



First Minister Nicola Sturgeon

Turning mothers into criminals

The Scottish Government is backing a Bill to make it a criminal offence for a parent to smack their own child. Those who support this change misrepresent a controlled smack by a loving parent as equivalent to child abuse.

Nicola Sturgeon's Government has promised to "ensure" that Green MSP John Finnie's Bill to implement a ban becomes law. The Bill threatens to ruin the lives of many ordinary families. If smacking is made illegal police would be under a duty to investigate allegations.



This process alone would be deeply distressing for families and could see children removed from homes and parents' jobs being affected. Whether you support smacking or not, it is surely wrong to criminalise parents for it. Almost three quarters

of Scots are opposed to smacking being a criminal offence. The legal defence of 'reasonable chastisement' only protects parents who use a mild smack.

Any unreasonable chastisement is already unlawful. Removing this defence would be an unprecedented interference in family life by the state.

OVERWHELMING POLICE AND SOCIAL WORKERS

Criminalising smacking will distract social workers and police with trivial cases. It would be a tragedy if major cases of abuse are missed because vital services are overwhelmed.

Those genuinely in need will suffer while resources are wasted on families where there are no real problems. Social workers will be swamped, and vulnerable children will not get the help they need.

Everyone accepts that the state must intervene to protect children who are in

danger of abuse. But if that is to be done effectively, the limited resources available need to be focused on identifying and helping those at risk, not investigating loving parents.

Those seeking a smacking ban deliberately conflate smacking with

'hitting'. Smacking is unjustly characterised as something that parents only do when lashing out in anger. This is to completely misrepresent what smacking is and how loving parents use it as a means of discipline.

When good parenting includes smacking, any smack

will not be done in a moment of anger but in full control.

It is just one of the means good parents may use to teach their children right from wrong. But most parents make the judgement that, occasionally, a mild smack could be appropriate.



The current law works

THE LEGAL POSITION ON SMACKING

Under the existing law, parents in Scotland are allowed to physically discipline their children.

This 'reasonable chastisement' is compatible with human rights laws. Parents are not free to beat or hit their children as smacking opponents like to claim.

Those in favour of a ban argue that it will protect children from abuse, but child abuse is already illegal. It is utterly misleading to equate smacking with child abuse.



Those who defend a loving parental smack as a means of discipline also oppose all cruelty towards children.

The existence of the 'reasonable chastisement' defence will never prevent a conviction in a case of genuine abuse. If there was a single case where this had happened, we would all know about it.

The present law protects children.

The Criminal Justice (Scotland) Act 2003 provides that, where a person accused of assaulting a child tries to use the defence that it was lawful chastisement, the court

will have to assess the facts in order to decide if their behaviour was justifiable. This includes considering factors such as:

- the child's age;
- what was done to the child, why, and what the circumstances were;
- how the child was physically or mentally affected;
- how long the punishment lasted and how often it took place;
- the child's other personal characteristics, including sex and health.

The Act specifically states that the use of an implement, shaking or a blow to the head are not justifiable.

THE LAW RECOGNISES CHILDREN AND ADULTS ARE DIFFERENT

Those calling for a ban fail to take into account the unique relationship between parents and their children. Children are not adults. They are dependent upon their parents and need to be taught right from wrong.

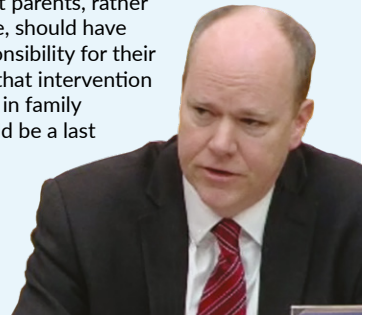
Parents do all kinds of things for their children that they would never do to another adult. This is not 'inequality' or 'injustice'. It is just the reality of parenting. If a parent confiscates their child's phone or sends them to their room, it is not treated as theft or false imprisonment.

Making smacking a criminal offence would represent a fundamental shift in the legal relationship between parents and children.

LAWYER ATTACKS CASE FOR BAN

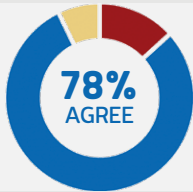
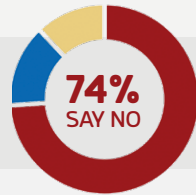
In an article for Scottish Legal News, Gordon Lindhurst MSP warned about the danger of rebranding loving parental discipline as assault. Mr Lindhurst, who is a lawyer, pointed out that removing the current legal defence of 'reasonable chastisement' would "subject parents to criminal liability".

He added that there is a longstanding principle "that parents, rather than the state, should have primary responsibility for their children and that intervention by the courts in family matters should be a last resort".¹



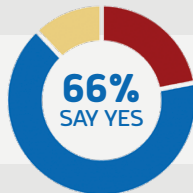
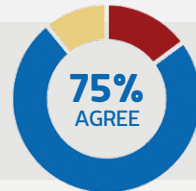
What Scotland says

Should parental smacking of children be a criminal offence?



