

Queensland Law Reform Commission
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11 April 2025

Re: Consultation on Section 280 of the Criminal Code (Domestic Discipline)

Dear Commissioners,

I write in strong support of Option 1: Repeal the defence of domestic discipline in section 280 of the Criminal Code. As the Senator who successfully championed the repeal of the "reasonable chastisement" defence in Ireland in 2015, I offer insights from our journey that may be relevant to Queensland's deliberations.

Like Queensland's current law, Ireland's "reasonable chastisement" defence originated in English common law. This colonial inheritance permitted violence against children that would be criminal if inflicted on adults. In December 2015, Ireland became the 47th country globally to prohibit all corporal punishment of children by abolishing this defence. Today, over 65 countries have taken this crucial step towards equal protection for children.

Three key lessons from Ireland's experience are worth highlighting:

1. **The shift in public opinion was immediate.** Before the law change, many politicians expressed concern that Irish society "wasn't ready." Yet after passage, the effect was dramatic – like flicking a light switch. Politicians who had urged caution were soon asking, "Why didn't we do this years ago?" The social understanding that hitting children is harmful and unnecessary was rapidly normalised once the legal sanction was removed.
2. **The criminal justice system was not overburdened.** Concerns about criminalising parents proved unfounded. As with all laws, prosecution decisions are guided by public interest principles. In the eight years since Ireland's law changed, there has been no evidence of parents being prosecuted for minor violations. The law change did, however, provide social workers and family support services with clarity when working with families.

3. **The law's educative function is powerful.** Legal reform proved to be one of the most effective tools for changing behaviour. Just as laws requiring seatbelts or prohibiting smoking in public places shifted cultural norms, prohibiting corporal punishment has contributed to evolving parenting practices and greater respect for children's dignity and rights.

Queensland's current consideration of this reform comes at a time when research evidence on the harms of physical punishment is even more robust than when Ireland acted. The link between physical punishment and adverse outcomes for children's development, mental health, and future relationships is now indisputable. The evidence further shows that physical punishment is ineffective in achieving positive behavioural change in children.

International human rights bodies have consistently held that permitting corporal punishment violates children's rights. Repealing section 280 would align Queensland with its obligations under the UN Convention on the Rights of the Child and position Queensland as a leader in child protection within Australia.

The most powerful argument for repealing this defence is one of simple equality. Adults are protected from being hit, no matter the reason or relationship. Children deserve no less. A home should always be a safe place, and the law should never sanction violence against a person simply because they are smaller or younger than the perpetrator.

For a more detailed account of Ireland's journey to prohibiting corporal punishment, I have attached my article "Why didn't we do this years ago? Ireland's Journey to Prohibiting All Corporal Punishment of Children", which documents the legislative process and its impact.

I commend the Commission for addressing this important issue and urge you to recommend Option 1: Repeal the defence in your final report.

Yours sincerely,



Jillian van Turnhout
Former Independent Senator, Ireland (2011-2016)

Attachment: "Why didn't we do this years ago? Ireland's Journey to Prohibiting All Corporal Punishment of Children"

“Why didn’t we do this years ago?” Ireland’s Journey to Prohibiting All Corporal Punishment of Children

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Abstract

In December 2015, Ireland became the 47th country to prohibit all corporal punishment of children, abolishing the common law defence of “reasonable chastisement”. This article tells the story of this momentous cultural and legislative change from the perspective of the Senator who championed the reform in the Irish Parliament. From the roots of the English common law defence through revelations of endemic violence against children to human rights rulings and courageous tenacity, the journey to ultimately achieving equal protection for children in Ireland is fully documented.

Keywords: *corporal punishment, children, Ireland, prohibition, legislation*

“Whatever you choose to do, leave tracks. That means don’t do it just for yourself. You will want to leave the world a little better for your having lived.”

-Ruth Bader Ginsburg

I served as an independent member of Seanad Éireann, the Irish Senate, from 2011 to 2016. During my tenure, I sponsored the amendment that ultimately repealed the common law defence of “reasonable chastisement” in 2015. Looking back, I can see how my own life and events in Ireland intertwined into a perfect moment that led to a ban on corporal punishment of children in all settings. This is the first time I have put together the pieces to share my version of how Ireland went from believing, “We are not ready” to asking, “Why didn’t we do this years ago?” I will bring you on the incredible journey that led to Ireland making this momentous decision.

Ireland was the 47th country in the world to ban corporal punishment in all settings. Through its colonial past, England has been responsible for rooting this legal defence in over 70 countries and territories throughout the world. Like Canada, the Government of Ireland had been repeatedly admonished by the UN Committee on the Rights of the Child for its failure to remove the defence and prohibit corporal punishment. Also like Canada, it had not acted. In fact, the Irish Government argued for retaining the law. In a May 2015 interview, James Reilly, Minister for Children and Youth Affairs, would at most commit to putting regulations in place for children in foster care, residential settings, and care of the state (The Journal, May 27, 2015). In his view, corporal punishment in the home was no longer a problem in Ireland and the government did not “intend reaching into everyone’s home” (The Journal, May 27, 2015). Only when pressed did Minister Reilly say he would “discuss with the Minister of Justice ... the possibility of removing of the defence of reasonable chastisement from Irish common law” (The Journal, May 27, 2015). And yet - just a few short months later, in December 2015 - Ireland fully repealed the legal defence of “reasonable chastisement” and commenced it into law without delay. Ireland was followed by Jersey (2019), Scotland (2020) and Wales (2022). Each used Ireland as a case study and impetus for change.

