

758.01.03 Excessive Corporal Punishment Guidelines

CHAPTER 7, Child Protective and Preventive Services

Revision Number: 08-02

Effective Date: 07/31/2008

758.01.03 Excessive Corporal Punishment Guidelines

I. HISTORICAL BACKGROUND

The General Assembly of South Carolina has acknowledged that parents have the authority and responsibility to discipline their children but holds that parents do not have the right to abuse their children. Parents should be supported in their efforts to provide for the needs of their children. S. C. Code of Laws Ann. (Supp.1997) Section 20-7-490(3) defines harm to a child and excludes corporal punishment which meets certain guidelines.

Section 20-7-490(3):

'Harm' to a child's health or welfare can occur when the parent, guardian, or other person responsible for the child's welfare:

- (a) inflicts or allows to be inflicted upon the child physical or mental injury, **including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:**
 - (i) is administered by a parent or person in loco parentis;**
 - (ii) is perpetrated for the sole purpose of restraining or correcting the child;**
 - (iii) is reasonable in manner and moderate in degree;**
 - (iv) has not brought about permanent or lasting damage to the child;**

(v) is not reckless or grossly negligent behavior by the parents.

In 1988, in a landmark decision of the case of South Carolina Department of Social Services vs. Father and Mother, 366 S.E.2d 40 (Ct.App.1988), the Court of Appeals of South Carolina held that: (1) corporal punishment inflicted by father, which left large purple contusions on back of child's left thigh and right leg, and a bruise on the temple, was excessive and constituted child abuse under statute, and (2) statute prohibiting such conduct was not unconstitutional on theory that it denied father his right to religious liberty under First Amendment. Although this situation involved a parent administering discipline, the court ruled that the punishment was not reasonable in manner nor moderate in degree because the father beat the child with a belt leaving large purple contusions covering almost the entire back of her left thigh and part of her right leg, even though the child was wearing long pants, and also hit her in the face while he was wearing his college ring, leaving contusions on the right temple. The court found that the child's skin was impaired by beating by the father, so as to constitute impairment of a body organ. Medical testimony stated that a "great deal of force" was necessary to inflict the injuries causing the court to rule that the discipline was not reasonable. While this case has been used to justify indicating reports of excessive corporal punishment dealing with minor bruises, it is important to remember that this situation does not deal with a minor bruise, but excessive force and extensive injuries and a finding that the force used was not "reasonable in manner nor moderate in degree" (Section 20-7-490-(3)(a)(iii)). Minor bruising would not support a finding of excessive corporal punishment if the criteria in Section 20-7-490(3)(a)(iii) are met.

Most medical personnel and psychologists agree that physical discipline should not be used on children who are under 12 months of age. These professionals believe if any corporal punishment is used on a child, the child

should be developmentally, emotionally, and physically normal. They also agree that punishing children who lack the cognitive skills to understand the consequences does not get the message across and does not accomplish the purpose of correcting or retraining the child. Generally, children over the age of 12 years do not respond well to corporal punishment and other methods are more effective in achieving the ends of changing behavior.

Children's advocate organizations warn that physical punishments can lead to serious injury or death. Child protection and medical professionals agree that many persons who are found to be physically abusive as adults were also corporally punished as children. However, it is important to remember that not all children who are corporally punished grow up to be abusive adults. While many professionals discourage the use of corporal punishment in many situations, the law in South Carolina does not prohibit it.

II. Guidelines for Assessing Excessive Corporal Punishment

The SC Court of Appeals case of Father and Mother established that the skin is an organ and bruising to the skin can be considered "permanent and lasting damage to a bodily organ" as defined by statute. This case dealt with extensive bruising to the child's legs and thighs as well as a blow to the forehead which left a bruise. These injuries and testimony that they were intentionally inflicted and the blow to the face demonstrated to the Court that the force used by the father was not moderate in degree nor reasonable in manner. The judges did not say that minor bruises with no other indicators of abuse should be determined to be child abuse. All the facts of the situation must be considered and assessed to make a determination of physical abuse due to excessive corporal punishment. Careful attention must be given to the criteria as set forth in Section 20-7-490(3)(a)(iii) and efforts made to determine whether any bruise has been inflicted in a way not "reasonable in manner and moderate in degree".

