

A WORK IN PROGRESS: THE NECESSITY OF A LEGISLATIVE BAN ON THE CORPORAL PUNISHMENT OF CHILDREN IN THE HOME IN THE STATE OF MINNESOTA

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ABSTRACT

While the era of corporal punishment has largely subsided in many states in the U.S., the practice has not been so widely prohibited in the home. Minnesota's statute which permits a parent, legal guardian, or caretaker to use "reasonable force" to restrain a child is one such example. Minnesota Statute 609.379(a)(1) has an intended goal of protecting the well-being of children overall. Has the statute been effective? Or is it unintentionally protecting harmful practices of parents, guardians, and caregivers?

This Note evaluates the legislative approach of Minnesota's reasonable force statute in congruence with its practical impact. Beginning with a historical preview behind the use of corporal punishment in educational settings, this Note analyzes prevalent issues surrounding state intervention in intrafamilial relations, legislative ambiguity, and the psychological ramifications of corporal punishment on children. Given the historical, legal, and psychological impact of this long-standing debate, this Note proposes an absolute ban on physical punishment of a child, regardless of environment. This will allow Minnesota to continue advancing its protective efforts, as well as to ensure every child's wellbeing and security.

INTRODUCTION

The fact that corporal punishment remains accepted within both the education system and a child's home comes as an odious surprise to some. Corporal punishment, as defined by the United States Department of Education, includes the "paddling, spanking, and other forms of physical

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punishment imposed on a child.”¹ As of 2024, corporal punishment in educational settings is legal in seventeen states and practiced in fourteen.² An “additional six other states have not expressly prohibited it.”³ Corporal punishment in the home is lawful in all states.⁴

Minnesota is one of the states that expressly prohibits the use of corporal punishment in educational settings.⁵ While Minnesota Statute § 121A.58 prohibits corporal punishment in schools, it does not similarly prohibit corporal punishment within the home.⁶ Under Minnesota Statute § 609.379, subd. 1(a)(1), a parent, legal guardian, or caretaker may use “reasonable force” to restrain a child.⁷ While corporal punishment in schools is statutorily prohibited, the issue of corporal punishment in the home must still be addressed in order to allow Minnesota legislation to accomplish its proposed goal: protecting the well-being of children overall.⁸

Thus, the question must now be asked: Is Minnesota’s legislative approach effectively protecting children? Or else, is it inadvertently creating barriers for children’s success and working to protect the actions of parents, guardians, and caregivers?

1. See Aniya Greene-Santos, *Corporal Punishment in Schools Still Legal in Many States*, NEA TODAY (May 20, 2024), <https://www.nea.org/nea-today/all-news-articles/corporal-punishment-schools-still-legal-many-states> [https://perma.cc/G5RR-BQYK].

2. *Id.*

3. *Id.*

4. “State laws confirm the right of parents to inflict physical punishment on their children and legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in childrearing.” END CORPORAL PUNISHMENT, CORPORAL PUNISHMENT OF CHILDREN IN THE USA 4 (2024), <https://www.endcorporalpunishment.org/wp-content/uploads/country-reports/USA.pdf> [https://perma.cc/KU8R-KUXN].

5. MINN. STAT. § 121A.58 (2024).

6. MINN. STAT. § 121A.58, subd. 2 (2024). (“Corporal punishment not allowed. An employee or agent of a district shall not inflict corporal punishment or cause corporal punishment to be inflicted upon a pupil to reform unacceptable conduct or as a penalty for unacceptable conduct.”).

7. MINN. STAT. § 609.379, subd. 1 (2024).

Reasonable force. (a) Reasonable force may be used upon or toward the person of a child without the child’s consent when the following circumstance exists or the actor reasonably believes it to exist: (1) when used by a parent, legal guardian, or other caretaker of a child, in the exercise of lawful authority, to restrain or correct the child.

Id.

8. See Jessie Van Berkel, *Minnesota’s Child Protection System Needs Fixes. Legislators Are Starting With These Changes*, THE MINN. STAR TRIB. (May 21, 2024), <https://www.startribune.com/minnesotas-child-protection-system-needs-fixes-legislators-are-starting-with-these-changes/600367517> [https://perma.cc/8FNW-RGMT].

Part I of this Note outlines the overarching history of corporal punishment and its incorporation in both educational settings and the home. It explores factors crucial for an understanding of corporal punishment, including the prevalent debates regarding government interference into familial relations, the pervasive legislative issues of ambiguity and lack of uniformity surrounding statutes, and the detrimental psychological harms that result from the use of corporal punishment. Additionally, legislative actions taken by other jurisdictions are explored. Part II analyzes the issues fostered by Minnesota's current statutory law and proposes legislative change for an absolute ban on physical discipline, as well as removing the "reasonable" punishment defense found in Minnesota Statute § 609.379, subd. 1(a)(1).⁹ This Note concludes that enacting such a proposal would rid Minnesota courts of the case-by-case discretion that the current law enables, while simultaneously ensuring the safety and well-being of children in all environments.

I. HISTORY

A. Corporal Punishment in Educational Settings

Corporal punishment has a lengthy history in American schools.¹⁰ Corporal punishment was present in educational settings dating back to the colonial period, and the utilization of corporal punishment by teachers was justified by common law doctrines such as *in loco parentis*¹¹ and *parens patriae*.¹² Early cases viewed the authority of the teacher as derivative from parents' rights.¹³ This notion stems from the common belief that parents have the ability to punish their children. Therefore, this privilege is "given" to teachers when the child is within the educational setting.¹⁴ Today, this

9. See MINN. STAT. § 609.379 (2024).

10. See Roy Lynn, *Corporal Punishment in American Public Schools and the Rights of the Child*, 30 J.L. & EDUC. 554, 555 (2001).

11. See Timothy Garrison, *From Parent to Protector: The History of Corporal Punishment in American Public Schools*, 16 J. CONTEMP. LEGAL ISSUES 115, 117 (2007).

12. See Lynn, *supra* note 10, at 556 (clarifying the idea that *parens patriae* was supported by the considerations of the state as a provider or protection to those unable to care for themselves, as well as the state as an educator "in controlling the child's behavior and providing for the safety and security of children entrusted in its care.").

