

The Scottish Parliament

The Information Centre

SPICe Briefing

SB 02/102
13 September

THE PHYSICAL CHASTISEMENT OF CHILDREN: LESSONS FROM SWEDEN AND GERMANY

GRAHAM ROSS

On 26 March 2002 the Criminal Justice (Scotland) Bill was introduced in the Scottish Parliament. The Bill represents the Scottish Executive's legislative response to a wide range of criminal justice issues many of which have been the subject of considerable public consultation and debate over the past few years.

THE CRIMINAL JUSTICE (SCOTLAND) BILL

Section 43 of the Bill deals with the physical punishment of children and is intended to provide improved protection for children against physical assault. The common law in Scotland has been interpreted as allowing parents, guardians and other persons with care or control of children to use force for the purpose of disciplining a child. The reasonable physical punishment of a child can be a justified assault where the force is moderate and not inspired by vindictiveness. The Bill aims to provide clarification in this area by setting out the circumstances in which the physical punishment of a child will not be regarded as reasonable, and by setting out a non-exhaustive list of the factors which are to be taken into account when considering whether such punishment is reasonable¹.

SUMMARY OF ARGUMENTS FOR AND AGAINST LEGISLATION

The introduction of legislation of this nature gives rise to strong opinions being voiced on both sides of the debate. It is clear that amongst interested parties, parents and legislators, there are diametrically opposed views as to the efficacy of such legislation. What follows is a brief summary of just some of the opinions which have been put forward in support of, and opposition to, the legislation being

¹ See also SPICe briefing 02/52: Criminal Justice (Scotland) Bill: Children, May 2002 and Research Note RN00-11 The Physical Punishment of Children.

proposed by the Scottish Executive. It should be noted that of the 220 responses² received by the Scottish Executive to the consultation [The Physical Punishment of Children in Scotland](#)³;

- 47% supported the Executive's proposals for clarification;
- 34% wanted a complete ban on smacking;
- 17% opposed any change in the law; and
- 6% gave other answers.

The majority (77%) agreed that there should be some clarification of the law and/or further restrictions introduced.

Arguments in favour of anti-smacking legislation

There is a clear consensus amongst those groups who are in favour of anti-smacking legislation that the effects of banning the corporal punishment of children can only be positive. They argue that the following factors are crucial when examining the benefits of introducing such legislation:

To enhance child protection – by easing prosecution in cases in which it is plainly necessary in the interests of the child. By enabling child protection workers to give parents of children at risk of abuse a clear message that no level of corporal punishment is acceptable. By ensuring that children have a consistent level of protection which does not vary according to where they are placed or who is caring for them and, by preventing unintended physical or psychological injury.

To support parents – by providing a clear legal basis for the promotion of positive, non-violent forms of discipline by statutory and voluntary bodies working with families i.e. discipline which reduces stress, improves family relationships and creates sociable, self-disciplined and well-motivated children.

To tackle violence and crime – because corporal punishment is a significant factor in the development of violent behaviour in childhood and later life, clear reform would help measures to reduce violence and crime. It would also help to promote the concept of zero tolerance of violence between all family members and thus reduce all forms of domestic violence, and it would help reduce bullying between children.

To assert the equal human rights of children – The UN Convention on the Rights of the Child requires the UK to protect children from “all forms of physical or mental violence”. The international monitoring body for the Convention, the Committee on the Rights of the Child, has emphasised that physical punishment within the family is not compatible with full implementation, and has formally recommended prohibition to the UK and to many other countries.

Arguments against anti-smacking legislation

Parties opposed to the introduction of the legislation argue that there will be more negative consequences than positive.

² Copies of all the responses received are available for consultation in the Scottish Parliament Information Centre.

³ <http://www.scotland.gov.uk/library2/doc1/ppcs-07.asp>

That parents will be criminalised – They argue that laws exist to restrain people from doing wrong and to provide a basis for punishing offenders. They express fears that the law would lead to prosecutions of parents who employed mild physical sanctions, while doing nothing to reduce the number of cases of genuine child abuse.

That families will suffer harassment from social services - Removing the defence of reasonable chastisement would significantly lower the threshold at which local authorities could intervene and it would no longer be a question of whether a child was suffering “significant harm”.

That a climate of fear will be created – They argue that parents will become fearful of being prosecuted or investigated by social services and that children will become fearful for the same reasons, not of being smacked by their parents.

That abused children will not receive any greater protection – They argue that the law already protects children from unreasonable chastisement and that the legislation does not offer any greater protection for children at real risk of abuse.

Giving evidence to the Justice 2 Committee, the Minister for Justice stated:

“The objective is not to prosecute or criminalise people for the trivial smack. Some discretion will apply and the police will exercise discretion too. Procurators Fiscal will not have to apply the act in relation to exercise of their discretion. There are circumstances relating to technical breaches of acts in which procurators fiscal do not prosecute. We should bear in mind that the purpose of the provision is not to raise the number of prosecutions but to ensure that parents know what is thought to be acceptable and unacceptable”⁴.

