

Parental Discipline: When Is It Abuse and/or a Crime?

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[Update, May 2016: In [this post](#) on the SOG's civil blog, Sara discusses two new appellate cases concerning the definition of abuse in the child discipline context.]

[Editor's note: Today's post is by Sara DePasquale, a relatively recent addition to the SOG faculty. Sara works in the areas of juvenile law and child welfare, and we are delighted to welcome her to the blog.]

Last Tuesday, Minnesota Vikings running back Adrian Peterson pled no contest to misdemeanor reckless assault after being charged in September with felony child abuse for disciplining his 4 year old son with a switch. Since the charges, he has been on the NFL "Commissioners Exempt List" and unable to play. Nike terminated his contract on Tuesday, and his future with the NFL remains uncertain.

What if Adrian Peterson lived in North Carolina?

The facts as the public knows them are that Adrian Peterson's son is 4 years old. While he was with his father in Texas last spring, his father disciplined him with a wooden switch, which caused multiple bruises and open cuts on the boy's hands, thighs, lower back, buttocks, and scrotum. The marks were still present when he returned to his mother's care in Minnesota. She brought him to a doctor, who made a report to Texas authorities. Adrian Peterson was criminally charged, and there are limited references to a child protective action.

I believe Adrian Peterson would have faced the same legal actions here.

North Carolina has a universal mandated reporting law, requiring any person who has cause to suspect a child is abused, neglected, or dependent to make a report to the county department of social services where the child resides or is found. [G.S. 7B-301\(a\)](#). The bruises and cuts on the child should have resulted in a report to a county DSS, thereby triggering the child protective services action. Upon determining a child is abused, the DSS director must report those findings to the district attorney and law enforcement for possible criminal investigation. [G.S. 7B-307\(a\)](#).

A Parent's Right to Use Corporal Punishment

Parents have a fundamental constitutional right to care, custody, and control of their children, including the right to discipline them. *Peterson v. Rogers*, 337 N.C. 397 (1994). However, a state may interfere with a parent's rights in order to protect a child when a parent is unfit or has acted inconsistently with those rights. *Price v. Howard*, 346 N.C. 68 (1997). Corporal punishment in and of itself will not result in state interference because it is neither abuse nor illegal. [In re C.B.](#), 180 N.C. App. 221 (2006). In fact, absent a school board policy or a parent's written statement to the contrary, NC allows for the use of corporal punishment by a child's teacher, principal, or assistant principal so long as excessive force, which is defined as force that causes injury that requires medical attention beyond simple first aid, is not used. [G.S. 115C-390.4](#).

What is the standard when determining if corporal punishment is abuse?

There are no bright line rules; instead, one must look at the facts of each case and consider the totality of the evidence as applied to the definitions of abuse under NC Juvenile and Criminal Codes. [In re L.T.R.](#), 181 N.C. App. 376 (2007). Factors to consider include:

- whether there was a disciplinary purpose, and if so the duration, instrument, and amount of force used,
- the child's age, response, and level of discomfort,
- whether there was injury (if so, of what type and duration) and need for treatment, and
- loss of work/school.

[In re L.T.R.](#); [State v. Romero](#), 164 N.C.App. 169 (2004).

The existence of temporary red marks is not determinative. *Scott v. Scott*, 157 N.C. App. 382 (2003). The lack of immediate medical attention is also not determinative. See *Romero*. However, age is given great weight. See *Romero* and *In re L.T.R.* compared to *In re C.B.*

Child Protective Services

In a child protective services action, the court determines if a child is abused, neglected, or dependent rather than determine a parent's culpability. In this case, the court will decide if Adrian Peterson's son will be adjudicated neglected and/or abused.

One definition of "neglect" is "a juvenile who does not receive proper care, supervision, or discipline." [G.S. 7B-101\(15\)](#). Age is a factor a court should consider when determining if the use of corporal punishment results in neglect. For example, a 2 year old whose mother did not believe repeatedly striking him with a belt on his buttocks and thighs was inappropriate discipline was adjudicated neglected. [In re A.J.M.](#), 177 N.C. App. 745 (2006).

There are several definitions of "abuse" in the Juvenile Code, two of which may apply here: a parent who inflicted serious physical injury to his child by other than accidental means, or a parent who used cruel or grossly inappropriate procedures or devices to modify his child's behavior. [G.S. 7B-101\(1\)a., c.](#) "Serious physical injury" is not defined by the Juvenile Code; however, the juvenile court may look to the Criminal Code for guidance and apply a fact specific analysis when considering all the evidence and factors. A 3 year old who is hit with a brush resulting in a six inch dark bruise lasting one week and causing the child discomfort days later was serious physical injury. [In re L.T.R.](#) However, a 13 year old who was beaten with a belt that caused one bruise on his leg and one on his arm was not serious physical injury. *In re C.B.*

Criminal Actions

In addition to misdemeanor assault on a child under 12 [[G.S. 14-33\(c\)\(3\)](#)], Adrian Peterson could have been charged with misdemeanor or felony child abuse. The distinction between them is whether the child suffered "bodily injury" versus "serious bodily injury" or "serious physical injury" by other than nonaccidental means. [G.S. 14-318.2](#); [G.S. 14-318.4](#). There's little doubt the child experienced "physical injury." Whether he suffered "serious physical injury," which includes an injury causing great pain and suffering, is a question of fact for the judge or jury. Looking at the totality of the evidence, the court of appeals found no error with the determination that "serious physical injury" occurred when (1) a 1 year old was struck with a belt in his forehead by his father, the child cried upon being hit, and a visible bruise resulted. [State v. Romero](#), 164 N.C.App. 169 (2004), (2) an 8 year old was repeatedly struck with a paddle on her buttocks causing her to bleed and resulting in her limping and needing medical care one week later, [State v. Williams](#), 154 N.C. App. 176 (2002), and (3) a 9 year old was hit with a belt for at least 40 minutes resulting in multiple bruises, his being in pain for at least two weeks, and ultimately his hospitalization, [State v. Williams](#), 184 N.C. App. 351 (2007).

Conclusion

Given Adrian Peterson's son's young age and the number, location, and duration of bruises and cuts, I believe he would have been adjudicated abused and/or neglected. I also believe this constitutes "serious physical injury" that could support a conviction of felony child abuse. What do you think?