In this article, I share my account of the story of this achievement and what was learned from Ireland’s experiences. Framing this paper as a journey, I begin by examining the landscape, stepping into history to explain the origins of the “reasonable chastisement” defence, how it

became part of Irish law, and the steps taken to remove this defence in other settings. I then describe how I set up my base camp, drawing on international expertise and bringing together a team of individuals and organisations who were willing to join me in building and lighting the fire. Next, I describe how I gathered the kindling and wood necessary to build our fire. As children, my father and his peers in County Kerry had to bring a 'sod of turf' for the school stove. Likewise, we had to gather elements to build our fire. Finally, I explain how I struck the match and lit the fire. While I had the immense privilege to champion the change in the law, I was unsure if the fire would ignite. I also knew that if I didn't try, it would likely be decades before the next opportunity.

I invite you to take a seat at the campfire as I take you through each step of the legislative process. I end by lighting beacons that I hope you, as a reader, will take to shine a light on the need for change to protect all children from harm.

There is no time to waste – all countries should heed the UN's call to uphold children's human rights and promote their wellbeing by prohibiting physical punishment in all forms and all settings.

Cover quote, The Lancet, July 2021¹

Your Guide for the Journey

I am a lifelong Girl Guide who believes we each have a power to leave the world a little better than we found it. Let me tell you a little about me – your guide on this journey.

My father was orphaned when he was 8 years of age, and my mother's father died when she was just 12 years of age. I often wonder if this traumatic start in life led my parents to work extra hard to ensure my brothers and I grew up surrounded by love and security. I was introduced to the concept of an adult hitting a child when I was about 10 years of age when a teacher hit girls in my class. My mother instructed me that if I was ever hit, I should stand up, calmly leave the classroom, go to the school secretary, and ask for my parents to be called to collect me. My parents were ahead of their time in respecting me as an independent rights holder.

By my mid-twenties, I was working in Brussels, where I co-founded the European Youth Forum, which brings together youth organisations from across Europe. When I returned to Ireland, I was elected President of the National Youth Council and subsequently Chief

Commissioner of the Irish Girl Guides. In 2005, I became CEO of the Children's Rights Alliance, which at that time brought together over 90 organisations with the aim of making Ireland one of the best places in the world to be a child. At the same time, I was a member and Vice President of the European Union (EU) advisory group, the European Economic and Social Committee, which led the first-ever EU-China dialogue on children's rights. It was based on this work that, in 2011, I was nominated by Taoiseach (Prime Minister) Enda Kenny to the Seanad Éireann – the Irish Senate (Upper House of the Irish Parliament).

During my five-year tenure as a Senator, my proudest achievement is having championed and secured the ban on physical punishment of children in Ireland. As of December 2015, a person who administers corporal punishment to a child is not able to rely on the defence of "reasonable chastisement".

The Landscape

Origins of the 'Reasonable Chastisement' Defence

Ireland was ruled by England as far back as the 12th century. An independence movement gained strength in the late 19th century, becoming an armed struggle in the early 20th century. The Irish war of independence ended in 1921 and it was soon followed by a Civil War over the Anglo-Irish Treaty, leading to part of Ireland ceding from Britain and to the establishment of the Irish Free State, an entity independent from the United Kingdom but within the British Empire. In 1937, the people of the Irish Free State adopted its second Constitution which included naming our country 'Ireland'. The 1949 *Republic of Ireland Act* severed its connection to the Commonwealth. However, pre-1922 legal statutes and common law remain in force to the extent that they are consistent with the Constitution. Common law is one of the main sources of Irish law. It consists of a series of rules and principles developed by judges over the centuries.

The defence of "reasonable chastisement" came to Ireland from English common law. An early reference to 'reasonable punishment' in English law is found in Dalton (1690).

Also though Assaults and Batteries be for the most part contrary to the Peace of the Realm, and the Laws of the same, yet some [people] are allowed to have a natural, and some a civil Power (or Authority) over others; so that they may (in reasonable and moderate manner only) correct and chastise them for their Offences, without any imputation of breach of the Peace ... And therefore the Parent (with moderation) may

chastise his Child within age. So may the Master his Servant or Apprentice, for their evil Service. So may the School-master his Scholars. So may a Gaoler (or his Servant by his command) his unruly Prisoners. So may any Man his Kinsman that is mad &c. And none of these shall be in peril therefore to forfeit any Recognizance of the Peace (p. 283).

We also see in Dalton's (1690) writing early attempts to define 'reasonable' punishment:

Note, That the Master may strike his Servant with his hand, fist, small staff or stick for correction; and though he do draw blood thereby, yet it seemeth no breach of the Peace ... And where the Servant shall be negligent in his Service, or shall refuse to do his Work, &c. here the Master may chastise his Servant for such negligence or refusal; so as he doth it not outrageously ... Also the School-Master, with a Rod, may chastise his Scholar which is careless and negligent in Learning, or that shall abuse his School-fellows, or for other the like occasions. Also it is lawful for the Parents, Kinsmen or other Friends of a Man that is mad or frantick (who being at liberty, attempteth to burn an House or to do some other mischief, or to hurt himself or others) to take and put him into an house, to bind or chain him, and to beat him with Rods, and to do any other forcible act to reclaim him, or to keep him so as he shall do no hurt (p. 283).

This legal thinking influenced the 1860 judgment in *R v. Hopley*. Hopley was a schoolmaster who wrote to the father of a pupil, Reginald Cancellor, to obtain consent to chastise him because was obstinate, noting that if Reginald were his child he would chastise him and if necessary "continue at intervals even if [the boy] held out for hours" (*R v. Hopley*, 1860). The father agreed to the course of action. Hopley subsequently beat the boy repeatedly for two and a half hours with a thick stick. The boy died. The schoolmaster was found liable for manslaughter and sentenced to four years' imprisonment.

