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What Do Prisoners and Zoo Animals Have in Common? They Have More Protection from Physical Violence than School Children in Nineteen States

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What Do Prisoners and Zoo Animals Have in Common? They Have More Protection from Physical Violence than School Children in Nineteen States

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I. INTRODUCTION

Florida is one of nineteen states that still permit corporal punishment in public schools, despite extensive research that corporal punishment is not an effective method of discipline and that it causes emotional damage with lasting negative social results.¹ The research clearly supports the position that corporal punishment should be prohibited in all public schools.² Unfortunately, the case law, which is dated, trivializes the physical and emotional effects of corporal punishment and does not reflect our current moral progress as a society. Presented with a similar case today, it is likely that the result would be significantly different.

Although corporal punishment is allowed in Florida, many districts have chosen to prohibit it. However, it is important that all Florida children feel safe wherever they go to public school. This article advocates prohibiting corporal punishment in all Florida schools. If that is not politically feasible at this time, it is imperative that the legislature, at the very least, acts to improve the statutes that presently only provide minimal guidance regarding corporal punishment. The recommended changes to the statutes endeavor to create a uniform, specific protocol, in order to deter abuse in the administration of corporal punishment, to insure that corporal punishment is meted out fairly, and to establish accountability.

II. CORPORAL PUNISHMENT IN UNITED STATES PUBLIC SCHOOLS

You may have thought that paddling in schools was a remnant from another era, but you would be wrong. As a reflection of our morally evolving society, more than half the states have abandoned the use of corporal punishment in public schools. Thirty-one states have prohibited corporal punishment, however nineteen states still permit corporal punishment in public schools, and Florida is one of them.³ We need

¹ See *infra* notes 21-23.
² See *infra* Part IX; see also *infra* notes 28 and 31.
³ CTR. FOR EFFECTIVE DISCIPLINE, *Discipline at School*, (2010), <http://www.gundersenhealth.org/ncptc/center-for-effective-discipline/discipline-at-school>.

legislation to protect all Florida public school children from the violence of corporal punishment.



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III. NEGATIVE EFFECTS OF THE USE OF CORPORAL PUNISHMENT

Corporal punishment is no longer allowed in prisons, mental institutions or the military.⁵ Schools are the only public institution where corporal punishment is sanctioned. Honorable Major R. Owens, Congressional Representative from New York made the following statement at the 1992 Hearing on Corporal Punishment:

“In all public institutions in America except the classroom, the use of physical punishment is prohibited - in prisons and jails, in the armed forces, in hospitals and psychiatric facilities. The Federal government has even prohibited zoos and commercial animal trainers from using corporal punishment to discipline animals. Only children sitting in the classroom are legal and acceptable targets for battery and abuse.”⁶

⁴ Rose Eveleth, *Nineteen States Allow Teachers to Spank Children*, SMITHSONIAN (Feb. 19, 2014).

⁵ *Corporal Punishment: Hearing on H.R. 1522 Before the Subcomm. on Select Educ. of the House Comm. on Educ. and Labor*, 102nd Cong., 2 (1992) (statement of Hon. Major R. Owens, Representative in Congress of the State of New York).

⁶ *See Corporal Punishment: Hearing on H.R. 1522 Before the Subcomm. on Select Educ. of the House Comm. on Educ. and Labor*, 102nd Cong., 2 (1992) (statement of Hon. Major R. Owens, Representative in Congress of the State of New York).

Because of their vulnerable status, children should be afforded more, not less protection under the laws of the United States.⁷ We should safeguard our children from being paddled by school officials in the pursuit of “order.” Freedom from being hit should be extended to all children attending public school. According to the American Civil Liberties Union, out of the 223,190 U.S. students who were legally paddled in 2006, approximately 20,000 had to seek emergency medical treatment.⁸

Laws and programs have been created to reduce domestic violence and child abuse, yet we still allow schools to engage in corporal punishment, a destructive form of discipline, which is physical violence against a child. Corporal punishment teaches aggressive physical action as a means of resolving problems and relies on force by the powerful over the weak.⁹ Corporal punishment models the use of force to achieve a desired result and that can lead to a cycle of violence in the child’s future.¹⁰

The use of corporal punishment increases the likelihood of the continuation of violence either as a perpetrator or victim when they become an adult.¹¹ “Violence begets violence.”¹² “Physical cruelty and emotional humiliation not only leave their marks on children, they also inflict a disastrous imprint on the future of our society.”¹³ We should not

⁷ OFFICE OF THE COMMISSIONER FOR HUMAN RIGHTS COUNCIL OF EUROPE, CHILDREN AND CORPORAL PUNISHMENT: “THE RIGHT NOT TO BE HIT, ALSO A CHILDREN’S RIGHT” (2009).

⁸ *Corporal Punishment in Schools and Its Effect on Academic Success: Hearing Before the Subcomm. on Healthy Families and Communities Comm. on Educ. and Labor*, 111th Cong., 2 (2010) (statement of Dr. Donald E. Greydanus, Pediatrics Program Director of the Michigan State University/Kalamazoo Center of Medical Studies).

⁹ Ronald T. Hyman & Charles H. Rathbone, *Corporal Punishment in Schools: Reading the Law*, 77 NASSP BUL. 20 (1993); see generally MURRAY A. STRAUS, DAVID B. SUGARMAN, & JEAN GILES-SIMS, CORPORAL PUNISHMENT BY PARENTS AND SUBSEQUENT ANTI-SOCIAL BEHAVIOR OF CHILDREN, 155, 761–67 (1997).

¹⁰ Corporal Punishment Committee, *Corporal Punishment In Schools: Position Paper of the Society for Adolescent Medicine*, 13 J. ADOLESCENT HEALTH 240, 240–46 (1992); *Hearing on H.R. 111-55 Before the Subcomm. on Healthy Fam. and Comm. on Educ. and Labor*, 111th Cong., 2 (2010) (statement of Donald E. Greydanus, M.D. Professor of Pediatrics & Human Development, MI. State Univ.).

¹¹ ELIZABETH T. GERSHOFF. REPORT ON PHYSICAL PUNISHMENT IN THE UNITED STATES: WHAT RESEARCH TELLS US ABOUT ITS EFFECTS ON CHILDREN (2008); Murray. A. Strauss, *Discipline and Deviance: Physical Punishment of Children and Violence and Other Crime in Adulthood*, 38 SOC. PROBS. 205, 205-06 (1991) (For more information, see the Global Initiative’s review of research on the effects of corporal punishment at <http://www.endcorporalpunishment.org/pages/frame.html>).

