



Written by [Raven Clabough](#) on September 27, 2012

Delaware Law Bans Parents from Spanking their Kids

Delaware has become the very first state to pass a controversial [law](#) that effectively outlaws the corporal discipline of children by their parents. Senate bill 234 was signed into law by Governor Jack Markell on September 12.

Sponsored by Delaware's Senate Majority Leader Patricia Blevins, the bill redefines child abuse laws to include any act that causes "pain."



The legislation classifies child abuse as a separate crime in the state and increases penalties in child abuse cases. Prior to the new law, child abuse cases were prosecuted under the same statute dealing with assault by abuse or neglect that applied to adult victims. "Assaults against children are different than assaults against adults," said Sen. Blevins. "So, it is important to make this a standalone crime."

The new law creates three levels of child abuse. The first and second degrees are considered felonies and penalties increase if the victim is under four years old and suffers from intellectual or developmental disabilities. Parents who are guilty of committing "physical injury," or "pain," to a child under the age of 18 would be guilty of a class A misdemeanor and subjected to a year in prison as a result. One who is charged with causing pain to a child under the age of three would be guilty of a class G felony and subjected to two years imprisonment.

"This bill establishes the offense of Child Abuse," the legislation states. "These new statutes combine current statutes and redefine physical injury and serious physical injury to reflect the medical realities of pain and impairment suffered by children." It continues, "The statute also expands the state of mind necessary for certain offenses against children allowing for more effective prosecution of parents who subject their children to abuse by others and fail to protect their children."

Strangely, the bill also labels the "unlawful termination of a pregnancy without the consent of the pregnant female" as a "serious physical injury."

Behind the [push](#) for this law was state Attorney General Beau Biden, the son of U.S. Vice President Joe Biden. "We know children are three times more likely to be assaulted, hurt or harmed if they have a developmental disability or are under four years old," said Biden. "We wanted to recognize a very vulnerable victim pool."

A report from Delaware First Media said that Biden "pointed out that more than three million children are reported to be victims of abuse or neglect in the United States each year, and the U.S. ranks higher in child abuse fatalities than any other industrialized nation in the world."

"Far too many children are the victims of abuse, neglect and assault and [this bill] will go a long way to better protect the children of this state," [said](#) Biden.

Blevins touts that the bill recognizes special classes of abuse cases, particularly those involving disabilities and very young children. "Thousands of children are abused every day, many of them under the age of three. They are not even verbal. The evidence needs to be collected in other ways than in testimony. These are very difficult crimes and deserve their own category," said Blevins. "It's very



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important to target those victims with development disabilities, because often they cannot testify, or their testimony needs special accommodations.”

And Delaware State Rep. Rebecca Walker, who cosponsored the bill, explains that she feels very strongly about child abuse after she witnessed cases of abuse firsthand while working as a forensic emergency room nurse. “It happens a lot in Delaware, a lot more than people think,” said Walker. “[This bill] can be something that will help our kids be a little bit safer.”

But some skeptics consider the new law to be another example of well-intentioned government overreach.

The controversial new law has drawn [criticisms](#) from the Home School Legal Defense Association (HSLDA), in addition to the Delaware Home Education Association and the Delaware Family Policy Council. They claim that the law is “a violation of the rights of parents to direct the upbringing of their children, including the long-recognized right to administer reasonable corporal discipline.”

According to the HSLDA, the legislation was unnecessary, as Delaware law had previously permitted parents to use force to punish their child so long as it does not cause physical injury.

LifeSiteNews reports, “By redefining ‘physical injury’ to include the infliction of any pain on a child, even the reasonable use of spanking has become a crime in Delaware punishable by imprisonment.”

Biden insists that the law does not prohibit spanking. “This will not do anything to interfere with a parent’s right or ability to parent as they see fit, but it also makes it clear that if you abuse a child in any way, shape or form, we’re going to have a statute that we’re going to be able to use to protect kids,” he stated.

But even StopSpanking.org interpreted the ordinance to prohibit spanking, reporting on its site, “Delaware is the first state to legislate against hitting children in an effort to stop child abuse. Senate Bill 234 effectively bans hitting of children, including in the home.”

And as noted by Nicole Theis, president of Delaware Family Policy Council, the vague language in the law can easily be used to punish parents that spank their children. “The concern with the bill is that it used the very subjective word ‘pain’ [and hinged legal behavior upon] using ‘reasonable force,’” she outlined. “The fact of the matter is that it’s written into the law and it very much could be interpreted as prohibiting spanking.”

Theis indicates that it is difficult to draft laws dealing with child abuse that properly distinguish between discipline and abuse. “It is a hard balance,” she explained. “We do recognize that Delaware did need child abuse legislation for case workers to work with.... There was a lot of emotion on each side.”

Theis acknowledges that the intent of the lawmakers was not to criminalize spanking, but believes that the language of the ordinance needs to be amended to make that more clear. “While we appreciate that it was not the intent of lawmakers to criminalize spanking, we hope that it bides us a little time to make an amendment to the law,” Theis concluded. “We definitely need some legal firepower to be able to resolve it.”



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