13. See Garrison, *supra* note 11, at 117.

14. *Id.* at 118.

logic coincides with the rationale that emphasizes the state's ability to impose corporal punishment as "is reasonably necessary for the proper education and discipline of the child."¹⁵ Consequently, it is believed that the safeguards for corporal punishment found within the common law will penalize an individual if that individual "go[es] beyond" the allowance of "reasonable force."¹⁶ Therefore, some reason that "[a]s long as the schools are open to public scrutiny, there is no reason to believe that the common-law constraints will not effectively remedy and deter excesses."¹⁷

The United States Supreme Court upheld corporal punishment in educational settings in the seminal case of *Ingraham v. Wright*.¹⁸ In that case, Plaintiffs James Ingraham and Roosevelt Andrews filed complaints based on paddling incidents at Drew Junior High School in Florida.¹⁹ The school prohibited punishment that was "degrading or unduly severe," but permitted the authorized punishment: paddling the student with a wooden paddle.²⁰ Staff punished Plaintiff James Ingraham for being slow to respond to the teacher's instructions, subjecting him to twenty "licks" with the paddle.²¹ This punishment was "so severe that he suffered a hematoma requiring medical attention and keeping him out of school for several days."²² Roosevelt Andrews was similarly paddled for minor infractions, and "[o]n two occasions he was struck on his arms, once depriving him of the full use of his arm for a week."²³

The Court in *Ingraham v. Wright* ruled that, in order to determine the reasonableness of the punishment, the circumstances had to be taken into account.²⁴ Among the most important considerations were, according to the Court, "[T]he seriousness of the offense, the attitude and past behavior of the child, the nature and severity of the punishment, the age and strength of the child, and the availability of less severe but equally effective means of discipline."²⁵ The Court justified the utilization of corporal punishment,

15. *Ingraham v. Wright*, 430 U.S. 651, 670 (1977).

16. *Id.* at 663, 670.

17. *Id.* at 670.

18. *Id.* at 683.

19. *Id.* at 653.

20. *Id.* at 655–56.

21. *Id.* at 657.

22. *Id.*

23. *Id.*

24. *Id.* at 662.

25. *Id.*

stating that it represented a “‘balance struck by this country’ . . . between the child’s interest in personal security and the traditional view that some limited corporal punishment may be necessary in the course of the child’s education.”²⁶ Following consideration of the circumstances, the Supreme Court ultimately determined that the Plaintiffs’ claims failed in this case.²⁷

B. Debates Examining State Intervention in the Home

A prominent concern in the debate over corporal punishment is the issue of legal intervention into intrafamilial relations and privacy. Many states have revealed a willingness to prohibit corporal punishment in the school setting.²⁸ However, these same states have not revealed a similar willingness toward addressing corporal punishment within the home.²⁹

Opponents of state intervention emphasize the sanctity of individual rights and liberties. They argue that “state paternalism” does not “fit in with this country’s continuing attempts to promote individual freedoms and family autonomy.”³⁰ As a result, state legislators often recognize and protect the rights of parents from “unwarranted” government intervention.³¹ The Supreme Court supported this belief in *Stanley v. Illinois*.³² In that case, the Supreme Court reasoned that “[t]he integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment.”³³ However, despite the Court’s holding in *Stanley*, many state courts have continued to expand the basis for state intervention into domestic matters, including abuse and neglect of children.³⁴

Opponents of state intervention also make a correlated argument that a high level of state intervention allows children in real danger to “get lost”

26. *Id.* at 676 (quoting *Poe v. Ullman*, 367 U.S. 497, 542 (1961) (Harlan, J., dissenting)).

27. *Id.* at 683.

28. See generally Benjamin Shmueli, *Corporal Punishment in the Educational System Versus Corporal Punishment by Parents: A Comparative View*, 73 L. & CONTEMP. PROBS. 281 (2010).

29. *Id.* at 300–01.

30. See Susan R. Rogers, *The State vs. The Family: Does Intervention Really Spare the Child?*, 28 MERCER L. REV. 547, 549 (1977).

31. See Douglas J. Besharov, “Doing Something” About Child Abuse: The Need to Narrow the Grounds for State Intervention, 8 HARV. J.L. & PUB. POL’Y 539, 540–55 (1985) (clarifying that if there is such intervention, the state should do so “with due regard to parental rights.”).

32. See generally *Stanley v. Illinois*, 405 U.S. 645 (1972).

33. Rogers, *supra* note 30, at 549 (alteration in original) (quoting *Stanley v. Illinois*, 405 U.S. 645 (1972)).

34. *Id.* at 550–52.

within the many “minor cases flooding the system.”³⁵ The growth of child protective programs has not kept pace with the increase in reported cases of children in need.³⁶ Therefore, over-reporting “places a further burden on chronically understaffed child protective agencies” and forces them to “allocate a substantial portion of their limited resources to these ‘unfounded’ reports.”³⁷ Opponents argue that the allocated resources in and of themselves are inadequate, and thus, the resources that do reach the child in “real” need are unable to effectively protect that child.³⁸ This argument proposes that immense state intervention will cause children in “real” need to be neglected, as well as a resulting lack of effectiveness for any potential aid offered.³⁹

On the other side of the debate is the acknowledgement that parental rights are not absolute, and that there is a critical need for intervention into private family matters in order to protect children in danger of abuse and neglect.⁴⁰ Proponents of state intervention argue that such intervention, “[E]ven if it actually occurs only in the rare exceptional cases, can play a significant role in keeping family behavior within reasonable bounds of decency.”⁴¹ This argument speaks to the social standards and acceptance, or lack thereof, of certain actions within a community. The knowledge that the state can intervene, that there are consequences for prohibited actions, and that social stigmas accompany such actions, may be enough in and of itself to deter such destructive behavior. The importance of state intervention is reiterated by the fact that “official reports of child maltreatment significantly and consistently underestimate the actual extent of abuse and neglect of children.”⁴²

Overall, most participants in the debates surrounding state intervention acknowledge the existence of child abuse and neglect, regardless of their

35. Besharov, *supra* note 31, at 562.

36. See Karen C. Tumlin & Rob Geen, *The Decision to Investigate: Understanding State Child Welfare Screening Policies and Practices*, THE URB. INST., May 2000, at 1.

37. Besharov, *supra* note 31, at 563.

38. *Id.* at 565.

39. *Id.*

40. See Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L.J. 75, 83–84 (2021).

41. See Frances E. Olsen, *The Myth of State Intervention in the Family*, 18 U. MICH. J.L. REFORM 835, 841 (1985).

42. See generally ROBERT DINGWALL ET AL., *THE PROTECTION OF CHILDREN: STATE INTERVENTION AND FAMILY LIFE* (2d ed. 2014).

stance on state intervention.⁴³ The core of the disagreement centers instead on when intervention is justified. Many support the necessity of state intervention to protect a family member when a family “misfunctions,” thus no longer existing as a “haven,” but rather as a “center of oppression.”⁴⁴ An alternative argument to a total absence of state intervention is the “[P]rotective [I]ntervention [A]rgument.”⁴⁵ This argument justifies state intervention to protect children from abuse or serious neglect, but argues that state intervention, at the same time, must be carefully limited.⁴⁶ This careful limitation results from the reasoning that “[e]xcessive or unnecessary intervention jeopardizes people’s freedom and interferes with family intimacy.”⁴⁷ This argument considers nonintervention to be the norm, while state intervention into the family is considered the exception.

