National Assembly for Wales
Children, Young People and Education Committee

Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill
Committee Stage 1 Report

August 2019

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About the Committee

The Committee was established on 28 June 2016. Its remit can be found at: www.assembly.wales/SeneddCYPE

Committee Chair:

Lynne Neagle AM
Welsh Labour
Torfaen

Aelodau cyfredol y Pwyllgor:

Dawn Bowden AM
Welsh Labour
Merthyr Tydfil and Rhymney

Hefin David AM
Welsh Labour
Caerphilly

Suzy Davies AM
Welsh Conservatives
South Wales West

Janet Finch-Saunders AM
Welsh Conservatives
Aberconwy

Siân Gwenllian AM
Plaid Cymru
Arfon

The following Member was also a member of the Committee during this inquiry.

Jack Sargeant AM
Welsh Labour
Alyn and Deeside

The following Members attended as substitutes during this inquiry.

Jayne Bryant AM
Welsh Labour
Newport West

Vikki Howells AM
Welsh Labour
Cynon Valley

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Recommendation 1. That the National Assembly, taking into account the wide range of evidence provided to us as part of our Stage 1 scrutiny and the recommendations we make in this report, agree the general principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill. Suzy Davies AM and Janet Finch-Saunders AM do not support this recommendation. ..... Page 99

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Recommendation 3. That the Welsh Government allow sufficient time between Royal Assent and commencement of the Bill's substantive provision (to remove the defence of reasonable punishment) and for the Deputy Minister to keep the National Assembly updated on her plans in this regard. We believe this time will be needed to enable the provision of information and support to parents, to raise awareness of the legislative change, and to update the necessary training and guidance, all of which we conclude are crucial to the effective and proportionate implementation of the Bill and the delivery of its stated aims. ..... Page 103

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Recommendation 16. That the Welsh Government ensure that activity to monitor the Bill's impact pays particular attention to the number of reports of physical punishment/assault of children that are found to be malicious. Evaluation activity on the Bill should include consideration of the impact allegations of physical punishment of a child have on the family courts and CAFCASS Cymru's workloads and timescales. ..... Page 175

Recommendation 17. That the Welsh Government ensure that the Bill Implementation Group, before the start of Stage 3:

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Recommendation 20. That the Welsh Government, before the start of Stage 3, publish a revised Regulatory Impact Assessment providing more detailed estimates of the "unknown" costs to public services arising from the Bill. ..... Page 202

1. Introduction

1. On 25 March 2019, Julie Morgan AM, Deputy Minister for Health and Social Services (the Deputy Minister), introduced the Children (Abolition of Defence of Reasonable Punishment (Wales) Bill (the Bill) and accompanying Explanatory Memorandum. The next day, the Deputy Minister made an oral statement in Plenary in which she explained:

> "If the Bill is enacted, the defence of reasonable punishment will no longer be available within Wales to parents, or those acting in loco parentis, as a defence to a charge of common assault or battery. It will be removed under both criminal and civil law. While corporal punishment has long been banned in schools, children's homes, local authority foster care and childcare provision, adults acting in loco parentis in non-educational settings, including the home, are able to use the defence of reasonable punishment. So, this Bill removes this loophole."[1]

2. At its meeting on 5 March 2019, the National Assembly's Business Committee agreed to refer the Bill to us, the Children, Young People and Education Committee, for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that we should report by 19 July 2019.[2]

3. In light of the significant amount of evidence received relating to the Bill, we requested an extension to the timetable for our scrutiny. The Business Committee agreed a revised reporting deadline of 2 August 2019.[3]

1.1. Terms of reference for our scrutiny of the Bill

4. We agreed the following framework within which to scrutinise the general principles of the Bill:

To consider—

[1] Plenary, 26 March 2019, Record of Proceedings (RoP) [para 177].

[2] Business Committee, Report on the timetable for consideration of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill, March 2019.

[3] Business Committee, Report on the revised timetable for consideration of the Children (Abolition of Defence of Reasonable Punishment) (Wales), May 2019.

- the general principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
- any potential barriers to the implementation of the provisions and whether the Bill takes account of them;
- whether there are any unintended consequences arising from the Bill;
- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum);
- the appropriateness of the power in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 1: Chapter 5 of the Explanatory Memorandum).

5. We conducted a public consultation between 2 April and 14 May 2019 to inform our scrutiny, receiving 650 online responses (see list in Annex A). We held 12 oral evidence sessions during May and June 2019, the schedule of which is provided in Annex B.

6. To ensure that we heard from those most likely to be affected by the Bill we invited parents and carers, some of whom supported the Bill and others who did not, to speak with us on 6 June 2019. We also invited the Welsh Youth Parliament to express its view on the Bill on behalf of the children and young people of Wales. More information about this work is provided in section 2.6 of this report.

7. We would like to thank everybody who took the time to contribute to our work. We would also like to thank the Data Science Campus at the Office for National Statistics for its analysis of the 650 responses submitted to our consultation.[4]

1.2. Other committees' consideration of the Bill

8. In accordance with Standing Order 19, the National Assembly's Finance Committee took evidence from the Deputy Minister on the financial implications of the Bill on 9 May 2019.

[4] Data Science Campus, Office for National Statistics, *Data Science to analyse responses to the National Assembly for Wales Children, Young People and Education Committee's consultation on the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill*, June 2019 – the full report is available on our website.

9. In accordance with Standing Order 21, the National Assembly's Constitutional and Legislative Affairs Committee took evidence on the Bill from the Deputy Minister on 3 June 2019. Its consideration focused on:

- matters relating to the competence of the National Assembly, including compatibility with the European Convention on Human Rights (ECHR);
- the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
- whether an appropriate legislative procedure has been chosen, in relation to the granting of powers to the Welsh Ministers, to make subordinate legislation;
- any other matter it considers relevant to the quality of legislation.