INTRODUCTION

The section of the Criminal Justice (Scotland) Bill dealing with the physical chastisement of children has attracted a great deal of attention and has not been without its critics. This briefing paper looks at the introduction of legislation in Sweden which was the first Western country to abolish all forms of physical and psychological chastisement of children and examines some of the research which has been carried out in evaluating the impact of the legislation. The paper also provides a brief summary of the German experience in relation to anti-smacking legislation. The paper also includes general comment from various sources on anti-smacking legislation.

SWEDEN

In 1979 Sweden became the first Western European country to abolish all forms of corporal punishment of children. The law has come to be known above all for its prohibition of the corporal punishment of children, but it also includes other humiliating treatment. The law states that the ban is directed against treatment which endangers the child’s personal development. The following instances of humiliating treatment are included: locking a child up, threatening, frightening, ostracising or ridiculing the child. The complete abolition of all forms of corporal punishment marked the end of a series of legislative reforms covering the previous 50 years which were aimed at making the rejection of corporal punishment increasingly explicit in law.⁵ In the most

⁴ Official Report, Justice 2 Committee, 18 June 2002.

⁵ ‘A Generation Without Smacking: The Impact of Sweden’s ban on physical punishment’: Durrant J.E. Save the Children 2000.
providing research and information services to the Scottish Parliament

comprehensive study on the legislation which was published in 2000, Professor J E Durrant states that the ban was intended to be 'educational rather than punitive'.⁶ Accompanying and ongoing supportive measures are intended to encourage parents to seek assistance with child management difficulties and to learn about alternative methods of discipline, thereby reducing reliance on and support for physical force.

While the law in Sweden makes clear that the criminal law on assault applies equally to assaults on adults and children, Durrant states that it is important to note that the law abolishing corporal punishment was not intended as a means of criminalising carers. For this reason the law was written into the Parents' Code (Föräldrabalken) which carries no criminal penalties and whose primary purpose was to educate, not to coerce.

"Should physical chastisement meted out to a child cause bodily injury or pain which is more than of very temporary duration it is classified as assault and is an offence punishable under the Criminal Code. In theory, at least, this was also true before the new Bill came into force, although it was not generally known. The advent of the new law swept aside all doubt, although trivial offences will remain unpunished, either because they cannot be classified as an assault or because an action is not brought."⁷

In order to reinforce the educational tenet behind the new legislation, a number of supportive measures were put in place. The Swedish Children's Rights Commission recommended that a public education campaign should be conducted to inform the Swedish public about the law and its objectives. The Ministry of Justice then carried out an extensive education campaign in which pamphlets containing information about the law and advice on alternative disciplining strategies were distributed to all households with young children. Information about the law was also printed on milk cartons for two months with the intention that parents and children would be encouraged to discuss the issue. As a result of these measures, by 1981 99% of Swedes knew about the law – a level of knowledge unmatched in any other study of knowledge about law in industrialised societies.⁸

The ban in Sweden had, at its core, three primary objectives. Firstly, it was intended to alter attitudes toward the use of physical force with children in that the law would produce a shift in social pressure, thus promoting the view that a 'good parent' was one who does not use corporal punishment. Secondly, it was intended to set clear guidelines for parents and professionals, ending debates about what constituted 'acceptable' and 'unacceptable' physical punishment. It would be clear to the general public that any use of physical force with children was not permitted and it was expected that Swedes would act promptly if they witnessed assaults or when children disclosed experiences of physical harm. Thirdly, earlier identification was expected to result in earlier intervention by social service professionals. When even mild corporal punishment was being used, professionals could provide information about alternatives without feeling that they had trespassed on a private family matter. It was intended that early intervention would have two outcomes:

- decreasing rates of child maltreatment; and
- implementation of more supportive and less coercive measures than would be used where intervention occurs only after a child has been harmed.

⁶ Ibid.

⁷ Swedish Ministry of Justice 1979.

⁸ Ziegert K. A 1983. 'The Swedish prohibition of corporal punishment: A preliminary report', *Journal of Marriage and the Family*, 45, 917-26.
providing research and information services to the Scottish Parliament

The purpose of Durrant's study was to evaluate whether the ban's objectives had been met. That is, to determine whether attitudes had shifted, early intervention had increased, and whether intervention had become less intrusive. The following paragraphs provide a summary of the evaluation.

Attitudes to Corporal Punishment

In order to look at changing attitudes towards corporal punishment, Durrant examined polls undertaken by the Swedish Opinion Research Institute (SIFO) and Statistics Sweden (SCB). Those polls, she states, indicate that support for corporal punishment of children in Sweden has declined markedly over the past 30 years.