C. Ambiguity in State Legislation

No state prohibits corporal punishment within the home.⁴⁸ Existing laws regarding corporal punishment in the home address “parameters of reasonableness, moderation, and necessity according to the circumstances.”⁴⁹ The term “reasonableness” has been criticized by scholars due to the lack of uniformity among the states defining it, causing implementation to lack uniformity as well.⁵⁰ Similarly, these statutes provide nothing explaining the limits of what is “adequate” or “necessary.”⁵¹

When state legislation pertaining to child maltreatment and abuse is ambiguous, “[T]he very definition of mistreatment becomes a relative matter.”⁵² This leads to difficult questions, such as where to draw the line between firm discipline and physical abuse of a child. Moreover, statutes are not self-enforcing, meaning significance is dependent on case-by-case determinations by a court based on its own discretion. This leaves the fact

43. *See id.*

44. Olsen, *supra* note 41, at 836.

45. *Id.* at 835–36.

46. *Id.* at 836–38.

47. *Id.* at 838.

48. END CORPORAL PUNISHMENT, *supra* note 4, at 4.

49. Shmueli, *supra* note 28, at 300.

50. *Id.* at 285.

51. *Id.* at 291.

52. DINGWALL ET AL., *supra* note 42, at 3.

finder in the jurisdiction broad discretion to “determine whether a parent went beyond conduct protected by the parental privilege.”⁵³ It is important to note that, while domestic violence and child abuse legislation appear to forbid physical harm to children, “[T]he parental defense of discipline operates to except children from domestic violence protection and may be invoked successfully to preclude convictions for serious and even permanent injury to children.”⁵⁴

Moreover, courts often reason that “although they cannot define child maltreatment, they know it when they see it.”⁵⁵ Thus, child abuse is whatever a court says it is. The inconsistent interpretations of these statutes result in a lack of uniformity and causes an increase in overall confusion about what constitutes child maltreatment and what does not.⁵⁶ Imprecise definitions are read too narrowly “so as to exclude those conditions that seriously jeopardize a child.”⁵⁷ The lack of uniformity concerning child maltreatment legislation leaves little protection for the children who need it most.

D. Minnesota Legislation and Case Law Ramifications

Minnesota has worked toward advancements in their laws concerning abuse in the home. Minnesota’s criminal domestic violence laws were first codified in 1979.⁵⁸ Minnesota law defines domestic abuse as “committed against a family or household member by a family or household member: (1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury or assault; or (3) terroristic threats . . . criminal sexual conduct . . . or interference with an emergency call.”⁵⁹ More recently, in 2010, the Minnesota legislature revised and strengthened the state’s domestic violence laws by “clos[ing] loopholes” and

53. See Deana Pollard, *Banning Child Corporal Punishment*, 77 TUL. L. REV. 575, 638 (2003).

54. *Id.* at 639–40.

55. Besharov, *supra* note 31, at 569.

56. *Id.* at 556.

57. *Id.* at 571.

58. See Shannon M. Heim, *Revisions to Minnesota Domestic Violence Law Affords Greater Protection to Vulnerable Victims*, 37 WM. MITCHELL L. REV. 950, 954 (2011) (footnote omitted) (“A combination of significant need, forward-thinking legislators, and an active nonprofit community resulted in early legal protections for Minnesota women and children.”).

59. See MINN. STAT. § 518B.01, subd. 2 (2008).

“increas[ing] penalties for violent behavior.”⁶⁰ The momentum to tackle these issues resulted from an investigation of Minnesota’s county-based child protection system.⁶¹ Resulting from this investigation, the legislature identified and examined problems in relation to “how workers screen maltreatment reports, inconsistencies in reviews when a child dies and persistent child protection workforce shortages.”⁶²

Importantly, there have been advancements in Minnesota, such as prohibiting corporal punishment in educational settings, which is not true in all states.⁶³ Even so, Minnesota’s child protection system could still benefit from additional modification and clarification.⁶⁴ As stated by Representative Dave Pinto, DFL-St. Paul, ““There’s no system that is more important than this one. Kids deserve our very best; they deserve to be safe and thrive.””⁶⁵ An often overlooked point, specifically in states like Minnesota that have prohibited corporal punishment in educational settings, is that “reasonable force” may be used by “a parent, guardian, or other lawful custodian of a child, in the exercise of lawful authority to restrain or correct such child.”⁶⁶ Pursuant to Minnesota Statute § 609.377, a malicious punishment results when there is use of “unreasonable force.”⁶⁷ The critical takeaway here is that a parent is allowed to use “reasonable” force.⁶⁸ While a paramount phrase, Minnesota courts have not analyzed this issue in detail.

60. Heim, *supra* note 58, at 958.

61. *Id.*

62. Van Berkel, *supra* note 8.

63. See MO. REV. STAT. § 160.261 (2022).

Spanking, when administered by certified personnel and in the presence of a witness who is an employee of the school district, or the use of reasonable force . . . when administered by personnel of a school district in a reasonable manner in accordance with the local board of education’s written policy of discipline, is not abuse.

See MO. REV. STAT. § 160.261.10 (2022).

64. See Jade Yeban, *State Laws Regarding Corporal Punishment*, FINDLAW, <https://www.findlaw.com/education/student-conduct-and-discipline/state-laws-regarding-corporal-punishment.html> [<https://perma.cc/N2PW-GL67>] (last visited May 23, 2024).

65. Van Berkel, *supra* note 8.

66. See MINN. STAT. § 609.06, subd. 1(6) (2024).

67. See MINN. STAT. § 609.377, subd. 1 (2024) (A malicious punishment of a child is when “[a] parent, legal guardian, or caretaker who, by an intentional act or series of acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child.”).

68. See Allen Al-Zouhayli, *Child Discipline or Malicious Punishment of a Child?*, RAM LAW PLLC (Sept. 7, 2022), <https://www.ramlawmn.com/blog/child-discipline-or-malicious-punishment-of-a-child> [<https://perma.cc/JZ7C-Z2B9>].

One Minnesota court discussed varying factors for a court to consider when determining “reasonableness” of the physical discipline of a child. These factors include the child’s age, height, weight, the seriousness of the infraction, the degree of force used by the parent, and the physical impact of the discipline.⁶⁹ Many Minnesota courts have felt as though this “leaves a lot to be desired in providing much guidance.”⁷⁰

As a result of this ambiguity, Minnesota courts often look to guidance from other jurisdictions, including the Supreme Court.⁷¹ The Supreme Court tends to hold parenting rights as a fundamental liberty to parents, promoting “a relatively high threshold for state intervention.”⁷² As a result, the courts within Minnesota will “grant parents leeway in using reasonable force in utilizing physical discipline of a child.”⁷³

The delegation of interpreting Minnesota’s statutory “reasonableness” standard to the discretion of the courts has resulted in the overturning of convictions for physical abuse and neglect of children in the Minnesota Court of Appeals.⁷⁴ *In re Welfare of Children of N.F.* is one such case.⁷⁵ This case was decided in the Supreme Court of Minnesota and held that the record was inadequate to establish physical abuse and “remand[ing] to allow supplementation of the record is not in the interests of justice.”⁷⁶ G.F.’s father, S.F., disciplined him, ‘paddling’ him a total of thirty-six times.⁷⁷ This punishment happened because G.F. left the house without permission and returned between fifteen and thirty minutes later.⁷⁸ “The district court concluded that ‘striking a child with a wooden paddle thirty-six times was not reasonable or moderate discipline and therefore constituted physical abuse.’”⁷⁹ The Minnesota Court of Appeals, considering G.F.’s age and weight, determined that the force was not unreasonable and that it was not

69. See *Physical Discipline of a Child – Authorized Use of Force*, N. STAR CRIM. DEF. (June 30, 2024), <https://www.northstarcriminaldefense.com/physical-discipline-of-a-child-authorized-use-of-force/> [<https://perma.cc/TSX5-55ZY>].