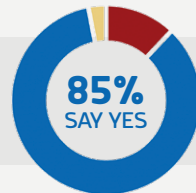
I would be concerned that a smacking ban might flood police and social workers with trivial cases which mean they struggle to stop serious abusers.

It should be the role of parents and guardians to decide whether or not to smack their children.



It is sometimes necessary to smack a naughty child.

Were you ever smacked by your parents or guardians as a form of discipline?



www.bereasonablesotland.org ■ = Don't know

Source: ComRes, 21 Sept-2 Oct 2017. ComRes interviewed 1,010 Scottish adults online between 21 September and 2 October 2017. Data were weighted to be demographically representative of all Scottish adults aged 18+.

FLAWED, BIASED CONSULTATION

Proponents of a ban claim there is public backing for a smacking ban because a majority of responses to John Finnie's consultation agreed with him.

However, after contacting many pro-ban campaign groups, he received just 660 responses. There are over 600,000 households in Scotland with dependent children. It was also held before the Government



had decided to support the plan, when the Bill appeared doomed to fail. As recently as 2017, the Scottish Government said: "We do not... support a ban as we do not think that would be appropriate and effective."²

FINNIE SMACKED HIS OWN CHILDREN

Green MSP John Finnie, whose Bill would outlaw smacking, has been open about smacking his own children. How did they turn out?

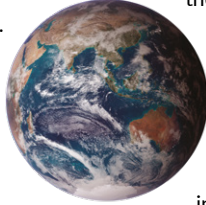
In Mr Finnie's own words, they are "well-rounded" individuals.³ In fact his daughter, Ruth Maguire, is also an MSP and convener of the Scottish Parliament committee tasked with scrutinising his Bill!

Watch

John Finnie's interview at bit.ly/brsjohnfinnie

INTERNATIONAL EVIDENCE

In 1979, Sweden became the first country to ban smacking. It is often cited as a role model. Opponents argue smacking teaches children that violence is acceptable. If this was true, we would expect the figures to show reduced violence among children in Sweden.



However, figures show the opposite. Since the smacking ban, child-on-child violence increased by 1,791 per cent between 1984 and 2010.⁴ One study comments: “trends in Swedish criminal assaults against minors suggest that the way the first spanking ban has been implemented in that country may have increased criminal assaults in that country, in contrast to its intended effect of decreasing violence”.⁵

Psychiatrist David Eberhard

published a critique of Sweden’s approach. He argued that the emphasis on permissive parenting, which started with the smacking ban, has left parents unable to correct their children in any way. Eberhard identified several serious consequences for Swedish society, such as breakdown of discipline in schools, plummeting grades and a rise in anxiety disorders among teens.⁶

In New Zealand, a top law firm has concluded that the country’s smacking ban has criminalised ordinary parents. The analysis, from public law specialists Chen Palmer, criticised confusing legislation and a failure to issue clear guidance to police. It also said statements made by politicians in 2007 were simply wrong in law. Claims that amending

section 59 of the Crimes Act would not criminalise ‘good parents’ were found to be “inconsistent with the legal effect of section 59 and the application of that section in practice”.

The report sets out a series of problems with the ban, citing comments made in Appeal Court and High Court rulings. In one such case, a former UK national, referred to as “DC”, admitted gently smacking his two sons and was convicted. The Court of Appeal later quashed his conviction but DC lost custody of and contact with his sons.⁷

Many activists claim that Scotland is an “outlier” by allowing parental smacking. However, the fact is that there are almost 150 nations worldwide which allow parents to lovingly discipline their own children, including France, Italy, the US, Canada and Australia.

GOD’S DESIGN FOR AUTHORITY AND DISCIPLINE

The God-ordained pattern of authority is seen throughout Scripture. We read in Romans 13 and 1 Peter 2 that God has established governments to restrain evil and commend what is good. The state should intervene in cases of abuse but it cannot simply usurp the family.

The biblical design is for parents to have authority over their children. Children are to honour their parents (Exodus 20:12). It is primarily the father and mother’s responsibility to raise and therefore discipline their child.

Christians recognise that firm discipline is an inevitable part of showing genuine love to a child. God himself disciplines

his children in ways that are painful in the short term for their long-term benefit. This is the pattern for parental discipline (Hebrews 12:7-11).

Not every parent will choose to smack and different children will benefit from different forms of discipline, but parents should have the freedom to decide.

The exercise of parental authority is also subject to other exhortations and commands in Scripture. Parents should not exasperate their children (Ephesians 6:4), they should be self-controlled (2 Peter 1:6), slow to anger (James 1:19) and careful not to sin when angry (Ephesians 4:26).



References available at christian.org.uk/SmackingScotland-ref



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