

# Response to the Social Services and Well-being (Wales) Bill stage 1 consultation

**From: 'Sdim Curo Plant/Children Are Unbeatable! Cymru**

CAU! Cymru is an alliance of Welsh organisations and individuals campaigning for legal reform to give children the same protection from assault as adults by prohibiting all forms of physical punishment. We also seek the active promotion of positive, non-violent forms of discipline.

CAU! Cymru is part of a UK-wide alliance of more than 600 organisations and projects, including all the major early years, child protection, domestic violence and parent-support organisations as well as many local early years groups, Local Safeguarding Children Boards, professional bodies (including six Royal Colleges of health) and faith groups.

Children are the only group in society who do not have full protection under the law against assault. In England and Wales corporal punishment has been prohibited in state schools since 1987 and in independent schools since 1998. All forms of physical punishment against children placed in local authority care have been prohibited in regulations issued under the Children Act 1989. So children placed in foster care have the same protection from assault as adults, but children who live with their parents or who are adopted can still be physically punished: section 58 of the Children Act 2004 allows parents and some other carers to justify common assault on a child as “reasonable punishment”.

In a debate held on 19<sup>th</sup> October 2011, the National Assembly for Wales voted by a clear majority for a motion calling on the Welsh Government to introduce legislation to guarantee children equal protection under the law on assault.<sup>1</sup>

Successive Welsh Governments for more than 10 years have been committed to achieving this reform. There has also been strong cross party support in successive Welsh Assemblies. In October 2011 the First Minister confirmed that Wales now has the devolved power to legislate to remove the defence of ‘reasonable punishment’. We have also taken independent legal advice that supports this opinion.

The commitment of Wales to banning physical punishment was reported to the UN Committee on the Rights of the Child in 2007 and acknowledged by the Committee in its 2008 concluding observations on the UK Government’s report under the

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<sup>1</sup> For 24, abstain 13, against 15, Record of proceedings, National Assembly for Wales, 19<sup>th</sup> October 2011

Convention on the Rights of the Child. The enactment of the Rights of Children and Young People Measure in 2011 reinforces the need to legislate now.

The **Social Services and Well-being (Wales) Bill** is the first major legislation introduced into the Assembly to address well-being and safeguarding; it is the obvious vehicle for fulfilling the long-standing commitment. Now there is a legislative opportunity: we question why should Welsh children wait any longer to have the same level of protection as adults under the law on assault? Children across Europe are already enjoying this equal protection before the law. Within the European Union, 17 states have banned smacking completely and another six are committed to doing so, leaving just four which have neither achieved reform nor committed to it: France, Belgium, the UK and Malta – which shares the same English law defence.

Ending violent punishment is a fundamental equality and human rights issue for children in Wales NOW. The law that allows parents and some others to justify common assault as ‘reasonable punishment’ is unjust, unsafe and unnecessary.

**Children are unbeatable! Cymru urges the Health and Social Care Committee to recommend in its Stage 1 Report that the necessary provision to remove the “reasonable punishment” defence should be included in the Bill. This written evidence sets out our arguments for the inclusion. We would welcome the opportunity to give oral evidence to the Committee.**

## **THE EVIDENCE**

### **The objectives and principles of the Bill (question 3)**

Question 3 of the consultation asks: “Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum? Please explain your answer.”

We do not consider that the Bill satisfactorily meets its objectives because it does not include the fundamental measure of child protection that has long been promised by successive Welsh Assemblies and administrations, namely to protect children from all forms of physical punishment by repealing the defence of “reasonable punishment” under section 58 of the Children Act 2004.

While the superficial business of the Bill is to consolidate social service duties and functions, the Explanatory Memorandum makes clear that this is not simply an

exercise in moving deckchairs but is intended to transform the lives of those who need care and support together with their carers.

Now that the Welsh Assembly has acquired the devolved powers to protect children from common assault, any failure to deliver this protection undermine and contradicts the Bill's overall objectives, for the following reasons:

### **1. "Inclusive policy-making" – focus on human rights, equality and dignity**

The Equality Impact Assessment included in the Explanatory Memorandum refers to the Inclusive Policy Making model developed by the Welsh Government which requires that all policy and legislation is developed to meet "the identified needs of individuals and communities, placing a citizen focus based on the principles of human rights; fairness, respect, equality and dignity at the centre of all our policy actions." (para. 179).