¹² Alan Reitman, *Corporal Punishment in Schools - The Ultimate Violence*, 9 CHILD LEGAL RTS. J. 6, 7 (1988).

¹³ JORDAN RIAK, PLAIN TALK ABOUT SPANKING 6 (2011).

be humiliating our students by paddling them, we should be setting an example by teaching them that conflicts can be resolved without the use of physical force.

In Florida family law we are careful to promote the “best interests of the child”¹⁴ but in Florida public schools where corporal punishment is sanctioned, that same standard of care and protection of children does not apply. When students are paddled in school, for the sake of classroom management, they are humiliated, degraded and their dignity and self-esteem are damaged. This practice of physical violence against students continues, even though research proves that there are alternate non-violent methods of discipline that are more effective and do not have numerous adverse side-effects.¹⁵ We should act responsibly and similarly endorse the “best interests of the child” in public school settings and eliminate corporal punishment in our schools.

Banning corporal punishment in public schools does not interfere with a parent’s right to raise children as they see fit; instead, it gives them the responsibility to discipline their children as they choose, rather than using the school as a surrogate parent. The school’s focus should be on educating children in a positive environment that promotes effective learning. Corporal punishment erodes the educational environment and promotes an oppressive fearful environment, which is not conducive to learning.¹⁶ School does not feel like a safe place for children who are subjected to the threat of corporal punishment.¹⁷ Children need to feel safe in order to learn and excel academically.¹⁸

In a review of educational training for Florida teachers, none recommended corporal punishment as necessary or even effective; instead they offer numerous alternate non-violent methods of behavior modification and classroom management.¹⁹ Groups such as: the American Medical Association, the National PTA, the National Association of School Psychologists, the American Academy of Pediatrics, the American Civil Liberties Union, the National Association of Pediatric Nurse Practitioners, the Society for Adolescent Medicine,

¹⁴ See e.g. FLA. STAT. § 61.13 (2013).

¹⁵ AM. PSYCHOANALYTIC ASS’N, POSITION STATEMENT ON PHYSICAL/CORPORAL PUNISHMENT (June 2013) https://www.apsa.org/About_APsaA/Position_Statements/Physical_Punishment.aspx.

¹⁶ HUMAN RIGHTS WATCH, A VIOLENT EDUCATION CORPORAL PUNISHMENT OF CHILDREN IN U.S. PUBLIC SCHOOLS 4, 57 (2008).

¹⁷ *Id.* at 8.

¹⁸ *Corporal Punishment in Schools and Its Effect on Academic Success: Hearing Before the Subcomm. on Healthy Families and Communities Comm. on Educ. and Labor*, 111th Cong., 2 (2010).

¹⁹ IRWIN A. HYMAN ET AL., SCHOOL DISCIPLINE AND SCHOOL VIOLENCE: THE TEACHER VARIANCE APPROACH (1996).

the American Bar Association, and the National Education Association, all reject the use of corporal punishment and consider it humiliating, abusive and detrimental to children's welfare.²⁰

Over more than four decades a substantial amount of research has established that corporal punishment is not effective as a disciplinary practice to help children control or change behavior.²¹ More than 150 studies show that corporal punishment has negative effects on children.²² Numerous studies have associated corporal punishment with increased mental health problems, such as stress, anxiety, depression, general psychological maladjustment, as well as alcohol and drug abuse.²³ In studies of children around the world, corporal punishment has been associated with increased physical aggression and anti-social behavior.²⁴

²⁰ Ctr. for Effective Discipline, *U.S. Organizations Opposed to School Corporal Punishment*, GUNDERSEN HEALTH (August 2008) <http://www.gundersenhealth.org/ncptc/enter-for-effective-discipline/resources/organizations-against>; see also NATIONAL ASS'N OF SCHOOL PSYCHOLOGISTS, CORPORAL PUNISHMENT POSITION PAPER (2006) http://www.nasponline.org/about_nasp/positionpapers/CorporalPunishment.pdf.

²¹ Elizabeth T. Gershoff & Susan H. Bitensky, *The Case Against Corporal Punishment of Children*, 13 PSYCHOL., PUB. POL'Y, & LAW 231, 233–234, 238 (2007).

²² Global Initiative to End All Corporal Punishment of Children, *Review of Research on the Effects of Corporal Punishment* (2013) <http://www.endcorporalpunishment.org>.

²³ See e.g., J. Csorba et al., *Family and School-Related Stresses in Depressed Hungarian Children*, EUR. PSYCHIATRY 16, 18–26 (2001); Heather L. Bender et al., *Use of Harsh Physical Discipline and Developmental Outcomes in Adolescence*, DEV. & PSYCHOPATHOLOGY 19, 227–242 (2007); Mary K. Eamon, *Antecedents and Socioemotional Consequences of Physical Punishment in Two Parent Families*, CHILD ABUSE & NEGLECT 6, 787–802 (2001); Christina M. Rodriguez, *Parental Discipline and Abuse Potential Affects on Child Depression, Anxiety and Attributions*, J. MARRIAGE & FAM. 65, 809–817 (2003); Joseph Lau et al., *The Relationship Between Physical Maltreatment and Substance Use Among Adolescents: A Survey of 95,788 Adolescents in Hong Kong*, J. ADOLESCENT HEALTH 37, 110–119 (2005); Ronald Rohner & Angela Steely, *Relations Among Corporal Punishment, Perceived Parental Acceptance, and Psychological Adjustment in Jamaican Youths*, CROSS-CULTURAL RES. 40, 268–286 (2006).