10. Both committees' reports were published on 2 August 2019.

1. 3. The Bill's stated aims

11. The Bill as drafted does not create a new offence. Instead it removes a defence to the existing offences of common assault and battery, and the tort of trespass to the person.[5]

12. In addition to abolishing the defence, section 1 (3) of the Bill provides that corporal punishment of a child taking place in Wales cannot be justified in any civil or criminal proceedings on the ground that it constitutes acceptable conduct for the purposes of any other rule of the common law. The Explanatory Notes to the Bill state:

> "Abolition of the defence of reasonable punishment, without more, might leave open the possibility of a person attempting to defend the use of punishment on the basis of its being generally acceptable in the course of ordinary life. For instance, a person might seek to argue that it is acceptable in the course of everyday life to smack a child, just as it is

[5] In English and Welsh law, "assault" and "battery" have different meanings. In general terms, "battery" is the intentional or reckless application of actual unlawful force to the body of another person (e.g. a punch). "Assault" is the apprehension of the possibility of immediate unlawful force (e.g. a face-to-face threat by an adult to punch another adult during a disagreement).

acceptable to brush a child's teeth. The wording in subsection (3) has been included to avoid this possibility."[6]

The current legal position

13. The defence of reasonable punishment currently applies in respect of both the criminal and civil law.

14. In terms of the **criminal law**, section 58 of the *Children Act 2004* means that parents, or adults acting "in loco parentis"[7] in Wales or England, can currently use the defence of reasonable punishment if they are charged with common assault against a child. The defence cannot be used under the existing law if they are charged with cruelty to persons less than 16 years of age, wounding, actual bodily harm or grievous bodily harm.[8]

15. The Crown Prosecution Service's legal guidance on *Offences against the Person incorporating the Charging Standard (the Charging Standard)* states that in respect of a charge of common assault, "the following factors will assist in determining whether the punishment in question was reasonable and moderate":

- the nature and context of the defendant's behaviour;
- the duration of that behaviour;
- the physical and mental consequences in respect of the child;
- the age and personal characteristics of the child;
- the reasons given by the defendant for administering the punishment.[9]

16. The Charging Standard also states:

[6] Explanatory Memorandum, Welsh Government, page 65, paragraph 30 of the Bill's Explanatory Notes.

[7] The term "in loco parentis" is Latin for "in the place of a parent". It refers to the legal responsibility of a person or organisation to take on some of the functions and responsibilities of a parent.

[8] Section 58 of the Children Act 2004 [accessed 7 July 2019].

[9] Crown Prosecution Service, Offences against the Person, incorporating the Charging Standard, last updated 12 November 2018 [accessed 7 July 2019].

> "Unless the injury is transient and trifling and amounted to no more than temporary reddening of the skin, a charge of ABH [actual bodily harm], for which the defence does not apply, should be preferred."[10]

17. In civil law, assault and battery constitute a tort, or civil wrong: the tort of trespass to the person. In addition to removing the availability of the defence in relation to the criminal law, the Bill removes the availability of the defence in relation to the tort of trespass against the person.

What the Bill aims to do

18. The Bill's Explanatory Memorandum states:

> "The Bill will remove the common law defence of reasonable punishment so it is no longer available in Wales to parents or those acting in loco parentis as a defence to assault or battery against a child."[11]

19. It goes on to say that the Bill's intention is to:

> "[…] help protect children's rights by prohibiting the use of physical punishment, through removal of this defence."[12]

20. The Explanatory Memorandum also states:

> "The Bill supports the adoption of positive parenting styles and contributes to several of the national wellbeing goals under the Well-being of Future Generations (Wales) Act 2015."[13]

21. The Explanatory Memorandum explains that "removing the defence of reasonable punishment has been the subject of debate in the Assembly since the early years of its existence".[14]

22. The Welsh Government's Programme for Government, *Taking Wales Forward 2016-2021*, included a commitment to "seek cross-party support for legislation to end the defence of 'Reasonable Punishment'".[15] In June 2017 the

[10] Crown Prosecution Service, Offences against the Person, incorporating the Charging Standard, last updated 12 November 2018.

[11] Explanatory Memorandum, Welsh Government, para 1.1, page 6.

[12] Explanatory Memorandum, Welsh Government, para 1.5, page 6.

[13] Explanatory Memorandum, Welsh Government, para 3.56, page 20.

[14] Explanatory Memorandum, Welsh Government, para 3.4, page 8.

[15] Welsh Government: Taking Wales Forward 2016-2021 [accessed 7 July 2019].

then First Minister confirmed the Welsh Government's intention to introduce a Bill "in the third year of this Assembly term".[16]

23. In January 2018 the Welsh Government published a range of consultation documents. It stated that the purpose of these documents was to inform the development of a legislative proposal to remove the defence of reasonable punishment.[17] In August 2018 the Welsh Government published its summary of consultation responses.[18]

24. Other Welsh Government commissioned reports used to inform the legislation's development include the following:

- Parental attitudes towards managing young children's behaviour (2017);[19]
- Parental Physical Punishment Child Outcomes and Attitudes (2018);[20]
- Legislating to prohibit parental physical punishment of children (2018).[21]

What the Bill will not do

25. The Explanatory Memorandum states:

> "[…] the Bill does not define actions by parents towards their children which would or would not be acceptable once the defence is removed. Removing the defence will not interfere with the principles of the common law, which acknowledge that a parent can intervene physically, for example, to keep a child safe from harm, or help with activities such as tooth brushing."[22]

26. Furthermore, the Bill as drafted does not affect situations in which greater force is used against the child than what would constitute a common-law battery.