In 1965, eight years after the repeal of the Criminal Code defence,⁹ half of the Swedish population believed that corporal punishment was necessary in childrearing¹⁰. According to a poll undertaken by SIFO, in 1981, that proportion had decreased to one quarter and by 1994 the proportion of Swedes supportive of corporal punishment, even in its mildest forms, was only one tenth (11%) (SCB 1996). Polls carried out by SCB (1996) indicated that those who were supportive of corporal punishment were three times more likely to be over the age of 54 (18%) than under 35 years of age (6%). Durrant argues that current levels of support for corporal punishment are also related to gender and education stating that those who still support its use are almost three times as likely to be men (16%) as women (6%), and more than four times as likely to have an elementary school (18%) as a university level (4%) of education.

In another study which was undertaken in relation to the Swedes' attitude towards corporal punishment,¹¹ a randomly selected sample of Swedish mothers of pre-school children were interviewed about their attitudes towards spanking. The study reported that a large majority of these mothers believed that spanking was harmful to a child (81%), ineffective in the long term (89%) and unnecessary (81%). Eighty seven per cent believed that it was a bad disciplinary technique overall. Only 5% stated that spanking was a normal part of their parenting.

The Use of Corporal Punishment

According to Durrant, although no longitudinal studies on the use of corporal punishment exist, there are other studies which indicate that corporal punishment has declined substantially in Sweden over the past 40 years. One study¹² found that in the late 1950's and early 1960's more than 90% of mothers in their Swedish sample had struck their pre-school-aged children. However, by 1994, only half of adults aged (18 and older) reported having received physical punishment as children from a mother or father, with the prevalence being approximately 8% higher among older adults than among younger and middle-aged adults (SCB, 1996). In addition, one-third of middle-school pupils reported having received physical punishment from a mother or father before they reached their teenage years.

Durrant argues that these findings show that the use of physical punishment has declined in Sweden and that the corporal punishment ban and ongoing public education campaigns appear to have been effective in altering the social climate with regard to corporal punishment. She states that while parental striking of

⁹ A defence contained in the Penal Code for carers who used corporal punishment.

¹⁰ SIFO, 1981

¹¹ Durrant, Rose-Krasnor, & Broberg; 'Maternal beliefs about physical punishment in Sweden and Canada'.

¹² Stattin H, Janson H, Klackenber-Larsson I & Magnusson D 1995: 'Corporal punishment in everyday life: an intergenerational perspective' in J. McCord (ed.), *Coercion and punishment in long-term perspectives*, 315-47, Cambridge: Cambridge University Press.

children was a common occurrence forty years ago, the practice has become increasingly rare over recent decades.

Early Intervention

According to Durrant, one of the goals of the corporal punishment ban was to increase awareness of the physical abuse of children. It was intended to encourage the public to take seriously assaults against children and to act to protect children at risk. Durrant argues that along with public awareness campaigns during the 1970's and 1980's, the legal change could be expected to produce an increase in child assault reports through the 1980's. Durrant states that, as expected, rates of reported crimes increased.¹³ However, she points out that the proportion of children under the age of 15 who were allegedly assaulted has not exceeded 2.8 per 1,000 population.

Figures show that the rate of reported assaults against children increased steadily between 1981 (0.6 per 1,000) and 1996 (3.1 per 1,000). Similarly, the rate of reported cases increased between 1984 (0.7 per 1,000) and 1994 (2.8 per 1,000). Of the reported assaults against children, the vast majority (averaging 92%) were petty or common offences which Durrant suggests is an indication that identification of offences is occurring before serious injury is sustained.¹⁴ (In Sweden, common assaults are of a moderate nature and carry a maximum prison term of two years, while petty assaults constitute the mildest level and are punishable by fines).

Prosecution of Reported Assaults

In Sweden, prior to 1982, in the case of minor or moderate assaults committed on private property, legal proceedings could only be initiated by the victim or the victim's carer. (The prosecutor had the power to prosecute in the case of serious assaults [and in cases where assaults are carried out in public places?].) Durrant states that in effect, the prosecutor could not proceed without the victim's consent, which had to be given explicitly to the police investigator. Since 1982 the prosecutor has been obliged to prosecute where there is sufficient evidence to proceed. Durrant argues that it might be supposed that the corporal punishment ban, together with such a change in prosecutorial policy, would lead to increased criminalisation of parents and carers in cases of minor assaults. She states, however, that this has not been the case.

When an assault is reported to police in Sweden a preliminary investigation is carried out. The decision to pursue it further depends primarily on whether

1. the alleged perpetrator is at least 15 years of age;
2. adequate evidence exists, and
3. the alleged act constitutes a crime.

If these criteria are not met, the investigation is not pursued. Durrant shows that between 1984 and 1994, the proportion of reported assaults which were not pursued, increased.¹⁵ This trend appears to be due largely to an increase in reports of assaults by alleged perpetrators under the age of 15 against their peers. (Between 1984 and 1994 this criterion accounted for between 10 and 16% of cases not being pursued).

¹³ National Crime Prevention Council 1997; Statistics Sweden 1995.

¹⁴ In Sweden, common assaults are of a moderate nature and carry a maximum prison term of two years, while petty assaults constitute the mildest level and are punishable by fines.

¹⁵ Statistics Sweden 1995.