²⁴ See e.g. Elizabeth Gershoff, *Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-analytic and Theoretical Review*, 128 PSYCH. BULL. 539 (2002); Elizabeth Gershoff et al., *Parent Discipline Techniques as Predictors of Child Aggression and Anxiety in an International Sample*, 81 CHILD. DEV. 487 (2010); Linda S. Pagani, *Risk Factor Models for Adolescent Verbal and Physical Aggression Toward Mothers*, 28 INT'L J. BEHAV. DEV. 528 (2004); Jennifer Lansford et al., *Physical Discipline and Children's Adjustment: Cultural Normativeness as a Moderator*, 76 CHILD. DEV. 1234 (2005); Andrew Grogan-Taylor, *Corporal Punishment and the Growth Trajectory of Children's Anti-Social Behavior*, 10 CHILD. MALTREATMENT 283 (2005); David C.R. Kerr, *Parental Discipline and Externalizing Behavior Problems in Early Childhood: The Roles of Moral Regulation and Child Gender*, 32 J. ABNORMAL CHILD PSYCHOL. 369 (2004).

There is a greater likelihood that individuals who were physically punished in childhood will use violence on others when they are adults.²⁵

Additionally, there is compelling evidence that rewards, positive reinforcement, and motivational techniques coupled with non-physical punishment techniques are superior in molding appropriate behaviors and eliminating misbehavior.²⁶ Based on all the available research, there is no empirical evidence of the benefit of corporal punishment.²⁷ Dr. Geydanus, Professor of Pediatrics and Human Development at Michigan State University, in testimony before the U.S. House of Representatives, Committee on Education and Labor in 2010, stated that a review of the research shows that “corporal punishment in schools is an ineffective, dangerous and unacceptable method of discipline.”²⁸

Supporters of corporal punishment often make the erroneous correlation that paddling is good discipline, however research shows that it does not effectuate long-term compliance, rather it teaches students only to avoid punishment instead of teaching internal control and making a real change in behavior.²⁹ There are many instances of abuse and overwhelming evidence of negative side effects to children from using corporal punishment.³⁰ Because the risks outweigh any perceived benefits, corporal punishment should not be used as a form of discipline in public schools.³¹

IV. CASE REVIEW

A. *Ingraham v. Wright*³²

This landmark case has been a significant impediment against abolishing the use of corporal punishment in public schools. In this 1977 case, several Dade County junior high school students and their parents

²⁵ See Gershoff & Bitensky, *supra* note 21, at 239.

²⁶ SAUL AXELROD & JACK APSCHÉ, *EFFECTS OF PUNISHMENT ON HUMAN BEHAVIOR* (N.Y. Academic Press 1984); John Northup et al., *Publication Trends in 25 Years of the Journal of Applied Behavior Analysis*, 26 J. BEHAV. ANALYSIS 527 (1993).

²⁷ Cindy S. Moelis, *Banning Corporal Punishment: A Crucial Step Towards Preventing Child Abuse*, 9 CHILD LEGAL RTS. J. 2, 2–5 (1988).

²⁸ *Corporal Punishment in Schools and Its Effect on Academic Success: Hearing Before the Subcomm. on Healthy Families and Communities Comm. on Educ. and Labor*, 111th Cong., 12 (2010).

²⁹ Gershoff, *supra* note 24, at 554.

³⁰ Irwin A. Hyman, et al., *Analysis of Physical Abuse in American Schools*, 13 AGGRESSIVE BEHAV. 1, 2 (1987); ADAH MAURER, *IT DOES HAPPEN HERE, IN CORPORAL PUNISHMENT IN AMERICAN EDUCATION* 219, 223 (Hyman & Wise eds. 1979).

³¹ See Gershoff & Bitensky, *supra* note 21, at 252.

³² *Ingraham v. Wright*, 430 U.S. 651, 657 (1977).

filed an action in federal court claiming that Dade County, Florida school administrators used excessive corporal punishment, thus violating the students' rights to bodily integrity.³³ The complaint contained three counts; the first two counts were for individual students, Ingraham and Andrews, based on paddling at Drew Junior High School.³⁴

Ingraham was slow to leave the auditorium, as instructed by his teacher, so he was held over a table in the principal's office and smacked with a paddle more than 20 times.³⁵ The paddling was so harsh that it caused a hematoma, which required medical attention and caused him to miss a week of school.³⁶

Andrews was paddled about 10 times for minor infractions; twice he was struck on his arms, once causing him to lose the full use of his arm for a week.³⁷ Testimony of 16 other students from the school established the fact that punishment at that school was excessive and severe and that it sometimes required medical treatment.³⁸ The third count was a class action claim seeking declarative and injunctive relief against the use of corporal punishment on Dade County public school children.³⁹

The Court did not focus on the use of corporal punishment as discipline, but rather on whether its excessive use was a constitutional violation.⁴⁰ The Court addressed two questions:

(1) Whether the paddling of the students violated their Eighth Amendment right to be free from cruel and unusual punishment? The Court held that the Eighth Amendment's protection from cruel and unusual punishment only applied to prisoners convicted of a crime.⁴¹

(2) Whether the corporal punishment violated the students' Fourteenth Amendment right to due process (the guarantee of protection against state deprivation of life, liberty or property without due process of law, i.e., the right to be heard before infliction of punishment)? The Court held that the students did have a constitutionally protected liberty interest, but that

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Ingraham, 430 U.S. at 657

³⁹ *Id.* at 653.

⁴⁰ Ingraham, 430 U.S. at 676.

⁴¹ *Id.* at 653, 689.

common civil and criminal law remedies were sufficient.⁴² Therefore, the Court decided not to impose any rules of procedural due process to govern corporal punishment because they did not want to impose a burden on the effectiveness of the use of corporal punishment in the schools.⁴³

In a close vote, the 5 to 4 majority decision was based on precedent and tradition, looking principally to the past for guidance as to social morality.⁴⁴ The Court ignored the Plaintiffs' testimony detailing the clearly excessive nature of the corporal punishment administered.⁴⁵ The school officials were not chastised for using excessive disciplinary measures for minor offenses, resulting in the need for medical attention.⁴⁶ Instead, the child's right to be free from physical abuse was trivialized, because despite the obvious excessive nature of the corporal punishment, the Court refused to grant the children relief.⁴⁷ The minority opinion raised many valid issues, which the Court had not appropriately addressed.⁴⁸

Legal support for corporal punishment is now a minority position in the United States.⁴⁹ Thirty-one states plus the District of Columbia and Puerto Rico already prohibit it.⁵⁰ Many of the states that prohibit corporal punishment have the greatest populations.⁵¹ Also, several large cities and school districts, which are located in states that do allow for corporal punishment, ban it in their schools.⁵² As of the last census in 2012, the United States had an estimated 313,914,040 inhabitants of which an estimated 190,790,386 lived in states or districts that prohibit corporal punishment.⁵³ This translates to a majority of 61% of the population.⁵⁴

The international lawmaking community's position is that corporal punishment of children is a human rights violation because it is unethical

⁴² *Id.* at 653, 672.