[16] Plenary, RoP [para 151], 26 June 2017.

[17] Welsh Government, Legislative proposal to remove the defence of reasonable punishment, 9 January 2019 [accessed 7 July 2019].

[18] Welsh Government, Legislative proposal to remove the defence of reasonable punishment, 9 January 2019.

[19] Welsh Government, Parental attitudes towards managing young children's behaviour (2017), 11 July 2018 [accessed 7 July 2019].

[20] Public Policy Institute Wales, Parental Physical Punishment Child Outcomes and Attitudes (2018), July 2018 [accessed 7 July 2019].

[21] Wales Centre for Public Policy, Legislating to prohibit parental physical punishment of children (2018), 2 November 2018 [accessed 7 July 2019].

[22] Explanatory Memorandum, Welsh Government, para vi, page 4.

The defence of reasonable punishment is not available for such offences, and so the Bill is not changing the law as far as they are concerned.

27. Corporal punishment in schools and other settings involving education is already prohibited. This position is not changed by the Bill.

1. 4. Legislative competence

28. The Welsh Government is satisfied that the Bill is within the legislative competence of the National Assembly. The Explanatory Memorandum points to the Wales Act 2017's Explanatory Notes, which state:

> "The exception for 'parental discipline' [in the Wales Act 2017] carves out from the reservation for parental responsibility, the right of a parent to discipline a child, this includes the right to administer reasonable chastisement to a child, or smacking. The Assembly has competence for the protection of children and young people and so would have the competence to ban smacking."[23]

29. In her statement on legislative competence, the Llywydd, Elin Jones AM, agreed that the provisions of the Bill would, in her view, be within the legislative competence of the National Assembly for Wales.[24]

Human rights

30. The Bill's Explanatory Memorandum states:

> "It is considered that the provisions are compatible with convention rights and European Union (EU) law."[25]

31. The Equality Impact Assessment published by the Welsh Government[26] lists the following rights as being engaged by the Bill:

[23] Explanatory Memorandum, Welsh Government, para 2.2, page 7.

[24] National Assembly for Wales, Presiding Officer's Statement on Legislative Competence, 25 March 2019.

[25] Explanatory Memorandum, Welsh Government, para 2.3, page 7.

[26] Equality Impact Assessment, Welsh Government [accessed 1 July 2019].

United Nations Convention on the Rights of the Child

- **Article 18** – that the best interests of the child will be parents' basic concern, which includes the obligation to protect children from all forms of violence;
- **Article 19** – that "State Parties shall take all appropriate legislative, social and educational measures to protect the child from all forms of physical or mental violence […] while in the care of parents";
- **Article 37** – that States ensure "no child shall be subjected to degrading treatment or punishment".[27]

European Convention on Human Rights

- **Article 3** – which prohibits torture, and "inhuman or degrading treatment or punishment";
- **Article 8** – which provides for the right to respect private and family life;
- **Article 9** – which provides for freedom of thought, conscience and religion;
- **Article 10** – which provides for freedom of expression.[28]

32. Opponents of the Bill have argued that the removal of the defence of reasonable punishment infringes parents' rights, not least in relation to the right to respect private and family life, and freedom of thought, conscience and religion.

33. The view that the Bill demonstrates state interference in family life in particular is considered in more detail in section 2.3 of this report.

34. In contrast, supporters of the Bill, and the Bill's Explanatory Memorandum, point to the UN Committee on the Rights of the Child's repeated calls for the abolition of the defence of reasonable punishment in the law of England and Wales on the grounds that:

> "[…] any physical punishment of children, however minor, is incompatible with the human rights of children under the United

[27] Unicef, The United Nations Convention on the Rights of the Child [accessed 7 July 2019].

[28] European Court of Human Rights, Council of Europe, European Convention on Human Rights [accessed 7 July 2019].

> Nations Convention on the Rights of the Child (UNCRC) Article 19 […] It has issued a general comment to highlight its recognition of the right of the child to respect of their human dignity, physical integrity and equal protection under the law."[29]

What people who oppose the Bill told us about human rights

"Where are the protections for parents who want to reasonably discipline their children in line with their principles or their religion or their human rights? Each person has the right to respect for their family and to prosecute a parent who reasonably disciplines their child would undermine the parent's human rights". Individual (CADRP 473)

"The infringement of human rights to privacy of family life and freedom of conscience is not justified and therefore unlawful, because the consequences of administering an occasional, light, loving, protective smack (e.g. to warn a toddler who is repeatedly venturing towards an electric socket) would be completely disproportionate, even without a criminal conviction". Individual (CADRP 558)

"Persecution of faith communities will actually be inevitable – a vast number of citizens will be placed under duress as they attempt to cope with the conflict between faith and state". Individual (CADRP 588)

35. The Children's Commissioner for Wales disagreed with the Bill's opponents. She argued:

- the current law does not protect children's human rights;[30]
- in contrast to the UNCRC which provides unqualified rights, the duty to protect family life is a qualified right that cannot be maintained in all circumstances if it breaches other important principles and conventions – therefore, it is a reasonable curtailment of parents' decision making to legislate for a child's right to dignity of physical integrity;[31]
- this Bill is not out of step with interventions made by governments in the past to legislate in the area of family life (e.g. physically punishing an adult in a family has been prohibited by law).[32]

[29] Explanatory Memorandum, Welsh Government, para 3.37, page 15.

[30] Oral evidence, CYPE Committee, RoP [para 580], 2 May 2019.

[31] Oral evidence, CYPE Committee, RoP [para 585], 2 May 2019.