It is not the purpose of this section to debate the use of corporal punishment, but rather to provide guidelines for staff who are expected to make critical judgments distinguishing appropriate corporal punishment from excessive corporal punishment or physical abuse and then make decisions regarding the level of risk in which the child may be. This can be a very difficult decision for the worker. The following questions are provided to operationalize the statutory guidelines outlined in Section 20-7-490. **Staff are reminded that minor bruises as a result of corporal punishment must be assessed in light of all other factors. Minor bruises should not be the sole reason for**

indicating a report of excessive corporal punishment nor for requesting the removal of the victim child or siblings. This is not a new requirement but a clarification of existing policy and procedures.

A. Statute Requirements

(i) is administered by a parent or person in loco parentis;

Persons who administer corporal punishment to children must be parents, guardians, or someone else as defined by the S. C. Code of Laws Ann. Section 20-7-490(5). Persons in this capacity have a unique relationship with the child and the right and responsibility to discipline the child. A person not in this capacity has no authority to discipline a child.

- What is the relationship between the child and the person administering the punishment?
- Does this person have a relationship with the child not defined by statute and society?
- If yes, what is the impact on the child of that relationship?

(ii) is perpetrated for the sole purpose of restraining or correcting the child;

Corporal punishment must be administered to correct a child's behavior or to restrain a child who is out of control.

- What is the intent of the parent in using the corporal punishment?
- What is the behavior of the child the parent wants to change?
- Is the discipline appropriate to the offense so that the child can make the connection between the misbehavior and the punishment?
- Are other forms of discipline used (i.e., progressive in nature or always use corporal punishment)?

(iii) is reasonable in manner and moderate in degree;

The way in which the corporal punishment is administered must be within reasonable limits, it must be moderate and not excessive or extreme, nor violent.

Father and Mother vs. SCDSS case heard by the SC Court of Appeals ruled that the father's actions were not reasonable in manner nor moderate in degree as there were extensive bruises to the legs, thighs, and forehead of a child. Minor bruises as a result of corporal punishment must be considered in conjunction with other indicators of abuse to result in an indicated finding.

- Is the discipline appropriate to the age and/or developmental state of the child? Generally, corporal punishment is not appropriate for a child under 15 months and not particularly effective for a child over the age of eight.
- Corporal punishment may not be appropriate for children with handicapping conditions who are not able mentally or emotionally to understand the discipline or are physically fragile.
- Are instruments (for example: paddles, sticks, electric cords, other) used as part of the discipline?
- Where are strikes or blows located?
- What harm did the child suffer from the discipline?

(iv) has not brought about permanent or lasting damage to the child;

The purpose of corporal punishment is not to severely injure a child but to change an undesirable behavior.

- Was the child harmed? If yes, how serious was the harm?
- Was medical attention needed?
- What was the medical assessment of the injury?

(v) is not reckless or grossly negligent behavior by the parents.

Parents are expected to administer corporal punishment while in control of their actions so as not to injure the child.

- Did the situation involve a loss of control by the parent?
- Was the parent's loss of control due to stress from a specific crisis, such as loss of employment, death of family member, divorce, or other?
- Is there chronic stress in the family due to a lack of skills, lack of impulse control, abuse of drugs or alcohol or other?

Family Functioning

- Do the adults use violence to solve problems in the family or with other persons?
- Does the family generally operate in a reasonable manner?
- Do the parents have extended family or other support systems to help them through difficult times?

B. Assessing Child Safety

As part of the process to determine if a child has been abused and whether removal from the parents is necessary,

the following factors must be considered in order to accurately assess the present danger threats and level of future risk to the child. These factors are the basis for the safety assessment. Although any one of the considerations listed may support that a child is unsafe or at risk of harm, usually it is a combination of several factors which lead to the determination that a child is or is not at imminent danger and cannot be protected in the home.

The Child

Assess the seriousness of the child's current physical condition.

- Has the child suffered harm?
- If yes, what is the location of the injury and the seriousness?
- Does the child need medical attention?
- If yes, what is the medical assessment of the injury?
- Does the child require hospitalization?
- Is the condition chronic or acute?

Assess the child's current emotional condition.

- Is the child withdrawn or uncommunicative?
- Is the child fearful of his or her parents?
- Is the child provocative?
- Is the child self-destructive?

Assess the child's ability to protect him or herself.

- What is the child's age?
- Does the child have any physical, emotional, or intellectual handicaps?

Assess the effect of the maltreatment on the child.

