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Regulations of and Remedies for Corporal Punishment Against Children

Comparative Legal Perspectives from Sweden, Norway and the
USA

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1 Introduction

This comparative review briefly presents the legal positions of the UN Convention on the Rights of the Child (“CRC”) and of the Swedish, Norwegian and American legal systems with respect to parental corporal punishment of children (“CP”), then outlines and compares the available remedies and enforcement in practice when incidences of CP occur in each of the three countries.¹

“Corporal” punishment, for the purposes of this article, involves a physical touching of a child for the purpose of correcting the child’s behavior. In the term “parental” we include biological and adoptive parents and stepparents, but exclude consideration of violence committed by other caregivers or guardians, also to limit the scope of discussion.

In the past century many legal regulators have moved from viewing “mild” CP of children as a parental right or even duty to viewing it as a harmful and

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¹ The selection of legal systems compared reflects the authors’ countries of primary legal education.

abusive practice. In a growing number of jurisdictions – including Sweden and Norway but not the United States – CP is now a crime.²

With this comparison, we test our hypothesis that actual legal consequences for various types of parental behavior that can be defined as CP do not differ as starkly as one might initially expect when one knows only that CP of children is criminally punishable in Sweden and in Norway but lawful in all fifty United States. We find this true to an extent, yet also describe significant differences in state actions taken when CP occurs in Sweden and Norway compared to in the US, including compensatory damages paid to children and potential criminal conviction of offending parents or removal of the child from the home. These consequences correlate with a much higher rate of CP occurring in the US than in these two Scandinavian countries today. We conclude with brief comments on the implications of our findings.

2 Legal Limits on Parental Discipline

Because of the widespread international approval of the UN's CRC, we begin with its position on the proper legal regulation of parents' behavior as they guide the upbringing of their children, specifically its position on disciplinary practices collectively known as CP, then summarize the three studied countries' approaches to CP regulation.³

2.1 *The Convention on the Rights of the Child's Position on CP*

The text of the CRC, including its Article 19 on the states' responsibility to take measures to protect children from all forms of physical or mental violence, injury or abuse, makes no reference to CP. The Committee on the Rights of the Child which oversees the CRC ("the Committee"), however, does define CP in its General Comment No. 8 (2006). CP is "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light." The Comment explicitly states that CP is incompatible with the Convention.⁴

² Similarities and differences between this progression and the progression of legal views regarding spousal, pupil and worker battery are interesting but beyond the scope of this contribution.

³ Almost all nation-states in the world have signed (197 as of June 2017) and all but one, the United States, have ratified the CRC. Ratification status is available at indicators.ohchr.org.

⁴ CRC Comment 8, paragraph 11 (2016). Paragraph 11 further clarifies that "[i]n addition there are other, non-physical forms of punishment that are also cruel and degrading and thus

The Committee's interpretation on this point has been rejected by several States Party to the Convention, including Australia, Canada and the United Kingdom, and yet publically supported by others.⁵ Implementation of the Committee's position that CP is legally incompatible with the CRC is therefore far from total to date.⁶ Although the many societies that have supported the CRC politically ascribe to its core mission to strengthen children's rights and circumstances, there are barriers to and differing levels of interest in legally prohibiting what remains the widespread parental practice of CP.

2.2 Sweden

In 1966 Sweden removed parents' statutory right to use CP. Prior to that, the law permitted parents to use measures that, given the age of the child and other circumstances, seemed reasonable in order to correct the child. Sweden then unanimously passed a statute explicitly banning CP in 1979, becoming the first nation in the world to do so.⁷ Sweden's Children and Parents Code now provides that "children are entitled to care, security and a good upbringing. They shall be treated with respect for their person and their distinctive character and may not be subjected to corporal punishment or other humiliating treatment."⁸

Physical violence by a parent towards a child, regardless of an intent to correct the child's behavior and to foster his or her upbringing, is hence illegal in Sweden. The prohibition on CP renders an act against a child criminally punishable if the same act would be punishable if it were carried out against an adult.⁹ Since 1982 this does not require the child or an adult representative to press charges in order for prosecution to go forward; state prosecutors have the discretion to prosecute

incompatible with the Convention," giving as examples "punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child."

⁵ Available at <http://www.endcorporalpunishment.org/progress/country-reports/> (last visited 2017-09-21).

⁶ As at March 2017, 52 states have prohibited CP in all settings, including the home. Governments of at least 54 others have expressed a commitment to enacting full prohibitions. Fifty-nine UN member states have prohibited CP in all alternative care settings, 59 in daycares, 127 in schools, 135 in penal institutions and 160 in criminal sentences. Available at <http://www.endcorporalpunishment.org/assets/pdfs/legality-tables/UN-member-states-progress-table-commitment.pdf> (last visited 2017-09-21).

⁷ Government bills Kunglig Majestäts proposition med förslag till lag om ändrad lydelse av 6 kap. 3 § och 15 kap. 14 § föräldrabalken m.m., and Proposition 1978/79:67 om förbud mot aga and Brå report 2011:16, Den polisanmälda barnmisshandeln, p. 7.

⁸ Swedish Children and Parents Code (Föräldrabalken 1949:381) Ch. 6 § 1.

⁹ Government bill Prop. 1978/79:67 p. 6.

those who commit violent acts regardless of the willingness of the victim to cooperate with the prosecution.¹⁰

Battery under the Swedish law includes physical actions against children such as pinches, slaps or spanks with objects. For an act of CP to amount to battery in Sweden requires that the child experiences bodily injury or pain that is not too mild or of too short duration.¹¹ Although the Swedish regulation in general meets the requirements of Article 19 of the CRC and of the Committee's interpretation, the requirement of bodily damage or pain of a certain severity is described as a weak point. A recent study shows that several cases of battery have been dismissed because of the difficulty to prove the child's pain or to prove that the pain suffered by the child was strong enough to constitute battery. This means that a child, not being able to describe his or her pain, in fact sometimes is less protected than an adult, which is not considered to be in line with the CRC.¹²

The statutory change of 1979 intended more than to clarify that parental assaults against children were criminally punishable. According to the Children and Parents Code, every act resulting in injury or pain is forbidden, even if the pain or injury is mild or of short duration. Certain acts are therefore forbidden in Sweden by the Children and Parents Code although they cannot lead to criminal liability. This decision by lawmakers, to create a broader civil prohibition, was seen mainly as a pedagogical support in the interest of convincing parents and others that no forms of violence may permissibly be used in the raising of children.¹³

The ban on CP quickly led to or at least coincided with a remarkable change in the use of CP in parenting, and also to a remarkable change in attitude.¹⁴ Rates of CP have declined in practice from over 90% in the 1960s to under 15% as of

¹⁰ Penal Code (Brottbalk 1962:700) Ch. 3 § 5.

¹¹ "Misshandel" is the Swedish crime we are translating as "battery." Non-physical acts or failures to act, for example a parent's failure to provide reasonable supervision and care which has led to a child's bodily damage or pain, can also constitute battery, as described in the case decision NJA 2013 p. 588. These types of child mistreatment are beyond the scope of this article.

