

**ACCEPTABLE DISCIPLINE OR CRIMINAL ABUSE? WHAT IF ADRIAN  
PETERSON WAS A NEW ENGLAND PATRIOT?**

Perhaps the only positive result of the recent issues that have plagued the National Football League is that it has brought two important issues to the national forefront: domestic violence and child abuse/corporal punishment. This article will focus on the latter and the state of the law in Massachusetts.

Physical discipline of children or corporal punishment is a hotly contested topic in our country. Some parents believe it is appropriate and legitimate discipline and others believe it constitutes abuse. Corporal punishment is the intentional infliction of pain that is designed to punish a person for his or her actions and teach that person not to do it again. About fifty (50%) percent of the states in the country, including Massachusetts, have outlawed corporal punishment outside of the home. In the Commonwealth, corporal punishment is prohibited in public schools (G.L. c. 71, §37G), day care (606 CMR 7.05(8)) and recreational camps (105 CMR §430.191).

Massachusetts law does not prevent all types of physical discipline but it does set certain limits. There is no statute or case in Massachusetts that specifically recognizes or approves a parental right to use force in disciplining a child. In *Commonwealth v. O'Connor*, 407 Mass. 663 (1990), the Supreme Judicial Court discussed such a right and noted that as of that time, there was no Massachusetts case or statute that granted parents or others the right to use reasonable force in disciplining a child. That said, there is also no law in Massachusetts that prohibits a parent from spanking a child. In 2007 a bill was placed before the Massachusetts legislature to outlaw spanking. It never passed. The line between permitted corporal punishment and punishment which constitutes criminal abuse is subjective and fact-driven. Courts have relied on the proposition that a parent may use reasonable force to discipline a child but not excessive force.

In some instances, child abuse cases are prosecuted by the state, i.e. assault and battery. In other cases, abuse is handled by The Department of Children and Families, the agency in Massachusetts which is charged with protecting children.

Abuse encompasses conduct “which causes harm or substantial risk of harm to a child’s health or welfare.” G.L. c. 119, §51A, as amended through St. 1993, c. 50, §23. Abuse is further defined by the regulations of the Department of Children and Families as “the non-accidental commission of any act by a caretaker upon a child under age 18 which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the laws of Commonwealth or any sexual contact between a caretaker and a child under the care of that individual. Abuse is not dependent upon location (i.e., abuse can occur while the child is in an out-of-home or in-home setting.” 110 Code Mass. Regs. §2.00. “Emotional injury” is defined as “an impairment to or disorder of the intellectual or psychological capacity of a child as evidenced by observable and substantial reduction in the child’s ability to function within a normal range of performance and behavior.” “Physical injury” is defined as: (a) death; (b) fracture of a bone, a subdural hematoma, burns, impairment of any organ, and any other such nontrivial injury; or (c) soft tissue swelling or skin bruising depending on such factors as the child’s age, circumstances under which the injury occurred, and the number and location of bruises; or (d) addiction to drug at birth; or (e) failure to thrive.

Anyone can report suspected abuse or neglect to the Department. There are, however, mandated reporters as defined by Massachusetts General Law c. 119, §51A. Mandated reporters include, but are not limited to, doctors, psychologists, teachers, guidance counselors, day care workers, dentists, nurses and psychiatrists.

In *Cobble v. Commissioner of the Dept. of Social Servs.*, 430 Mass. 385, 387-388, 395 (1999), the Court ruled that the parent's spanking of a nine year old child with a leather belt, delivering no more than five blows to the child's fully clothed buttocks in a nonviolent and controlled manner, not in anger, and leaving slightly pink marks with no bruising, combined with an explanation of the reason for the punishment and expressions of caring, did NOT constitute abuse as defined in the Department of Social Services regulations, 110 CMR §2.00 (1996).

Another leading case in Massachusetts is *Commonwealth v. Rubeck*, 64 Mass. App. Ct. 396 (2005). That case involved a mother and her two year old son. They were in the waiting room of a doctor's office when the child began to misbehave. The child was "running around and jumping up and down and whining." The mother yelled at her son, grabbed him and told him to "shut up, be quiet, sit down." The mother put her foot on her son's foot, pulled him toward her and said "If you don't stop it now, we're going out to the car and you'll be there alone with me." The child resumed jumping and running. The mother grabbed the boy by the collar and pulled him toward her while saying "shut up, stop it." She then grabbed him by the arms, shook him and threw him into a chair, the distance of a couple of feet. The child was crying. The mother appeared frustrated and out of control. Some other patients in the waiting room asked office personnel to intervene. The mother took the boy outside and the police were called. The mother's friend who was there denied that the mother forcefully threw the child into the chair. The friend said the mother put him in the chair. The friend also said the mother was not yelling but was talking in a normal voice.

In affirming the mother's conviction of assault and battery, the Court relied on Instruction 3.15 of the Massachusetts Superior Court Criminal Practice Jury Instructions (1<sup>st</sup> Supp. 2003) which states that "[a] parent, or one acting in the position of a parent and who has assumed the

responsibilities of a parent, may use reasonable force to discipline (his/her) minor child. However, a parent may not use excessive force as a means of discipline or chastisement.” In a footnote, the Court quoted a New York case which held that although physical force by a parent may be permissible if it is used for the training or education of a child, when the child is so young that he/she does not have the capacity to understand or appreciate the correction, the value of the training, education or discipline lost and therefore, the use of such physical force is impermissible. *Id.*, citing *Matter of Rodney C.*, 91 Misc. 2d 677, 680-681 (N.Y. Fam. Ct. 1977).

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