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. END CORPORAL PUNISHMENT, *supra* note 4.

75. See generally *In re Welfare of Children of N.F.*, 749 N.W.2d 802 (Minn. 2008).

76. *Id.* at 811.

77. *Id.* at 804.

78. *Id.* at 805.

79. *Id.*

excessive discipline.⁸⁰ G.F. was only twelve years old.⁸¹

In another case within the Minnesota Court of Appeals, *In re Welfare of the Minor Children of J.B.B.*,⁸² the Court held that “spanking children with an eighteen-inch wooden lath⁸³ does not constitute child abuse where there is no evidence that the father spanked the children for reasons other than discipline.”⁸⁴ This was determined despite the fact that “a pediatric expert felt that the punishment constituted abuse,⁸⁵ both children testified that the spankings hurt, and one child testified that he was afraid of his father as a result of the spankings.”⁸⁶

E. Psychological and Mental Health Effects of Corporal Punishment

Corporal punishment of children remains legal in the United States.⁸⁷ Around 50% of parents of toddlers and 65% to 68% of parents of preschoolers in the United States use corporal punishment regularly to discipline their children.⁸⁸ Moreover, 85% percent of American children have been physically punished by parents by the time they reach middle and high school.⁸⁹

The ultimate goal of parents who use corporal punishment to discipline their children is to increase the child’s compliance and to decrease the child’s aggressive or antisocial behavior.⁹⁰ According to Dr. Melissa Merrick, President and CEO of Prevent Child Abuse America, there is not

80. *Id.*

81. *Id.* at 804.

82. *See generally In re Welfare of the Minor Children of J.B.B.*, No. C0-00-1606, 2001 WL 243221 (Minn. Ct. App. Mar. 13, 2001).

83. *Id.* at *1 (describing the wooden lath as “a piece of wood resembling a yardstick—approximately 18 inches long and one quarter inch thick.”).

84. Pollard, *supra* note 53, at 640.

85. Dr. Wu, the pediatric doctor and expert testifying, stated “that it is not abnormal for children to be in an abusive situation, yet have no visible injuries at the time of examination. He further testified that the pediatrics association does not condone the use of corporal punishment of any kind because it negatively effects children.” In his opinion, Dr. Wu stated that this “discipline” was physical abuse. *See In re Welfare of the Minor Children of J.B.B.*, No. C0-00-1606, 2001 WL 243221, at *2 (Minn. Ct. App. Mar. 13, 2001).

86. Pollard, *supra* note 53, at 640 n.411.

87. Greene-Santos, *supra* note 1.

88. *See* Elizabeth T. Gershoff, *More Harm Than Good: A Summary of Scientific Research on the Intended and Unintended Effects of Corporal Punishment on Children*, 73 L. & CONTEMP. PROBS. 31, 31 (2010).

89. *Id.*

90. *Id.* at 34.

a single scientific study that reveals that corporal punishment leads to “healthy, compassionate, respectful, and successful adults.”⁹¹ Instead, studies show a correlation between corporal punishment and physical injury and abuse, mental health problems, an eroded quality of the relationship between the child and parent, reduced cognitive abilities, and an increase in adult aggression and antisocial behavior.⁹²

The connection between corporal punishment and physical abuse is quite clear.⁹³ Coincidentally, “[T]he more frequently or severely children are spanked or hit, the more likely they are to have symptoms of depression and anxiety.”⁹⁴ A growing number of studies and research have revealed “links between the frequency with which parents use corporal punishment and impairments in children’s cognitive abilities.”⁹⁵ One theory prompted by a previous study reasoned “that if parents avoid corporal punishment, they are more likely to engage in verbal methods of behavior control, such as explaining and reasoning, and that the increased verbal interaction with the child will, in turn, enhance the child’s cognitive ability.”⁹⁶ In contrast, studies have shown that “[f]right, stress, and other strong negative feelings can interfere with cognitive functioning and result in cognitive deficits such as erroneous or limited coding of events and diminished elaboration.”⁹⁷

The use of corporal punishment by parents to discipline their children may also result in an eroded quality of relationship between parents and their children, as well as issues occurring later in a child’s life, such as increased aggression and antisocial behavior.⁹⁸ Many psychologists have concluded that a child who endures such punishment is “one of the most powerful generators of depression in adulthood.”⁹⁹ Children who are spanked report feeling estranged from their parents, and this prevents the

91. See Melissa Merrick, *Corporal Punishment in Schools Creates More Trauma for Children*, PREVENT CHILD ABUSE VT. (Aug. 31, 2022), https://www.pcavt.org/all-news/2022/8/31/corporal-punishment-in-schools-creates-more-trauma-for-children?gad%20_source=1&gclid=Cj0KCQiA-aK8BhCDARIsAL_%20-H9IX5k-R1VYbs4pD9xDxnF-c_YeslnrN3G_c5n791jiSfUQfkWbRoPkaAt3NEALw_wcB [https://perma.cc/38YD-ACAC].

92. Gershoff, *supra* note 88, at 41–43, 45–47.

93. *Id.* at 41 (“Empirical research has found that parents’ risk for abusing their children increases significantly the more they corporally punish their child.”).

94. *Id.* at 43.

95. *Id.* at 46.

96. Pollard, *supra* note 53, at 614.

97. *Id.* at 617.