¹² SOU 2016:19 Barnkonventionen blir svensk lag, p. 29. Sweden adopted the CRC in 1990 and is presently considering incorporation.

¹³ Prop. 1978/79:67 p. 7. Note that a parent has a right to physically restrain a child if the child is at risk of inflicting harm to itself or to another. A teacher may also use physical force or bodily contact in order to fulfil his or her duty to supervise the child, per NJA 1988 p. 586.

¹⁴ Janson, Staffan, Jernbro, Carolina & Länberg, Bodil, *Kroppslig bestraffning och annan kränkning av barn i Sverige*, Stiftelsen Allmänna Barnhuset, 2011, pp. 125, 129 and 130.

2011,¹⁵ and some Swedish experts have attributed that result largely to the message sent by the explicit ban. Very few parents in Sweden today talk about CP as an acceptable treatment of children, and it has been argued that this change in attitude may cause some difficulty in detecting families where CP is used, thereby creating a hindrance to protecting some children.¹⁶

Statistics show that the children most at risk for CP are children in families where there is domestic violence between the parents. Financial difficulties, single parenthood, immigrant parents and stressed parents also increase the risk. Children with chronic diseases and functional disabilities also run a greater risk of being subject to CP.¹⁷

Even if the ban on CP is not under debate in Sweden, there have been a few cases where visiting parents have been accused of battery after use of CP. These cases have drawn international attention. Generally researchers find that rates of violations of the law and of children experiencing CP during their childhoods are comparatively very low in Sweden today.

In most cases, Swedish parents raise their children without direct governmental involvement into their parenting. However, if a child is somehow at risk of getting hurt, the social services may intervene. It is their duty to make sure that children grow up under good and secure conditions and to try to prevent that children get hurt.¹⁸ All authorities that work with children, as well as their employees, have a duty to report to the social services if they know or suspect that a child is at risk, for example due to CP.¹⁹ The social services then decides if an investigation should be opened, and what measures, if any, should be taken. In severe cases of CP, removal of the child from the home is an option.

2.3 Norway

In Norway, all forms of violence towards children are forbidden, even in connection with the upbringing of the child. Children's protection against

¹⁵ Janson et al., 2011, pp. 108–121. These statistics are based on the self-reporting of pupils in the 9th grade, reporting if they have ever experienced CP.

¹⁶ Leviner, Pernilla, "Förbudet mot barnaga i Sverige ur ett jämförande perspektiv – effekter och utmaningar", *Juridisk Tidskrift*, 2013, p. 578.

¹⁷ Janson et al., 2011, pp. 110–114.

¹⁸ The Social Services Act (Socialtjänstlag 2001:453) Ch. 5 § 1.

¹⁹ The Social Services Act Ch.14 § 1.

violence is enshrined in The Human Rights Act and the CRC,²⁰ The Penal Code,²¹ The Child Welfare Act²² and The Children Act.²³

Parents' right to use CP was removed from the law in 1972 and CP was explicitly banned in 1987.²⁴ The 1987 amendments to The Children Act stated that "the child must not be subject to violence or in any other way be treated so as to harm or endanger his or her mental or physical health."²⁵ After Norway's Supreme Court opined in 2005 that lighter CP was nonetheless still legally permissible, legislators further amended the Act in 2010 to clarify that the prohibition "shall also apply when violence is carried out in connection with upbringing of the child. Use of violence and frightening or annoying behavior or other inconsiderate conduct towards the child is prohibited."²⁶ State prosecutors have the discretion to prosecute cases of CP and it is not required for the child or an adult representative to press charges.²⁷

Children's integrity is protected *at least* to the same extent as adults'.²⁸ Lawmakers specified that due to children's vulnerability and the unequal power relationship between parent and child, children should be given better protection than adults against offensive treatment.²⁹ Lawmakers also considered the new proposed statutory wording to be more in harmony with the CRC and the Committee's interpretation and clarification presented previously.³⁰ Gently

²⁰ Norway incorporated the CRC into Norwegian law in 2003 through Norway's Act of 21 May 1999, The Human Rights Act (Menneskerettsloven, LOV-1999-05-21-30). As a result of this, the CRC is one of five conventions that prevail over other Norwegian acts.

²¹ The General Civil Penal Code (Straffeloven, LOV-2005-05-20-28).

²² The Child Welfare Act (Barnevernloven, LOV-1992-07-17-100).

²³ The prohibition also includes psychological violence, as stated in The Children Act (Barnelova, LOV-1981-04-08-7), Ch. 5 § 30. See also Ot.prp.nr. 104 (2008-2009) Ch. 6 p. 36.

²⁴ Amendment of the Children Act § 30 (Vold og annen mishandling av barn, LOV-1987-02-06-11).

²⁵ Author's translation.

²⁶ The Children Act § 30(3) and Ot.prp.nr. 104, Ch. 6, p. 36. Regarding the Norwegian legal development towards final prohibition see Sandberg, Kirsten, "Norway: The Long and Winding Road Towards Prohibiting Physical Punishment", in Durrant, Joan E. & Smith, Anne B. (eds), *Global Pathways to Abolishing Physical Punishment. Realizing Children's Rights*, Ch. 15, Routledge, London 2011, pp. 197–209.

²⁷ Criminal Procedure Act (Straffeprosessloven, LOV-1981-05-22-25) § 62(a).

²⁸ Ot.prp.nr. 104, Ch. 6, p. 38 specifies that the fact that the physical force is used towards children will normally lower the limit on which actions are considered punishable physical force.

²⁹ Ot.prp.nr. 104, Ch. 6, p. 36.

³⁰ General Comment No. 8 (2006) and Ot.prp.nr. 104, Ch. 6, p. 36. Failures to prevent, protect and act, for example a parent's failure to provide reasonable supervision and care which has led to

physically restraining the child can be legally permitted, but only if the purpose is to prevent the child from hurting itself or others. If a situation can be solved with milder methods than physically holding or moving the child, the physical force is forbidden.³¹ Physical correction such as a lighter smack is, under every circumstance, prohibited.³² There also seems to be coherence between the prohibition in the Children Act's § 30 and the criminal prohibition of such violence.³³

The Norwegian legislation, including Norway's international treaty commitments, regards the parents as children's main caregivers.³⁴ Still, the Norwegian child welfare service has a right and a duty to ensure that children and young people who live in conditions that may be detrimental to their health and development receive the necessary assistance and care at the right time.³⁵ This includes investigations of a child's home conditions if the child welfare service is notified of potentially insufficient caregiving.³⁶ If a child is exposed to violence, the child welfare service can decide on appropriate interventions, if necessary even removal of the child.³⁷ The Child Welfare Act §§ 4-12 states that a care order may be made "if there are serious deficiencies in the everyday care received by the child" or "if the child is mistreated or subjected to other serious abuses at home." An order may only be made when necessary due to the child's

a child's bodily damage or pain, can also constitute assault, and lead to imprisonment. The duty to prevent is now stricter and broader due to the 2005 amendments of the Penal Code.

³¹ Ot.prp.nr. 104, Ch. 6, p. 38.