⁴³ *Id.* at 652.

⁴⁴ *Id.* at 651.

⁴⁵ *Id.*

⁴⁶ *Ingraham*, 430 U.S. at 651.

⁴⁷ *Id.* at 672.

⁴⁸ *Id.* at 683–702.

⁴⁹ See Ctr. for Effective Discipline, *Discipline at School*, GUNDERSEN HEALTH, <http://www.gundersenhealth.org/ncptc/center-for-effective-discipline>.

⁵⁰ *Id.*

⁵¹ U.S. Census Bureau, *State & County Quick Facts*, CENSUS, <http://quickfacts.census.gov/qfd/index.html>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

and morally indefensible.⁵⁵ The international law forbidding corporal punishment of children is a reflection of world opinion and should serve to enlighten the deliberation of the corporal punishment issue in the United States.⁵⁶ The United Nations in its Convention on the Rights of the Child officially condemned the use of corporal punishment, both in the home and in schools and encouraged governments to ban corporal punishment on the grounds that the freedom from being hit is a universal right from which children should not be excluded and that right should not be sacrificed in order to maintain discipline.⁵⁷

If a similar case came before the Supreme Court today, in light of the extensive research that demonstrates the dangers of corporal punishment, the change of cultural norms and public sentiment against treating children violently, as well as the current majority views of basic human decency regarding children, it is likely that the *Ingraham* decision would be overturned. The reasoning of the Court about eliminating corporal punishment in schools would likely resemble the reasoning of the Supreme Court in *Atkins v. Virginia*,⁵⁸ which created federal legislation prohibiting the death penalty for those criminals who were mentally retarded.⁵⁹

The *Atkins* Court looked at the case from the public policy perspective of morality and acknowledged social change.⁶⁰ In that case, the Court took into consideration the following factors: that many states had enacted legislation prohibiting the use of capital punishment against mentally retarded persons, the widespread evidence that Americans were against the use of capital punishment on mentally retarded persons, and the “world community’s” disapproval of the use of capital punishment on the mentally retarded.⁶¹ Ultimately, the *Atkins* Court held that the imposition of the death penalty on mentally retarded persons was excessive punishment under the Eighth Amendment.⁶²

Following the Court’s method of reasoning in *Atkins*, if the Supreme Court today was presented with a new case involving corporal

⁵⁵ SUSAN H. BITENSKY, *CORPORAL PUNISHMENT OF CHILDREN: A HUMAN RIGHTS VIOLATION* (Transnational Pub., 2006).

⁵⁶ Susan H. Bitensky, *Spare the Rod, Embrace our Humanity: Toward a New Legal Regime Prohibiting Corporal Punishment of Children*, 31 U. MICH. J. L. & REFORM 353, 361–88, 404–21 (1998).

⁵⁷ UNITED NATIONS CONVENTION, CRC/C/GC/8, ON THE RIGHT OF THE CHILD TO PROTECTION FROM CORPORAL PUNISHMENT AND OTHER CRUEL OR DEGRADING FORMS OF PUNISHMENT (2007).

⁵⁸ *Atkins v. Virginia*, 536 U.S. 304 (2002).

⁵⁹ *Id.* at 320.

⁶⁰ *Id.* at 315.

⁶¹ *Id.* at 315–317.

⁶² *Id.* at 321.

punishment in a public school that exhibited acts comparable to those in *Ingraham*, the Court would take into consideration the following factors: that 31 states now ban corporal punishment in public schools, the majority of people in the United States disapprove of corporal punishment in public schools, the extensive research substantiating the negative effects of corporal punishment on children, the evidence that it is an ineffective and counterproductive method of discipline,⁶³ and that international law finds corporal punishment of children to be a human rights violation.⁶⁴

Finally, in resolving the hypothetical new case, the Court should extend the protection of the Eighth Amendment to children in public schools as there is nothing in the wording of the Constitution that would restrict such application. As Justice White pointed out in his dissent in *Ingraham*, “the fact that the Framers did not choose to insert the word ‘criminal’ into the language of the Eighth Amendment is strong evidence that the Amendment was designed to prohibit all inhumane or barbaric punishments, no matter the nature of the offense for which the punishment is imposed.”⁶⁵ The application of that protection would embrace the moral changes in society reflecting the disapproval of violence used on children.⁶⁶ Therefore, in our hypothetical case, the Court would conclude by prohibiting corporal punishment in schools.

Ingraham was 37 years ago and it is based on outdated ethics, as well as the Court’s failure to acknowledge or address the reality of abuses and the detrimental effects of corporal punishment.⁶⁷ In fact, Dade County schools now prohibit corporal punishment in public schools, despite the fact that the State of Florida allows it.⁶⁸

⁶³ Global Initiative to End All Corporal Punishment of Children, *supra* note 22, at 5.

⁶⁴ Bitensky, *supra* note 55, at 8.

⁶⁵ *Ingraham*, 430 U.S. at 685.

⁶⁶ *Id.* at 683 (White, J., dissenting); U.S. CONST. amend. VIII.

⁶⁷ HUMAN RIGHTS WATCH, A VIOLENT EDUCATION CORPORAL PUNISHMENT OF CHILDREN IN U.S. PUBLIC SCHOOLS 4, 57 (2008).

⁶⁸ Miami-Dade County Public Schools, *Corporal Punishment – Prohibited*, available at <http://www.dadeschools.net/schoolboard/rules/Chapt5/5d-1.07.pdf> (“The administration of corporal punishment in Miami-Dade County Public Schools is strictly prohibited. Miami-Dade County Public Schools has implemented comprehensive programs for the alternative control of discipline”).

