Corporal Punishment and Physical Abuse: Defining Reasonable Discipline in Texas

Introduction

Corporal punishment is legal in Texas as a form of child discipline. However, almost all physical child abuse begins with the intent of corporal punishment. Texas law regarding the limits of corporal punishment needs clarification in statute.

Texas code exempts “reasonable discipline” from its classification of physical abuse, yet the code fails to define its meaning. A definition for the term “reasonable discipline” must be made in order to clarify this statute for law enforcement, Child Protective Services, as well as parents and caregivers. Given the examples other states have set and expert medical advice, it is recommended that the Texas Family Code include a definition of reasonable physical discipline and proposes the following concepts that could be incorporated into a definition: does not result in an injury; is delivered to a child over the age of two, with the intent of correcting the child’s behavior; excludes the use of an object; excludes all body parts except for the buttocks, and excludes aggressive acts such as kicking, throwing, shaking, or any act resulting in interrupted breathing. Having a guiding definition of discipline could eliminate forms of punishment that may ultimately lead to serious physical abuse or injury of a child.

“Reasonable Discipline” and the Current Statute

The current definition of physical abuse in Texas appears subjective and fails to adequately differentiate between abuse and reasonable discipline, leaving too much room for interpretation and therefore an increased risk for discipline to lead to abuse.

In Texas, Section 261.001 of the Family Code defines abuse of a child as inclusive of “physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm.” The statute notably lacks a definition for “reasonable discipline.”

The phrasing of the Texas statute leaves the interpretation of what constitutes “reasonable discipline” widely open, failing to provide adequate guidance for parents and for synchronized enforcement by Child Protective Services and court systems. In addition, an important consideration is the latitude the exception gives to prosecutors. A vague definition blurs the line between physical punishment/discipline and physical abuse, leaving Texas children unprotected. However, if the definition is too narrow, the statute could exclude some overlooked forms of harmful discipline. For example, in Canada, the Supreme Court decided on seven criteria that would determine reasonable discipline: the discipline must be by a parent;
must be delivered to a child between two and 12; must be educational to the child; must be minor and transitory; must not use objects or involve hitting the head; must not be a result of the parent’s own anger; and must not be demeaning or harmful. When researchers reviewed these criteria, they found that they would deem a significant percentage of child abuse cases legal, which makes the criteria appear arbitrary and unhelpful. Clearly, some specificity is needed, but it is the responsibility of states to make the determination.

Of critical note: An expanding amount of research continues to confirm that the use of physical acts to punish a child is not an effective method of discipline and, in fact, has numerous adverse effects on a child. Because physical punishment uses the stimulus of discomfort for conditioning, there is an inherent risk of overusing the stimulus in an attempt to get desired results (behavior compliance) and causing injury to the child, even by well-meaning parents. In fact, studies have shown that 2/3 of substantiated child physical abuse begins with the intention to discipline using physical acts.

RECOMMENDATIONS

Texas could adopt or create a definition of reasonable discipline by eliciting concepts from other states’ statutes that would be most appropriate to Texas. Currently, sixteen states, including Arkansas, Missouri, and Mississippi, as well as the District of Columbia, American Samoa, and the Northern Mariana Islands allow for exceptions to physical abuse to include some forms of physical discipline, as long as the discipline does not cause injury and is “reasonable.” However, states and territories choose to define the word in various ways. For example, the District of Columbia’s statute on child abuse excuses reasonable parental discipline which is “moderate” and does not include burning, biting, or cutting; hitting with a fist; causing injury by “shaking, kicking or throwing”; causing intentional injury to a child under 18 months; interrupting breathing; and threatening with or using a weapon (Child Welfare Information Gateway, 2011, p. 25). Arkansas excludes from its child abuse statute “reasonable and moderate physical discipline…that shall not include an act that is likely to cause and that does cause injury more serious than transient pain or minor temporary marks” (p. 16). California’s exception appears to have the most stringent limitations, noting “serious physical harm does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury” (p. 19). Overall, state definitions appear to incorporate one or more of the following variables: intent, specific action, result, and interference in development.

In addition to states and territories, the medical community also has a stance on using physical punishment to discipline a child. According to the American Academy of Pediatrics (AAP; 1998),

Forms of physical punishment, such as striking a child with an object, striking a child on parts of the body other than the buttocks or extremities, striking a child with such intensity that marks lasting more than a few minutes occur, pulling a child's hair, jerking a child by the arm, shaking a child, and physical punishment delivered in anger with the

Defining Reasonable Discipline in Texas
intent to cause pain, are unacceptable and may be dangerous to the health and well-being of the child. (p.726)

The AAP goes on to discuss the likelihood that physical punishment oftentimes escalates, which underscores the need to draw a solid line of limitation.

Given examples set forth by other states, expert advisory, and the need to balance specificity with judicial latitude, Texas’ statute could be changed to define “reasonable physical discipline” as that which incorporates these components or concepts:

1. Does not result in an injury;
2. Is delivered to a child over the age of two, with the intent of correcting the child’s behavior;
3. Excludes the use of an object;
4. Excludes aggressive acts such as kicking, throwing, and shaking, or any act resulting in interrupted breathing;
5. Avoids all body parts excluding the buttocks.

**CONCLUSION**

To conclude, “reasonable physical discipline” must be defined in Texas statute in order to clarify existing guidelines for Texas agencies and courts and to protect children’s’ well-being. States have defined the term in various ways, but the professional advice is clear. Drawing from states’ precedents and expert recommendation, Texas should hone its statute to reflect a vital understanding of the powerful implications of the terminology and define discipline in a manner that protects best protects our children.
REFERENCES


Coleman, Dodge, & Campbell. (2010). Where and how to draw the line between reasonable and corporal punishment and abuse. Law and Contemporary Problems, 73:107, 107-165.