³² In a Supreme Court Appeal committee ruling, Rt. 2014 s. 702, the Supreme Court appeal committee upheld the lower court's holding that the Penal Code must be understood in the context of the Parent and Child Act § 30. This implies a general and unconditional prohibition against the use of violence as an educational method. The appeal committee made reference to the CRC art. 19 paragraph 1, the General Comments 8 and 13 and the Norwegian Constitution § 92.

³³ The Children Act § 30 does not itself set penalties for violations. Prohibited actions according to this section are covered by the Penal Code, and physical violence is covered in chapter 25 on violent crimes. The prohibition in § 30 also includes psychological violence. The Penal Code § 266 relates to this prohibition and contains the same wording as in the Children Act's § 30. See also Ot.prp.104, Ch. 6, p. 38.

³⁴ Treaties such as the CRC and the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 1950 (ECHR).

³⁵ The Child Welfare Act § 1-1.

³⁶ The Child Welfare Act §§ 3-1 and 4-3. Both in the investigations and the measures applied, the child welfare service must use the mildest measures and methods applicable, and pursuant to § 4-1 decisive importance shall be attached to finding measures which are in the child's best interests.

³⁷ The Child Welfare Act §§ 4-6 and 4-12.

current situation, hence such an order may not be made if satisfactory conditions can be created for the child by assistance measures.³⁸ A single episode of mild CP is therefore not sufficiently severe to remove the child from the parents, but it can result in criminal punishment.³⁹

A governmental study indicates that even if the use of CP has decreased in the period from 2007 to 2015, still more than one out of five children are exposed to less severe physical violence at some point during their childhoods.⁴⁰ Cultural diversity questions arise from use of CP by, among others, immigrants to Norway. However, the study implies that the use of mild CP is quite randomly distributed throughout the population. Recent controversy in Norway arises not over whether CP in every form is unlawful, but under what circumstances incidences of CP should be remedied and how.⁴¹

2.4 *The United States*

In the US, CP is regulated by state and not federal law, meaning there are 50 states plus the District of Columbia separately regulating CP. What has been established as a parent's right, freedom or privilege to use mild CP in the upbringing of children remains legally protected in all 51 of these legal systems, while at the same time all prohibit more "severe" CP and other "inappropriate" discipline, to assure that children grow up free from child "abuse" or "neglect."⁴²

³⁸ Due to the severity of an order to remove the child, the Welfare Act § 4-12 already contains a general consideration of proportionality between the intensity of the child's current harmful circumstances and the necessity of removal compared to other remedies. The strict terms and wording in § 4-12 reflects the ECHR art. 8 no. 2 and The Norwegian Constitution § 102 protection of a family life.

³⁹ The Norwegian preparatory work, Ot.prp. nr. 104, Ch. 6, p. 25, and jurisprudence (ex. Haugli, Trude, Samværsrett i barnevernssaker, 1998, p. 9) consider the legislation to contain strict terms for permanent removal of the child.

⁴⁰ The study examined statistics from the 1960s until 2015. Available at https://www.bufdir.no/Statistikk_og_analyse/Oppvekst/Vold_og_overgrep_mot_barn/Barn_utsatt_for_vold_i_familien/ (last visited 2017-09-21). Experiencing less severe physical violence means here that the children once or several times had experienced hair-pulling, pinching, pushing, shaking or being smacked with a flat hand.

⁴¹ Gording Stang, Elisabeth, "We should be careful understanding the use of violence in parenting as cultural diversity" ("Vi bør være varsomme med å anse bruk av vold i oppdragelse som noe fremmedkulturelt"), feature story/essay in *Aftenposten*, published 10 May 2016.

⁴² See Coleman, Doriane Lambelet, Dodge, Kenneth A., & Campbell, Sarah Keeton, "Where and How to Draw the Line Between Reasonable Corporal Punishment and Abuse", *Law and Contemporary Problems* vol. 73, Spring 2010, pp. 107–165 at p. 107.

Legal protection of a parent's choice to use CP to discipline his or her child is a continuation of the common-law "privilege of discipline."⁴³ This is sometimes tied to the freedom to practice one's religion or follow the norms of one's social group, for example within some Christian faiths that advise parents not to "spare the rod" or they could "spoil the child."⁴⁴ Opponents of CP argue that it both violates children's human rights and is associated by research with negative instead of positive outcomes.⁴⁵ Many health organizations have issued statements strongly recommending CP be replaced with more effective, less hazardous non-physical discipline.⁴⁶ Proponents of mild CP argue it can be effective when appropriately used, and join the majority of Americans in opposing all but necessary legal intrusion into the family, the "first and foundational" social unit; individuals raising children in the "heterogenic democracy" of the US should be ideologically diverse, and parental autonomy is a good that should be preserved, is the societal value expressed in defense of not banning parental CP.⁴⁷

A majority of state laws defining CP include wording permitting the use of "reasonable" force, thereby distinguishing instances of legally-acceptable CP from instances of unreasonable, "excessive" force used against children, which is illegal child abuse or child neglect.⁴⁸ It remains difficult for those responsible for enforcing these laws that the harms to a child and behaviors of a parent which are allowed versus disallowed are points along a continuum, not easily distinguishable.⁴⁹

⁴³ "A parent is privileged to apply such reasonable force or to impose some reasonable confinement upon his child as he reasonably believes to be necessary for its proper control, training or education." Restatement (Second) of Torts § 147 (1965).

⁴⁴ See Taylor, Catherine A. & Hamvas, Lauren, "Perceived Instrumentality and Normativeness of Corporal Punishment Use Among Black Mothers", *Family Relations* vol. 60, February 2011, pp. 60–72 at p. 66.

⁴⁵ Taillieu, Tamara L., Afifi, Tracie O., Mota, Natalie, Keyes, Katherine M., & Sareen, Jitender, "Age, sex, and racial differences in harsh physical punishment: Results from a nationally representative United States sample", *Child Abuse & Neglect*, vol. 38, 2014, pp. 1885–1894 at p. 1885.

⁴⁶ See e.g. the American Academy of Child & Adolescent Psychiatry Policy Statement on Corporal Punishment approved July 30, 2012, available at http://www.aacap.org/aacap/Policy_Statements/2012/Policy_Statement_on_Corporal_Punishment.aspx (last visited 2017-09-21).

⁴⁷ Coleman et al., 2010, p. 138.

⁴⁸ Coleman et al., 2010, pp. 107–108.

⁴⁹ See Gershoff, Elizabeth Thompson, "Corporal Punishment By Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review", *Psychological Bulletin of the American Psychological Association*, vol. 128, no. 4, 2002, pp. 539–579 at p. 540.