V. CIVIL RIGHTS CONSIDERATIONS

A. *Disproportionate Corporal Punishment of Minorities*

The Fourteenth Amendment provides equal protection and requires that any action taken by a school “be applied equally to similarly situated students.”⁶⁹ However, research indicates that African Americans and other minority students are subject to more paddling in school.⁷⁰

The education system in America has a historical racial and socioeconomic segregation issue that goes beyond the ratification of the 14th Amendment and civil rights legislation.⁷¹ The issue has been recognized to exist by the Human Rights Committee, who in its fourth periodic review of 2013 asked the United States to provide information on the unequal use of corporal punishment that affects African American students.⁷²

The U.S. Department of Education Office for Civil Rights reported in 2007 that African American children were 2.5 times more likely to be paddled in school than white children.⁷³ Data also revealed that they are 6.5 times more at risk of receiving such punishment than Hispanics.⁷⁴ In addition, boys were 3.4 times more likely to be paddled than girls.⁷⁵ The inequitable administration of corporal punishment in schools is of significant concern when a segment of society is prejudicially subject to such harsh discipline.

In a study conducted in Florida in 2012, 39% of all black students were suspended at least once compared with only 22% of white students, with black students averaging a longer period of suspension than white students.⁷⁶ In general, minorities such as blacks and Hispanics receive punishment that is more severe, even for less serious offenses.⁷⁷ Despite the fact that less obtrusive disciplinary alternatives exist, African American students are still more likely to be subjected to harsher measures, such as corporal punishment.⁷⁸

⁶⁹ THOMAS HUTTON & KIRK BAILEY, SCHOOL POLICIES AND LEGAL ISSUES SUPPORTING SAFE SCHOOLS 8 (2007).

⁷⁰ See Gershoff & Bitensky, *supra* note 21, at 247.

⁷¹ THE LEADERSHIP CONFERENCE EDUCATION FUND, STILL SEGREGATED: HOW RACE & POVERTY STYMIE THE RIGHT TO EDUCATION, line 6 (2013).

⁷² *Id.* at line 1.

⁷³ See Gershoff & Bitensky, *supra* note 21, at 247.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ THE LEADERSHIP CONF. EDUCATION FUND, *supra* note 71, at 8.

⁷⁷ *Id.*

⁷⁸ WILLIAM DRAKEFORD, NATIONAL CENTER FOR CULTURALLY RESPONSIVE EDUCATIONAL SYSTEMS, RACIAL DISPROPORTIONALITY IN SCHOOL DISCIPLINARY PRACTICES 4 (2006).

The judiciary will only scrutinize the policies adopted by a school district when the actions taken by the school affect students differently on the basis of a protected characteristic, such as race.⁷⁹ In a case where a student alleges discrimination, he or she must prove that there was some racially discriminatory intent behind the action taken by the school.⁸⁰ This is an extremely hard burden to prove and courts have in the past been reluctant to make such inferences from statistical evidence alone.⁸¹

B. Corporal Punishment also Performed on Children with Disabilities

Special needs students, who are our most vulnerable children because they have mental and/or physical handicaps, should never be subject to corporal punishment. Students with disabilities are already presented with many challenges to thrive as a result of their conditions.⁸² These students should not be disciplined using corporal punishment, as it has the potential to exacerbate their existing conditions and cause serious physical or mental harm.⁸³ A special needs student who is paddled will feel the pain, but may not be able to comprehend the connection between their behavior and the physical violence of corporal punishment. These students might even be punished for behaviors related to their illness (which they are not in control of).

In 2009, the United States of America signed the Convention on the Rights of Persons with Disabilities' Treaty.⁸⁴ One of the clear purposes of the treaty was to provide for non-discrimination on basis of disability and includes promoting "respect for the [disabled's] inherent dignity".⁸⁵ Allowing corporal punishment on students with disabilities is incompatible with this principle.⁸⁶

There is certainly a sense of hypocrisy when special programs are created (thereby recognizing the special needs of children with

⁷⁹ THOMAS HUTTON & KIRK BAILEY, SCHOOL POLICIES AND LEGAL ISSUES SUPPORTING SAFE SCHOOLS 8 (2007).

⁸⁰ *Id.* at 9.

⁸¹ *Id.*

⁸² Alice Farmer, *Stop Beating Students With Disabilities in Schools*, ACLU BLOG OF RIGHTS (Aug. 11, 2009) <https://www.aclu.org/blog/human-rights-racial-justice/stop-beating-students-disabilities-schools>.

⁸³ *Id.*

⁸⁴ *The Convention on the Rights of Persons with Disabilities*, U.S. INT'L COUNCIL ON DISABILITIES, available at, <http://www.usicd.org/index.cfm/crpd>.

⁸⁵ Alice Farmer & Kate Stinson, *Failing the Grade: How the Use of Corporal Punishment in U.S. Public Schools Demonstrates the Need for U.S. Ratification of the Children's Rights Convention and the Convention on the Rights of Persons with Disabilities*, 54 N.Y.L. SCH. L. REV. 1035, 1057 (2010).

⁸⁶ *Id.*

disabilities) and allowing these same children to be the subject of corporal punishment in schools that allow it. There are no protections from corporal punishment carved out for these defenseless children.

In Florida, this practice is evidenced by the information on the website of Civil Rights Data Collection which shows most of the school districts that allow corporal punishment, have in fact performed corporal punishment on students with disabilities.⁸⁷

VI. PADDLING & SOCIOECONOMIC STATUS IN FLORIDA

The number of children that are paddled each year is disproportionately higher in states with lower social capital.⁸⁸ It appears that those students that come from lower socioeconomic classes are more likely to be punished physically and that socioeconomic status bears a direct relationship with corporal punishment in schools.⁸⁹

In Florida, this principle seems to explain the disparities in corporal punishment as administered throughout the state. When the data from the student discipline table for the year 2011-12 by the Florida Department of Education is compared with the data from the last population census, the results demonstrate that students who are disciplined with corporal punishment come from families with lower incomes.⁹⁰ Out of the eleven Florida counties that reported over one-hundred incidents of corporal punishment in the school year 2011-12; 91% have a significantly lower median income than the median income of the state itself.⁹¹ This is an unconscionable social inequity.

⁸⁷ See e.g., *Discipline of Students with Disability*, CIVIL RIGHTS DATA COLLECTION, <http://ocrdata.ed.gov/Page?t=d&eid=31592&syk=5&pid=561> (This shows as an example Alachua County and how corporal punishment on disabled children has been performed. This is one of many examples in the website).

⁸⁸ See Gershoff & Bitensky, *supra* note 21, at 247.