Children's right to respect for their human dignity and physical integrity and to equal protection under the law requires the removal of the "reasonable punishment" defence. The issue is fundamental to children's status in society as well as to their well-being, safety and protection.

This right has been recognised for over two decades, and the following UN human rights treaty bodies have specifically recommended that the UK prohibit in law all corporal punishment of children:

**The Committee on the Rights of the Child:** three times, in 1995, 2002 and 2008. In addition the Committee's General Comment No. 8, on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, emphasises that a ban is "an immediate and unqualified obligation of States parties."

**The Committee on Economic, Social and Cultural Rights:** twice, in 2002 and 2009.

**The Committee on the Elimination of Discrimination against Women:** in 2008

Successive **UN High Commissioners for Human Rights** have also called for legal reform to prohibit physical punishment, as did the 2006 report of the UN Secretary-General's **Study on Violence against Children**. Many UN member states have also called on the UK to ban physical punishment in the **Universal Periodic Review** at the Human Rights Council.

Within Europe, in 2005 and again in 2012, **the European Committee of Social Rights**, reviewing compliance with Article 17 of the European Social Charter, found that the UK was in breach because it had not prohibited all corporal punishment in the family. In 2008, the **Commissioner for Human Rights of**

**the Council of Europe**, following his visits to the UK in February and March/April 2008, stated in a formal Memorandum to the UK Government that laws allowing physical punishment are not compliant with international human rights standards. Also in 2008, the **Council of Europe** launched a Europe-wide campaign for prohibition of all physical punishment and the promotion of positive non-violent parenting in its member states.

## **2. The Bill's focus on "well-being"**

According to the Explanatory Memorandum the addition of "Well-being" to the title of the Bill came about because consultation respondents asserted that the key principles of the Bill were about much more than social services and social care: "The principle of promoting well-being for people – children, adults and carers - is central to the Bill. This way ensures that focus is on individual need. The Bill sets out the shift in emphasis from services to individual need, and to take a rights based approach. Focussing on well-being plays much more strongly into the prevention and early intervention service model that the Bill aims to establish." (para. 188)

Section 2 of the Bill sets out the definition of "well-being", with particular regard to children's well-being. Aside from the human-rights imperative to ban physical punishment, research findings increasingly show that all these elements of well-being would be improved by a ban on physical punishment.

What follows is a brief summary of some of the main findings in this respect. If the Committee is interested we would of course be happy to provide them with greater detail. It should be noted that in 2002 a major meta-analysis of 88 studies on corporal punishment by parents and associated child behaviours and experiences was carried out by Elizabeth Gershoff.<sup>2</sup>

N.B. Studies included in the meta-analysis are referenced to Gershoff, more recent studies have separate footnotes. It may also be noted that few of these studies were conducted in the UK. This is not because we are avoiding presenting the findings by British researchers: it is because there are very few such studies.

### **The definition of well-being in clause 2 of the Bill:**

#### **a) physical and mental health and emotional well-being**

The links between corporal punishment and poor mental health in childhood and adulthood are clear. In Gershoff's meta-analysis, all 12 studies on mental health in childhood concluded that corporal punishment is significantly associated with a decrease in children's mental health, including anxiety and disruptive disorders in young children and depression and hopelessness in adolescents. All eight studies on mental health in adulthood found an association between corporal punishment and

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<sup>2</sup> Gershoff, E. T. (2002), "Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review", *Psychological Bulletin*, 128(4), 539-579

poorer mental health, including low self-esteem, depression, alcoholism, self-harm and suicidal tendencies.