All US jurisdictions define the line between permitted CP and child abuse consistently with a “medical model of child abuse.” The legal definitions focus on the immediate and short-term physical effects of a violent act on a child, not on a parent’s motivation. The definitions most often include as impermissibly abusive those acts which put a child at risk or substantial risk of physical harm.⁵⁰ This is distinguished from CP, which for example California’s statutory law defines narrowly as “age-appropriate spanking to the buttocks.”⁵¹ As another example of what is prohibited, Pennsylvania defines “child abuse” as any act, or failure to act, causing or creating an imminent risk of non-accidental “serious” injury to a child.⁵² Adding to the difficulty for law enforcement to distinguish permissible from impermissible violence against children, research supporting introductions of CP bans in the US has demonstrated that violence by parents against children can escalate, and many instances of illegal child abuse begin as attempts to use “permissible” CP.⁵³

Not only legislatures but courts in US jurisdictions create law regulating CP. In 2015 the Massachusetts Supreme Judicial Court, for example, overturned a parent’s conviction for battery because of the parental privilege of discipline, yet attempted to set a clear standard for when CP becomes illegal. The Massachusetts Supreme Court held that:

a parent or guardian may not be subjected to criminal liability for the use of force against a minor child under the care and supervision of the parent or guardian, provided that (1) the force used against the minor child is reasonable; (2) the force is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention of or punishment of the minor’s misconduct; and (3) the force used neither causes, nor creates a substantial risk of causing, physical harm (beyond fleeting pain or minor, transient marks), gross degradation, or severe mental distress. By requiring that the force be reasonable and reasonably related to a legitimate purpose, this approach effectively balances respect for parental decisions regarding the care and upbringing of minor children with the Commonwealth [of Massachusetts]’s compelling interest in protecting children

⁵⁰ Coleman et al., 2010, p. 114.

⁵¹ California Welfare & Institutions Code § 300.

⁵² PA Cons. Stats. § 6303. The inclusion of failures to act and mere risk of physical harm which in the end does not actually occur evidences some similarity to the laws of Sweden and Norway. It is not only serious injury to children that is prohibited in the US, despite the continuing legality of some forms of CP; neglecting a child or putting one at risk is also often sanctioned.

⁵³ See e.g. Gershoff, Elizabeth T., “More Harm Than Good: A Summary of Scientific Research on the Intended and Unintended Effects of Corporal Punishment on Children”, *Law and Contemporary Problems*, vol. 73, Spring 2010, pp. 31–56 at p. 42.

against abuse. By additionally specifying certain types of force that are invariably unreasonable, this approach clarifies the meaning of the reasonableness standard and provides guidance to courts and parents.⁵⁴

Beyond statutory law and court decisions, each of the US states also has issued regulations or administrative guidelines developed by Child Protective Services (“CPS”) agencies, the state governmental social services agencies in each state to which incidents that may qualify as abuse are reported. CPS agencies develop these guidelines, sometimes at the local and sometimes at the state level. In North Carolina, for example, a state-level mandatory “decision tree” is in place, requiring local county CPS offices to evaluate the severity of physical injury to the child, but also the injury’s location on the child’s body, whether an object was used to strike the child, whether any bruising lasted more than 24 hours, the number of strikes to the child, the family’s history of CP and contact with CPS, the child’s sense of safety in the home and with the offending parent, the child’s developmental and presumably chronological age, emotional and developmental implications of the injury including school-related implications, and the risks of future harm.⁵⁵

As previous research has identified, CPS investigators report that they try to consider all relevant factors possible when deciding whether to intervene in a family by pursuing charges of child abuse instead of deciding that an act was permissible CP. The agencies do this from the perspective that privacy and parental rights are not necessarily good for children, while courts, in contrast, are more likely to consider and to weigh more heavily such “parent-focused factors” as the parent’s legal right to use discipline, and relatedly the parent’s motivation when committing a given violent act towards a child.⁵⁶

Law regulating CP that is binding in all US jurisdictions is federal law and some international law. At the federal law level, the US Supreme Court has confirmed that a parent’s US federal constitutional right to privately direct the upbringing of his or her child cannot often be outweighed by a governmental interest in preventing harm to children when the harm is minor. At the same time the Court has never explicitly ruled in a case involving CP that resulted in little

⁵⁴ Commonwealth v. Dorvil, 472 Mass. 1 (2015).

⁵⁵ See Coleman et al., 2010, p. 125, reporting on a legal research interview with a North Carolina CPS official. A parent’s motivation must have been, under most state laws, a reasonable correction of the child’s behavior and not merely an expression of anger or a disproportionate response to the child’s undesired behavior.

⁵⁶ Coleman et al., 2010, pp. 128–130.

physical injury. Therefore some legal scholars argue that a state likely *could* legally implement a statutory ban on CP and be upheld against parental rights challenges in the US Supreme Court, especially in today's Supreme Court where states' rights are given particular deference, although this is not certain.⁵⁷ Currently, then, there is state and federal case law supporting constitutional protection for *the parent* in the context of "mild" CP (traditional spanking), and not as strong law supporting a right for *the child* to be free of such "mild" CP.

At the international law level, the CRC, signed but not ratified by and therefore not binding in the US, is not a major influence on US CP regulation. Legal scholars have pointed to the US desire to retain stronger parental rights as a primary reason,⁵⁸ therefore the Committee's disapproval of the US for failing to outlaw CP in all contexts⁵⁹ has not swayed US lawmakers sufficiently as to lead to a ban of "mild" CP in a US state.

Although CP use has declined over recent decades, mostly for older children, in 1995 one study found that 94% of preschool-aged children in the US had been hit by a parent in the past one year, and a 2006 study looking only at children aged 8 and older found 44% of children aged 8-10, 33% aged 11-13, 22% aged 14-15 and 15% aged 16-18 experienced CP in the past one year.⁶⁰ Roughly 50% of toddlers and 65-68% of preschoolers have parents who use CP as a regular method of discipline.⁶¹

⁵⁷ Pollard, Deana A., "Banning Corporal Punishment: A Constitutional Analysis", *American University Law Review* vol. 52, 2002, pp. 447-492 at p. 454 ("[T]he Supreme Court has never ruled on the issue of whether parents have a right to corporally punish their children as part of the parent's right to rear. To the contrary, the Ninth Circuit has held that parents do *not* have a clearly established right [to inflict CP]" and only has applied the lowest form of constitutional scrutiny, rational-basis-test scrutiny, to state laws limiting the parental right to rear, although the Court has referred to this parental right as "fundamental").

⁵⁸ Bartholet, Elizabeth, "Ratification by the United States of the Convention on the Rights of the Child: Pros and Cons from a Child's Rights Perspective", *Annals of the American Academy of Political and Social Science* vol. 633, January 2011, pp. 1-21 at p. 6.

⁵⁹ United Nations Human Rights Council, "Report of the Working Group on the Universal Periodic Review: United States of America", A/HRC/30/12.20, July 2015, at recommendations paragraph 176.265.

⁶⁰ Straus, Murray A., "Prevalence, Societal Causes, and Trends in Corporal Punishment by Parents in World Perspective", *Law and Contemporary Problems* vol. 73, Spring 2010, pp. 1-30 at pp. 3-4.

⁶¹ Gershoff, 2010, p. 31 (citing studies from 2007 for toddlers and 2004 for preschoolers).

3 The Legal Consequences of CP

Given the above-described legal regulations of CP, we wondered what types of legal consequences, civil or criminal, are regulated in law and will follow in practice in situations where a parent living in Sweden, Norway, or the United States today uses CP. In order to improve our comparison, we have each tried to describe the legal consequences of two typical situations, both concerning incidents of “mild CP”.