98. Gershoff, *supra* note 88, at 45–47.

99. Pollard, *supra* note 53, at 618 (quoting PHILIP GREVEN, SPARE THE CHILD 130 (1992)).

child from developing any feelings of “closeness” with their parents. In the absence of such feelings, “[T]he children will be less susceptible to their parents’ positive socializations.”¹⁰⁰ These issues will continue into the child’s adult life. Studies suggest that “one of the most reliable predictors of children’s level of aggression is the heavy use by parents of harsh, punitive discipline and physical punishment.”¹⁰¹ Specifically, “Having learned that they can use aggression and force to compel others to do what they want in childhood, children persist in using aggression to control others’ behavior into adulthood.”¹⁰² Thus, not only is this aggression contained within the child’s life, but the experience of corporal punishment from one’s parents increases the likelihood that this aggression will be “transmitted to the next generation in a cycle of violence” as well.¹⁰³

F. Alternative Jurisdictional Prohibitions of Corporal Punishment in the Home

Sweden became the first nation to explicitly prohibit all forms of corporal punishment against children by all caretakers in 1979.¹⁰⁴ The creation of this law followed attempts at legislative reform, spanning the previous fifty years.¹⁰⁵ The attempts at reform began when concerns arose about the welfare of children, and corporal punishment was abolished in Swedish secondary schools in 1928.¹⁰⁶ As concerns continued, legislators repealed the Penal Code defense for caretakers using corporal punishment in 1957.¹⁰⁷ While it was expected that these legislative changes would solve the issues of varying levels of violence directed toward children, they did not.¹⁰⁸ The “Parents’ Code” was therefore reviewed by an appointed

100. Gershoff, *supra* note 88, at 45.

101. See Ronald G. Slaby & Wendy Conklin Roedell, *The Development and Regulation of Aggression in Young Children*, in *PSYCH. DEV. IN THE EARLY YEARS* 97, 106 (J. Worell ed., 1982).

102. Gershoff, *supra* note 88, at 47.

103. *Id.* at 47.

104. See Joan E. Durrant, *Evaluating the Success of Sweden’s Corporal Punishment Ban*, 23 *CHILD ABUSE & NEGLECT* 435, 435 (1999). The ban was an effort to “(1) alter public attitudes toward this practice; (2) increase early identification of children at risk for abuse; and (3) promote earlier and more supportive intervention to families.” *Id.* (quoting from the abstract).

105. *Id.*

106. *Id.*

107. *Id.* at 435–36.

108. *Id.* at 436. “[I]n the 1970s, a case of serious child physical abuse occurred and the father who had beaten the child was acquitted by the court. Public outcry over this case, and over child abuse in

Commission on Children's Rights, which revealed that the guidelines were not sufficiently clear.¹⁰⁹ The Commission suggested adding an additional section to the Parents' Code that would explicitly prohibit corporal punishment.¹¹⁰ This prohibition had multiple primary objectives. The ban was "intended to alter attitudes toward the use of physical force with children" and "produce a shift in social pressure" to stand in opposition to parents who use corporal punishment.¹¹¹ The ban was additionally meant to set clear guidelines that would lead to earlier intervention.¹¹²

Studies have since revealed that this legislative action by Sweden has been incredibly successful. It is considered to have "achieved full prohibition in all settings, including the home," as well as fostering "a profound change of attitude across Swedish society in relation to violence against children."¹¹³ The ban has changed long-term perceptions about violence against children, and now that an entire generation has grown up with the ban in place, corporal punishment is unconscionable; Sweden created "a new social norm."¹¹⁴ Additionally, as a result of greater awareness of the detriments of such actions taken by caregivers in any environment, the ban has resulted in an increase in reports of child abuse overall.¹¹⁵

Following Sweden, and as of 2025, seventy countries and several territories have enacted full prohibition of corporal punishment of children, including within the home.¹¹⁶ Other countries, while not yet reaching full prohibition, are taking steps in that direction. On April 17, 2024, a policy report, "Equal protection from assault in England and Northern Ireland," was submitted. This policy report is supported by the Royal College of

general, contributed to a decision" for further change. *Id.*

109. See *Sweden's Children and Parent Code*, FUTURE POL'Y, <https://www.futurepolicy.org/rightsofchildren/swedens-children-and-parent-code-to-prohibit-all-corporal-punishment-and-other-humiliating-treatment-of-children/#:~:text=No%20penalties%20are%20associated%20with,Sweden%2DParental%2DResponsibilities.pdf> [https://perma.cc/D9AH-CDRQ] (last visited Mar. 25, 2026).

110. Durrant, *supra* note 104, at 436.

111. *Id.*

112. *Id.*

113. FUTURE POL'Y, *supra* note 109.

114. *Id.*

115. *Id.*

116. See *Global Progress, END CORPORAL PUNISHMENT*, <https://endcorporalpunishment.org/countdown/> [https://perma.cc/HKU7-RV8L] (last visited Mar. 25, 2026).

Paediatrics and Child Health, End Corporal Punishment, and Parenting and Family Research Alliance.¹¹⁷ The goal of this policy report was to argue “[t]he health, education and legal case for legislative change to remove the ‘reasonable punishment’ defence and to prohibit all physical punishment of children.”¹¹⁸

The “reasonable punishment” defense within England and Northern Ireland’s law is set forth in the Children Act 2004 and the Law Reform 2006.¹¹⁹ This defense allows a parent who has physically assaulted their child to argue that their actions constitute “reasonable punishment.”¹²⁰ Scotland and Wales have removed the reasonable punishment defense from their legislation.¹²¹ In Scotland, the reasonable punishment defense was abolished under the Children (Equal Protection from Assault) (Scotland) Act of 2019, which became effective on November 7, 2020.¹²² The reasonable punishment defense in Wales was abolished in 2022 under the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act.¹²³ The report recommends that the changes made within the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 be mirrored in England and Northern Ireland.¹²⁴

117. See generally ELIZABETH FUSSEY ET AL., EQUAL PROTECTION FROM ASSAULT IN ENGLAND AND NORTHERN IRELAND (Apr. 17, 2024), https://www.rcpch.ac.uk/sites/default/files/2024-05/rcpch-equal-protection-from-assault-england-ni_policy-report-2024-v1-2.pdf [<https://perma.cc/LD65-CEPB>].

118. *Id.* at 1.

119. *Id.* at 7.

120. *Id.*

121. *Id.* at 5.

122. *Id.* at 10.

123. See Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020, Explanatory Notes ¶ 3 (UK).

Abolition of the defence in accordance with section 1(1) will mean that any act of battery constituting corporal punishment of a child which takes place in Wales will be unable to be justified on the ground that it was reasonable punishment. This will be the case in respect of any civil or criminal proceedings in the jurisdiction of England and Wales.

Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020, § 1.10 (UK).