Durrant also states that the rates of reported assaults that are prosecuted show a declining trend since 1984.¹⁶ In order to determine whether this trend is accounted for by the increase in reported assaults by children under the age of 15, an analysis of prosecution rates was conducted on those reported crimes allegedly committed by individuals 15 years of age and older. The analysis showed that there was a declining trend even when only those individuals old enough to be prosecuted are included in the analysis. The proportion of reports that end in summary punishments has, according to Durrant, remained steady since 1984 (3.5% for all suspects where the victims were below the age of fourteen), while the proportion ending in prosecution waivers has declined (3.6% in 1984 to 2% in 1994).

The proportion of reports of assaults which are pursued, but for which no measures are taken¹⁷, shows an increasing trend between 1984 and 1994. This is still the case when only those offenders old enough to be prosecuted are considered (2% in 1984 to 3.1% in 1994).

In the studies examined by Durrant, the overall trends indicate that the proportion of child assault reports that are not pursued has remained steady and seem to show that prosecution rates have declined since 1984, even when reported assaults by alleged offenders too young to be prosecuted are excluded from the analysis, and despite a 1982 policy change making prosecution easier to pursue. Durrant argues that these findings indicate that the corporal punishment ban has not resulted in greater criminalisation of minor assaults by parents and other adults.

Support and care interventions

Durrant notes that one of the goals of the corporal punishment ban was to encourage earlier intervention in cases of children at risk in order to make child welfare work more proactive and less reactive. It was expected that child welfare measures would become increasingly preventive, as professionals could begin to legitimately discourage the use of physical force with children and provide supportive measures to families at risk. Durrant's examination of support and care statistics¹⁸ revealed the following findings.

She argues that, as might be expected from the increase in rates of reported assaults against and by children, the numbers of children subject to one or more support or care measures in any given year show an increasing trend between 1982 and 1995. (c23,000 in 1982 to c 27,000 in 1995.) Durrant states that an analysis of the findings shows that the proportion of interventions involving out-of-home placements has declined substantially and the kinds of interventions implemented have become increasingly preventive and supportive of families. These figures, she says, represent the total number of children subject to measures at any time during each year – that is, all those still receiving measures of support or care implemented in previous years, plus all those who received such measures for the first time during that year.

When the numbers of children receiving support and care measures for the first time in a given year ('debutant children' – those not receiving such measures within the previous five years) are examined, a similar trend is seen.¹⁹ (From just under 5,000 in 1982 to just under 7,000 in 1995). The following table shows the numbers of support and care measures administered in 1982 and 1995. (SoL measures are those which are implemented by the Social Services Act 1982 and which are

¹⁶ *ibid.*

¹⁷ 'A Generation without Smacking: The impact of Sweden's ban on physical punishment' p. 14; Save the Children 2000

¹⁸ Socialstyrelsen 1995,1996.

¹⁹ *ibid.*

voluntary – that is, they are carried out with parental consent. LVU measures are those which are implemented by the Special Provisions for the Care of Young People Act and which are compulsory).

Either of these kinds of measures can be implemented if the home is ‘deficient’ i.e. in the case of abuse, neglect, parental substance abuse, parental physical or mental illness, or if the child’s health and development is jeopardised by his or her own behaviour. Durrant points out that children under the age of 15 alleged to have committed a criminal act are always referred to social services. Although they are registered in the police statistics, the responsibility for dealing with their crimes lies with the social, not judicial, authorities.

Kind of Measure	1982	1995	% Change
Debutant Children			
SoL contact person	3,185	4,506	+42
SoL out-of-home care	3,717	2,653	-29
Total	6,902	7,159	+4
LVU short-term care	731	782	+7
LVU long-term care	391	420	+7
Total LVU	1,122	1,202	+7
Total out-of-home-care	4,839	3,855	-20
Total number of children receiving measures			
SoL contact person	7,369	17,230	+134
SoL out-of-home care	12,141	11,246	-7
Total SoL	19,510	28,476	+46
LVU short term out-of-home care	1,104	1,394	+26
LVU long term out-of-home care	9,562	4,357	-54
Total LVU	10,666	5,751	-46
Total out-of-home care	22,807	16,997	-26
Total measures	30,176	34, 227	+13

(Note: These figures represent the number of measures administered, not the number of children receiving measures. Therefore, children can be counted more than once).

Durrant argues that the new Act (SoL), as expected, has led to an increase in voluntary measures and a decrease in compulsory measures since 1982. She

reports that in every year since 1982, the majority of measures have been of a voluntary nature and the difference in the proportions of the two kinds of measures has steadily increased.²⁰ Between 1982 and 1995, the number of compulsory measures administered annually declined by 46% (see Table 1 above) and in 1995, fewer than 20% of measures were implemented without parental consent.