[32] Oral evidence, CYPE Committee, RoP [para 605], 2 May 2019.

What people who support the Bill told us about human rights

"Articles 8 and 9 of the European Convention on Human Rights (ECHR) are qualified rights. Any limitations removal of the 'reasonable punishment' defence place upon individual enjoyment of those rights are necessary in order to protect an absolute right of others (Article 3, ECHR) and for the wider good and are lawful, necessary and proportionate". **Equal Protection Network Cymru (CADRP 481)**

"While freedom of thought, conscience and belief is a fundamental human right, all rights stop short at the violation of the rights of others. Children have the clear right at international law to not be subjected to violence. Corporal punishment however light is violence. No right of mine can justify my violation of a right of yours". **Anne McGillivray, Professor of Law, University of Manitoba (retired) (CADRP 384)**

"If Wales implements this legislation and it becomes part of the law, then, arguably Wales would be more in compliance with ECHR than not, and England would be less so". **Barry Hughes, Chief Crown Prosecutor for Wales (RoP [para 138], 6 June 2019)**

36. When asked to outline the assessment undertaken by the Welsh Government in relation to the balancing of relevant human rights under this Bill, the Deputy Minister stated:

> "We have given a great deal of thought, as you can imagine, to the human rights considerations [...] it's ultimately a question how we find a balance between the rights of children as well as parents, who both enjoy rights under the European Convention on Human Rights [...]
>
> The Bill's provisions are regarded as proportionate measures, and given the fundamental importance of protecting children from inhumane or degrading punishment or other ill treatment, we do consider that we have balanced the rights in a proportionate way."[33]

37. In relation to article 3 (prohibition of torture, inhuman or degrading treatment or punishment), the Deputy Minister stated:

> "In ensuring that children are protected from physical punishment in the same way as adults, the Bill is following that requirement of article 3, and the positive obligations on states to protect individuals from ill treatment or punishment that is contrary to article 3."[34]

[33] Oral evidence, CYPE Committee, RoP [paras 198 and 204], 12 June 2019.

[34] Oral evidence, CYPE Committee, RoP [para 200], 12 June 2019.

38. In relation to article 8 (the right to respect for private and family life) and article 9 (the right to freedom of thought, conscience and religion), she said:

> "Some of those who are opposed to the prohibition of physical punishment have cited article 8, private and family life, and also cited article 9, freedom of thought, conscience and religion, as potentially protecting the right for parents to decide how best to punish their children, including the use of physical punishment. That is used as an argument by those who are opposed to stopping physical punishment. But these rights are not absolute, and action can therefore be taken that interferes with them, provided the interference is justified. It's the Government's view that the Bill's provisions are necessary in order to protect the rights and freedom of children. We are looking here from the point of view of children."[35]

39. With regard to article 10 (freedom of expression) and article 14 (prohibition of discrimination), the Deputy Minister argued:

> "[…] these rights are not absolute and action can be taken, therefore, that interferes with them, providing the interference is justified. We don't think it's clear that article 10 and 14 rights are being interfered with, but even if they are, we consider we can justify the interference in order to protect the rights and freedoms of children."[36]

40. We note the evidence in relation to matters of legislative competence from the Deputy Minister. We also note the Llywydd's statement that, in her view, the provisions of the Bill would be within the legislative competence of the National Assembly for Wales.

41. We further note the Constitutional and Legislative Affairs Committee's view that a full commentary in relation to the Welsh Government's assessment of human rights considerations ought to be provided in the Explanatory Memorandum laid before the National Assembly alongside the Bill, rather than in the Equality Impact Assessment published on the Welsh Government's website.[37]

[35] Oral evidence, CYPE Committee, RoP [para 203], 12 June 2019.

[36] Oral evidence, CYPE Committee, RoP [para 205], 12 June 2019.

[37] Constitutional and Legislative Affairs Committee, Report on the Children (Abolition of Defence of Reasonable Punishment Bill, 2 August 2019.

2. Support or otherwise for the general principles of the Bill

Once introduced, a Bill is normally referred to a National Assembly Committee for consideration of its general principles. It is our role to consider and report on the evidence for and against the Bill. The purpose of this work is to inform the National Assembly's decision on whether the Bill should progress to the next stage of the legislative process or fall.[38]

2. 1. The current and proposed law

Clarity of the current and proposed law

43. One of the main arguments put forward by both those who support and those who oppose this Bill is about whether or not the existing law is clear. We also heard views about the clarity, or otherwise, of the proposed law.

44. In January 2018, when the former Minister for Children and Social Care made a statement in Plenary to launch a consultation to inform the development of the legislative proposal to remove the defence of reasonable punishment, he said "we want to make it clear that physically punishing a child is no longer acceptable in Wales".[39]

45. As stated in section 1.3 of this report, the Bill, as drafted, does not create a new offence. Instead it removes a defence to the existing offences of common assault and battery, and the tort of trespass to the person.

46. Those who oppose the Bill told us that, in their view, the current legislation is clear in respect of physical punishment. Be Reasonable Wales referred to the current legal position and told us "the defence is well understood".[40] Jamie Gillies, representing the group, went on to say:

[38] More information about the legislative process is available on the Assembly's website.

[39] Plenary, RoP [para 132], 9 January 2018.

[40] Oral evidence, CYPE Committee, RoP [para 208], 2 May 2019.

> "I would just iterate again that the law is clear—we have good law on this already, this debate has been had. The law has been amended as recently as 2004. So, we've had this debate, and the law as it's framed just now strikes the correct balance, which strongly protects children from violence, from abuse but also accepts that very mild, light discipline is appropriate. If we remove the defence altogether, that creates mass uncertainty for the police, for social workers; that line is not there anymore to be drawn."[41]

47. The majority of submissions to our consultation from individuals responding in a personal capacity did not support the Bill. One of the main concerns they raised with us was that the current law, if enforced adequately, is already sufficient and clear enough to protect children from abuse.