The *first situation* concerns a parent hitting or pinching the child once or a few times, sometimes impulsively after losing his or her temper, sometimes as a parenting method. The *other situation* concerns a repeated, long-term use of mild CP, most often as a parenting method. The following chapter covers three main types of consequences that may occur in these cases: criminal consequences, social service involvement, including possible removal from the home, and a child’s ability to claim and receive damages. We attempt to cover both the remedies available by law and the likely remedies actually awarded during enforcement.

Although this has been our ambition and intent, the available material has set some limits on the outcome. There are some differences in what can be said about the three jurisdictions; although the law of a country may be clear, there is not always adequate case law to clarify the likely outcomes. The available statistics also vary, which makes it difficult to make a full comparison of enforcement in practice.

We have excluded one often-mentioned legal consequence of CP, namely potential influences on child custody and visitation disputes, because an adequate treatment of those issues would require more space than the present article allows.⁶²

⁶² In all three countries, accusations by or admissions of CP by one parent can affect a court’s determination of which living situation will be best for the children, under the “best interests of the child” standard used in all three countries. However, the legal permissibility of CP in the US could be expected to make this a less determinate factor than it likely would be in Sweden or Norway.

3.1 *Criminal Consequences*

3.1.1 *Sweden*

The number of parents hitting their children in Sweden has continuously decreased since the 1980s. The change is most noticeable when it comes to less serious cases of CP. The number of parents admitting to hitting or slapping their child during the last year declined from 28% in 1980 to 1% twenty years later.⁶³ The number of more severe cases of violence towards children has however been more or less constant. About 3-4 young children (aged 0-5) out of 100,000 are admitted to the hospital every year because of battery. Cases where children have been killed have, however, declined.⁶⁴

The change in attitudes is also clearly visible through the increasing number of reported cases of CP to police authorities. Although reports from parents have somewhat increased, the reports from schools and childcare services represent the biggest change; the personnel's legal obligation to report their concern about the well-being of a child to the social services, along with education and improved routines, may explain this shift.⁶⁵

However, only a small percentage of all cases reported to the police, about 10%, result in a criminal proceeding.⁶⁶ As mentioned above, prosecution for battery requires that the child experiences bodily injury or pain that is not too mild or of too short duration, and this can sometimes be hard to prove. Only one criminal case concerning CP has been tried by the Swedish Supreme Court since the ban in 1979. It concerned a one-time incident. A mother was prosecuted for having spanked her son with a spatula on his thigh and bottom one afternoon when she was under a lot of stress and lost her temper. She wanted to correct him. The hitting caused him pain, redness and minor bruising. The injury led to a conviction for minor battery. The court affirmed the mother's conviction for minor battery, in contrast with a more severe crime, because in this case it was clear that her actions were a one-time occasion. Her sentence consisted of monetary fines, not prison time or other remedies.⁶⁷

⁶³ SOU 2001:18; Janson et al., 2007. According to Janson et al., a possible minor increase can be seen for subsequent years.

⁶⁴ Socialstyrelsen 2009, Brå 2011.

⁶⁵ Janson et al., 2011, p. 7.

⁶⁶ About 7% of the reported cases of battery of young children (0–5 years) and about 13% of the cases concerning older children (7–14 years) resulted in a criminal proceeding in 2015. Brå, 2011.

⁶⁷ NJA 2003 p. 537.

When it comes to repeated, long-term use of CP, statistics indicate that the increase in reported cases concerns mainly this type.⁶⁸ The Swedish Supreme Court has made clear that a systematic use of CP as a parenting method is an aggravating circumstance supporting a conviction for a higher degree of assault or battery, even if the pain or injury in each instance would be insufficient to support this higher level of criminal prosecution.⁶⁹ In one appellate court case, two parents were convicted for having used extensive, repeated and systematic battery as a parenting method. The father was sentenced to one year of imprisonment, the mother to six months.⁷⁰

Statistics show that minor battery is the most common conviction for violence against young children, and fines are the most common penalty.⁷¹

3.1.2 Norway

As mentioned above, even if the use of mild CP has decreased continuously since the 1960s, as recently as 2015 one in five children still reported being exposed to it at some point during their childhoods.⁷² It is difficult to say how many of these cases end up in court, but it is safe to say that the percentage is low.⁷³ One judge working with these cases estimated in 2017 that it is still very rare that mild CP cases end up in court.⁷⁴ The judge also remarked that they rarely use a term like the Norwegian equivalent of CP. In court, violence is called violence, and a case of violence towards a child, especially from a parent, can result in stricter

⁶⁸ Brå, 2011, pp. 29–30.

⁶⁹ NJA 2003 p. 537.

⁷⁰ HovR för Västra Sverige, 2011-05-03, B 4838-10.

⁷¹ Brå 2011, p. 9.

⁷² Available at https://www.buifdir.no/Statistikk_og_analyse/

Oppvekst/Vold_og_overnep_mot_barn/Barn_utsatt_for_vold_i_familien/ (last visited 2017-09-21).

A national examination based on children in high school self-reported violence and assault. 21% of minors have been exposed to physical violence by their parents, 6% have been exposed to more severe physical violence and 8% have experienced violence between the parents.

⁷³ Statistics on how many of these cases that is reported to the police is uncertain, but the number of reports has increased. How many of the reported cases that result in a criminal proceeding at the police is also uncertain. According to Gimse, Guro Angell, *Restorative Justice in Domestic Violence- we might be on the right track*, University of Oslo, Oslo 2010, only 25% of the cases involving family violence resulted in a criminal proceeding. The same study implied that the number of these cases that end up in court is almost none.

⁷⁴ Informal interview by Marie Nordvik, February 2017.

penalties.⁷⁵ It is difficult to find published cases where parents have been convicted for the use of mild CP. However, there are some examples supporting the conclusion that when these cases reach court, the use of CP is sanctioned quite seriously, including with imprisonment of the offending parent. The two cases below show that Norway's Supreme Court has sanctioned the use of "mild" CP with imprisonment both when CP was used only a few times, and when CP was used over several years.

In 2014 Norway's Supreme Court appeals committee refused to reverse the sentence of a lower court where both parents were sentenced by the lower court to 15 days' imprisonment, suspended in favor of probation.⁷⁶ The parents had smacked the children with a stick of bamboo a few times.⁷⁷ None of the incidents left marks. The father also punished the children by pushing existing bruises. The Supreme Court appeals committee commented that the lower court correctly considered that the Penal Code must be understood in the context of the Children Act's § 30, and that today's law consists of a general and total prohibition against violence in the upbringing of children. The appeal committee made reference to CRC Art. 19 No. 1 and General Comments 8 and 13, and also to The Norwegian Constitution at § 92.

In a Norwegian Supreme Court case from 2015, an appeal of the level of penalty imposed by a lower court, the conviction was for rather serious and continuous violence/CP against a family's children.⁷⁸ The lower court found that the convicted parent repeatedly, over a period of 12 years, had corrected the two oldest of five children physically.⁷⁹ The violence was in some of the incidents conducted forcefully, and one time one of the daughters suffered a cracked lip. The parental behavior was partly a conscious method, and partly a result of affect and a lack of control. The use of CP resulted in scared and traumatized children, including for the children witnessing but not directly suffering from the physical violence. During the period in which these violent acts occurred, the legislation changed and the penalty level increased. The court emphasized the parent-child relationship, and the psychological effects a violent home has on children

⁷⁵ This is also confirmed in a Supreme Court appeal committee case, Rt. 2013 p. 838. The court stated that the trust and dependence relationship between child and abuser is an aggravating circumstance, even if the actions themselves were not severe.