⁸⁹ Harold G. Grasmick et al., *Support for Corporal Punishment in the Schools: A Comparison of the Effects of Socioeconomic Status and Religion*, 73 SOC. SCI. Q. 177, 178, 184 (1992); see generally Irwin A. Hyman, *The National Center for the Study of Corporal Punishment and Alternatives in the School: Moving from Policy Formation to Implementation*, 12 J. CLINICAL CHILD PSYCHOL. 257, 257-260 (1983).

⁹⁰ *Comparative Trends in Discipline and the Decline in the Use of Corporal Punishment*, FLA. DEP'T OF EDUC., (2011-2012) <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.shtml>; see also *State & County Quick Facts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/index.html>.

⁹¹ *Id.*

VII. CORPORAL PUNISHMENT IN FLORIDA SCHOOLS

CORPORAL PUNISHMENT ALLOWED		CORPORAL PUNISHMENT PROHIBITED	
COUNTY	POPULATION	COUNTY	POPULATION
BAKER	27,086	ALACHUA	251,417
BAY	171,903	BREVARD	547,307
BRADFORD	27,049	BROWARD	1,815,137
CALHOUN	14,723	CHARLOTTE	162,449
CITRUS	139,360	COLLIER	332,427
CLAY	194,345	DUVAL	879,602
COLUMBIA	67,966	ESCAMBIA	302,715
DESOTO	34,712	DEAF/BLIND SCHOOL	N/A
DIXIE	16,126	FAMU LAB SCH	N/A
FRANKLIN	11,686	FAU LAB SCH	N/A
GILCHRIST	16,815	FLAGLER	98,359
GLADES	13,107	FSU CHTR SCH	N/A
GULF	15,718	GADSDEN	46,528
HAMILTON	14,708	HERNANDO	173,422
HARDEE	27,514	INDIAN RIVER	140,567
HENDRY	37,447	LEE	645,293
HIGHLANDS	98,128	LEON	283,769
HILLSBOROUGH	1,277,746	MANATEE	333,125
HOLMES	19,806	MARTIN	148,817
JACKSON	48,968	MIAMI-DADE	2,591,035
JEFFERSON	14,256	MONROE	74,809
LAFAYETTE	8,804	OKALOOSA	190,083
LAKE	303,186	OKEECHOBEE Y. DEV.	N/A
LEVY	40,025	CENTER	
LIBERTY	8,276	ORANGE	1,202,234
MADISON	18,907	PALM BEACH	1,356,545
MARION	335,125	PASCO	470,391
NASSAU	74,629	PINELLAS	921,319
OKEECHOBEE	39,476	POLK	616,158
OSCEOLA	287,416	SARASOTA	386,147
PUTNAM	73,263	SEMINOLE	430,838
SANTA ROSA	158,512	ST. LUCIE	283,866
ST. JOHNS	202,188	TAYLOR	22,744
SUMTER	101,620	UF LAB SCH	N/A
SUWANNEE	43,656	VIRTUAL SCHOOL	N/A
UNION	15,212		
VOLUSIA	496,950		
WAKULLA	30,818		
WALTON	57,582		
WASHINGTON	24,892		
COUNTIES TOTAL:	40	COUNTIES TOTAL:	34
POPULATION TOTAL:	4,609,706	POPULATION TOTAL:	14,684,359

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⁹² This chart shows which school districts among the Florida counties still allow corporal punishment and which ones do not, as of 2012. The population is measured from the 2012 U.S. Census. As we can see, this chart demonstrates that the majority of the

In Florida schools, individual school districts are allowed to determine their own policies on corporal punishment.⁹³ Florida Statute section 1006.07(1) (a) gives the individual school boards the authority to prohibit corporal punishment, rather than eliminating the use of corporal punishment throughout the state.⁹⁴ In 40 out of 74⁹⁵ districts, Florida children from pre-school through high school are still being paddled.⁹⁶ Many of those counties are located in rural North Florida.

In 1989-1990, the Florida Department of Education reported that 33,188 Florida students were subject to corporal punishment; in 2009-2010, 3,661 Florida students were subject to corporal punishment; in 2012, 2,996 Florida students were subject to corporal punishment.⁹⁷ Florida has followed the national trend and the use of corporal punishment has declined, but this deplorable practice still continues. Florida Statute 1003.32 does not even require teachers to report each incident of a child being paddled.⁹⁸ Therefore, these are only the reported cases and the actual numbers may be significantly higher.

population in Florida lives in counties where corporal punishment is prohibited, which supports the inference that the majority of people in the state do not support it. Created by Linda Fresneda.

* These 13 districts allow corporal punishment; however there are no reported incidents in the last ED.gov Civil Rights Data Collection, 2011.

⁹³ See FLA. STAT. § 1006.07(1) (a) (2014).

⁹⁴ *Id.*

⁹⁵ *Public Schools / Districts*, FLA. DEPT. OF EDUC., http://www.fldoe.org/Schools/schoolmap/flash/schoolmap_text.asp. Under Florida statute, each county comprises a school district; FLA. STAT. § 1001.30 (2014). In addition to the regular districts, there are four laboratory schools (operated by Florida A & M University, Florida Atlantic University, Florida State University, and the University of Florida); FLA. STAT. § 1000.04 (2014). There is also the Florida School for the Deaf and Blind, and the Florida Virtual School; FLA. STAT. § 1000.04 (2014). Additionally, there is the Okeechobee Youth Development Center (administered by the Florida Department of Juvenile Justice); FLA. STAT. § 1003.51 (2014).

⁹⁶ FLA. STAT. § 1006.07 (2014). This number is a good faith estimate based on our review of each of schools located within the county's disciplinary handbooks. Our findings reveal that only a limited amount of districts specifically prohibit corporal punishment in their guidelines. Some of the other counties' failure to mention corporal punishment in their policies as a method of discipline has been interpreted as the county not using it. Either way the school district's webpages lack a uniform system where this information can be located, making it challenging to have a 100 % accurate count.

⁹⁷ *Trends in Discipline and the Decline in Use of Corporal Punishment*, FLA. DEPT. OF EDUC., (2009-2010) <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.shtml>; *Trends in Discipline and the Decline in the Use of Corporal Punishment*, FLA. DEP'T. OF EDUC., (2011-2012) <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.shtml>.

⁹⁸ FLA. STAT. § 1003.32 (2014).