The judge, Lord Cockburn, proclaimed:

By the law of England, a parent or a schoolmaster (who for this purpose represents the parent and has the parental authority delegated to him), **may for the purpose of correcting what is evil in the child inflict moderate and reasonable corporal punishment**, always, however, with this condition, that it is moderate and reasonable. If it be administered for the gratification of passion or of rage, or if it be immoderate and excessive in its nature or degree, or if it be protracted beyond the child's powers of endurance, or with an instrument unfitted for the purpose and calculated to produce

danger to life or limb; in all such cases the punishment is excessive, the violence is unlawful, and if evil consequences to life or limb ensue, then the person inflicting it is answerable to the law, and if death ensues it will be manslaughter... It is true that the father authorized the chastisement, but he did not, and no law could, authorize an excessive chastisement. There can be no doubt that the prisoner thought the boy obstinate, but that did not excuse extreme severity and excessive punishment (R v. Hopley, 1860, emphasis added).

This defence was confirmed in the *Children Act 1908*, when Ireland was still part of the United Kingdom. In Ireland, the defence is that of ‘reasonable chastisement’; in England, Wales and Northern Ireland, it is referred to as the defence of ‘reasonable punishment’ (see Holland, this issue); and in Scotland as the defence of ‘justifiable assault’ (see Barrett, this issue).

The Evolution of Ireland’s Laws in Settings other than the Home

The entire *Children Act 1908* was eventually repealed in the *Children Act 2001* (Office of the Attorney General, 2001, s5). Over the decades, a series of changes to regulations and legislation increased the protection of children from corporal punishment in a number of settings outside the family home. However, throughout this period, the common law defence remained.

Schools

Teachers in state-funded primary (‘national’) schools were prohibited from using corporal punishment in 1982, in an amendment to Rule 130 of the *Rules for National Schools*:

130 (1) Teachers should have a lively regard for the improvement and general welfare of their pupils, treat them with kindness combined with firmness and should aim at governing them through their affections and reason and not by harshness and severity. Ridicule, sarcasm or remarks likely to undermine a pupil’s self confidence should not be used in any circumstances.

(2) The use of corporal punishment is forbidden.

(3) Any teacher who contravenes sections (1) or (2) of this rule will be regarded as guilty of conduct unbefitting a teacher and will be subject to severe disciplinary action (Department of Education, 1982b).

Also in 1982, the Minister of Education required that “as a condition for the receipt of financial

aid from his Department, including the payment of salaries to the teachers,” management authorities of secondary schools “should take measures to ensure that corporal punishment will not be administered” (Department of Education, 1982a).

Interestingly, however, teachers retained immunity from criminal liability. This was changed in 1997 under the *Non-Fatal Offences Against the Person Act 1997*, which stated: “The rule of law under which teachers are immune from criminal liability in respect of physical chastisement of pupils is hereby abolished (Office of the Attorney General, 1997b, s24).

Child Care

In 1996, the *Child Care (Pre-School Services) Regulations* required that “a person carrying on a pre-school service shall ensure that no corporal punishment is inflicted” (Government of Ireland, 1998, Regulation 8). In the 1997 amendment to this legislation, the following sentence was added: “Inappropriate behaviour in a child attending a pre-school service should be corrected in a caring, constructive and consistent manner. Positive methods of discipline which encourage self control, self direction, self-esteem and cooperation should be used” (Government of Ireland, 1998, p. 33).

The 2004 *Child Care (Special Care) Regulations* prohibited “corporal punishment or any form of physical violence” in ‘Special Care Units’ which are secure residential facilities for non-offending children needing special care or protection (Office of the Attorney General, 2004, s. 15).

Justice

The 1997 *Criminal Law Act* prohibited corporal punishment in penal institutions and as a sentence for a crime (Office of the Attorney General, 1997a, Art. 12(1), Art. 12(2)). Children who are remanded in custody or sentenced to detention are held in ‘children detention schools’. *The Children Act 2001* prohibited several forms of punishment in these facilities: corporal punishment or any other form of physical violence; deprivation of food or drink; treatment that could reasonably be expected to be detrimental to physical, psychological or emotional wellbeing; and treatment that is cruel, inhuman or degrading (Office of the Attorney General, 2001, s201).

Foster Care

The 2003 *National Standards for Foster Care* proclaim children's rights to dignity, privacy and choice, including participation in decisions about their care (s3). These Standards require guidance and training for foster carers (s10.1) and prohibited "corporal punishment in any form, for example, slapping, smacking, shaking or any form of humiliating treatment" (Department of Health & Children, 2003, s10.2).

Gaps in Legislation

Despite this progress, legal grey areas remained. For example, the prohibitions in the *Child Care (Placement of Children in Foster Care) Regulations, 1995* (Office of the Attorney General, 1995) and the *National Standards for Foster Care* were not underpinned by legislation. Under the *Children Act 2001*, it was "an offence for any person who has the custody, charge or care of a child wilfully to assault, ill-treat ... the child ... exposed, in a manner likely to cause unnecessary suffering or injury to the child's health or seriously to affect his or her wellbeing" (Office of the Attorney General, 2001, s24.6.1). However, the common law continued to provide a defence if the assault or ill-treatment was for the purpose of correction.

The continuing availability of the common law defence also undermined efforts to change parents' behaviour. For example, social workers who were working with families where children were being subjected to ill-treatment and harm were unable to send a clear message - 'You can't hit your child' – because the common law defence clearly told them that they could.