⁷⁶ Rt. 2014 p. 702.

⁷⁷ The father had smacked one of the children one time, and the mother had smacked all three children one time.

⁷⁸ HR-2015-01368-A, (sak nr. 2015/356).

⁷⁹ Clipping them, smacking them with flat hand on the fingers or mouth, pinching and pushing them, roughly grabbing them by the arms, and kicking them on the buttocks.

growing up, even if these actions are not of the more severe kind. The court also considered the number of children involved. The sentence of imprisonment for one year and three months was upheld.

3.1.3 *The United States*

Because child abuse including excessive and unreasonable CP is criminal in all states, yet “reasonable” CP remains legally and to a lesser extent socially accepted, there is no criminal consequence when parents engage in the “mild” CP that is the subject of this comparison.

In the *first situation* for example, a parent hitting or pinching the child once or a few times, whether after losing his or her temper or as a parenting method, under certain states’ laws this could be investigated and even held by a court not to be CP, for example if CP is defined as spanking on the buttocks with the intent to correct behavior or if the hitting or pinching were extreme and caused more than mild, transient marks or pain. In most cases, where pinches and slaps do not seriously injure the child, in the rare circumstance where a report of this CP was brought to the authorities it might be investigated. This might lead to some form of state intervention like parenting or anger-management classes ordered by a court, depending on the facts of the case, but would be unlikely to lead to criminal charges. A prosecutor would need to make the case that the state’s definition of criminal child abuse or neglect fits the provable facts.

The *other situation*, a repeated, long-term use of mild CP, most often as a parenting method, would similarly be unlikely to lead to criminal charges unless coupled with something else, such as the child being spanked daily but also slapped on the face, hit with a closed hand, denied food or confined in a closet—something that suggests more a pattern of abuse and neglect than an emotionally-stable parent choosing a physical but “mild” method of discipline in a country where social and legal norms continue to allow that cultural or personal practice.

Social services involvement to determine if the home environment is causing risk to a child is, however, possible, and even commonly occurs.

3.2 *Social Services Involvement, Including Removal from the Home*

In what circumstances do social services agencies investigate parental actions with respect to a child, and in what circumstances might a child be removed from the home, temporarily or permanently, after allegations of what might be “mild” CP? We discuss this, below, for each jurisdiction compared.

3.2.1 Sweden

As mentioned above in 2.2, the Swedish social services are obliged to investigate any reported risk of children's well-being, and to intervene if necessary. In more severe cases, removal is an option. According to Swedish law, a child may be removed from a home against the will of the parents, if there is a *substantial risk for harm* to the child's health or development. The risk may arise from CP, and cases of abuse are often seen as a reason for removal. Although it is seldom the case, it is possible that even milder forms of CP by the parents will be seen as creating a substantial risk for harming the child's health or development. However, a one-time rash incident is not enough for such intervention.⁸⁰ A decision to remove the child is always tried by a court.

In a case tried by Sweden's Supreme Administrative Court, a nine-year-old boy was removed from his home after social services intervention. There were suspicions that the boy had been hit by his father (he had bruises on his face at least three times) and that there was some neglect or certain inadequacies in the care-taking of the child. Later the court found that there was not enough proof of a substantial risk to the boy's health or development. The court established that the removal of a child from his or her home is a very intrusive measure and should therefore be used restrictively.⁸¹

Repeated, long-term use of CP may lead to removal. In the case mentioned in 2.2, where the parents were convicted and sentenced with imprisonment, the children were removed from the home.⁸²

According to statistics, the number of children removed from their homes has not increased in Sweden since the ban on CP, although the number of reports to the police authorities, as mentioned above, has increased substantially.⁸³ There is no indication that Swedish children are removed from their homes more often than children in other industrialized countries.⁸⁴

⁸⁰ 2 § LVU and Proposition 1989/90:28 p. 107. If the parents agree to treatment and support from the social services, this may reduce the risk of harm and thereby prevent a decision of removal from the home. Removal can be ordered even if the parent has not been convicted of any crime, per Schiratzki, Johanna, *Föräldraansvar i välfärdsrätten*, Norstedts Juridik AB, Stockholm 2013, p. 157.

⁸¹ RÅ 1996 ref. 91.

⁸² HovR för Västra Sverige, 2011-05-03, B 4838-10.

⁸³ Leviner, 2013, p. 596.

⁸⁴ Janson et al., 2011, p. 127.

3.2.2 Norway

Any report to Norway's child welfare service concerning potential violence towards a child will result in an investigation. This is a duty of the child welfare services according to The Child Welfare Act § 4-3, and a case will be opened even if the use of CP seems to be a result of a one-time incident of an upset parent momentarily losing control.⁸⁵ The first priority is to make sure the child is safe. The severity of the reported behavior will determine if this is an acute situation that requires special measures.⁸⁶ Further examination will hopefully clarify if the CP is commonly used or if the CP seems to be a single incident. During examination, the child protection service will give guidance to the parents, or they can decide on parental counseling as an intervention. If it seems certain that this was a one-time incident and the parents regret it, and the children do not still suffer from the incident and feel safe, it is common to close the case. If CP is used repeatedly, the parents' attitude regarding the use of CP in parenting and their willingness to change will determine how the case evolves. The child's view will also influence the case and what further measures are taken.⁸⁷

If the violence has caused marks or damage, or the worrisome report of violence comes from the child through a teacher or daycare employee, the child must be removed from the potentially violent situation to make sure the child is safe. Cases like this will commonly be reported to the police and the child protection service will initiate an examination. This can be done simultaneously.⁸⁸

On a legislative level, it seems clear that even though single episodes of neglect, violence, offense and abuse are criminal, the statutory law requires parental actions detrimental to the child's health and development to result in a removal of the child to foster or institutional care.⁸⁹ It is uncommon and maybe unlikely, according to one child welfare service worker interview, that a child can continue living at home in a case where the parents get convicted for violence towards the child. But, on the other hand, permanently removing the child is no

⁸⁵ Interview with former child welfare service workers, Marie Nordvik, February 2017.

⁸⁶ In acute situations, the child protection service removes the child immediately. The removal needs to be accepted by an administrative court (Fylkesnemnda) within 2 weeks; see the Child Welfare Act § 4-6.

⁸⁷ The child protection service has experienced that private conflicts between parents often have great impact on children and often include violence. Therefore the child protection workers report that they recently, more often than before, have opened examination cases in private conflicts. Interview with former child welfare service workers, Marie Nordvik, February 2017.

⁸⁸ Interview with former child welfare service workers, Marie Nordvik, February 2017.