Moreover, a nationally representative study in the USA found that people who had experienced physical punishment, but not more severe forms of violence, were more likely to experience mental health problems including major depression, mania, anxiety disorders, alcohol and drug abuse and personality disorders.<sup>3</sup>

Although many studies concentrate on more severe forms of corporal punishment, these associations have been shown to exist even where children experience corporal punishment infrequently. A study of 2,000 10-16 year olds in the USA found that the more often the young people had been “spanked”, slapped or hit by parents or guardians in the past year, the more likely they were to have experienced psychological distress (including feeling sad, feeling alone and feeling bad about themselves). The association was significant at all levels of frequency of corporal punishment, including for young people who had experienced physical punishment once or twice in the past year. Those who experienced “frequent” corporal punishment (at least once a month) were also more likely to have been depressed (feeling sad many times or all the time) in the past month. The study controlled for young people’s experience of violence identified as abuse and for their age, gender and parent’s income. The study also examined the effect of parental support and perhaps surprisingly, concluded that:

“The findings... suggest... that using physical punishment is not beneficial to the well-being of children or adolescents even in the context of a supportive parent-child relationship. In fact, this “loving” context may affect the meaning that children attach to the punishment, such that they are more likely to attribute it to their own failures and deficiencies, or experience the discipline as arbitrary and unexpected.”

Corporal punishment may also have a negative impact on children’s physical health. For example, a study of 3,355 13- to 19-year-old students in Hong Kong, found that those who had experienced corporal punishment in the past three months were more likely to feel that their health was poor and to experience physical illnesses (for example asthma), or to take up risky practices such as smoking, alcohol consumption and fighting with others.<sup>4</sup>

#### **b) protection from abuse and neglect**

All physical punishment, however “mild” and “light”, carries an inbuilt risk of escalation, because its effectiveness in controlling children’s behavior decreases over time, encouraging the punisher to increase the intensity of the punishment.

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<sup>3</sup> Afifi, T. O. et al (2012), “Physical Punishment and Mental Disorders: Results From a Nationally Representative US Sample”, *Pediatrics*, 2 July 2012

<sup>4</sup> Lau, J. T. F. et al (1999), “ Prevalence and correlates of physical abuse in Hong Kong Chinese adolescents: A population-based approach”, *Child Abuse & Neglect*, 23: 549-557

In Gershoff's meta-analysis, all 10 of the studies on this topic found that corporal punishment was significantly associated with physical "abuse" (although it perhaps is more accurate to say that all physical punishment *is* abuse). A study of 830 substantiated physical abuse cases in the USA in the 1980s concluded that "almost invariably" parents defined their actions as "disciplinary procedures that were required in response to the child's behaviour."<sup>5</sup> Two large Canadian studies of reported child abuse in the last decade have consistently found that around 75% of substantiated physical abuse of children "occurred during episodes of physical punishment."<sup>6</sup> A study in the USA found that children who had been "spanked" by their parents in the past month were 2.3 times as likely to suffer an injury requiring medical attention than children who had not been spanked.<sup>7</sup>

### **c) education, training and recreation**

Several studies suggest that corporal punishment can have a negative impact on children's cognitive development. For example, studies of the association between corporal punishment and poorer cognitive development in young children from the USA include a study of over 2,500 children which found that those who were "spanked" aged one were more likely to score worse on a test of their mental development aged three.<sup>8</sup> And in a study of 337 children of African-American mothers, the children were tested as infants and at age seven. The study found that children whose mothers used reasoning to resolve conflicts were more confident with words at age seven and that the more children were "spanked", the more difficulties with attention and hyperactivity they had at age seven (for example, being easily distracted or having difficulty awaiting their turn).<sup>9</sup> A further study from the USA, in which over 1,500 children did tests of their cognitive ability (including tests of their reading and maths, memory of locations and motor and social development), found that the more times children were "spanked" by their mothers in the week prior to the study, the less their cognitive ability had increased four years later.<sup>10</sup>

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<sup>5</sup> Kadushin A and Martin J A (1981). *Child abuse: An interactional event*. New York: Columbia University Press, p.249

<sup>6</sup> Trocme N and 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, 39–56; Trocme, N. et al (2010) Canadian Incidence Study of Reported Child Abuse and Neglect – 2008: Executive Summary & Chapters 1-5. Public Health Agency of Canada: Ottawa, 2010; see also A. & Trocme, N. (2013), [Physical Abuse and Physical Punishment in Canada](#), Child Canadian Welfare Research Portal Information Sheet # 122