By 2010, about one-quarter of parents were still reporting that they had physically punished their children within the previous year (Halpenny et al., 2009). The prevalence was highest among parents of children younger than 5 years (32%) and between 5 and 9 years (37%). However, 65% of parents in this survey believed that smacking was "not necessary to bring up a well-behaved child" and only 34% thought it should remain legal.

Ireland's Historic Failure to Protect Children

From the mid-1990s to 2009, a significant body of evidence highlighted the need to enhance child protection in Ireland's laws, policies and services. Eighteen official reports highlighted the Irish State's failures. The first, in 1993, was the Kilkenny Incest Investigation (McGuinness, 1993), which documented 15 years of physical and sexual abuse by a father of his

daughter and the failure of systems to intervene. The details shocked the nation. The daughter revealed that the first incident of sexual abuse, when she was 11 years old, was inflicted on her as punishment. Her father began beating her around the same time and she was powerless to stop it. Although she sought and received health services many times for severe injuries and medical problems – and although she disclosed her abuse multiple times to physicians, public health nurses and social workers – her situation was never investigated. The report called for, among other changes, amendment of the Constitution “so as to include a statement of the constitutional rights of children”, referring legislators to the UNCRC for wording (McGuinness, 1993, p. 96)

In 2000, the Irish Government established the Commission to Inquire into Child Abuse (The Ryan Commission) to investigate all forms of child abuse in institutions from 1936 to 2000. This was Ireland’s largest-ever child abuse investigation. In its 5-volume report (The Ryan Report; Government of Ireland, 2009), the Commission noted that “excessive corporal punishment for breaches of discipline was the most common complaint of former pupils” and that “physical abuse arose, amongst other reasons, out of the then legal entitlement of school authorities to chastise pupils physically” (p. 56). The Commission devoted several pages to documenting the laws and regulations allowing physical violence in the schools. The *Children Act 1908* recognised the common law defence, which entitled a teacher to punish a child who “was of an age when he or she could appreciate the correction; when the punishment was both moderate and reasonable; when the implement used was fit for the purpose and not inappropriate” (Government of Ireland, 2009, p. 56). In 1933, the Minister of Education set out rules for how such “discipline” should be administered in the industrial schools and reformatories:

Punishments shall consist of:

- (a) Forfeiture of rewards and privileges, or degradation from rank, previously attained by good conduct.
- (b) Moderate childish [sic] punishment with the hand.
- (c) Chastisement with the cane, strap or birch (Minister of Education, 1933, Regulation 13).

In an early attempt to set limits on corporal punishment, these rules stated that girls over 15 years were exempted from punishment with implements; for younger girls implements were only allowed “in cases of urgent necessity” (Minister of Education, 1933, Regulation 13). Further

attempts to define “reasonable” corporal punishment ensued over the decades, including debates about whether leather straps were allowed, until 1982 when all corporal punishment was prohibited in schools.

The Ryan Commission heard from more than 500 witnesses who described the terror under which they lived due to rampant physical and sexual violence. Survivors made 857 claims of physical abuse and 381 claims of sexual abuse. Often, the two occurred together, such as beatings of children who attempted to disclose sexual abuse (5.21). The Report described “a climate of fear” created by the pervasiveness of corporal punishment (1.16). The use of leather straps on boys was the norm, sometimes with coins stitched into them to amplify the pain (5.15). Boys were also struck with canes, chair legs, dowels, fists and feet (5.16) and “girls were struck with implements designed to maximise pain and were struck on all parts of the body. The prohibition on corporal punishment for girls over 15 years was generally not observed” (6.16). Indeed, corporal punishment of girls “was often administered in a way calculated to increase anguish and humiliation” (6.17). Children in orphanages were regularly physically punished as a first response to any perceived wrongdoing, and physical punishment was the standard response to bed-wetting (5.56, 5.57). Even hospitalised children were struck for simple things such as spilling their milk or not eating their food; children confined to their beds were beaten during lessons (5.65-5.68). The fear of physical punishment pervaded all institutions, including deaf and special schools where children were struck for not eating quickly, poor speech or handwriting, signing, or poor academic performance (5.83-5.89). In all settings, children were terrified to report sexual abuse because it would bring a severe beating. The fear and utter powerlessness of children in these institutions shocked the nation.

The report’s findings are now etched on the nation’s psyche and will forever be a stain on our country. Some of us had an inkling of the contents that lay within its pages, but nothing could have prepared us for learning of the deeply inhumane and appalling cruelties catalogued within it. As a nation and a people, we realised that we had failed miserably in our duty to protect and cherish these children. The immense outpouring of shock and sadness felt by the people of Ireland as a whole was, in many ways, unprecedented. The bravery of those who spoke out against the wrongs that were perpetrated against them touched the hearts of many (Children’s Rights Alliance, 2010, p.

The catalogue of documented cruelties lifted back a veil. We could see what had happened to children behind closed doors. The Ryan Report caused a seismic shift. In 2009, survivors marched on our parliament to seek justice. In meeting with many of them then and since, I have witnessed how the impact of their trauma remains evident. In their darkest conversations, they express their drive to ensure no child is subjected to a similar experience and their drive for justice. I have carried their words with me; they drove me to ensure our laws would be strengthened to protect all children.

Setting up Camp: Forming the Team

I was appointed Chief Executive of the Children's Rights Alliance in 2005 – four years before the publication of the Ryan Report. Within the first year of my appointment, I was a guest on our national political debate programme, *Questions and Answers*, in which audience members put questions to a panel. I was asked a question about corporal punishment. I was clear in my response that this is violence. Gasps from the audience immediately told me that my view was out of step with that of the general public. I realised that I needed to help parents understand the research evidence on physical punishment. I wanted each child to have the armour given to me by my parents and ensure that every child in Ireland knew no one had the right to hit them.