⁸⁹ The Child Welfare Act §§ 1-1, 3-1, 4-3, 4-6, 4-12.

automatic consequence. It has to be thoroughly considered, and the state of the child and the child's opinion must be considered of crucial importance.⁹⁰

3.2.3 *The United States*

When a parent's potentially excessive use of CP is reported to authorities, either by legally-mandated reporters⁹¹ or by private persons, it is within the discretion of those authorities to initiate an investigation, and even criminal charges may be filed. In contrast to these reports of potentially excessive CP, instances of only the "mild" CP that is the subject of this comparison can result in investigation by social services (CPS), but will only exceptionally result in a child's removal from the home.

A typical process according to the legislative and administrative law involves, for example in North Carolina, CPS's use of a "decision tree that requires classifying as neglect by inappropriate discipline" any CP that is more than what the agency considers "reasonable" but is less than what they consider "abuse."⁹² In other words, in at least North Carolina there exists a gap between where reasonable CP ends and abuse begins, and in that gap can social services such as parental education, counseling, and monitoring of the family improve the situation of the children involved, even though no criminal action for child abuse is pursued.

3.3 *The Child's Right to Damages*

Another potential consequence of CP is civil damages to the child.

3.3.1 *Sweden*

If a parent is convicted of a crime against the child, the court may grant the child damages for personal injury and for violation of the personal integrity of the

⁹⁰ Interview with former child welfare service workers, Marie Nordvik, February 2017.

⁹¹ These include doctors, social workers, therapists, teachers, and similar professionals in contact with children. See Child Welfare Information Gateway, 2016, *Mandatory reporters of child abuse and neglect*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, available at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/manda/> (last visited 2017-09-21).

⁹² Coleman et al., 2010, p. 117.

child.⁹³ Often damages are requested by the prosecutor or the injured party's counsel on behalf of the child.

In cases where there was no intent to hurt or to violate the personal integrity of the child, but rather a situation where the parent or other person lost control momentarily or acted impulsively, damages will sometimes be granted to the child. In a recent Supreme Court case involving a teacher (not a parent), a seven-year-old pupil requested damages for violation of his personal integrity after being hit by his teacher with an open hand. This occurred in the classroom when the teacher grabbed his hand to correct him and the pupil then blew some saliva in her face. The Supreme Court granted him about 550 USD in compensation.⁹⁴ Children have been granted the same compensation in similar cases where a parent was the offender.⁹⁵

In cases of milder but extensive and systematic spanking with the hand or a tool as a parenting method, children have been granted about 2,750 USD in damages.⁹⁶

If the offender parent does not or cannot pay damages, the child may be granted criminal injuries compensation. This compensation will be paid by the government, and will cover the same damages as the offender would have paid. The parent must repay the state if and when possible.

If a child has been the victim of severe CP or abuse, and the social services authority fail to react, although they are aware of the risk to the child's well-being, the child may claim damages from the authority for its neglect.⁹⁷

3.3.2 Norway

As in Sweden, children can be granted damages both from the offender and as a state compensation.⁹⁸ This can be granted by the court if a parent is convicted of a crime against the child, or if the child has witnessed violence committed against another family member. Children can also be granted state compensation

⁹³ Torts Act (Skadeståndslag 1972:207) Ch. 2 § 3.

⁹⁴ NJA 2016 p. 596. The minority of the court, two out of five judges, found that this should be seen as a minor violation of the pupil's personal integrity, and therefore he should not be granted any damages. The reasons stated were that the slap was unpremeditated and that the teacher apologized to the pupil directly after the incident, and also called his mother to inform her.

⁹⁵ Brottsoffermyndighetens Referatsamling, 2017, p. 68.

⁹⁶ Two examples of more severe cases are HovR för Övre Norrland, 120329, B 886-11 and Svea HovR, 120326, B 786-12. One of milder but systematic spanking is HovR för Västra Sverige, 110503, B 4838-10.

⁹⁷ Torts Act Ch. 3 § 1.

⁹⁸ Victims of Violence Compensation Law (Voldsoffererstatningsloven) LOV-2001-04-20-13.

without a criminal conviction. Both in court and when applying for state compensation, the required level of evidence is lower to be granted damages than to criminally convict. To be granted damages as a part of a criminal case, the prosecutor or the injured party's counsel on behalf of the child has to request them. To get state compensation without a criminal case the violence usually needs to be reported to the police. In a child protection case followed up in court, the children get no damages from the court, but presumably the child can get state compensation if the same violence is reported to the police.

In the Norwegian Supreme Court judgement where a father was convicted for violence over a period of twelve years, the two of the children directly subjected to CP were awarded 65,000 NOK (about 7,780 USD) each, and the three indirectly violated received 25,000 NOK (about 3,000 USD).⁹⁹

3.3.3 *The United States*

There are no state-paid damages available to children subjected to CP by parents in the United States, except to the extent that a state actor could be held liable to the child in failing to protect him or her from CP that had crossed the legal lines, discussed above, into child abuse, where the state authorities knew or should have known the risks faced by the child. A parent criminally convicted of child abuse may face imprisonment, fines to the court, loss of parental rights and other consequences, but rarely (if ever) are damages to the child available.

The abuser parent could in some states civilly be held liable for physical and emotional damages and costs caused to the child, if someone sued on behalf of the child for these damages. The cultural legacy or value in keeping family members immune from tort liability to each other has clear exceptions under the Restatement of Torts and various states' approaches to the question of whether a parent may be liable in tort to their child, and for what behaviors, but reluctance to encourage these cases remains strong. Legal scholars have argued for and against recognizing a child's action for damages from a parent. Granting a child a right to bring such an action could be against the core CRC principle of the best interests of the child, and is not required by the CRC, concluded one researcher in 2010.¹⁰⁰

⁹⁹ HR-2015-01368-A.

¹⁰⁰ See Shmueli, Benjamin, "Love and the Law, Children Against Mothers and Fathers: Or, What's Love Got to Do With It?", *Duke Journal of Gender Law and Policy* vol. 17:131, 2010, pp. 131–188 at p. 139 (also tracing the history of American law on parental immunity from tort liability to their children into today's murky "qualified doctrine of parental immunity" at pp. 145–155).

One more practical reason that children do not seek damages from their parent abusers, sometimes cited by American lawyers, is that most parents do not have sufficient financial resources available to pay damages that would make a child's suing for damages from the parent worthwhile, given the high cost of legal representation in the US. A civil lawsuit is highly unlikely to occur unless the parents are in disagreement or the child has some other court-appointed guardian, and the abusive parent has assets sufficient to make such a case worthwhile. Cases against institutions or non-parent individuals responsible for child abuse or physical harm, for example against a school district, a church or a coach, are more frequent and do not involve the question of parental immunity or authority.

4 Conclusions

We conclude with some comments comparing the laws and remedies in practice detailed above, and on the implications of our findings.

4.1 *Comparison of the Legal Regulations*

Sweden in 1979 and Norway in 1987 banned the use of CP, including milder forms. In all 50 of the United States plus the District of the Columbia, on the other hand, mild CP is legal, viewed as a parent's privilege, and is so far constitutionally protected. More severe CP and child abuse is illegal in all states.

The differences between the legal regulations is reflected in both the attitude towards and frequency of mild CP. In Sweden and Norway the ban on CP is internalized in a vast majority of the population, and only about 15% of children in Sweden and 20% in Norway report being ever hit or otherwise hurt during their childhood. In the United States about 50% of toddlers and 65% of preschoolers have parents who use CP as a regular method of discipline, and many more report having been hit at least once. Although the majority of American parents seem to use CP as a method for upbringing, the disadvantages of CP are emphasized by others.

