

Supreme Judicial Court says spanking a child is legal



The offices of the Supreme Judicial Court (*The Republican File*)



By **The Associated Press**

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By BOB SALSBERG, Associated Press

BOSTON (AP) -- Massachusetts' highest court for the first time established legal guidelines Thursday for the use of physical punishment by parents, saying it's permissible to discipline a child by spanking so long as "reasonable" force is used and the child is not harmed.

The Supreme Judicial Court issued the framework while reversing the assault and battery conviction of a Brockton man who had been seen by police spanking his almost 3-year-old daughter near a bus station.

Corporal punishment cases had come before the court in the past, but the justices noted that specific guidelines had never been issued for the parental privilege defense, leaving open the question of whether spanking was allowed under any circumstances in Massachusetts.

Writing for the seven-member court, Justice Barbara Lenk said two important interests needed to be balanced: protecting children against abuse; and avoiding unnecessary interference with the rights of parents to raise children as they see fit.

Spanking or other mild physical punishment was permissible if "the force used against the minor child is reasonable," and used for the purpose of "safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor's misconduct."

But the court made clear that force can never be used if it causes or risks causing any lasting physical or emotional harm, and concluded that the overall balance must always tip in favor of

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protecting children from abuse masking as discipline.

"By requiring that the force be reasonable and reasonably related to a legitimate purpose, this approach effectively balances respect for parental decisions regarding the care and upbringing of minor children with the Commonwealth's compelling interest in protecting children against abuse," Lenk wrote.

The justices reviewed guidelines in other states before issuing the decision, and acknowledged that some people abhor the use of spanking under any circumstances.

"I think there are far better ways to discipline children than spanking them," said Mary McGeown, chief executive officer of the Massachusetts Society for the Prevention of Cruelty to Children.

"We are the grown-ups. We are supposed to protect kids and hitting them is not a way to discipline them or empower them to make good decisions," she said.

McGeown credited the justices, however, for balancing strong views on both sides of the matter and was pleased with the court's strong position on child protection.

The court overturned the conviction of Jean Dorvil, who was charged in 2011 after two police officers said they witnessed him kick and then strike his young daughter in the buttocks. Dorvil said he was playing around with the girl, and spanked her lightly when she became disobedient.

The judge who tried the case cited conflicting testimony on whether the child was kicked but found Dorvil guilty of assault and battery for the spanking. He appealed on the grounds of parental privilege.

Martin Healy, chief legal counsel for the Massachusetts Bar Association, said the guidelines issued Thursday were long overdue.

"The state has been operating in a vacuum in terms of not having much guidance in these cases," said Healy.

The framework will assist both prosecutors and defense attorneys by clarifying the constitutional rights of parents to exercise their own judgment in child rearing -- within reason -- without undue state interference, Healy said.

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