When I was appointed a Senator in May 2011, I decided to make ending corporal punishment a priority. As I researched the topic, I came to understand the issue as one of equal protection. I relied heavily on the resources developed by the Global Initiative to End All Corporal Punishment of Children (now 'End Corporal Punishment', which is part of the UN's Global Partnership to End Violence against Children),² as well as guidance from the office of the UN Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais. To my surprise, I found that many children's organisations and statutory bodies that should have been at the forefront of this effort chose to put their heads down. Some believed that it was not the time to "cross the threshold of the family home". There was not yet broad understanding of law reform as an issue of fundamental human rights. In fact, my fellow Senator, David Norris, who is respected for upholding human rights, stated in the upper house,

There are many impolite, brassy children around. I think a bit of a slap would not do them the slightest bit of harm. ... That is the way I was treated and look at me. I am not psychologically damaged. ... There are people throughout the country who feel as I do, namely, that giving a child the odd slap if it is badly behaved is very good for it (Seanad Debates, May 27, 2015).

Knowing that this was the mindset of many politicians and civil servants, I built my base camp from those I knew to be courageously committed to children's human rights. Many individuals joined me, equipped with evidence, robust arguments, and legislative text. The support of the Children's Rights Alliance and the ISPCC (Irish Society for the Prevention of Cruelty to Children) fully understood the issue and its importance. Mummypages.ie – a prominent pregnancy and parenting website – helped me communicate with a wider public about the issue.

Gathering the Firewood

International Human Rights Standards

Over the past two decades, considerable pressure has been brought to bear by international human rights bodies. They have consistently viewed corporal punishment and laws permitting it to be human rights violations. When they have focused their gaze on Ireland specifically, they have repeatedly urged a full prohibition.

UN Committee on the Rights of the Child

International human rights law is clear that corporal punishment violates children's rights to respect for their human dignity and physical integrity. The UNCRC sets out states' obligation under international law to prohibit and eliminate all forms of violence against children (UN General Assembly, 1989, Art. 12). The UN Committee on the Rights of the Child (the Committee) issued a General Comment (2006) to clarify that "corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them" (para. 18). In all its work, the Committee has consistently held that States have an immediate obligation under the Convention to prohibit and eliminate all corporal punishment of children.

Ireland was first examined on its record under the UNCRC in 1998. In its Concluding Observations (Committee on the Rights of the Child, 1998), the Committee expressed its concern about the lack of legislation prohibiting corporal punishment, noting that “this contravenes the principles and provisions of the Convention (para. 16). It called upon the government to “take all appropriate measures, including of a legislative nature, to prohibit and eliminate the use of corporal punishment within the family” (para. 39). By 2006, the Committee had become “deeply concerned” that Ireland had not yet prohibited corporal punishment within the family and urged the Government to implement an explicit prohibition, educate the public, and promote positive, non-violent discipline (UN Committee on the Rights of the Child, 2006, paras. 39, 40).

European Committee on Social Rights

In 2003, the World Organisation against Torture lodged a complaint with the Council of Europe. It argued that Irish law violated Article 17 (the right of children and young persons to social, legal and economic protection) of the *Revised European Social Charter* (Council of Europe, 2003). In its arguments, the Irish Government stated:

The policy of the Government is to deter parents and others from resorting to corporal punishment of children. It refers to the National Children’s Strategy which states that “As part of a policy of ending physical punishment, parenting courses will focus on alternative approaches to managing difficult behaviour in children.” It refers to the report of the Law Reform Commission on Non Fatal Offences Against the Person of 1994 which clearly recommended the abolition of the corporal punishment of children in schools, however concluded in respect of parental corporal punishment that: “The sudden introduction of criminal liability for any assault in the home without more education and information would be inimical to good reform and the interests of children. Foundations have to be laid with prudence. Without proper guidance in effective, enlightened, non-violent parenting, parents will feel lost, resentful and resistant to change” (Council of Europe, 2003, para. 43).

The Committee on Social Rights disagreed, stating that a prohibition:

must cover all forms of violence regardless of where it occurs or of the identity of the alleged perpetrator. ... Although the criminal law will protect children from very serious

violence within the home, the fact remains that certain forms of violence are permitted (para. 57).

The Committee held that Irish law was in violation of Article 17 of the *Revised European Social Charter*. In 2007, the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, conducted an official visit to Ireland to assess its implementation of human rights standards (Hammarberg, 2008). In his report, he referred to the 2005 ruling by the European Committee on Social Rights and "urge[d] the Irish authorities to bring Irish law in line with international standards" by fully prohibiting corporal punishment (Hammarberg, 2008, para 47).

Seeing no action from the Irish Government following the 2005 ruling, in 2013, the Association for the Protection of All Children (APPROACH) lodged another complaint under the *Revised European Social Charter* (Council of Europe, 2013). Ireland cited in its pleadings to the European Committee on Social Rights that it couldn't change the law because of "the special protection afforded to the family in the Constitution" (European Committee of Social Rights, 2013, para. 4). The Committee unanimously concluded that Irish law violated Article 17.1 of the *Charter* (Council of Europe, 2013).

UN Sustainable Development Goals

Beyond the international and regional human rights mechanisms, global support for the elimination of corporal punishment continued to grow. In 2015, the UN adopted the *2030 Agenda for Sustainable Development*, which contains a commitment to work to "end abuse, exploitation, trafficking and all forms of violence against and torture of children" (UN General Assembly, 2015, Target 16.2). One of three indicators used to monitor progress towards this target recognises the centrality of eliminating corporal punishment to end all violence against children: the proportion of children aged 1–17 years who experienced any physical punishment and/or psychological aggression by caregivers in the previous month (UN General Assembly, 2017, Indicator 16.2.1).

