of the Canadian Charter of Rights and Freedoms;⁶
- that the law violates the terms of the UN Convention on the Rights of the Child;⁷
- that research demonstrating that physical punishment has no beneficial long-term effects and is associated with long-term risk to children renders it unjustifiable.⁸

In a six to three decision, the Supreme Court upheld Section 43 of the Canadian Criminal Code. However, new legal limits on the definition of “reasonable force” were set. According to the judgement, only minor corrective force of a transitory and trifling nature by a parent is reasonable physical punishment. The following are considered unreasonable:

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- Physical punishment of children younger than two and older than 12;
- The use of objects or blows or slaps to the head;
- Degrading, inhuman, or harmful conduct.

Further, the Court ruled that teachers may apply force to remove a child from a classroom or secure compliance with instructions, but not as corporal punishment. While these three principles provide some limits to Section 43, it is not clear how the public and the courts will interpret “minor,” “transitory,” and “trifling.” There is some concern that the court’s decision creates an impression of modernizing an antiquated law without addressing the key arguments raised by the challenge.

Legal reform in the international context

A number of nations have clarified their positions on physical punishment by removing their criminal defences; for example, Sweden in 1957, Finland in 1969, Norway in 1972, and Austria in 1977. Furthermore, 11 countries have explicitly abolished physical punishment in all settings: Sweden, Finland, Norway, Austria, Denmark, Cyprus, Latvia, Croatia, Israel, Germany, and Iceland.

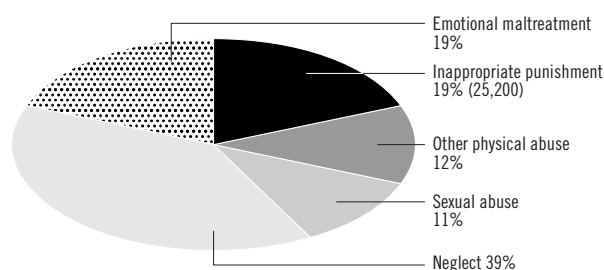
Rates of physical punishment in child welfare investigations

Rates of physical abuse occurring in the context of punishment are tracked nationally through the 1998 Canadian Incidence Study of Reported Child Abuse and Neglect. In these cases,

Child abuse has occurred as a result of inappropriate punishment (e.g., hitting with hand or object) that has led to physical harm, or put the child at substantial risk of harm.⁹

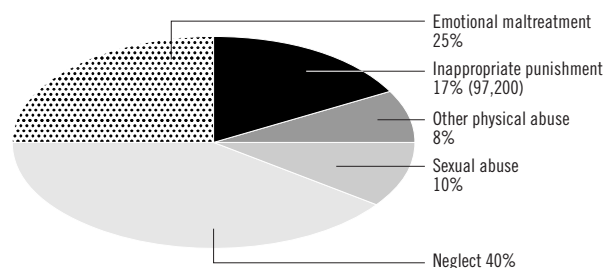
Over 25,200 of the estimated 135,600 reports of child maltreatment investigated in 1998 involved allegations of physical punishment as the primary reason for investigation, making it the third most frequently investigated form of child maltreatment nationwide. Thirty-nine percent of these cases (involving 9,700 victimized children) were substantiated. In another 21% of these cases, abuse remained suspected.

Figure 1: 135,500 investigations



Source: CIS 1998

Figure 2: 61,000 substantiated investigations

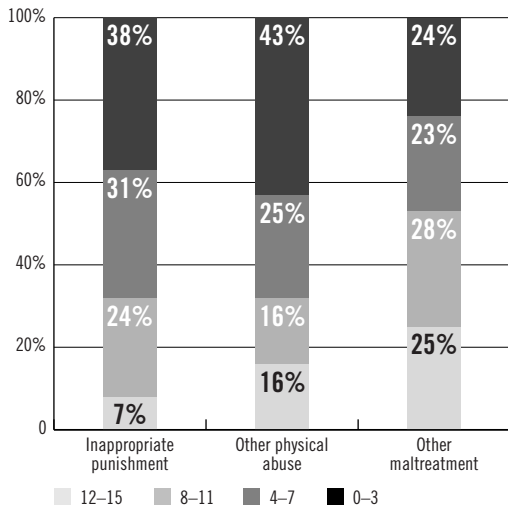


Source: CIS 1998

Victim and perpetrator characteristics

Comparing the age and gender of victims of physical abuse occurring in the context of punishment reveals some important differences. Two-thirds of victims are boys, while boys constitute 52% of victims of other forms of physical abuse and 48% for other forms of maltreatment. Victims of punishment abuse are on average older (9.5 years) than victims of other forms of maltreatment (7.3 years).

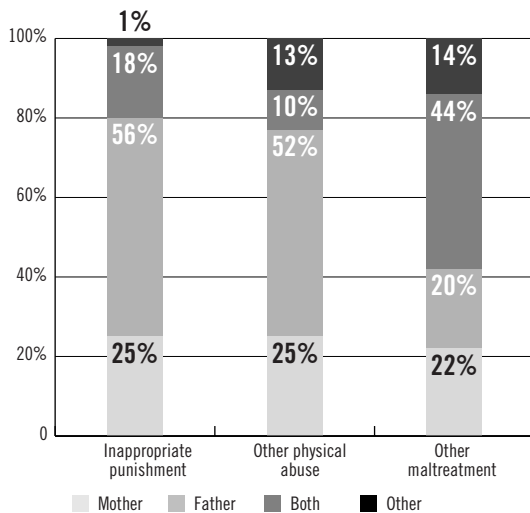
Figure 3: Victim age



Source: CIS 1998

In two-parent families nearly three quarters of perpetrators (73%) are fathers, and in most instances fathers on their own. Fathers are also over-represented as perpetrators in other cases of physical abuse but are equally likely as mothers to be perpetrators in other forms of maltreatment.