- Is the child likely to suffer from short-term harm?
- Is the child likely to suffer permanent damage, either physical or emotional, from the maltreatment?

The Parent

Assess the parent's explanation of the child's condition.

- Is it inconsistent with the child's condition?
- Is it inconsistent with the child's physical and/or developmental capabilities?

- Does the parent blame the child for the child's condition?
- Does the parent admit to abusing or neglecting the child?
- Does the parent's story sound rehearsed?

Assess the parent's attitude toward the child's condition.

- Does the parent understand the severity of the injury or condition?
- Does the parent seem concerned or unconcerned about the child's condition?
- Is the parent willing to obtain medical or psychiatric care for the child?

Assess the parent's attitude toward the investigation.

- Is the parent extremely hostile?
- Does the parent threaten you?
- Is the parent overly compliant, telling you everything you want to hear?
- Is the parent willing to participate in the investigation?

Assess the emotional condition of the parent.

- Is the parent able to communicate with you?
- Does the parent grasp the reason for your presence?
- Is the parent delusional or having hallucinations?
- Does the parent's behavior seem inappropriate, bizarre, or out of place?
- Does the parent appear to be volatile, unable to control his or her impulses?
- Does the parent seem to be overwhelmed or immobilized?

Assess the parent's strengths.

- Does the parent recognize his or her problems?
- Is the parent willing and/or able to admit he/she has problems?
- Is the parent willing to problem solve with you regarding what needs to be done to protect the child?
- Is the parent willing to take action to protect the child and remedy his/her problems?
- Is the parent isolated?
- Does the parent have friends or relatives to whom he/she can turn to for support?
- Does the parent seem to be motivated to change his/her situation?

Assess the parent-child relationship.

- Is the parent able to comfort the child?
- Does the child look fearful or cry when the parent approaches?
- Do either of the parents stiffen when the child approaches them or when the child cries?
- Does the parent yell at the child unnecessarily?
- Does the parent strike the child in your presence?
- Does the parent seem over-solicitous toward the child?
- Do the parents appear to use inappropriate or excessive discipline?
- Do the parents appear to be unable to adequately care for the child?
- Do the parents ignore the child?
- Does the parent compete with the child for your attention?
- Do the parents appear to scapegoat the child?
- Do the parents appear to favor any of their children?
- Are the parents unwilling or unable to discipline or provide structure for their children?

The Home Environment

Assess the physical condition of the home.

- Is the home safe?
- Are there exposed wires?
- Is the house a fire hazard?
- Is there a bed for the child?
- Is there adequate food?
- Do the parents have the necessary materials to care for the child?

Previous Maltreatment

Determine whether the child has suffered previous maltreatment.

- Have there been previous reports of abuse or neglect (either the same or different allegations)?
- Are the previous reports founded or unfounded?
- Does the child state that this is a one-time occurrence?
- Does the reporter state that this is not the first time he or she witnessed the child's condition?
- Do x-rays, medical records, or other documents substantiate that the child has been maltreated previously?
- Have other siblings experienced maltreatment? If yes, how serious were the injuries?

C. Removal Criteria

The following criteria should be considered in conjunction with the above guidelines and the information gathered as a result of the investigation, interviews, and observations to determine if a child should be removed from the home.

- The presence of potential maltreatment in the home is such that the child has suffered or could suffer permanent physical or mental injury if left there.
- The child needs immediate medical or psychiatric treatment which the parents refuse to obtain.
- The child's present physical or emotional injuries require a special environment for treatment and recuperation which the family cannot or will not provide, e.g., a hospital, quiet or physical control.
- The child's sex or physical or mental condition renders him incapable of self-protection, or for some reason his characteristics or condition are intolerable to the parents.
- The evidence suggests that the parents have or are probably systematically resorting to disciplinary methods which are completely inappropriate responses to the child's behavior, e.g., extreme verbal or physical punishment of a child who makes a simple age-appropriate request.
- The parents acknowledge being abusive and agree that they will probably continue to be abusive if the child remains in the home.
- The physical environment in the home poses an immediate threat and danger to the child, e.g., it is extremely unsanitary, there is a total absence of food, the shelter/heat is completely inadequate for the weather.

If any or all of the above criteria are found to be true through the investigation, removal of the victim child from the parents is supported. Removal of siblings of a victim child is based upon the likelihood of future injury to that child if left in the home environment.

Referenced Documents

Revision Comments