124. FUSSEY ET AL., *supra* note 117, at 18–19.

Abolition of reasonable punishment of children in England[.] (1) The common law defence of reasonable punishment is abolished in relation to corporal punishment of a child taking place in England[.] (2) Accordingly, corporal punishment of a child taking place in England cannot be justified in any civil or criminal proceedings on the ground that it constituted reasonable punishment. (3) Nor can corporal punishment of a child taking place in England be justified in any civil or criminal proceedings on the ground that it constituted acceptable conduct

The policy report notes that society must be careful about “passing too many laws that are aspirational in nature and which that same society is not prepared to enforce.”¹²⁵ However, it is reiterated that this is not of issue here. The physical punishment of children “is so fundamental to the future protection of children’s rights that legislative change is required.”¹²⁶ The policy report also makes clear that a change in legislation will not, on its own, eradicate the issues resulting from the physical punishment of children.¹²⁷ In addition to legislative change, there is a need for the development of a national action plan for all child protection systems, as well as a raising of public awareness to achieve social norms in opposition to the physical punishment of children.¹²⁸ The success of such additional measures can be seen in Wales, where, following the abolition of the reasonable punishment defense, criminal prosecution of parents and guardians has been rare.¹²⁹ Wales permitted an alternative to prosecution known as an “out-of-court disposal,” which includes referrals to out-of-court parenting support, and there have been reports of positive outcomes including “improved child behaviour or increased parental wellbeing.”¹³⁰ Overall, Wales’ integration of a comprehensive public awareness strategy, an unambiguous legal prohibition of physical punishment, and a decreasing public acceptance of corporal punishment “create the ideal conditions for a rapid decline in physical punishment and a non-punitive system response.”¹³¹

Opponents to legislative change, which prohibits corporal punishment in the home, argue that “it will lead to increased prosecution or imprisonment of parents, or children being taken into care.”¹³² However, there is no evidence from places that have achieved prohibition to support this view. A non-punitive system response is crucial to many states and

for the purposes of any other rule of common law.

Id. at 18.

125. *Id.* at 20.

126. *Id.*

127. *Id.* at 23.

128. *Id.*

129. See Sally Holland, *Removing the “Reasonable Punishment” Defence in Wales*, 10 CAN. J. CHILD.’S RTS 142, 158 (2023).

130. *Id.*

131. *Id.*

132. See ANNA HENRY & TRÍONA LENIHAN, *ENSURING NON-VIOLENT CHILDHOODS* 14 (Turid Heiberg & Annabel Egan eds., 2018).

countries that have enacted complete legislative prohibitions on the physical punishment of children.¹³³ In particular, “There is a . . . need for interventions that translate evidence of its harms into parent-friendly messages and that support parents in changing their behavior in ways that promote their children’s healthy development.”¹³⁴ Many countries where there has been a complete prohibition on corporal punishment continue to support the idea that “[c]hild protection and social care systems must be designed to help families stay together wherever this is in the best interest of the child.”¹³⁵ While it will not always be the case that it will be in the best interest of a child to remain with their family, when it is, states recognize that “[p]reserving the family unit and preventing separation” should be the essential objectives of any child protection system.¹³⁶ Therefore, instead of prosecuting parents, the primary purpose of prohibiting corporal punishment within the family is to “prevent violence against children by changing attitudes and practice and to promote non-violent child” care.¹³⁷

II. ANALYSIS AND PROPOSAL

A. Analysis

i. Absence of Constructive Safeguards in the Common Law

Corporal punishment within the home must be addressed and acknowledged. In the past, the use of corporal punishment was supported by an overarching belief that the “safeguards” within the common law would limit and restrain the use of such punishment to “acceptable” discipline situations.¹³⁸ However, we know from court holdings that these “safeguards” are not adequate to protect children.¹³⁹ These safeguards are

133. See FUSSEY ET AL., *supra* note 117, at 25. (“There is strong evidence that programmes supporting positive parenting have numerous beneficial impacts on child development, health and education outcomes, as well as reducing family violence and promoting child protective norms and behaviour.”).

134. See generally Elizabeth T. Gershoff et al., *Promising Intervention Strategies to Reduce Parents’ Use of Physical Punishment*, 71 CHILD ABUSE & NEGLECT 9, 10 (2017).

135. HENRY & LENIHAN, *supra* note 132, at 22.

136. *Id.* at 4.

137. *Id.* at 21.

138. *Ingraham v. Wright*, 430 U.S. 651, 670 (1977).

139. See generally *In re Welfare of Children of N.F.*, 749 N.W.2d 802 (2008).

developed through the discretionary consideration of certain circumstances by the trier of fact. These circumstances include the child's attitude and past behavior, as well as the child's age and strength.¹⁴⁰ Such consideration of "instructive" circumstances in the case of *Ingraham v. Wright* allowed a determination that rendering a child without the full use of his arm for a week was "acceptable" discipline.¹⁴¹ Thus, the justification of corporal punishment in any environment is antiquated. Organizations such as the World Health Organization speak to the rights of children in having "physical integrity and human dignity . . . and freedom from torture and other cruel, inhuman or degrading treatment or punishment."¹⁴²

ii. The Case for Limited State Intervention

Discourse surrounding state intervention into the home remains prominent today.¹⁴³ Alongside proponents for the parental right to determine adequate punishment for their children are the coinciding arguments against the intervention of state legislation into the interfamilial sphere.¹⁴⁴ While the ideology of the autonomy of the family has evident merit, the necessity for state intervention in certain situations is clear. It would be detrimental to a child's safety to safeguard a parent's harmful actions. The need for some degree of state intervention is reiterated as the "defense of 'discipline'" has been raised in "forty-one percent of homicide prosecutions against parents who 'accidentally' killed their child through discipline."¹⁴⁵ The argument for the complete autonomy of parents, guardians, and caregivers lends leeway for the continuance of such detrimental occurrences, as well as promoting a lack of recourse for children harmed by such discipline.

The argument that too much state intervention would allow for the children who are in real danger to "get lost in the press of minor cases flooding the system" does articulate an important consideration.¹⁴⁶ While state intervention need not be overbearing, we can also not afford to

140. See *Ingraham*, 430 U.S. at 662.

141. *Id.* at 657.

142. Green-Santos, *supra* note 1.

143. See Rogers, *supra* note 30, at 547.

144. *Id.*

145. Pollard, *supra* note 53, at 621.

146. See Besharov, *supra* note 31, at 562.

continue allowing the harm that results from the dependence on absolute parental autonomy to discipline children in harmful ways.

Limited state intervention would therefore be beneficial.¹⁴⁷ Limited state intervention, while protecting families from feared excessive and unnecessary intervention, encourages family behavior to remain within “reasonable bounds of decency.”¹⁴⁸ The possibility of state intervention if a parent, guardian, or caregiver acts in a prohibited way works to deter such behavior.¹⁴⁹ Moreover, the social stigma that accompanies punishment for such actions similarly work to discourage the harmful punishment and discipline of a child as well.¹⁵⁰

iii. The Fallacy of Discretionary Definition

In addition to the debate regarding the acceptable degree of state intervention into the familial sphere is the prominent issue of defining abuse in and of itself.¹⁵¹ Resulting from this definitional issue, there is a difficulty in determining when such intervention is appropriate.¹⁵² Because many of these determinations are based on the discretion of the trier of fact, and because all courts are different, there exists considerable confusion regarding what constitutes child abuse and neglect.¹⁵³ The logic that a court will “know it when they see it”¹⁵⁴ is not an acceptable standard. If neither the courts nor the trier of fact have a comprehensive understanding of what child abuse is, or what actions by parents amount to it, there is no promise of protection for the child who needs it the most. The determination of detriment to a child should not be dependent on a court “know[ing] it when they see it.”¹⁵⁵

The term “reasonableness” has been heavily criticized,¹⁵⁶ and for good reason. The consideration of factors, such as age, weight, and height of a

147. See Olsen, *supra* note 41, at 835.

148. *Id.* at 841.