<sup>7</sup> Crandall, M. et al (2006). Injury in the first year of life: Risk factors and solutions for high-risk families. *Journal of Surgical Research*, 133, 7-10

<sup>8</sup> Berlin, L. J. et al (2009) "Correlates and Consequences of Spanking and Verbal Punishment for Low-Income White, African American, and Mexican American Toddlers", *Child Development* 80(5):1403-1420

<sup>9</sup> Jester, J. M. et al (1999) "Do Maternal Reasoning and Physical Punishment Contribute to Development of Verbal Competence and Behavior Problems?", presented at the Society for Research in Child Development Biennial Meeting, Albuquerque, New Mexico, April 1999

<sup>10</sup> Straus, M. A. & Paschall, M. J. (2009) "Corporal Punishment by Mothers and Development of Children's Cognitive Ability: A Longitudinal Study of Two Nationally Representative Age Cohorts", *Journal of Aggression, Maltreatment & Trauma*, 18:459-483

#### **d) domestic, family and personal relationships;**

Corporal punishment inflicted on a child by her or his parents can cause damage to the parent-child relationship. In Gershoff's meta-analysis, all 13 studies on the topic found an association between corporal punishment and a decrease in the quality of the parent-child relationship.

Corporal punishment was also associated with adult domestic violence towards a partner in all five studies on the topic included in Gershoff's meta-analysis.

A major study involving men in Brazil, Chile, Croatia, India, Mexico and Rwanda found that those who had experienced violence, including corporal punishment, during childhood, were more likely to perpetrate intimate partner violence, hold inequitable gender attitudes, be involved in fights outside the home, pay for sex and experience low self-esteem and depression, and were less likely to participate in domestic duties, communicate openly with their partners, attend pre-natal visits when their partner is pregnant and/or take paternity leave.<sup>11</sup>

A study of 717 boys in Canada found that experience of harsh parental practices (being punished by being hit, slapped, scolded all the time or called names and feeling rejected by parents) contributed directly and significantly to the boys being perpetrators of "dating violence" at 16 and 17 years old.<sup>12</sup> A study of 608 respondents in the USA who were interviewed in 1982 at ages 12-19 and again ten years later found that those who had experienced "harsh physical discipline" were more likely to be violent towards a "romantic partner" as adults.<sup>13</sup>

A study which used data from over 4,400 adults in the USA, who took part in a nationally representative survey of American heterosexual couples with and without children, found that the more often respondents – both men and women – had experienced physical punishment as teenagers, the more likely they were to physically assault their partners as adults and to approve of violence in adult relationships, such as slapping a partner's face).<sup>14</sup>

In our recent submission on domestic violence, CAU! Cymru commented:

"It should be self-evident that attitudes to violence begin in the home and are influenced by treatment in pre-school years... We know that

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<sup>11</sup> Contreras, M. et al (2012), *Bridges to Adulthood: Understanding the Lifelong Influence of Men's Childhood Experiences of Violence*, Analyzing Data from the International Men and Gender Equality Survey, Washington DC: International Center for Research on Women (ICRW) and Rio de Janeiro: Instituto Promundo

<sup>12</sup> <sup>12</sup> Lavoie, F. et al (2002), "History of family dysfunction and perpetration of dating violence by adolescent boys: a longitudinal study", *Journal of Adolescent Health*, 30, pp 375–383

<sup>13</sup> Swinford, S. P. et al (2000), "Harsh physical discipline in childhood and violence in later romantic involvements: The mediating role of problem behaviors", *Journal of Marriage and the Family*, 62, 508–519

<sup>14</sup> Straus, M. A., & Yodanis, C. L. (1996), "Corporal punishment in adolescence and physical assaults on spouses later in life: What accounts for the link?" *Journal of Marriage and Family*, 58, 825–841

parents act as role models – smoking parents encourage children to smoke, parents who have gone to prison are more likely to have children who commit offences and so forth – and it is therefore imperative that measures are taken to stop parents hitting their children. Whatever the disciplinary intention, the message physical punishment carries is overwhelming – that hitting a loved-one in order to punish or control them is acceptable behaviour. This message is transmitted to children at an early stage of their development and is internalised and unexamined. Banning physical punishment is part of preventing violence in later life.”