Durrant also states that since 1982, support and care interventions have become increasingly preventive, voluntary, and supportive of families. The proportion of measures carried out with parental consent has increased. Of these, the proportion involving out-of-home placements has been reduced by one-third, while the proportion involving the assignment of support persons has doubled. Of compulsory interventions, which constitute fewer than 20% of care and support measures, the proportion of long-term measures has decreased while the proportion of short-term measures has increased.

Professor Durrant concludes that the data collected from the range of official sources support the case that the goals of the Swedish corporal punishment ban have been met. . In particular, the data show that:

- support for corporal punishment has declined markedly among the Swedish population since 1965;
- reporting of assaults against children has increased;
- the proportion of suspects in child-assault cases who were raised in Sweden after the ban's passage has decreased; and,
- child-welfare measures have become increasingly preventive, non-coercive and supportive.

CRITIQUES

There is no doubt that views on the smacking of children are polarised between those who support some measure of physical chastisement and those who would see a complete ban on all forms of punishment in relation to children. The following sections of the paper consider contributions to the debate of two authors who have expressly attacked the research carried out by Durrant and of the Swedish anti smacking legislation more generally.

In an article published in 2001, Dr Robert E Larzelere of the University of Nebraska Medical Centre casts doubt on the findings by J E Durrant in her 2000 study²¹ of positive outcomes resulting from the ban on corporal punishment since 1979. is e. I Another critic of the Swedish anti-smacking legislation is Ruby Harrold-Claesson of the Nordic Committee for Human Rights. In several articles on the Swedish legislation Harrold-Claesson claims it has had an adverse impact on the children it is meant to protect. .²²

Larzelere

Larzelere states that as other countries are considering placing limits on the rights of parents to employ physical correction, there is a need for rigorous, objective evaluations of such policies. He argues, however, that Durrant's conclusions:

²⁰ *ibid.*

²¹ "Sweden: data does not support success claims"; *Families First* No 2, Autumn 2001.

²² "Smacking and the Law – a European Perspective"; *Families First* No 2, Autumn 2001.

“..seem to reflect her unconditional commitment to an anti-smacking perspective more than an objective appraisal of the data available from her sources”.

Public attitudes to smacking

On public attitudes to smacking, he takes issue with Durrant's claims that the punishment ban and ongoing education campaigns appeared to have been extremely effective in altering the social climate with regard to corporal punishment in Sweden. He argues that the way in which she analyses the survey data is suspect. In demonstrating that the Swedish public's support for corporal punishment dropped from 35% in 1971 to 26% in 1981 and to 11% in 1994 he claims that Durrant not only compared survey questions which were very different in 1981 and 1994, but that she also used only one of two responses to the 1994 question that indicated qualified support for corporal punishment. The original survey item used from 1965-1981 stated: “A child has to be given corporal punishment from time to time.” Larzelere says that the percentage agreeing with this statement in Sweden dropped from 53% in 1965 to 26% in 1978²³, the year prior to the ban on smacking. This figure then remained at 26% in 1979 and 1981. He goes on to say that the 11% cited by Durrant in 1994-95 were “positively inclined to milder forms of physical punishment”, while a further 22% were “in principle against all form of physical punishment, but can use such punishment if upset enough.”²⁴ Only 56% were against all forms of physical punishment, and the remaining 10% did not choose any of the three options.

The survey also included the following item which Larzelere notes was closer to the wording used between 1979 and 1981:

“Mild or moderate physical punishment is sometimes necessary as a child-rearing method, but should be carefully considered and not the result of anger.”

Thirty four per cent agreed partly or fully with this statement, an increase from the 26% support in 1978, just before the 1979 ban was implemented.²⁵ Larzelere points out that this same survey found that the actual use of physical punishment had dropped very little. The survey shows that 32% of respondents aged 13-15, born during or after 1979, had received physical punishment from their fathers, compared with 34% in the next oldest generation. Thirty one per cent of those born after the ban on smacking had been physically disciplined by their mothers compared with 36% in the next oldest age group. Larzelere argues that physical punishment of teenagers changed even less. For example, 17% of 13-15 year olds reported corporal punishment by their fathers “when a teenager”, compared to an average of 16% in the three older generations. Corporal punishment of 13-15 year olds by their mothers remained constant across the four age groups.

Larzelere contends that, in direct contrast to Durrant's conclusion about changes in attitudes towards corporal punishment, certain changes in attitude occurred before the 1979 legislation and have changed very little since then. He raises the question that if the ban on smacking actually failed to change attitudes or practices concerning physical punishment, how could it influence anything else? He believes that one possibility could be that the ban affected the frequency of physical

²³ Solheim JS: A cross-cultural examination on the use of corporal punishment on children: a focus on Sweden and the United States. (1982)

²⁴ Statistics Sweden 1996.

²⁵ Sanden A & Lungdren L 1997.

punishment, even though the percentage of parents actually smacking dropped very little. Another possibility is that physical punishment against the law may have different effects from its use within the law.

“For example, parents may have become less inclined to use a mild physical sanction when they are still in control and more likely to use physical punishment when upset. This could easily increase the risk of child abuse”.