149. *Id.*

150. *Id.*

151. See Pollard, *supra* note 53, at 638.

152. *Id.* at 638–39.

153. See Besharov, *supra* note 31, at 556.

154. *Id.* at 569.

155. *Id.*

156. Shmueli, *supra* note 28, at 285.

child,¹⁵⁷ should not be the basis for determining if certain actions are okay or “reasonable.” The fact that a child is a few years older or a few inches taller does not mean that the child should have to endure increasingly severe punishment. This promotes the idea that an older, taller, and heavier child should be punished in a harsher manner. The implementation of such factors for the trier of fact’s consideration work to increase confusion about what constitutes detrimental discipline overall.

vi. The Need for Legislative Action in Minnesota

Regarding the prohibition of corporal punishment in educational settings, Minnesota has been one of the more progressive states.¹⁵⁸ Now, this progressive attitude must be similarly directed to corporal punishment in the home.¹⁵⁹ The need for change is evident within Minnesota case law and the decisions coming from the Minnesota Court of Appeals and the Minnesota Supreme Court.

Minnesota courts have followed a “procedure” like many other courts in utilizing a consideration of factors to determine “reasonableness” of physical discipline.¹⁶⁰ These factors include “the child’s age, height, weight; the seriousness of the infraction; the degree of force used by the parent; and the physical impact of the discipline.”¹⁶¹ This leaves the courts lacking much guidance. The danger of this adopted “procedure” is clear, as a reliance on a child’s characteristics exists as the sole criteria for determining if punishment is too severe. The logic behind this “procedure” reinforces the ideology that harmful punishment is acceptable if a child “fits” into certain categories.

The detriment of this “procedure” is visible in decisions issued by Minnesota courts. In *In re Welfare of Children of N.F.*, the hitting of a child thirty-six times with a paddle was deemed acceptable because the child was twelve years old.¹⁶² The child had left the house without permission for, at most, thirty minutes.¹⁶³ This purported permissibility of hitting a child,

157. N. STAR CRIM. DEF., *supra* note 69.

158. Heim, *supra* note 58, at 953.

159. See MINN. STAT. § 609.06 (2024).

160. N. STAR CRIM. DEF., *supra* note 69.

161. *Id.*

162. See *In re Welfare of Children of N.F.*, 749 N.W.2d 802, 804, 811–12 (Minn. 2008).

163. *Id.* at 805.

thirty-six times in only one instance, is worrisome. It is also important to note that this was only one instance, and other punishments inflicted upon this child at other times are unknown and were determined not to warrant any investigation.¹⁶⁴ This decision neglected the health and well-being of the child and permitted acceptance of the parent, guardians, and caregivers' actions.

Further detriment to the well-being of children is seen in the case of *In re Welfare of the Minor Children of J.B.B.*¹⁶⁵ Here, there was direct testimony from a pediatric doctor ruling that the punishment by the father constituted physical abuse of the children.¹⁶⁶ The doctor stated that "the pediatrics association does not condone the use of corporal punishment of any kind because it negatively affects children."¹⁶⁷ Additionally, there was evidence in this case that the spankings hurt the children and resulted in fear of the father.¹⁶⁸ However, the father's actions were determined not to constitute abuse because he acted for the purpose of disciplining the children.¹⁶⁹ The children were allowed to be hit by an eighteen-inch wooden lath, one-quarter inch thick, because it was in the name of discipline.¹⁷⁰ If such actions are allowed by law, in light of opposing evidence that this discipline is considered unacceptable by a pediatric association, where do we draw the line? This reiterates the need for legislative change that will implement additional protections for children in Minnesota.

v. The Life-Defining Repercussions of Corporal Punishment

It is also critical to consider the long-lasting mental and psychological effects of corporal punishment on a child. Many parents state their ultimate goal in utilizing corporal punishment is to increase their child's compliance with their rules.¹⁷¹ However, research has proven the use of corporal punishment in disciplining a child leads to an increase in these unwanted

164. *Id.* at 811.

165. *See generally In re Welfare of the Minor Children of J.B.B.*, No. C0-00-1606, 2001 WL 243221 (Minn. Ct. App. Mar. 12, 2001).

166. *Id.* at *2.

167. *Id.*

168. *Id.*

169. *Id.* at *3.

170. *Id.* at *1, 3

171. Gershoff, *supra* note 88, at 34.

behaviors.¹⁷²

There is not a single scientific study that reveals that corporal punishment leads to “healthy, compassionate, respectful and successful adults.”¹⁷³ On the other hand, the number of studies that prove the many negative effects corporal punishment has on children is overwhelming.¹⁷⁴ Studies show that corporal punishment results in physical injury, mental health problems, an eroded quality of the relationship between the child and parent, reduced cognitive ability, and an increase in adult aggression and antisocial behavior.¹⁷⁵ The imminent threat to the safety of a child, along with the long-lasting and life-altering effects on a child’s physical, psychological, and mental health, further reiterate the necessity of legislative change.

vi. Alternative Jurisdictional Successes and Minnesota’s Next Steps

While Minnesota courts have looked to the Supreme Court for assistance in determining how to rule on parents’ use of corporal punishment in disciplining their children,¹⁷⁶ there are additional jurisdictions Minnesota can look to. Sweden was the first nation to explicitly prohibit all forms of physical punishment of children in all environments.¹⁷⁷ This absolute prohibition has conferred a clear comprehension of the need to end the use of corporal punishment in the discipline of children.¹⁷⁸ The relevant paragraph in Sweden’s legislation states that children “may not be subjected to physical punishment.”¹⁷⁹ This explicit statement has set clear guidelines for parents, guardians, and caregivers and has encouraged critical objectives to be accomplished.¹⁸⁰ This outright ban of physical punishment has additionally increased the social stigma connected to physical punishment as a form of discipline and has resulted in earlier intervention.¹⁸¹

172. Merrick, *supra* note 91.

173. *Id.*

174. Pollard, *supra* note 53, at 575–657.

175. *See generally* Gershoff, *supra* note 88, at 42–45.

176. N. STAR CRIM. DEF., *supra* note 69.

177. Durrant, *supra* note 104, at 435.

178. *Id.* at 436.

179. *See generally* Sara Helgesson, Children’s Rights and corporal punishment in Sweden (2019) (B.A. thesis, Malmö University).