Florida Statute 1003.01(7) defines corporal punishment as “the moderate use of physical force or physical contact by a teacher or principal as may be necessary to maintain discipline or to enforce school rule.”⁹⁹ Here are some definitions of corporal punishment from other sources that create a clearer picture: the striking of a person’s body as punishment;¹⁰⁰ punishment of a physical nature;¹⁰¹ any punishment in which physical force is used and intended to cause some degree of pain or discomfort;¹⁰² intentional infliction of physical pain as a method of changing behavior.¹⁰³

The legislature provides school districts a guideline which is disturbingly minimal regarding corporal punishment of school children in Florida Statute 1003.32:

(1)(k) Use corporal punishment according to school board policy and at least the following procedures, if a teacher feels that corporal punishment is necessary:

1. The use of corporal punishment shall be approved in principle by the principal before it is used, *but approval is not necessary for each specific instance in which it is used*. The principal shall prepare guidelines for administering such punishment which identify the types of punishable offenses, the conditions under which punishment shall be administered, and the specific personnel on the school staff authorized to administer the punishment.

2. A teacher or principal may administer corporal punishment only in the presence of another adult who is informed beforehand, and in the student’s presence, of the reason for the punishment.

3. A teacher or principal who has administered punishment shall, *upon request* provide the student’s parent with written explanation of the reason for the

⁹⁹ FLA. STAT. § 1003.01(7) (2014).

¹⁰⁰ ENCARTA WORLD ENGLISH DICTIONARY 406 (1999).

¹⁰¹ Holly Case, *The Long-Term Effects of Physical Punishment on a Child*, LIVESTRONG., <http://www.livestrong.com/article/168282-definition-of-corporal-punishment-child-abuse/#ixzz2MD1q8y> (last visited Feb. 7, 2015).

¹⁰² M.J. Stephey, *Corporal Punishment in U.S. Schools*, TIME MAG. (Aug. 12, 2009) <http://www.time.com/time/nation/article/0,8599,1915820,00.html#ixzz2MCzApAaB> (giving the definition of Corporal Punishment under human rights law).

¹⁰³ *Corporal Punishment in the School Setting*, NAT’L ASS’N OF SCH. NURSES, <http://www.nasn.org/Portals/0/positions/2011pscorporal.pdf>.

punishment and the name of the other adult who was present.

(2) Teachers and *other instructional personnel* shall:

(a) Set and enforce reasonable classroom rules that treat all students equitably.

(b) Seek professional development to improve classroom management skills when data show that they are not effective in handling minor classroom disruptions.

(c) Maintain an orderly and disciplined classroom with a positive and effective learning environment that maximizes learning and minimizes disruption.

(d) Work with parents and other school personnel to solve discipline problems in their classrooms.

(3) A teacher may send a student to the principal's office to maintain effective discipline in the classroom and may recommend an appropriate consequence consistent with the student code of conduct under s. 1006.07. The principal shall respond by employing the teacher's recommended consequence or a more serious disciplinary action if the student's history of disruptive behavior warrants it. If the principal determines that a lesser disciplinary action is appropriate, the principal should consult with the teacher prior to taking the disciplinary action.¹⁰⁴

Florida Statute section 1006.10 addresses the authority of school bus drivers and district school boards relating to student discipline and student safety on school buses.¹⁰⁵ Subsection (2) states that the principal or the principal's designee may delegate any disciplinary authority to school bus drivers except for the suspension of students from riding the bus.

The inclusion of school bus drivers and other instructional personnel in the wording of the statute would indicate that Florida legislators consider both school bus drivers and the broadly inclusive "other instructional personnel" to be sufficiently trained to reasonably and fairly

¹⁰⁴ FLA. STAT. § 1003.32(1)(k), (2)(3) (2014) (emphasis added).

¹⁰⁵ FLA. STAT. § 1006.10 (2014).

administer corporal punishment to children.¹⁰⁶ All parents and legislators should carefully review the statute and request information regarding the training provided to those who have the authority to administer corporal punishment to children.

In order to determine in which districts bus drivers have the authority to paddle children, the legislature would need to examine the policies and practices of all the school districts that sanction corporal punishment, as well as the policies of each of the individual schools in those districts. The districts that allow corporal punishment have a basic guideline, but the specifics of administering corporal punishment are determined by the individual schools.¹⁰⁷ The legislature has failed to provide uniform, clear, and specific guidelines to insure that all students who attend Florida schools that administer corporal punishment are treated fairly and equitably in order to minimize abuse.

Florida Statute section 1006.11(2) ensures that teachers, principals or their designees, or school bus drivers are not civilly or criminally liable for using corporal punishment that complies with the State and District rules.¹⁰⁸ This in effect provides little recourse for parents of a child who has been injured. Instead, “*an extra layer of protection is provided for school employees by addressing disciplinary acts explicitly within the state statute.*”¹⁰⁹ Parents can only sue for excessive force, cruel or unusual punishment, or failure to follow district guidelines.¹¹⁰ In addition, under Florida law the student can only recover from the personal assets of the teacher, principal, or other designee that administered the corporal punishment.¹¹¹ The school board is protected by sovereign immunity from damages for the torts of its agents.¹¹² Teachers, administrators and even school bus drivers have immunity from prosecution that parents do not have when it comes to child abuse.¹¹³ In addition to this legal inequity, there really is no judgment that will erase the adverse effects of physical violence on a child.

¹⁰⁶ FLA. STAT. § 1006.10(2) (2014).

¹⁰⁷ FLA. STAT. § 1003.32(1)(k), (2)(3) (2014).

¹⁰⁸ FLA. STAT. § 1006.11(2) (2014).

¹⁰⁹ ALICE FARMER, *IMPAIRING EDUCATION: CORPORAL PUNISHMENT OF STUDENTS WITH DISABILITIES IN U.S.* 67 (2009).

¹¹⁰ FLA. STAT. § 1006.11(2) (2013).

¹¹¹ *Igraham*, 430 U.S. at 695.

¹¹² *Buck v. McLean*, 115 So. 2d 764, 765 (Fla. Dist. Ct. App. 1959).

¹¹³ Suzanne Dworak-Peck, *Stop Abuse of Children in Schools*, N.Y. TIMES, July 25, 1987, at 30.

