

The law on smacking children

The Children's Legal Centre is a unique, independent national charity concerned with law and policy affecting children and young people.

It is illegal for a teacher to smack another person's child.

What is the law on smacking children?

It is unlawful for a parent or carer to smack their child, except where this amounts to 'reasonable punishment'. This defence is laid down in *section 58 of the Children Act 2004*, but it is not defined in this legislation. Whether a 'smack' amounts to reasonable punishment will depend on the circumstances of each case taking into consideration factors like the age of the child and the nature of the smack.

However, physical punishment will be considered "unreasonable" if it leaves a mark on the child or if the child is hit with an implement such as a cane or a belt.

There are strict guidelines covering the use of reasonable punishment and it will not be possible to rely on the defence if you use severe physical punishment on your child which amounts to common assault or battery.



Reasonable Punishment in Schools, nursery's and child care

It is illegal for teachers, nursery workers and child care workers to smack another person's child. If a person is employed privately by a parent, such as a babysitter or nanny, the parent may give permission for that person to smack their child as long as it is reasonable and does not amount to an offence.

Calls to ban smacking

There is huge pressure from different organisations in the UK to change the law relating to reasonable punishment. Organisations such as the NSPCC and 11 Million campaign for a complete ban on reasonable punishment.

Professor Sir Al Aynsley-Green, Children's Commissioner for England is concerned that section 58 of the Children Act 2004 continues to breach the United Nations Convention on the Rights of the Child by failing to provide children with equal protection under the law on common assault.

This information is correct at the time of writing [August 2008] The law in this area is subject to change. The Children's Legal Centre cannot be held responsible if changes to the law outdate this publication.

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Smacking

When will it become a criminal offence?

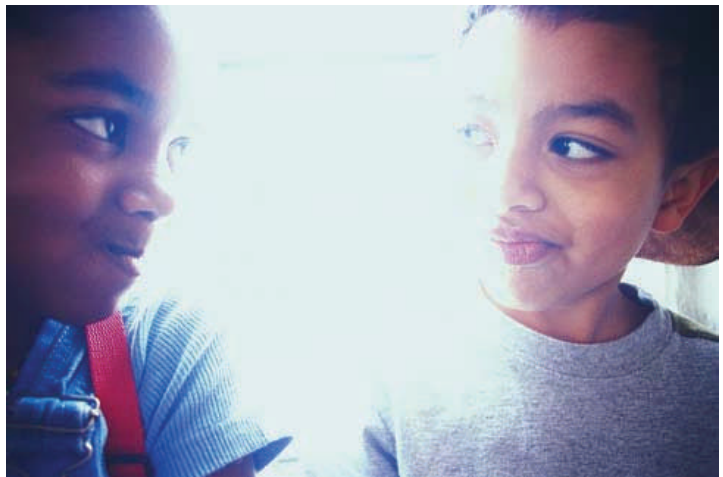
A parent can be charged with a criminal offence if they harm their child under certain offences, these offences are:

- an offence under *section 18 and 20 of the Offences against the Person Act 1861* (wounding and causing grievous bodily harm)
- an offence under *section 47* of that act (assault occasioning actual bodily harm)
- an offence under *section 1 of the Children and Young Persons Act 1933* (cruelty to persons under 16)

Determining what charge will be made depends on the harm caused to the child.

The Director of Public Prosecutions for England and Wales has produced a charging standard in order to help prosecutors to determine the appropriate offence in a case. This guidance has suggested that common assault is where injuries amount to no more than the following:

- Grazes;
- Scratches;
- Abrasions;
- Minor bruising;
- Swellings;
- Reddening of the skin;
- Superficial cuts;
- A 'black' eye



The charging standard goes on to say that:

"... there may be cases where the injuries suffered by a victim would usually amount to common assault but due to the presence of serious aggravating features, they could more appropriately be charged as actual bodily harm."

One such aggravating feature is whether the victim is a child. Even in such cases however, prosecutors are nonetheless required to bear in mind that:

".....the definition of assault occasioning actual bodily harm requires the injury to be more than transient and trifling."



Actual Bodily Harm (ABH) The difference between common assault and ABH is the severity of the harm caused, for example:

- Loss, or breaking of tooth or teeth;
- Temporary loss of sensory functions i.e. loss of consciousness;
- Extensive or multiple bruising;
- A broken nose;
- Minor fractures;
- Minor, but not merely superficial, cuts, that are probably going to require medical treatment, like stitches;
- Psychiatric injury, which is more than emotions like fear or distress.

Smacking

GBH with Intent:

This is the most serious of the offences and carries a maximum sentence of life imprisonment.

The offence is committed when a person unlawfully, maliciously and intentionally either:

- wounds another person; or
- causes grievous bodily harm to another person.

To find whether a defendant had intended to cause the GBH is a decision that will be made at court, taking all of the evidence into account.

If you are charged with actual bodily harm, grievous bodily harm or grievous bodily harm with intent your case will be heard at court.

The Children's Legal Centre produces a number of publications including childRIGHT, a monthly publication and Working with Young People: Legal Responsibility and Liability. For further information about our publications please contact us.

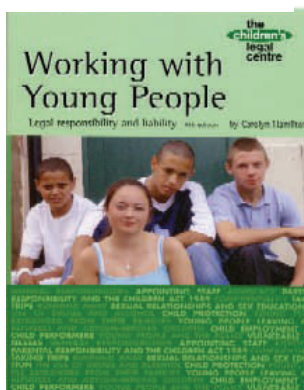
Grievous Bodily Harm (GBH) GBH and wounding; to legally wound someone both the inner and outer layers of skin must be broken; examples of such harm are:

- Injury resulting in a permanent disability, or permanent loss of a sensory function;
- Injury which results in more than minor permanent, visible disfigurement; broken or displaced limbs or bones, including fractured skull;
- Compound fractures, broken cheek bone, jaw, ribs, etc;
- injuries which cause substantial loss of blood, usually needing a transfusion;
- Injuries resulting in lengthy treatment or incapacity;
- Psychiatric injury. As with ABH, appropriate expert evidence is essential to prove the injury.


At What Age Can I ?
 A guide to age-based legislation
 2008 Edition
 Updated by Joanne Claridge




At the Police Station:
 What are children's rights?
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