#### **e) the contribution made to society**

We all want children to grow into thoughtful, respectful and well-behaved citizens. Much of the research on corporal punishment’s effect on children’s learning has focussed on whether parental corporal punishment “works” –that is to say, examining the effect it has on children’s behaviour rather than any other developmental aspect. This research has consistently found that far from teaching children how to behave, corporal punishment makes it less likely that they learn the lessons adults want them to learn.

Although in Gershoff’s meta-analysis, three of the five studies on the topic found that corporal punishment is associated with immediate compliance, 13 of the 15 studies on long-term compliance found that corporal punishment does not contribute to the child’s long-term compliance to the desired behaviour. Corporal punishment does not teach children how to behave or help them understand how their behaviour affects others. Rather than helping children to develop the desire and motivation to behave well of their own accord, corporal punishment teaches children that it is desirable not to get caught: rather than behaving differently next time, they are therefore likely to repeat the undesired behaviour and use strategies to avoid being caught. Corporal punishment may also decrease long-term compliance through its effects on children’s cognitive development – for example, by making children less able to regulate their own behaviour– and by damaging adult-child relationships (see below), introducing fear and undermining the powerful behavioural motivations of children’s love and respect for their parents and other adults involved in their care and education.

A recently-published Department for Education (England) study on *How is parenting style related to child antisocial behaviour?* found that a negative parenting style was clearly associated with more severe child antisocial behaviour. Positive parenting practices included praise and rewards and parental involvement and negative parenting practices included corporal punishment, lack of consistency in discipline and failure to monitor the child. The study said the findings “remained true even after a range of child and family socioeconomic factors were taken into account”. Children of parents who were in the top quarter of reported use of negative



discipline showed twice the rate of severe child behaviour problems, compared to the children of the other parents.<sup>15</sup>

In another example, a study involving 102 college students in the USA found that those who had experienced “minor” corporal punishment such as “spanking” or slapping as children had lower levels of empathy, while those whose parents had used explanation of the consequences of their actions as a discipline method had higher levels of empathy. Empathy was measured by a test where participants indicated their level of agreement with statements such as “I get really angry when I see someone being ill-treated”. The authors of the study suggest that corporal punishment may prevent people from developing an internalised set of values, meaning that they need to rely on external sanctions when making decisions about moral issues.<sup>16</sup>

#### **f) securing rights and entitlements**

See pages 1-2 above on children’s recognised human right to a ban on physical punishment in the section on “Inclusive policy-making”.

#### **g) social and economic well-being**

Corporal punishment has been implicated in a variety of studies as a factor in antisocial behaviours such as bullying, lying, cheating, running away, truancy, school behaviour problems and involvement in crime as a child and young adult. In 12 of the 13 studies included in Gershoff’s meta-analysis, corporal punishment was found to be significantly associated with an increase in delinquent and antisocial behaviour.

Above all, there is abundant evidence that corporal punishment is associated with increased aggression in children. All 27 studies on the topic included in Gershoff’s meta-analysis found an association, and this has been confirmed by numerous other studies. Studies which use a prospective design increasingly refute the idea that children who are more aggressive experience more corporal punishment – research consistently suggests that experiencing physical punishment directly causes children’s levels of aggression to increase.

#### **...in relation to a child ‘well-being’ also includes a) physical, intellectual, emotional, social and behavioural development**

See a)-g) above for evidence of the multiple adverse effects of physical punishment on children’s development.

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<sup>15</sup> Scott, S. et al (2010) How is parenting style related to child antisocial behaviour? Preliminary findings from the Helping Children Achieve Study, Department for Education.

<sup>16</sup> Lopez, N. et al (2001) “Parental disciplinary history, current levels of empathy, and moral reasoning in young adults”, *North American Journal of Psychology*, 3:193-204

## **(b) “welfare” as that word is interpreted for the purposes of the Children Act 1989**

It should be noted that the interpretation of children’s “welfare” in the 1989 crucially includes an obligation to have regard to children’s own wishes and feelings on the matter in question (section 1(3)(a) of the Children Act 1989).