One of the notable differences is what behaviors are criminally punishable in the Scandinavian countries. According to Swedish law, all CP is forbidden, but CP of a child will constitute a crime only if the child experiences bodily damage or pain that is not too mild or of too short duration. Proving that can of course sometimes be difficult. According to Norwegian law, even lighter CP, so long as it is treatment of the child "so as to" harm or endanger, is criminal. It seems that the Norwegian regulation is stricter in this sense.

The legality of mild CP in the United States means that the limit between mild and therefore permitted CP and more severe cases of child abuse is relevant. All states use a medical model for determining child abuse; if the behavior of the parent puts the child at risk or substantial risk of physical harm, it is illegal. However, fleeting pain or minor transient marks does not constitute physical harm in some states.

4.2 *Comparison of the Criminal Consequences*

As discussed above, it remains rare that a case of isolated incidents of mild CP end up in court in Sweden or Norway. Yet statistics show that some children still are subjected to mild CP despite its prohibited status in both jurisdictions. Even so, examples from both Sweden and Norway's supreme courts show that if a case goes to court, the parents are highly likely to get convicted for the use of mild CP even if it is only used a few times.¹⁰¹ In the US, there is no criminal consequence when parents engage in "mild" CP. In some states the use of CP even one time could be investigated and held by a court not to be permissible CP but rather abuse or neglect.¹⁰²

For long-term use of "mild" CP both the Swedish and Norwegian supreme courts have made clear that a systematic use of CP as a parenting method is an aggravating circumstance. Rulings from both Sweden and Norway show that long-term use of CP leads to higher sentences, specifically imprisonment for a year and more. In the US, on the other hand, long-term use of mild CP would be unlikely to lead to criminal charges, unless coupled with something that suggests more a pattern of abuse and neglect, or an intent by the parent to abuse rather than correct the child.

This indicates that parents never get convicted for the use of "mild" CP fitting a state's CP definition in the US. In Sweden, it can happen even for a few incidents of "mild" CP, though probation or imprisonment may be less likely than fines as a consequence. In Norway, the use of CP is more likely to lead to probation or imprisonment, even for one or a few incidents of CP. Still, for this to happen the cases need to reach court, and they probably rarely do.

¹⁰¹ In Norway, the Supreme Court also clarifies that the trust and dependence relationship between child and abuser is an aggravating circumstance.

¹⁰² For example if CP is defined as spanking on the buttocks with the intent to correct behaviour and another form of hitting or pinching is used.

4.3 Comparison of Social Services Interventions

A report of suspected mistreatment of a child to social services after incidences of CP can occur in all three countries studied. So can prior, simultaneous or subsequent reporting to the police, who generally cooperate with social services in the studied jurisdictions. In all three countries, most social services interventions will start with looking into the facts of a reported case and determining whether a child is sufficiently safe to close the case. If a case continues, they must decide if the child, parents or entire family will benefit from further services, whether or not legal charges will be pursued. Social services agencies must also determine if they will request removal of the child from the home.

The ultimate social services intervention, removal of children from their home, does not occur after one-time occurrences of mild CP in any of the three countries studied, from what we have found. Removals even for more continuous CP are also rare in Sweden and Norway, as is CP itself, and must be decided after a court hearing, not solely by social services staff. The significant difference seems to be that removal is possible as a consequence of CP used regularly as a parenting practice in Norway and Sweden. Because what in the US would be called parentally-privileged, “reasonable” CP is clearly outlawed and has been for several decades in these countries, its premeditated use over time is understandably viewed as contrary to societal norms as well as law, and as assault and battery against a child. Although it is rare, this can justify in some circumstances a child’s removal to foster care. In the US, removal of a child if the CP is engaged in by a parent, not in anger but with intention to correct the child’s behavior, is highly unlikely and could be challenged in court based upon the parent’s right. The starkest contrast with the US’s standard when battery is committed by a parent towards his or her child is Norway’s standard or level of illegality of a battery specifically because it is committed by a parent upon a child. Sweden’s standard treats batteries against adults and batteries against children under the same standard, thus can in this sense be seen as a middle ground.

4.4 Comparison of Damages

According to Scandinavian law, a child can claim compensation from the parent even for a one-time incident of mild CP. A slap with open hand would render a damage of about 550 USD in the very few cases this is tried by the court. In cases of more systematic and long-term use of mild CP, damages up to over 7,000 USD have been granted the child. If a systematic and long-term use of mild CP

was found to have led to emotional or physical damage, it might be possible for a child to claim damages in an American court, but this is not frequent or legally guaranteed, and is not available for the milder CP allowed in the US, only for parental wrongdoing such as child abuse or neglect.

Provided the parent cannot or will not pay damages, a child may be granted compensation from the Swedish or Norwegian state; if so the parent will have to repay the state later. There is no comparable state compensation in the United States.

4.5 *Final Remarks*

Empirical research and logic agree that from a child's perspective, wherever he or she grows up, CP is shaming, painful or uncomfortable and to be avoided. The question legal systems face is whether a parent can decide if CP legally can be used, and to what degree, plus what enforcement measures are best used when parents cross these legal boundaries.¹⁰³

It is not necessary for this legal analysis that its authors state a position on the international policy disagreements over whether and how criminalization of all forms of corporal punishment should be enacted and enforced. We tend to support the view that children and societies do better when children are considered victims of battery and assault under the same standards that apply to adults, because we consider this view better empirically supported, but we have strived not to let our views influence this analysis. We hope that our objective research in this area may assist the many legal jurisdictions around the world where corporal punishment of children is legal to consider whether and which legal reforms may best advance their child protection aims.

All three countries compared herein ascribe to the "best interests of the child" standard in various family-law contexts, including a preference to allow children and parents to develop a healthy family life together. Those charged with enforcing the law to protect children and other interests must decide difficult cases when one or more adults in a family have been and may again be violent towards a child.

Results of the comparison herein partially supported our hypothesis that the consequences of CP today may not differ as starkly as one might predict knowing only that Norway and Sweden have criminalized CP while all 50 US states have preserved it as legal. They also partially did not support our hypothesis, in that

¹⁰³ Proponents of CP do not claim that it does not hurt the child in the short-term, though they may disagree with opponents of CP as to whether it hurts or benefits the child in the long-term.

the consequences of CP in these three countries can differ significantly, especially when it comes to criminal consequences. The results inform policymakers analyzing how best to prevent, rehabilitate and/or punish parents who engage in CP behaviors, otherwise known as milder violence towards their own children. Sweden, Norway and the United States offer alternative approaches, from strict and clear illegality of such behavior to more civil and private encouragement away from CP. Education and other factors that influence cultural change, including lawmaking, will ultimately decide how many children experience CP in the future. Scandinavia is at the forefront of a progressive movement towards which all countries via the CRC are potentially headed, and has proven that legal bans on CP most likely have significant influence on parental behavior, yet factors including parental rights traditions in countries like the USA may continue to slow worldwide adoption of CP bans.