What we heard from those who told us they think the current law is clear

"The reasonable defence legislation already legislates against the harsh, cruel or abusive treatment of children. The new bill is utterly redundant. Moreover, the reasonable defence exception has been rarely used in Wales in 10 years--in other words, this whole exercise is a demonstration of virtue signalling, rather than seeking to close a loophole that has been repeatedly used over the years. There is no loophole". **Individual (CADRP 181)**

"We already have the legal remedies available to tackle abuse, so if there are perceived deficiencies in that area, we ought to be toughening up implementation, rather than framing a Bill which is designed to create a whole new criminal underclass". **Individual (CADRP 379)**

"There are laws in place to cover excessive force used on children already, enforce those instead of introducing new laws that are going to do nothing but make criminals out of good parents". **Individual (CADRP 399)**

"The current law is clear. Don't confuse it". **Be Reasonable Wales (CADRP 92)**

"Those who support the Bill disingenuously suggest that children are not legally protected from assault, and therefore that removing the defence of 'reasonable chastisement' is necessary to keep children safe. But of course children are protected from assault and abuse. Parents who use unreasonable or immoderate physical punishment can already be prosecuted". **The Christian Institute (CADRP 609)**

"Turning smacking into abuse will bring confusion into the law against child abuse". **Individual (CADRP 529)**

[41] Oral evidence, CYPE Committee, RoP [para 217], 2 May 2019.

48. However, we also heard from those who support the Bill who argue that the current law is unclear and therefore does not allow professionals to fully protect children because the existing position is ambiguous.

49. In oral evidence, Barry Hughes, Chief Crown Prosecutor for Wales, told us:

> "[…] it's rarely a case of being black and white; there are these degrees of grey. And removing that defence does make life clearer."[42]

50. In written evidence, the British Association of Social Workers Cymru told us:

- "A total ban on all physical punishment of children is clear and unambiguous, whereas the current defence of 'reasonable chastisement' is open to interpretation and can create confusion, uncertainty and gives a clear message that children- the most vulnerable members of our society, do not enjoy equal rights to adults";
- "Children's social workers can find themselves in the situation of trying to define and communicate to parents what 'reasonable chastisement' means in the eyes of the law as it currently stands and at what point these cross a threshold and become a child protection issue. By prohibiting all physical chastisement of children, there will be no further scope for ambiguity and there will be a real opportunity to 'bust' many of the myths surrounding the current legislation";
- "Social workers often work in highly charged and contested environments – this probably applies more to social work with children and families, so Social Workers (and parents) will be able to operate within a much clearer legal framework".[43]

51. Sally Jenkins, then Chair of the All Wales Heads of Children's Services and representing the Association of Directors of Social Services, told us that this Bill "brings a clarity even for children at that very far end. It takes away that point of discussion that this [physical punishment] could possibly be okay"[44]:

> "On behalf of ADSS and on behalf of children's services and social services more widely, for us, this is not a change in our position, this is not new; this is a position that we, on behalf of the leaders of social services across Wales, have taken over many years, going back 20, 25

[42] Oral evidence, CYPE Committee, RoP [para 13], 6 June 2019.

[43] Written evidence, CYPE Committee, CADRP 283 – British Association of Social Workers.

[44] Oral evidence, CYPE Committee, RoP [paras 39], 8 May 2019.

> years. […]. For children's services at the very sharp end of this world, for us, it brings a true clarity. This continues with an ambiguity in how we treat our children and how we care for our children, and the shift for us brings that very much needed clarity."[45]

52. The need for more clarity in the law was a view supported by other health delivery bodies and organisations representing frontline practitioners such as the Royal College of General Practitioners (RCGP) and Betsi Cadwaladr University Health Board, who told us the Bill "can only enhance the protection of children".[46]

53. Dr Rowena Christmas, representing the RCGP, told us that she had around "35 patient contacts a day" and that "probably two or three times a week I'll talk to a parent who's having issues managing their children – quite frequently".[47] Dr Christmas went on to say that she could not advise parents not to smack their children, explaining:

> "Although I strongly believe that the evidence is fairly compelling that this isn't the best way for their long-term development, it's difficult for me to say, 'You really shouldn't do that', though I would talk about all the reasons why it might not be helpful at the moment. If the law was changed, I would have a much stronger case to make and then could be talking about time out and withdrawal of privileges and all those good things that parents can do. I'd have greater strength in that argument."[48]

54. The Royal College of Nursing told us that this Bill would help the work its members are involved with:

> "Clarity in the law will also help Registered Nurses such as Health Visitors, School Nurses and Children's Community Nurses to give clear advice to parents. It would eliminate the current potential for confusion over what is acceptable and provide a clear basis for child protection."[49]

55. The Royal College of Psychiatrists Wales told us it "welcomes this legislation" and said that "the current law in the UK is ambiguous and confusing to parents

[45] Oral evidence, CYPE Committee, RoP [paras 5-6], 8 May 2019.
[46] Written evidence, CYPE Committee, CADRP 291 – Betsi Cadwaladr University Health Board.
[47] Oral evidence, CYPE Committee, RoP [para 290], 22 May 2019.
[48] Oral evidence, CYPE Committee, RoP [para 295], 22 May 2019.
[49] Written evidence, CYPE Committee, CADRP 406 – Royal College of Nursing.

and guardians of children". It went on to tell us "these laws are harmful for children, confusing for parents and profoundly inhibiting for child protection".[50]