Figure 4: Perpetrators in two-parent families



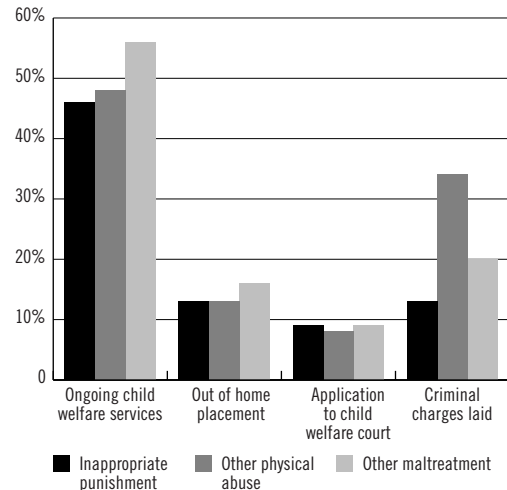
Source: CIS 1998

Intervening in cases of punishment abuse

Cases involving physical abuse in the context of punishment are somewhat less likely to be kept open for ongoing child welfare services than are other forms of maltreatment (46% vs. 56%), and victims are somewhat slightly less likely to be placed in out-of-home care during the investigation (13% vs. 16%).

There is a very significant difference in rates of criminal charges being laid: criminal charges were laid in only 13% of physical punishment cases, compared with 34% of cases involving other physical abuse.

Figure 5: Service outcomes



Source: CIS 1998

Future research

Information is needed on the kinds of services provided to families in cases where reports are not substantiated. It is also important to examine how frequently subsequent reports are made in these cases. Further study of the cultural meanings of physical punishment would assist practitioners in reducing the risk of its use among diverse communities.

Physical abuse that occurs in the context of punishment is one of the leading forms of investigated and substantiated maltreatment across Canada.

Conclusion

Physical abuse that occurs in the context of punishment is one of the leading forms of investigated and substantiated maltreatment across Canada. Therefore, the child welfare system is already in a position to respond to legal reform that would make Canadian laws clear and consistent. The effectiveness of child protection and abuse prevention will remain impaired as long as the physical punishment of children remains explicitly permitted in criminal legislation.

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- 1 This information sheet is based the following peer-reviewed publications:

Durrant, J.E., Ensom, R., & Wingert, S. (2003). *Joint statement on physical punishment of children and youth* (pre-publication edition). Ottawa, ON, Canada: Coalition on Physical Punishment of Children and Youth.

Trocme, N., MacLaurin, B., Fallon, B., Daciuk, J., Billingsley, D., Tourigny, M., Mayer, et al. (2001). *Canadian incidence study of reported child abuse and neglect: Final report*. Ottawa, ON: Minister of Public Works and Government Services Canada.

Trocme, N. & Durrant, J. (2003). Physical punishment and the response of the Canadian child welfare system: Implications for legislative reform. *Journal of Social Welfare and Family Law*, 25(1), 39-56.
 - 2 *Child and Family Services Act*, RSO 1990, Chapter C.11, Section 2. Available online at: [http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c11_e.htm#37.\(2\)](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c11_e.htm#37.(2))
 - 3 *Child, Family and Community Service Act*, RSBC 1996, Chapter 46, Section 13 (1) (a). Available online at http://www.qp.gov.bc.ca/statreg/stat/C/96046_01.htm
 - 4 *Youth Protection Act*, LRQ, Chapter P-34.1, Section 38 (g). Available online at <http://www.canlii.org/qc/sta/csqc/20030815/r.s.q.p-34.1/whole.html>
 - 5 *Criminal Code*, RS, Chapter C-34, Section 43. Available online at <http://laws.justice.gc.ca/en/c-46/40190.html>.
 - 6 *Canadian Charter of Rights and Freedoms* (enacted as Schedule B to the Canada Act 1982 [UK] 1982, C. 11, which came into force on April 17, 1982). Available online at <http://laws.justice.gc.ca/en/charter/>
 - 7 *UN Convention on the Rights of the Child* (adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989). Available online at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>
 - 8 Gershoff, E.T. (2002). Corporal punishment by parents and associated child behaviours and experiences: A meta-analytic and theoretical review. *Psychological Bulletin*, 128(4), 539-579.
 - 9 Trocme, N., MacLaurin, B., Fallon, B., Daciuk, J., Billingsley, D., Tourigny, M., Mayer, et al. (2001). *Canadian incidence study of reported child abuse and neglect: Final report*, pp. 30-31. Ottawa, ON: Minister of Public Works and Government Services Canada.

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Suggested citation: Trocme, N., Durrant, J., Ensom, R., & Marwah, I. (2004). *Physical abuse of children in the context of punishment*. CECW Information Sheet #8E. Toronto, ON, Canada: Faculty of Social Work, University of Toronto.

The Centre of Excellence for Child Welfare (CECW) is one of the Centres of Excellence for Children's Well-Being funded by Health Canada. The CECW is also funded by Canadian Institutes of Health Research and Bell Canada. The views expressed herein do not necessarily represent the official policy of the CECW's funders.



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