Change in Law Leads to Change in Behaviour

In my preparation, I was conscious of the cultural effect of a change in the law. In 1970s Ireland, seat belts could be found in cars, but it was only in 1983 when it became compulsory to wear them in the front seat and 1986 to wear them in the back seat that we saw people change their behaviour. It is now normal and the change in the law empowers children and parents to insist on wearing a seat belt. A positive change in law led to cultural acceptance and saves lives. The law did not interfere with families; it provided additional safety.

Since 2003, it has become unimaginable to go into a theatre, restaurant or workplace in Ireland and experience people smoking. When that bill was debated, opponents argued that the courts would be full of people being prosecuted. In fact, people respected the law and adapted their behaviour, and where there were possible breaches, it was the people themselves who policed its implementation. There was no increase in prosecutions.

I co-sponsored a law leading to a ban on smoking in cars with children with Senators Mark Daly and Professor John Crown, a leading oncologist. Leading up to this change, the opposing argument was that we would be unable to police it. But with a law giving both children and their parents the right to be in a smoke-free environment, the culture changed. There was no need for any additional policing as the new law changed people's behaviours.

Over the years, I heard consistently that Irish society was unready for legal reform; we had to wait for society to change. However, a change in the law is probably one of the most effective ways of changing people's behaviours. Study after study shows that public support follows law reform (see, for example, Bussman et al., 2011).

Framing the Debate

I had difficulty understanding why a society can accept discussions about if and when it is acceptable to hit someone - let alone someone smaller who cannot understand why they are being hit. Adults commonly use euphemisms to downplay our contributions to violence against children. In debates, one can see an invisible line appear in people's minds delineating their tolerance level. They say, "You know I am only talking about a tap not a thump, a slap not a belt, a smack not a whack". Of course, our tolerance is largely determined by our childhood experiences, which lead us to proclaim that "it never did me any harm". Research demonstrates that it never did us any good either (Gershoff, 2002, Gershoff & Grogan-Kaylor, 2016; Heilmann

et al., 2021). The ever-growing evidence base allows people to let go of the baggage of judgement of how they were raised.

The invisible line between acceptable and unacceptable corporal punishment is subjective, leaving children vulnerable. When someone hits a child, it is most often not a rational act. Indeed, when asked to reflect on the last time they had smacked their child, 81% of parents in Ireland reported that they felt sorry or guilty, and only 5.5% reported that they felt better. Parents strike out when they are in a heightened emotional state, when they are stressed, tired and least able to engage reasoned judgement. The invisible line gets blurred or erased, as parents' neurological stress response takes over their executive function. During Ireland's debate about law reform, it was important to help the public recognise that the myth of the invisible line – and the permission it grants parents to start hitting - means children are often exposed to an escalation of violence.

Another rationalisation for corporal punishment is that it shows children how wrong and serious their behaviour is. We helped people see that such a rationalisation would never be applied to a senior – with or without cognitive decline. We pointed out the hypocrisy of this excuse and helped the public to realise that it does not justify hitting anyone, old or young.

We took a strong position that a home should always be a safe and secure place and that society must do all it can to ensure this. Where corporal punishment is permitted, society is allowing – even justifying and prescribing - violence against children in their own homes, where they have no recourse. Prohibition, on the other hand, sends a clear message that hitting and hurting a child under any circumstances is wrong, just as hitting and hurting adults is wrong. The common law defence assumes that the child is always wrong and the adult is justified in hitting them. A prohibition assumes that an adult who hits a child is always wrong and must be accountable for their actions.

Constitutional Change

By 2011, momentum was building to strengthen children's rights in the Irish Constitution. Children were virtually absent from the Constitution and our superior courts had not expanded on the rights therein. The bar for intervention in the family was high, guaranteeing “the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children” (Art. 41.1, cited in Council of Europe, 2003). The State could only intervene “in exceptional cases, where the parents for

physical or moral reasons fail in their duty towards their children” (Art. 42.5, cited in Council of Europe, 2003). Amendments to the Irish Constitution must be approved in a public referendum.

In November 2012, as part of our collective response to the *Ryan Report*, the people of Ireland voted in a referendum to enshrine the protection of children as individual rights holders into the Irish Constitution (Referendum Commission, 2013). The amendment inserted a new Article that stated, in part: “The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights” (Art. 42A). This amendment “shifts the trigger of intervention from focusing solely on the parents’ failures to the impact of that failure on the children” (Children’s Rights Alliance, n.d.). The *Thirty-First Amendment of the Constitution (Children) Act 2012* was signed into law on April 28, 2015.

Momentum for Change

In June 2013, the Government lost its majority in our Senate, creating a situation in which I could force a vote. Then, in October 2013, there was a proposal by the Government to abolish Seanad Éireann. The people of Ireland voted against the proposal and the Senate was reinvigorated.

In May 2015, the Irish people voted 62% to 37% in favour of amending the Constitution to permit marriage to be contracted by two persons without distinction as to their sex. Ireland was the first country in the world to successfully hold a plebiscite to bring marriage equality into law, demonstrating a strong public commitment to human rights. In the following month, the Irish Representative to the Council of Europe’s Rapporteur Group on Social and Health Questions “fully committed to working towards the elimination of corporal punishment” and to examining the removal of s58 of the *Child Care Act 1991* and the common law defence (Council of Europe Committee of Ministers, 2015, p.2). In response, the Council of Europe’s decision-making body – the Committee of Ministers - unanimously reiterated that Ireland’s laws violated Article 17 of the *European Social Charter* and called once more for corporal punishment to be fully prohibited (Council of Europe Committee of Ministers, 2015).

