

A Ban on Physical Punishment

National Assembly Debate

Children are Unbeatable! Cymru

October 2011

'Sdim Curo Plant!
Children are Unbeatable! Cymru

On the 19 October the National Assembly for Wales passed a motion to urge the Welsh Government to bring forward legislation which would end the availability of the defence of "reasonable chastisement" for an offence of assaulting a child.

Under the law, as it currently stands in England and Wales, parents who hit their children can use a defence of "reasonable chastisement." The law relating to this defence was partially amended by the *Children Act 2004*, so that the defence could no longer be used in circumstances where the parent had caused actual bodily harm to a child, but it can still be used in other cases.

Children in Wales, together with many colleagues in the children's sector, have long campaigned through the Children are Unbeatable! Cymru campaign for children to have the same protection in the law from assault as adults. We believe that the defence of "reasonable chastisement" should be removed and that this should be coupled with public education and advice about the risks of physical punishment and the alternatives to it.

There are many arguments for this. Physical punishment is a violation of children's rights, with the UN Convention on the Rights of the Child stating that children should be protected from all forms of physical violence. The UN Committee on the Rights of the Child, which is responsible for monitoring the implementation of the convention, has repeatedly raised concerns about this in their reports to the UK Government.

There is also a plethora of research spanning several decades and different countries which has found smacking to be associated with an abundance of highly damaging affective, cognitive, and behavioural child outcomes. Smacking teaches children that violence is an acceptable and appropriate strategy for resolving conflict or getting people to do what they want. For example a study published in the *American Journal Pediatrics* in 2010 showed that children who had been smacked at the age of three were much more likely to be aggressive by the age of five.

The law as it stands at the moment is ambiguous and

this undermines effective child protection. In 2007 the Crown Prosecution Service reviewed the cases in which physical punishment was involved following the changes made by to the law by the *Children Act 2004*. None of the cases were about minor smacks - the child victims are alleged to have been slapped around the head, made to eat soap, smacked on the naked bottom by a non-relative, pinned down by the neck, bruised on the arm, punched and strangled. Of the seven cases, in at least four the defence of "reasonable chastisement" was raised, and in all of the cases the defendant avoided conviction.

Smacking has now been banned in a number of countries, including 16 within the EU. Sweden was the first country to ban it and while smacking has not

entirely disappeared, both children and parents report a steady decrease in the use of physical punishment. Parental support for physical punishment is now below 10%.

Developments in Wales

While campaigners have been unable to gain the support of the UK Government for an outright ban, the Government in Wales has been much more supportive. As long ago as October 2002 the Welsh Government issued a Cabinet Statement highlighting its opposition to the physical punishment of children, and indicating that it was intent on making representation to the UK Government to change the law to remove the defence of reasonable chastisement. This support has continued. The Welsh Government's Action Plan on children's rights *Getting it Right* was published in

Physical Punishment is already prohibited in: Austria, Bulgaria, Costa Rica, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Iceland, Israel, Kenya, Latvia, Liechtenstein, Luxembourg, Moldova, Netherlands, New Zealand, Norway, Portugal, Poland, Romania, South Sudan, Spain, Togo, Tunisia, Ukraine, Uruguay, Venezuela.



November 2009 and Priority 10 of the plan is "working to make physical punishment of children and young people illegal in all situations."

Up until May 2011 the only way the Welsh Government could act was through its support of alternatives to physical punishment as the legislative powers to remove the defence of "reasonable chastisement" lay at Westminster. However, the additional powers gained by the National Assembly following the referendum in March 2011 have changed the situation. Several lawyers, including the First Minister, Carwyn Jones, have confirmed that they now believe that the National Assembly for Wales does now have the powers to amend the law to end the availability of the defence of reasonable punishment.

The recent debate in the National Assembly for Wales was held under a new procedure for individual

Assembly Members to bring forward motions for debate. The motion was tabled jointly by four Assembly Members, Christine Chapman AM, and Julie Morgan AM, both from the Welsh Labour Party, Lindsay Whittle AM of Plaid Cymru and Kirsty Williams AM of the Welsh Liberal Democrats. It was the first debate on this subject to take place since the Assembly gained these new powers, and Assembly Members were given a free vote on the issue. A number of other Assembly Members spoke in favour of the motion during the debate, as well as the four AMs who had proposed the motion. They included Lord Elis-Thomas (Plaid Cymru), and Jenny Rathbone (Labour). Members speaking against the motion included Darren Millar, Mark Isherwood and Byron Davies, all from the Welsh Conservative Party. The motion was passed by 24 votes to 15, with members of the Welsh Government

abstaining.

Deputy Minister for Children and Social Services, Gwenda Thomas responded to the motion on behalf of the Welsh Government. She confirmed that as a Government they believe that hitting children is wrong. She explained: "Our manifesto, and now our programme for government, reinforced our commitment to work to make physical punishment of children and young people unacceptable through the promotion of positive alternatives. The Welsh Government will drive this commitment with vigour." She outlined some of the programmes that the Welsh Government is involved with that support positive parenting, but explained that the Welsh Government did not intend to bring forward any legislation during this Assembly term to ban smacking: "I recognise that we still have work to do to persuade those who would

defend hitting children, and I believe that the policies and programmes of this Government will make a major contribution to winning hearts and minds here in Wales.

"In the meantime, I do not want to add to the problems of those families who do not have at their disposal the means and necessary skills to parent more positively. I would be fearful of criminalising parents, especially our most vulnerable. A great deal of preparatory work would need to be done to pave the way for legislation of this sort, and we would not be able to bring forward legislation during the term of this Assembly. However, I am committed to retaining the option of legislating at some future date, if we cannot achieve the significant change we seek through other means."



Children in Wales currently host the Children are Unbeatable S'dim Curo Plant! Campaign. If you would like to become a supporter or have further information, please e-mail: cau@childreninwales.org.uk or contact Children in Wales, 25 Windsor Place, Cardiff, CF10 3BZ, Tel: 029 2034 2434