²⁶

Impact on child abuse

One of the major motivations behind the ban on smacking was to reduce child abuse. Larzelere points out that there have been few evaluations of whether the ban achieved this goal and that no study has convincingly documented a resulting decrease in child abuse.²⁷ He criticises Durrant for focussing on fatalities which were classified as resulting from child abuse as the sole measure of the instance of child abuse, pointing out that Sweden had one of the lowest mortality rates for young children both before and after the 1979 ban on smacking. Durrant for her part, acknowledges that the analysis of the statistics before and after 1979 failed to achieve statistical significance²⁸.

Larzelere points out however, that the source Durrant used to obtain her statistics on assaults against children also indicates sharply increasing rates of physical child abuse, at least in the criminal records of assaults by relatives against children under the age of seven. This frequency rose from 99 in 1981 to 583 in 1994, a 489% increase.²⁹ Larzelere argues that the increase could reflect a change in reporting mechanisms, an actual increase or other factors. He suggests that other countries need an unbiased, objective way of deciding among these alternative explanations before emulating Swedish policies.

Effect of interventions

On Durrant's claims that interventions on behalf of children have become more preventive and supporting, Larzelere does not dispute her assertion on the grounds that he does not have access to the data which was used. He does however, refer to alternative statistical analysis which suggests a completely different perspective on this issue. He argues that whether the Swedish system is supportive or intrusive towards families is seen very differently by critics of the system than it is by its supporters.

For example, he states that the critics' perspective on the nature of voluntary versus compulsory social services is very different from Durrant's. In the compulsory programme, parents are allowed to see their children only once a month for a supervised visit. As such, most parents therefore choose the voluntary programme as the lesser of two evils.³⁰ In the voluntary programme, their child may be taken away from their home (37% of new cases in the voluntary programme in 1995, down from 54% in 1982), but at least parents are able to visit their children more often and have a greater chance of being reunited. Larzelere points out that the number of new children in the compulsory programme for out-of-home care actually increased by 7% between 1982 and 1995 but this is not considered in Durrant's article. He also claims that what Durrant calls “support and care measures”, consists of removal from the home for 46% of new children in the

²⁶ Families First No 2, Autumn 2001.

²⁷ Larzelere R.E. & Johnson B: Evaluation of the effects of Sweden's spanking ban on physical child abuse rates: a literature review. (1999).

²⁸ Durrant J E 'Evaluating the success of Sweden's corporal punishment ban'; Child Abuse & Neglect, 23, 435-448, 1999 .

²⁹ <http://people.bioia.edu/faculty/paulp/>

³⁰ Westerberg S: How parents were deprived of their rights in Sweden. Family Educational Trust (1999)

system a figure which has reduced from 60% when the programme started in 1982. Larzelere believes that Durrant's hypothesis that early identification of problems was "intended to lead to earlier, more supportive intervention", turns out, in effect, to mean removal from the home in at least 46% of the new cases receiving "support and care measures".

Larzelere also highlights two sources which claimed that children are much more likely to be removed from their homes in Sweden than in other European countries. The first records that around 22,000 children in Sweden were removed from their homes in 1981, compared with 1,900 in Germany, 710 in Denmark, 552 in Finland and 163 in Norway.³¹ Durrant corroborates the Swedish figure by showing that there were 22,807 Swedish children in out-of-home care in 1982; 4,839 for the first time that year. According to a second source, Sweden has about 15,000 children in care, compared with 40,000 in Britain which has a population more than seven times the size of Sweden.³²

Larzelere concludes by saying that contrary to what Durrant has posited, attitudes towards and the practice of corporal punishment have changed very little since 1979 and that shifts in attitudes and practices were far more dramatic before 1979. He also suggests that it is difficult to evaluate the extent to which the Swedish social services have achieved an optimal balance between a preventive approach to protecting children on the one hand, and becoming overly intrusive on the other.³³

Finally, he argues that most of the evidence suggests that large increases in assaults by minors and in physical child abuse are not entirely explained by changes in reporting mechanisms. Critics of the law do not think the increase has been caused entirely by the ban on smacking. Rather, critics have argued that the influence of parents has been inadvertently compromised by the entire set of overly intrusive Swedish policies.³⁴ Larzelere believes that what is required is rigorous and unbiased evaluations of these kind of policy changes and argues that the degree of bias in Durrant's evaluations increases suspicions that the success of Sweden's ban on smacking is uneven at best and counterproductive at worst.

Harrold-Claesson

Another critic of the anti-smacking legislation in Sweden has been Ruby Harrold-Claesson, a Swedish lawyer and President of the Nordic Committee for Human Rights. Harrold-Claesson has written several articles on the Swedish law of 1979 and claims that the law has been:

"...a disaster for children and their families, but a great success for the system, It gives the social workers, police and prosecutors easy work. The repressive authorities no longer seek to fight crime in society – the family is their main prey."³⁵

Harrold-Claesson goes on to point out, what she claims are a number of facts relating to the law in Sweden although it should be noted that these observations are not backed up by hard evidence in the article. She argues that:

³¹ Ivarsson M; Malmö 1984.