There is a tendency by governments to give priority to the views of parents when considering this issue. While polls of parents almost invariably show majority opposition to the notion of “criminalising” smacking, these views should not be oversimplified. In September 2010 a literature review of 138 articles and recent surveys of parental views on physical punishment (including the UK Government’s survey undertaken as part of its 2007 review of section 58) was conducted.<sup>17</sup> The researchers concluded:

“Lack of parental support for a complete ban on physical punishment must also be viewed alongside the fact that a majority of parents believe that using it is upsetting to both themselves and their children and rarely results in increased obedience, respect or teaching right from wrong. High levels of emotional arousal, stress and frustration also suggest that the context in which such discipline is administered is often far from controlled. A comprehensive review of the literature on parental views of physical punishment shows that parents are often ambivalent about physical discipline, do not view it as an optimal method of behaviour management and are more prone to smack when stressed or angry. Nonetheless, many parents continue to smack despite the fact they do not believe it to be effective.”

It should also be noted that polls consistently show that younger parents are less likely to smack and are more likely to support a ban than older parents. But, above all, research shows that once a ban is enacted, parental support for, and use of, physical punishment rapidly diminishes.<sup>18</sup>

As regards the views of children, when the UK government in Westminster reviewed section 58 in 2007 it commissioned a survey of the views of children. In-depth interviews were held with 64 children aged 4-16, two-thirds of whom reported

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<sup>17</sup> Bunting L, Webb M A and Healy J, *In two minds? Parental attitudes toward physical punishment in the UK*, *Children & Society* Vol 24 (2010), pp 359-370.

<sup>18</sup> Undoubtedly the clearest example is Sweden, see for example, Modig C (2000) *Never Violence – Thirty Years on from Sweden’s Abolition of Corporal Punishment*, Government Offices of Sweden and Save the Children. Some supporters of smacking have suggested that smacking was in decline before 1979: this is correct, but in fact the defence against a common assault was actually repealed in 1957, when 90% of Swedish parents supported the use of physical punishment. Since then it has steadily declined, and is now under 10%. It might also be noted that a 2010 survey of 1,353 parents by Ireland’s Minister for Children and Youth Affairs found a majority in support of a legal ban – perhaps as a result of the Irish government publicly committing itself to taking this step.

personal experience of being smacked.<sup>19</sup> The government's overview report of the exercise reported the following findings:

“Many children accepted that discipline and punishment were an important part of growing up and whilst it was often unpleasant it was necessary. However, most felt that smacking was out of place in modern childhood, and that other punishments were more effective in bringing about reflection, changing behaviour and supporting good and close relationships with parents. Whilst smacking was the most feared form of punishment, it was the emotional distress and humiliation that can be caused by smacking, rather than any physical pain, which children feared.”<sup>20</sup>

### **3. The Rights of Children and Young People Measure**

The Explanatory Memorandum explains (para. 191): “The Rights of Children and Young People Measure 2011 requires the Welsh Ministers to give due regard to the United Nations Convention on the Rights of the Child in the development of all legislation and policy”. It goes on to state that the Bill “takes forward Wales’ distinctive and internationally regarded rights based approach to children’s social care. It notes that the assessment of the impacts that the Bill will have on children and young people confirms a rights based approach and lists relevant Articles that “are being dealt with in the Bill”.

Among the articles of the Convention listed as being ‘dealt with’ in the Bill is Article 19: under this article it is noted that: “Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them”. The Memorandum goes on to note a number of provisions in the Bill relevant to observance of children’s Article 19 rights.

But the complete absence of any provision to remove the “reasonable punishment” defence and thus provide children with equal legal protection from common assault is not explained in the assessment (although the issue was raised by a number of respondents to the Consultation on the draft Bill).

The Committee on the Rights of the Child has consistently interpreted Article 19 as requiring the prohibition and elimination of all physical punishment of children, including in the detailed guidance provided in its General Comment No. 8 in 2006. In concluding observations on successive reports from the UK it has recommended removal of the defence; in its 2008 concluding observations, it commended the National Assembly for its commitment “to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation”.