56. We asked health representatives why the Welsh NHS Confederation's response to our consultation suggested the current law is ineffective and how that presents challenges to health professionals in particular. Dr Dave Williams, Divisional Director, Family Therapy Services, Aneurin Bevan University Health Board, told us:

> "At the moment, the legal line and the danger line are too close together; we need to separate them so there's some clear blue water between them."[51]

57. He explained further:

> "I view it as the equivalent of playing on the edge of the cliff. At the moment, we've got people who are using punishments, maybe, that are (a) not ideal and (b) don't work. And, in certain situations, when emotions get aroused or—things happen that damage the child.
>
> I think sending a clear message that, actually, the line in the sand lies several feet away from the edge of the cliff—that, actually, there isn't the confusion there, that we're clear that, actually, if you wouldn't do it to an adult, you wouldn't do it to your child—makes the situation much clearer for the population."[52]

58. Representatives of the National Independent Safeguarding Board Wales said more clarity was needed. Jan Pickles, a member of the Board, told us "what we want is clarity so that people for themselves know what is acceptable and what isn't acceptable".[53]

59. Andy James, representing the Equal Protection Network Cymru, told us

> "The law as it stands is ambiguous and confusing […]. We would prefer, as this Bill promotes, that there is an unequivocal message about physical violence, that it's no longer acceptable. As it stands, also, the current law is also a confusing message to children. Children don't

[50] Written evidence, CYPE Committee, CADRP 639 – Royal College of Psychiatrists Wales.

[51] Oral evidence, CYPE Committee, RoP [para7], 22 May 2019.

[52] Oral evidence, CYPE Committee, RoP [paras 6-7], 22 May 2019.

[53] Oral evidence, CYPE Committee, RoP [para 169], 22 May 2019.

> report something that they're told is allowed in the law or can somehow be justified."[54]

What organisations told us about clarity in the law

"The current law is a halfway house between permitting violence against children, and attempting to prevent violence against children. It is unclear and is particularly difficult for professionals working in difficult circumstances where children may be exposed to some degree of violence to assess [if] this is lawful or unlawful. This may lead to delay in intervention where intervention is necessary, putting children at risk". **Observatory on Human Rights of Children (CADRP 335)**

"The current law is ambiguous and unclear. The defence of reasonable punishment permits parents to use an arbitrary level of violence on their children which can result in injury and, in a small minority of cases, escalate into physical abuse". **NSPCC Cymru/Wales (CADRP 641)**

"We must ask how what would be considered assault towards an adult, can be acceptable to a much smaller, more vulnerable human who is defenceless and reliant on their parent to teach right from wrong. The change in the law would send a clear message that physical violence towards children is wrong on any level. This will help to change attitudes over time and may help to stop parents smacking their children in anger, in the knowledge that this is a hard line that must not be crossed". **Royal College of General Practitioners (CADRP 498)**

"[…] having a legal framework which categorically states that assaulting a child can be 'justifiable' is hampering those who work with children and families from delivering clear, evidence-based advice". **Royal College of Paediatrics and Child Health (CADRP 504)**

"The continued legality of 'reasonable punishment' implies that a certain level of violence against children is acceptable – a blanket ban of all physical punishment of children will provide clearer, simpler legislation". **Global Initiative to End All Corporal Punishment of Children (CADRP 519)**

60. Among the parents we met on 6 June 2019 who supported the Bill, there was a clear view about the importance of people knowing what the law is. One of the parents told us:

> "It is important for the law to be black and white – that's why I support this Bill."

[54] Oral evidence, CYPE Committee, RoP [para 397], 2 May 2019.

61. A range of individuals responding to our consultation in a professional capacity argued that the Bill would provide clarity in terms of the law, giving a clear message to the population that no form of physical punishment was acceptable, and removing existing "grey areas" for professionals or parents in terms of advice and managing behaviour. In turn, some respondents argued that this Bill will give children and adults more confidence in challenging incidents of physical punishment.

What professionals told us about clarity in the law

"The current law is unclear; professionals need to be able to tell parents that the physical punishment of children is against the law". **Individual (CADRP 148)**

"As a counsellor working with children and parents, we cannot give clear advice to parents. I welcome the change so that as a professional I can say to parents physical punishment of children is against the law". **Kirsty Sanderson - Counsellor (CADRP 290)**

"I think the current legislation is ridiculous and vague. It gives parents an excuse when there should be none". **Individual (CADRP 342)**

"It will enable people who witness a child being hit by its parents to tell them to stop". **Individual (CADRP 467)**

62. The Deputy Minister emphasised the issue of clarity, saying:

> "[…] when that defence exists, it does make it very difficult to make it absolutely clear that physical punishment is not acceptable. And I think you're probably aware that all the health professionals, all the people who work with children at the very early age, want to be able to give clear messages that any form of physical punishment is not acceptable. And when that defence exists, it muddies the water. It's not clear that we don't find physical punishment acceptable. So, the fact that this defence is not used in many cases is not really surprising, because that defence exists. So, the police would not go forward with cases because they already know there's a defence to cover some behaviour. So, I really think that we need to make the law absolutely clear and we want to make it absolutely clear that, in Wales, we do not want a society where it is acceptable to physically punish children. And I think the only way of doing that is, really, to be quite clear about it and to get rid of this defence."[55]

[55] Oral evidence, CYPE Committee, RoP [para 6], 2 May 2019.