³² Westerberg S (1999).

³³ Larzelere RE 2001.

³⁴ Ibid.

³⁵ "Smacking and the Law": Families First No 2, Autumn 2001.

- The law in Sweden has resulted in hundreds of normal parents being harassed by the police and social authorities, prosecuted, sentenced and criminalised, because they have smacked their children for bad behaviour.
- While having the appearance of being altruistic and humanitarian, the 1979 law has led to unwarranted interference in private and family life, and has caused serious damage to the relationship between parents and their children to the detriment of the family.
- Several leading lawyers in Sweden expressed strong misgivings before the Bill abolishing the physical punishment of children was presented to the Swedish Parliament. Their fears that the law would lead to prosecutions of parents who employed mild physical sanctions, while doing nothing to reduce the number of cases of genuine child abuse, have materialised.
- Parents belonging to ethnic minorities and parents with strong religious convictions, in particular, have been victimised under the 1979 law.
- The social authorities and the courts enforce the law concerning the child's right not to be subjected to physical punishment, irrespective of what the child has done. Many Swedish parents are therefore afraid of their children and dare not correct them for fear of being reported to the police, indicted and fined or sent to prison.
- The law against physical punishment does more damage to children than a smack from a mother or father. When the authorities intervene in the life of a well-functioning family, its life is destroyed. There is nothing that can mend the resulting hurt, pain and bitterness, and the children are the losers.
- When children are removed from their supposedly 'abusive' parents and taken into care, they suffer the torture of forced separation from parents, brothers and sisters, and other relatives and friends. They are also exposed to the risk of real abuse. Such children are frequently subjected to physical, mental and even sexual abuse, but social workers and the police seldom listen to the complaints of children in care.
- The 1979 law has caused incalculable damage to countless families where allegations have been made and investigations carried out, even where the charges have been dropped at an early stage.
- The law has given rise to cases where children have accused their own parents of ill-treatment, without appreciating the consequences of their actions. The public prosecutor then takes over the case and may pursue it even where the parents deny any abuse and where children withdraw their accusations. In this way, the legislation has been directly responsible, not only for destroying relationships between parents and children, but also for the break-up of many marriages and families.

Harrold-Claesson concludes by saying that:

“The damage caused by the legislation in Sweden is so serious, that it should not be followed by any civilised country. She argues that Sweden needs the help of other nations to have this destructive legislation repealed.”

Discussion

It is obvious from the material presented above that the debate surrounding the role of legislation in the physical chastisement of children is not finally 'settled'. The extensive research on the Swedish case carried out by Professor Durrant claims significant success for that country's ban on all forms of corporal punishment of children. However, other commentators offer different interpretations of the situation in Sweden from their very different perspectives. What this shows, perhaps, is that there is a considerable need for some form of independent evaluation of the impact of existing legislation to be undertaken.

Response by Durrant

The following points have been made by Professor Durrant in response to the criticisms of her work on the physical chastisement of children by Larzelere.

Professor Durrant takes issue with Larzelere's criticism that in her research she focused 'only on mortalities classified as due to child abuse' as a measure of the incidence of child abuse in Sweden³⁶. Durrant asserts that she examined the rate of child abuse fatalities because the World Health Organisation considers that this data provides the most reliable measure of child abuse in a country. She argues that the Swedish rate has been very low by international standards since at least the early 1970's. She notes the implication by Larzelere that the statutory ban on the corporal punishment of children did not lower the mortality rate in Sweden further but states that this was because the rate of child mortality attributed to child abuse was zero for 15 years prior to the early 1990's.

Professor Durrant points out that Larzelere has:

"...long and erroneously argued that Sweden's increase in rates of reports of child physical assault are a direct reflection of an increase in child abuse rates".

She argues that reporting rates increased dramatically in every nation that recognised child physical abuse as a social problem, citing Canada, the United States, and the United Kingdom as examples. She states that reporting rates are useless as a measure of actual assault rates because of their extreme sensitivity to changing definitions and public awareness of violence. She goes on to say;

"We can never know the extent of child abuse through reporting rates. An unbiased, objective way of examining trends in child abuse is to examine child abuse fatalities as I have done".

She reasserts her view, questioned by Larzelere, that intervention in Sweden has become more supportive and preventive. She argues that the vast majority of children new to the system are receiving support measures and that the use of 'contact persons' increased by 42% with children new to the system and by 134% overall between 1982 and 1995. She concludes that intervention has become more supportive and preventive and that this is borne out by the data.

Durrant also states that certain figures used by Larzelere with regard to the number of children in care in Denmark, Finland and Norway are both out of date and erroneous, and that he has not recognised that the size of a country's population

³⁶ Durrant J E 'Evaluating the success of Sweden's corporal punishment ban': *Child Abuse & Neglect*, 23, 435-448, 1999.
providing research and information services to the Scottish Parliament

must be taken into account when international comparisons are made. She argues that the figures which he uses are 20 years old and are actually useless in gaining an understanding of social change as they are presented in isolation from their trends over time and from their social and historical contexts.