VIII. CHANGES RECOMMENDED TO FLORIDA STATUTES ON CORPORAL PUNISHMENT

Florida needs legislation to protect public school children. As former State Representative Ari Porth, D-Coral Springs stated, “[j]ust because you are born in a different county in Florida doesn’t mean you should be any less safe than a child in Broward . . . when I heard that this practice still exists, I was mortified. No child should not feel completely safe when they go to school.”¹¹⁴ In 2012, Porth sponsored Florida House Bill 493 and Eleanor Sobel, D-Hollywood sponsored Florida Senate Bill 264, an identical bill to ban corporal punishment statewide.¹¹⁵ Sadly, both bills died in committee.

Ideally, the Florida legislature should consider the best interests of all Florida school children and demonstrate Florida’s evolving standards of decency by eliminating corporal punishment in all Florida schools. It is time to move forward into the enlightenment of the 21st century and reflect our humanity by protecting all Florida’s school children from the negative effects and humiliation of corporal punishment. The legislature should promote an effective, fair, and rational educational disciplinary policy in the best interests of the child. Nevertheless, banning corporal punishment is bound to be met with resistance by legislators from districts where corporal punishment is currently practiced. To effectuate change, we will need to educate those communities and legislators so they can modify their attitudes. We can provide them with the extensive evidence from numerous studies that clearly demonstrate the harmful effects of corporal punishment in order to enable them to make their decisions based on current information, rather than based on entrenched traditions and local anecdotal commentaries.

If prohibiting corporal punishment in Florida public schools is not politically feasible right now, let us not give up on making Florida schools safer for all those school children subjected to corporal punishment. Determining what is reasonable and what is excessive corporal punishment is subjective. In our current system of corporal punishment there are abuses and inconsistencies; it is time to implement some legal reforms. At the very least, the legislature should reassess its current policies to insure fairness in the administration of corporal

¹¹⁴ Sarah Gonzalez, *Bottom Line on Paddling: Florida Schools Still Do It- You Thought Paddling Students was a Relic of Bygone Days? Think Again*, THE MIAMI HERALD (March 17, 2012).

¹¹⁵ H.B. 493, 2012 Fla. Leg., 2d Sess. (the bill died during March 9, 2012 K-20 Competitiveness Subcommittee); S.B. 264, 2012 Fla. Leg., 2d Sess. (the bill died during March 9, 2012 died in Education Pre-K – 12).

punishment where it is allowed, by establishing uniformity through clear, specific protocols.

A. Suggestions for Creating a Uniform and Specific Protocol for Florida Schools that Allow Corporal Punishment

The purpose of the protocol is to deter abuse when administering corporal punishment, to establish accountability for the use of corporal punishment, to decrease the number of instances that corporal punishment is used, to encourage alternate less harmful methods of classroom management, as well as to insure that corporal punishment is meted out fairly and equitably in all districts that allow it.

1. Administration

- Corporal punishment should be administered only for a list of specific infractions.
- Corporal punishment should be used only for major infractions and only as a last resort.
- Designate the exact number of “licks” for each of the authorized infractions by grade level.
- Determine the dimensions & material used for the paddle throughout Florida.
- Designate who may administer the corporal punishment. Consciously limit those who have that power to only professionals, such as principals and teachers.
- Designate that only the buttocks may be paddled.
- The statute’s broad protection for school personnel should be amended, so that if any area other than the buttocks is hit, the civil and criminal protections are not extended to the perpetrator of such corporal punishment.
- Designate in what location the corporal punishment should be administered. Corporal punishment should never be administered in front of other children. It should never be administered in the classroom, as that would be a major classroom disruption creating a hostile classroom environment.
- No student with mental or physical disabilities should be disciplined using corporal punishment without a parent present. It could exacerbate their underlying condition and cause serious physical or mental harm.

2. Notice & Documentation

- In order to prevent mistakes and lawsuits, best practices would require districts that allow corporal punishment to have parents “opt-in” for corporal punishment rather than “opt-out” of corporal punishment. Uniform statewide opt-in or opt-out forms should be provided for parents.
- The parent should be informed each time there is corporal punishment. The best practice would be providing notice before, not after, the corporal punishment is administered. The current Florida law requires parents to request documentation of the incident.¹¹⁶ Providing parents notice is important because some students who have been paddled may not tell their parents, although they may suffer both physical and emotional injuries, which the parent should have an opportunity to address promptly.
- The administrator of the corporal punishment should be required to fill out documentation for each instance of infliction of corporal punishment. This will enable better record keeping of the extent of corporal punishment being administered and thereby identify schools and teachers that need additional training in alternate methods of classroom management. Currently, the statute leaves it up to the teacher or other instructional personnel to seek professional development to improve classroom management skills.¹¹⁷
- The witness that is required by the current statute should also be required to sign the documentation.

3. Training and Evaluation

- Teachers in districts that sanction corporal punishment should have required in-service training for alternative methods of classroom management.
- If other instructional personnel (or bus drivers) are allowed to administer corporal punishment, they too should be required to have in-service training for alternative methods of student management.
- If a student has had several instances of corporal punishment they should be referred for counseling and evaluation. A protocol should be developed that triggers a required referral for appropriate services. If the student is continuously in trouble, it is likely that there may be underlying factors that need to be addressed and doing so will help alleviate the improper conduct.

¹¹⁶ FLA. STAT. § 1003.32(1)(k)3 (2014).

¹¹⁷ FLA. STAT. § 1003.32(k)3(2)b (2014).

- If a teacher over-utilizes corporal punishment, he/she should be provided additional support and training in order to develop better classroom management
- If a school over-utilizes corporal punishment, their classroom management practices should be accessed by the Florida Department of Education

IX. CONCLUSION

This is an issue of human decency; the values of a state and its moral progress will be judged by the way it chooses to treat its children. Corporal punishment in our public schools is not an issue that parents, concerned citizens, and legislators can ignore. The Florida legislature should act in the best interest of children and initiate legislation to protect all Florida public school children from violence by prohibiting corporal punishment in Florida public schools. If that legislative goal cannot be accomplished, our legislators must, at the very least, improve the existing conditions for Florida public school children, who are subject to corporal punishment. The current statutes need to be improved in order to protect Florida public school children through precise protocols for corporal punishment that establish fairness, consistency and accountability.