Other issues relating to clarity of the law

63. The Explanatory Memorandum states that:

> "While teachers are no longer able to use force as a punishment in schools, adults acting in loco parentis in what are termed 'non-educational settings' are able to use the defence of reasonable punishment. This legislative proposal would remove this loophole."[56]

64. Referring to this, Professor Sally Holland, Children's Commissioner for Wales, told us the law needed to be clearer in all settings including Sunday schools and madrassas.[57]

65. In terms of alternatives to both the current position and the Bill, Professor Robert Larzelere, an academic who does not support the Bill, told us "my research made me a major proponent of conditional physical punishment". Professor Larzelere went on to say:

> "In response to a constitutional challenge against the legality of any smacking, three levels of the Canadian court system reviewed the scientific and legal evidence on both sides of this important issue more thoroughly than any government has done before or since. Accordingly, Canada narrowed the legal definition of reasonable force to correct children to open-handed strikes by parents to the buttocks or the limbs in 2- to 12-year-olds. In contrast to Swedish trends after their smacking ban, most child outcomes and parenting methods have improved in Canada (comparing 1994 to 2008 national data)."[58]

66. The issue of whether an age limit or range was something that should be considered was something we explored in oral evidence with those who opposed the Bill. Sally Gobbett, parent campaigner, told us:

> "I was quite clear not to specify an age. I think one can't do that, because every child develops differently and every family situation is different."[59]

67. Dr Julie Doughty, Lecturer in Law at Cardiff University, made a different point, calling for the Bill to remain clear:

[56] Explanatory Memorandum, Welsh Government, para 62, page 81.
[57] Oral evidence, CYPE Committee, RoP [para 582], 2 May 2019.
[58] Written evidence, CYPE Committee, CADRP 559 - Robert E Larzelere - Professor.
[59] Oral evidence, CYPE Committee, RoP [para 271], 2 May 2019.

> "It is essential that the wording of the Bill remains clear and uncomplicated. It is not about types of punishment or types of assault - it just needs to make the law the same for the protection of adults and children."[60]

The definition of punishment

68. The Explanatory Memorandum defines physical punishment as "any battery of a child / children carried out as a punishment", and explains that it is referred to in the Bill as "corporal punishment".[61]

69. The Explanatory Memorandum also states:

> "The Bill does not define actions by parents towards their children which would or would not be acceptable once the defence is removed."[62]

70. Some opponents of the Bill argued that the proposed legislation introduced confusion about what constitutes punishment.

What some opponents of the Bill told us about the definition of punishment

"This bill will confuse the investigation of child abuse rather than help it since anything physical which a parent does that a child dislikes could be interpreted as abuse, including obvious acts of kindness such as strapping a child into a car-seat, changing a nappy, etc". **Individual (CADRP 286)**

"[…] removing the defence will not increase clarity, but rather create a lack of clarity at another point, namely around what exactly constitutes physical punishment in the first place: restraining a tantruming child/ unwanted removal from a situation/ physically coercing a child who is unwilling to be strapped into a car-seat/ buggy/ holding a child down on a 'time-out' seat/ holding the child firmly by the arms in order to speak to them at eye-level/ 'pinning down' a toddler who is not complying with having their nappy changed. […]. The removal of the reasonable chastisement defence will mean arbitrary lines are drawn between what physical force is 'disciplinary' and what is 'protective'". **Individual (CADRP 558)**

71. This was refuted by supporters of the Bill. The Equal Protection Network Cymru stated:

[60] Written evidence, CYPE Committee, CADRP 628 - Julie Doughty - Lecturer in Law.

[61] Explanatory Memorandum, Welsh Government, para 1.6, page 6.

[62] Explanatory Memorandum, Welsh Government, para vi, page 4.

> "[the Bill is] about actually punishing in a physical way, so that assault is interpreted as an attack that is intended to cause harm, that is intended to hurt. However, it doesn't include all of the other really important physical interaction that parenting involves. So, when you're a parent, there's a huge range of different physical interactions that you need to have with your child in order to rear them safely and well into healthy adults […] all of those areas are really clearly described and can be separated out from the issue of using a physical attack or a physical strike to intentionally hurt or humiliate or degrade a child."[63]

72. The Deputy Minister stated in oral evidence:

> "I don't think we should be defining acceptable ways of hitting or punishing children, because I think it does send a confused message to children. It says, 'It's okay for me to hit you, but don't you hit anybody else.' I think it causes confusion. So, I'm confident that updating the law will make it much clearer for parents and people working with children."[64]

73. As section 1(5) of the Bill defines corporal punishment to mean battery carried out as a punishment, we asked the Deputy Minister to confirm how the defence is removed in cases of assault. In correspondence to us, she explained:

> "[…] once the defence is abolished in relation to acts of battery constituting corporal punishment, it follows that an assault by way of a threat to carry out any degree of corporal punishment (which will be unlawful once the Bill is in force, irrespective of severity) cannot be defended in legal proceedings."[65]

The difference between "abuse" and "smacking"

74. One of the main issues cited by individuals responding in a personal capacity and opposing the Bill is that a "smack" is not the same as "child abuse" or "assault".[66] There were very strong views that there is a clear difference between

[63] Oral evidence, CYPE Committee, RoP [paras 476 and 478], 2 May 2019.

[64] Oral evidence, CYPE Committee, RoP [para 6], 12 June 2019.

[65] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

[66] Within the current law a "smack" would constitute an assault however there is a defence of "reasonable punishment" which is what this Bill is proposing to remove.

child abuse or assault and loving parental discipline that teaches and maintains good behaviour.