However, there remained an overriding belief among politicians, the government and even among some children’s organisations that Ireland wasn’t ready – that we needed full public support before we could change the law for children. Children had to sit in the corner and wait

once again. In my view, they could not wait. It was imperative to provide them full protection as soon as possible. The longer we waited, the more children would be harmed. I was conscious that my term as a Senator would end when the Government's term ended at some point within the next twelve months. It was time to light the match.

Lighting the Match

The 2011 to 2016 Senate was the first in Ireland's history that included an independent group of Senators from business, the Arts and broader civil society. I was the leader of this Independent Group and had earned a reputation for working collaboratively. By 2015, the Minister for Children and Youth Affairs, James Reilly (a member of the lower house of parliament, the Dáil Éireann) was strengthening our child protection laws through the *Children First Bill* - a suite of measures to bring about a new approach to child protection. This Bill had been introduced in April 2014 in the Dáil Éireann and was passed in July 2015. Then it began its progress in the Seanad.

It was a Government priority to bring the *Children First Bill* into law before the next election. I consulted widely on all aspects of the Bill and recognised that it provided an ideal opportunity to repeal the common law defence. While speaking to the Bill in the second stage of Seanad debate, I outlined several areas of the Bill where I would be coming back at the next stage with amendments:

There is much to welcome in the Bill, but given the time constraints on us, I will outline the concerns I need to be further addressed. ... I agree with the Council of Europe and echo its call for a culture of zero tolerance of violence towards children. It is for this reason that I have advised successive Ministers for Children and Youth Affairs of my intention to table an amendment to the Bill to repeal the defence of reasonable chastisement. I look forward to formally tabling this amendment, which I sent to the Minister's office last year, when we take Committee Stage (Houses of the Oireachtas, 2015, July 21).

Over subsequent months, I consulted with civil society organisations and legal experts in drafting a series of amendments to the *Children First Bill*. These amendments included providing a definition of child emotional abuse, ensuring gender recognition for children, updating archaic legislative terminology relating to child sexual abuse material and, of course, the repeal of the

reasonable chastisement defence (Houses of the Oireachtas, 2015, September 23). After I submitted my amendments, an advisor of the Minister for Children and Youth requested a meeting at which we reviewed each amendment and I outlined the research underlying each one. When we reached the amendment to repeal the defence, the conversation turned to: why the time wasn't right; that society needed to be brought along; that we can't interfere in private family life; that this was not the right piece of legislation; that it would be better if the Minister for Justice took the lead on this issue.

I explained that I was willing to spend as long as necessary on each amendment. At Committee Stage, there are no time limits and I had made clear the amount of material I had available to put on the record in relation to each amendment. I also made the importance of this amendment clear to the advisor who worked with me from the Taoiseach's (Prime Minister's) office. I stood my ground without knowing if I had the support of my fellow parliamentarians. I was mindful that in 1956, Senator Sheehy-Skeffington attempted to ban slapping of girls in schools and he was unsuccessful, securing only 3 of 11 votes. In my view, children in Ireland needed to know that at least one adult was willing to say, "hitting children is wrong."

Soon, a senior official of the Department of Children and Youth Affairs invited me to meet with the Minister for Children and the Secretary-General. The Minister began by thanking me for changing his day, which was spent in discussions with the Office of the Attorney General. He said that he was exploring how an amendment could be done, but that he needed more time. I agreed that I would not put any of my amendments to a vote at Committee Stage, which was scheduled for the next day. I committed to ongoing communication with the Minister until Report Stage. The Minister agreed to publicly state at Committee Stage that he was committed to finding a way to bring forward an amendment abolishing the reasonable chastisement defence.

The Campfire

The Legislative Process: Seanad Éireann (Upper House)

On 23 September 2015, Committee Stage commenced in the Seanad. I framed the legal reform in the language of equal protection for children as already enjoyed by adults (Seanad Debates, 2015a). To my welcome surprise, several Senators spoke to support the amendment. Senator Marie Moloney (Labour) stated:

When I first saw this amendment, I had my doubts and reservations. However, I sat down

and thought about it at length ... My granddaughter, who is nearly two, goes to a child minder. I would hate to think that the child minder would slap her - it would absolutely gut me. I wonder why we feel like that, why we feel that somebody else cannot hit a child but a parent can hit or slap their child. Where do we draw the line between reasonable chastisement and what is more physical and violent? It is best if we get rid of it altogether. ... I very much support Senator van Turnhout's amendment.

Senator Terry Leydon (Fianna Fáil) remembered corporal punishment in schools and how “it was a terrifying experience to go up there, a little child of 10 or 11, or less, and hold out your hand to be walloped.” He noted that the 1916 *Proclamation of the Republic* deals with the equal rights of children and treating all children equally. ... There is no excuse. What one is doing is perpetrating violence by using violence, in that they will use violence on their children, and it goes on and on and never ends. ... [Passing this amendment] would mean that the children of Ireland would be protected from abuse inside the home, outside the home, in schools, institutions and everywhere else.

Senator Sean Barrett (Independent) said:

It is Victorian stuff that children should be seen and not heard. It is completely outdated by developments in education. ... Violence does not solve problems. ... The people of this country do not want children to be beaten by adults in any context.