Professor Durrant argues that the comparison Larzelere makes between Sweden and England in relation to the number of children in care, is an extremely difficult one as rates in England are calculated on the basis of the number of children in care on a particular day of the year, while Swedish figures reflect the number of children still in care from previous years plus all those who came into care during the course of the year.

Durrant firmly refutes Larzelere's claim that she has attributed an attitudinal shift in Sweden exclusively to the corporal punishment ban. Rather, she says that she has written several articles documenting the history of attitudinal changes in Sweden and that the ban on corporal punishment was the final step, not the beginning of attitudinal change.

Finally, Professor Durrant rejects Professor Larzelere's claim that her conclusions are biased, as not supported by any evidence. She argues that her findings are based on official statistics which were vetted by individuals responsible for the collection of statistics at Statistics Sweden.

On the comments made by Ruby Harrold-Claesson, Professor Durrant believes that these are simply expressions of an individual's opinion and have absolutely no basis in fact.

GERMANY

In November 2000 Germany enacted a law to ban the smacking of children. The law consists of two key sentences which have been added to the Burgerliches Gesetzbuch, the German Civil Law.

- Children have a right to be brought up without the use of force; and
- Physical punishment, the causing of psychological harm and other degrading measures are forbidden.

The reasons behind the decision to implement new legislation were laid out by the German Government. In summary these were:

- That the Children's Commission (an all-party group of MPs) had concluded that legal change was needed.
- That research in Germany had established a clear link between childhood experiences of physical punishment and the likelihood that those young people would turn to violence and other forms of anti-social behaviour in turn. Concern about growing youth crime was high in Germany, and a ban on smacking was clearly seen as an important element of the attempt to turn the tide in the long term.
- Many other countries had already banned smacking indicating a growing consensus among European countries that use of any force against children is unacceptable. Germany was keen to learn from these others' experiences and

Sweden, Norway, Denmark and Austria were picked out in particular as examples of good practice.

- That Germany was a signatory to the UN Convention on the Rights of the Child. Article 19 of this convention affirms a child's right to be protected from all forms of physical or psychological violence.
- The German Constitution applies equally to children and adults. Different articles of this Constitution provide for the protection of each person's value as a human being and for the right to be free from all physical harm from others. To allow a situation to continue in which children can be subjected to physical punishments while adults were legally protected was untenable.

The change in the law was also introduced after a concerted campaign by childcare professionals, children's rights workers and others who advocated a complete ban on smacking. Shortly after the general election of 1998 the Social Democratic Party and the Green Party formed a coalition government and included in their programme a commitment to ban corporal punishment. There was little opposition to this commitment in the German Parliament despite the fact that public opinion polls at the time showed a majority of people opposed to a ban due to a fear that German parents would be criminalised. This was overcome by writing the ban into the Civil Law. By banning all forms of corporal punishment the German Government hoped to:

- Give children the same legal protection from being hit as adults;
- Change public attitudes to make all forms of violence against children unacceptable in the population as a whole, leading eventually to a break in the "cycle of violence";
- Reduce child abuse by allowing professionals to identify with more confidence families whose children may be at risk and to provide help before more serious abuse takes place.

In order to communicate the change in the law to the public, the German Government introduced a public education campaign entitled "More Respect for Children"³⁷. The precise nature of the campaign varied from place to place due to Germany's federal structure, but employed a wide range of methods to get the message across. These included advertising on national television, the production of leaflets and educational materials for parents, public events and workshops and the introduction of structured courses as part of adult education programmes. Critics have argued that the campaign was not extensive enough.

An evaluation of the impact of the campaign is currently being undertaken and preliminary results show a shift in public opinion already, but the actual results of the evaluation will not be known until Autumn 2002. Early indications show however, that there has not been a single prosecution of parents under the new law which, it could be argued, indicates that the "help instead of punishment" perspective is working.

Further Reading

³⁷ A series of brochures introduced by the Government – "Mehr Respekt vor Kindern".

["A Generation Without Smacking: The impact of Sweden's ban on physical punishment"](#). Durrant, J. E.; Save the Children Fund, 2000.

["Children and Abuse: corporal punishment and other forms of child abuse in Sweden at the end of the second millennium"](#). The Swedish Ministry of Health and Social Affairs.

["Ending corporal punishment: Swedish experience of efforts to prevent all forms of violence against children – and the results"](#). The Swedish Ministry of Health and Social Affairs.

[The Physical Punishment of Children in Scotland: Consultation Responses](#). The Scottish Executive.

Corporal Punishment by Parents and Associated Child Behaviours and Experiences: A Meta-Analytic and Theoretical Review Gershoff E.T. 2002

Ordinary Physical Punishment: Is It Harmful? Comment on Gershoff (2002) Baumrind, D. Larzelere, R.E. Cowan, P.A. 2002

SPICe Briefings are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.