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<sup>19</sup> Sherbert Research *A study into children’s views of physical discipline and punishment*, October 2007

<sup>20</sup> Department of Children, Schools and Families *Review of Section 58 of the Children Act 2004* October 2007

Successive Welsh Governments for more than a decade have accepted that achieving equal protection from assault for children is a fundamental element in a rights-based approach to children.

In 2002 the Welsh Government formally expressed its support for the Committee on the Rights of the Child's recommendation that all physical punishment should be prohibited in law.<sup>21</sup> In the following years Children Are Unbeatable! Wales received funding from the Welsh Government, the Welsh Assembly voted by a large majority to express its formal regret that the UK had failed to legislate to ban physical punishment, a number of Ministerial statements were made on the Welsh commitment to ban and Assembly Members visited Sweden to explore the effect of its ban (passed over 30 years ago). In 2004 the Welsh Assembly Government issues *Rights to Action* setting out its proposals for policy and provision for children and young people in Wales, including full prohibition:

“The Assembly Government believes that the current legal defence of ‘reasonable chastisement’ should be ended. We wish to encourage respect for children's rights to human dignity and nonviolent forms of discipline, including through public education programmes. We have made representations to the UK Government about this...Children who are smacked are more likely to believe that the strong get their own way and that violence is an acceptable manner of expressing a view or dealing with anger or frustration.”<sup>22</sup>

In 2009 the Welsh Government launched its five year action plan, of which one priority was to “make physical punishment of children and young people illegal in all situations”<sup>23</sup>.

In 2011, following confirmation by the First Minister that the Assembly now has power to repeal section 58 and thus ban smacking, the National Assembly voted by a majority of 24 to 15 to urge the Welsh Government to introduce this legislation (Government ministers abstained in this vote).<sup>24</sup> This Bill provides an obvious and immediately available vehicle for the necessary amendment.

## Conclusion

A great deal of preparatory work has already been done to encourage parents in Wales not to smack their children and children should not have to wait now that

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<sup>21</sup> Cabinet Statement, Supporting children and parents in Wales, 23 October 2002.

<sup>22</sup> Framework for Partnership *Children and Young People: Rights to Action* Welsh Assembly Government, July 2002

<sup>23</sup> *Getting it right 2009 United Nations Convention on the Rights of the Child A 5-year rolling Action Plan for Wales setting out key priorities and actions to be undertaken by the Welsh Assembly Government in response to the Concluding Observations of the UN Committee on the Rights of the Child 2008*, November 2009, Welsh Assembly Government

<sup>24</sup> National Assembly for Wales record of proceedings, October 19 2011

Wales has the power to legislate. Would women be asked to wait for protection from assault while men were re-educated or unemployment was eradicated? Banning smacking does not add to the problem of vulnerable families. Parent-educators are unanimous that stopping smacking invariably benefits family life: parents become less stressed, children better behaved and family relationships improve. And while parents who smack would technically be 'criminalised', just as any person who commits a minor assault on an adult is 'criminalised', it is scaremongering to suggest parents would be dragged through the criminal justice system for minor smacks, since both CPS and childcare services have confirmed that this would not be the case<sup>25</sup>.

Wales was the first nation of the UK to ban smacking in childcare settings, the first to appoint a Children's Commissioner; the first to incorporate the UN Convention on the Rights of the Child into legislation – Wales should be the first nation to ban smacking and ensure equal protection for children in the law on assault.

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<sup>25</sup> In evidence to the Joint Parliamentary Committee on Human Rights on May 25 2005 the then Director of Public Prosecutions did not rule out the possibility that a parent might be taken to court for a mild smack, but stressed that this might be appropriate only in very rare circumstances. In a joint statement in 2008 the Association of Directors of Children's Services, BASW, BASPCAN, Unite – Community Practitioners' and Health Visitors' Association; NSPCC, Parenting UK and Royal Colleges of paediatrics and nursing confirmed that the threshold of "significant harm" for social work intervention in families at risk would not change following a ban on smacking..