180. Durrant, *supra* note 104, at 436.

181. *Id.*

These advancements taken by Sweden, and the successes of such advancements, reiterate the necessity for Minnesota to discard its legislation that includes “legal defences that allow parents . . . to use reasonable chastisement . . . to discipline their children.”¹⁸²

In addition to the incorporation of absolute bans on physical punishment, many jurisdictions have also found success through the removal of the “reasonable punishment” defense from their legislation.¹⁸³ Wales is one such example.¹⁸⁴ Wales’ unambiguous legal prohibition of physical punishment, along with the removal of its “reasonable punishment” defense, is referred to as creating “the ideal conditions for a rapid decline in physical punishment.”¹⁸⁵ The progress attained in Wales is reiterated as other countries, including England and Northern Ireland, are following suit.¹⁸⁶

Moreover, while opponents to an absolute ban on physical punishment fear the effects such legislative change will have on the prosecution of parents,¹⁸⁷ this fear is unfounded. The importance of “preserving the family unit” is recognized and upheld, and all efforts are made to ensure the child’s best interests are met.¹⁸⁸ Therefore, Minnesota would not only benefit from an absolute prohibition on physical punishment of children, but also from the removal of the “reasonableness” defense from its legislation. Implementing such measures would permit Minnesota to comprehensively protect a child while also preserving the family.

B. Proposal

In consideration of the harmful effects of corporal punishment on children today, Minnesota must continue to act. To adequately acknowledge this issue, this action must take place within the Minnesota legislature. Under Minnesota Statute § 609.379, subd. 1(a)(1), a parent, legal guardian, or caretaker may use “reasonable force” to restrain a child.¹⁸⁹ As addressed,

182. See FUTURE POL’Y, *supra* note 109.

183. See Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020, Explanatory Notes ¶ 3 (UK).

184. See Holland, *supra* note 129, at 144.

185. *Id.* at 158.

186. See generally FUSSEY ET AL., *supra* note 117.

187. See HENRY & LENIHAN, *supra* note 132, at 14.

188. See *id.* at 4.

189. See MINN. STAT. § 609.379, subd. 1(a)(1) (2024).

this has allowed for much discretion within Minnesota courts.¹⁹⁰ The determinations of what actions are “reasonable” are heavily dependent on the trier of fact’s personal opinions, experiences, and biases.¹⁹¹ Therefore, this Note proposes that the Minnesota legislature enact an *absolute ban on physical punishment of a child*, regardless of the environment, as well as *remove the “reasonable” punishment defense* under Minnesota Statute § 609.379, subd. 1(a)(1).¹⁹²

While this proposal may appear to be a significant change for Minnesota state law, a more modest recommendation will not suffice. The issue of Minnesota law’s differential “reasonableness” standard must be directly addressed. Although modest change may appear more agreeable, the unproductive nature of such change is exhibited through the fifty years of attempts to implement moderate legislative change in Sweden, with little reported success.¹⁹³

There are many parallels between Sweden’s history and Minnesota’s actions. Sweden began its change through the prohibition of corporal punishment in the education system,¹⁹⁴ as did Minnesota.¹⁹⁵ Sweden’s subsequent step was to enact a statute limiting corporal punishment in the home.¹⁹⁶ This parallels Minnesota’s “reasonableness standard”¹⁹⁷ found within its statutory law. Sweden then acknowledged that such a limitation was not effective in addressing the issue of harmful physical punishment of children.¹⁹⁸ Likewise, Minnesota should consider the inadequacies of its own “reasonableness standard” in light of Sweden’s success.¹⁹⁹ There are no characteristics, such as a certain age or weight, that a child possesses that should distinguish a particular child as one who does not have a right to protection from harmful discipline. Therefore, simply altering the “reasonableness standard” will not suffice; it must be discarded.

As with any proposal, there are prospective flaws within this one. This proposal indisputably recommends an immense change to Minnesota

190. See N. STAR CRIM. DEF., *supra* note 69.

191. See *id.*

192. See MINN. STAT. § 609.379, subd. 1(a)(1) (2024).

193. See Durrant, *supra* note 104, at 435.

194. *Id.* at 435–36.

195. See MINN. STAT. § 121A.58 (2024).

196. Durrant, *supra* note 104, at 436.

197. See MINN. STAT. § 609.379, subd. 1(a)(1) (2024).

198. Durrant, *supra* note 104, at 436.

199. See N. STAR CRIM. DEF., *supra* note 69.

legislation. However, such legislative change has been shown to provide an effective avenue to eliminate detrimental discipline.²⁰⁰ The statistic that the “defense of ‘discipline’” has been “raised in forty-one percent of homicide prosecutions against parents who ‘accidentally’ killed their child through discipline”²⁰¹ further reiterates the importance of such immense change.

Another challenge to this proposal may arise from those who fervently oppose state intervention into the familial sphere. If this proposal were enacted, there would be an absolute prohibition on certain actions that parents may currently opt to take when raising their child. However, the understanding and acknowledgement of child abuse and harmful discipline in the home today speaks to the necessity of such intervention.²⁰²

Therefore, despite the challenges that may arise in opposition to this proposal, it remains a promising option for the state of Minnesota. An absolute prohibition on physical punishment of children, alongside the removal of Minnesota’s “reasonableness” standard,²⁰³ will allow the state to set clear guidelines and expectations for the conduct of parents, guardians, and caregivers. This action will also acknowledge the detrimental toll that excessive discipline takes on a child, both mentally and physically, for the entirety of their lives.

CONCLUSION

The use of corporal punishment has long held a prominent position within many disciplinary domains.²⁰⁴ However, following the examination of evidence throughout this Note, it is indisputable that Minnesota must take legislative action. An absolute prohibition of corporal punishment in the home and removal of the “reasonableness”²⁰⁵ standard from Minnesota’s statutory law would establish safeguards to further protect the welfare of children overall. Through Minnesota case law,²⁰⁶ as well as psychological studies,²⁰⁷ this Note has previewed the very real harms that unreasonable

200. FUTURE POL’Y, *supra* note 109.

201. Pollard, *supra* note 53, at 621.

202. See ROBERT DINGWALL ET AL., THE PROTECTION OF CHILDREN: STATE INTERVENTION AND FAMILY LIFE I, 231–32 (Avebury 2d ed. 1995) (1983).

203. See MINN. STAT. § 609.379, subd. 1(a)(1) (2024).

204. See Lynn, *supra* note 10, at 555.

205. See MINN. STAT. § 609.379, subd. 1(a)(1) (2024).

206. See *In re Welfare of Child. of N.F.*, 749 N.W.2d 802, 804 (Minn. 2008).

207. See generally Pollard, *supra* note 53, at 575–657.

“reasonable”²⁰⁸ corporal punishment within the home has on a child, both during their childhood and for the rest of their life. An absolute ban on physical punishment will enable the creation and enforcement of clear guidelines,²⁰⁹ while also removing the harmful case-by-case discretion that courts presently hold.

The safety and well-being of children must be prioritized as an issue of the utmost importance in every community. While Minnesota has been one of the more progressive states, the time for further action is now. Through the proposed legislative reform within this Note, Minnesota can continue on its path to advance the overall protection of children, as well as work to ensure every child’s well-being and security for the entirety of their lives.

208. See Gershoff, *supra* note 88, at 42.

209. FUTURE POL’Y, *supra* note 109.