Senator Imelda Henry (Fine Gael) added her voice:

The Minister and his predecessor have done much work in terms of disturbing legacy issues affecting children. As my party spokesperson on children in this House, I acknowledge that we have come a long way but that we have a lot to do also. I would be very happy if the Minister could give the amendment serious consideration.

Minister James Reilly closed the debate:

Although various provisions exist under Irish law and administrative measures that prohibit, or aim to prohibit, the use of corporal punishment in non-family settings, it has been acknowledged that these arrangements do not reach the standard required by

international instruments to which Ireland is a party, such as the UN Convention on the Rights of the Child and the Council of Europe's Revised Social Charter. ... I view the particular matter as one of equality before the law, rather than any intrusion on the exercise of legitimate parental authority... The aim of the current work by my Department is to ensure that there is the strongest possible policy and legal grounding for action in this potentially legally sensitive area. These steps constitute a normal, prudent approach to ensuring that legislative measures, particularly where the State interacts with the family, consider implications and vulnerabilities as extensively as possible to provide the greatest level of confidence that the measure is sustainable. In other words, we want it to stick. ... There is absolutely no ideological issue here. Everybody wants this to happen. I do not want to leave this behind us.

On 21 October 2015, at Report Stage in the Seanad, the Government tabled a joint amendment. It is highly unusual for the Government to table an amendment with an independent Senator. The proposed amendment would insert s24A.(1) into the *Non-Fatal Offences Against the Person Act 1997*: "The common law defence of reasonable chastisement is abolished." The same day, the Report and Final Stages of the *Children First Bill* were taken in the Seanad (Seanad Debates, 2015b). Minister Reilly tabled the joint amendments stating:

The Government is fully committed to the elimination of corporal punishment and to protecting children from violence.. ... The amendment before the House provides for the total abolition of the common law defence of reasonable chastisement. It does not create a new offence but rather removes something that has its roots in a completely different era and societal context. The measure asserts: that there is no circumstance in which it may be seen to be in order to hit a vulnerable person, in this case a child; that from a child's perspective there is nothing reasonable about being on the receiving end of corporal punishment; that Irish parents are no less protective of their children, nor less progressive in their parenting practices, than those in the other 19 European countries where a statutory ban on corporal punishment is in place; that the Government, by its laws, will protect and vindicate the rights of children; and that Ireland is diligent as regards meeting its international obligations in the area of human rights. The measure represents a significant advancement as regards the protection and rights of children.

Several Senators spoke in support of the amendment, and it was passed without a vote. Attending the debate in the visitors' gallery was Kay Boland, widow of the former Minister for Education who had championed the 1982 school corporal punishment ban. I added my support, "Irish law is being brought into step with parents, children's rights advocates and international best practice. With this amendment we have a way to unite and agree that all citizens are equal. There must never be a defence for violence against children."

The Legislative Process: Dáil Éireann (Lower House)

The amended *Children First Bill 2014* returned to the Dáil (lower house) for final consideration on 11 November 2015 (Dáil Éireann, 2015). This is procedural - as the *Children First Bill 2014* started its legislative process in the Dáil, that house must have an opportunity to review the amendments agreed upon by the Seanad³. Of the Teachta Dála (TDs or members of Dáil Éireann) who spoke in the debate, all spoke in favour of the amendment that would abolish the reasonable chastisement defence.

The Taoiseach Enda Kenny took the unusual step of speaking at this stage on the *Children First Bill*:

Children First is no longer a national aspiration but a constitutional reality with the enactment of this legislation. Within decades of children in this country having been demonised, brutalised and criminalised for their audacity to be poor, different, abandoned, orphaned, troubled or just plain neglected, with Children First they are recognised and constitutionally protected as citizens of the Republic in their own right. ... Children First is not and will not become a charter for trespass by the State and its agencies into their lives and the lives of their children. In fact, the Government resolved that Children First would clearly set out and demand that any actions taken be first and always in the best interests of the child and that they be judicious, timely and proportionate. ... It is clear in many cases that when we are intervening, we are already too late. We must catch children and families before they fall. We must support families from day one if we are to give them the future and opportunity they deserve. Good and proportionate intervention is not interference, be it parenting programmes, family support services or the chance of an early education. It is how we truly support all our children and every family, in terms of health, nutrition,

learning and social opportunities, now and into the future. That is good for our children, families, economy and society. ... I am delighted to have had the opportunity to say these few words on the passing of this legislation. May it keep our society, families and children, now and into a prosperous future, rich in opportunity, compassion, safety, respect and dignity (Dáil Debates, 2015).

The Bill was passed without a vote. On 19 November 2015, the *Children First Act 2015* was signed by the President into law.

Lighting the Way

The moment the law changed, the effect was as dramatic as flicking a light switch. I was inundated by my fellow politicians and others (many who had urged caution) asking me, “Why didn't we do this years ago?”

My proudest achievement is having championed and secured the abolition of Ireland's reasonable chastisement defence. This reform brought clarity to ensure equal protection for children. In the words of a social worker, “it took the 'that's the way I was raised' argument off the table and families appeared to take more notice due to the fact that physical discipline is now illegal.”

When we think of home, we think of comfort and safety. Yet in many countries, the law can make a child's home one of the least safe places. Where corporal punishment is permitted, the law allows for violence against children in their own home. For any countries considering a similar change in the law – the time is now. The time for action in Canada is long overdue.

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¹ [https://www.thelancet.com/journals/lancet/issue/vol398no10297/PIIS0140-6736\(21\)X0031-1#fullCover](https://www.thelancet.com/journals/lancet/issue/vol398no10297/PIIS0140-6736(21)X0031-1#fullCover)

² <https://www.end-violence.org/>