Some views of those opposing the Bill about the difference between a "smack" and "abuse"

"There is a huge difference between smacking a child and beating a child but this legislation does not differentiate between the two or how it will be enforced". **Individual (CADRP 376)**

"Smacking a child in discipline does not constitute abuse. There is a huge, huge difference between discipline and abuse. A small smack on the backside, leg or back of the hand causes no damage at all and offers a sharp surprise rather than any pain". **Individual (CADRP 22)**

"There is a big difference between hitting a chi[l]d (assault and battery) and smacking a child as a last resort as part of family discipline. Hitting a child is wrong and deserves full response through the law. Smacking a child is a strand of discipline within the family and is occasionally necessary for young children who are wilfully disobedient". **Individual (CADRP 474)**

"It also devalues the language of child abuse by applying it to behaviour which everyone knows is not abusive". **Be Reasonable Wales (CADRP 92)**

"It [the Bill] treats child abuse and a loving smack as one and the same thing". **Brynteg Village Church (CADRP 547)**

75. In its written evidence, The Christian Institute echoed and expanded on some of these views:

> "The overwhelming majority of people know there is a vast difference between child abuse and smacking, and the current law rightly recognises and respects this difference."[67]

76. It went on to say:

> "Those seeking a smacking ban deliberately conflate smacking with hitting. Smacking is unjustly characterised as something that parents only do when lashing out in anger. This is to completely misrepresent what smacking is and how loving parents use it as a means of discipline. When good parenting includes smacking, any smack will not be done in a moment of anger but in full control. It is just one of the means good parents may use to teach their children right from wrong.

[67] Written evidence, CYPE Committee, CADRP 609 - The Christian Institute.

> But many parents make the judgement that, occasionally, a mild smack could be appropriate."[68]

77. However, those in favour of the Bill had a different view. For example, Michelle Moseley, representing the Royal College of Nursing, told us:

> "[…] a smack is a hit. Even the term 'smack' minimises what a hit is."[69]

78. In written evidence, some of those supporting the Bill highlighted that physical punishment is an assault, that it can be violent, and that it is an abuse of an adult's power and/or morally wrong.

Some views of those supporting the Bill about the difference between a "smack" and "abuse"

"Smacking children is a form of abuse". **Individual (CADRP 468)**

"Violence means violence. It doesn't matter who is at the receiving end or who is causing it". **Individual (CADRP 405)**

"The use of physical assault (physical punishment) is unacceptable in any civilized and just society . This is all the more so when there is a clear imbalance of power and physical strength as there is when the use of physical punishment, or threats of physical punishment, is deployed against children". **Individual (CADRP 423)**

79. In oral evidence, the Deputy Minister told us:

> "I know that, often, people use different euphemisms really to make light of physical punishment. I've heard expressions used such as a 'light smack' or a 'loving smack' or a 'tap', and really there can be different interpretations of what is a 'light smack', what is a 'loving smack', and that doesn't really cover the issue of the frequency of such actions being taken."[70]

Views about "equal protection" for children and adults

80. Another theme which emerged on both sides of the debate relates to whether the law should treat adults and children in the same way. The focus of the debate in the context of this Bill was whether it was acceptable, on the one hand, for the defence of reasonable punishment to be used by adults investigated

[68] Written evidence, CYPE Committee, CADRP 609 – The Christian Institute.

[69] Oral evidence, CYPE Committee, RoP [para 287], 22 May 2019.

[70] Oral evidence, CYPE Committee, RoP [para 5], 12 June 2019.

under the criminal law for common assault or battery of a child or the civil law tort of trespass against the person, when the same defence would not be available to an adult accused of the same action against another adult.

81. It is important to note that this Bill will not lead to adults and children being treated in exactly the same way under the law. Some physical interventions by a parent in relation to a child will still be permitted that, in the context of two adults, would not necessarily be permitted e.g. physically stopping a child from running into a road, or restraining a child to keep them from injuring themselves or others (see paragraphs 88-93 for more detail).

82. The emphasis on the broader need for equal protection from assault was a strong theme among individuals who support the Bill.

Some views on "equal protection" from those supporting the Bill

"If it is wrong to hit adults, it is wrong to hit children - simple". **Individual (CADRP 213)**

"We wouldn't think it [smacking] acceptable on a badly behaved adult so why would we think it acceptable on vulnerable children?". **Individual (CADRP 41)**

"It is important to me that children receive the same protection as adults and animals!! Why should we protect a dog from attack but not our children under the law?". **Individual (CADRP 218)**

"[…] children should have the same protection from assault as adults do. The smallest, most vulnerable members of our society should not have less protection". **Multiple individuals (e.g. CADRP 313, 316, 338, 361, 371, 388, 398, 413, 427, 486, 578, 653)**

"Just as adults have legal protection from assault, children should have the same right to be protected from violence and the removal of this as a defence will ensure that right is recognised in law. There is no justification for why children, who are by their nature more vulnerable to assault than adults, should have less protection under the law". **Multiple individuals (e.g. CADRP 123, 151, 420, 438, 444, 478, 543, 580, 600)**

83. The "equal protection" argument was also put forward as an argument in favour of the Bill by a range of organisations. For example Newport Mind, Welsh Women's Aid, the Royal College of Psychiatrists, Swansea Bay University Health Board, Hywel Dda University Health Board, the Royal College of General Practitioners, Cwm Taf Morgannwg University Health Board, the Association of

Directors of Social Services, Welsh Local Government Association and the Association of Directors of Education Wales.[71]

84. The Children's Commissioner for Wales stated:

> "Children who are physically punished are receiving a message that one person can make another person do something they wish them to do by physically punishing them. This Bill aims to ensure that this message is as unacceptable in adult-child relationships as it is in adult-adult relationships."[72]

85. Humanists UK argued:

> "By suggesting that there are circumstances in which it is justifiable to deliberately cause pain to a child or young person, the existing law sends a confusing message that is at odds with the law relating to interactions between adults. Indeed, it actively undermines the messages of the law relating to domestic violence, which is based on the principle that attempting to control another person by hitting or hurting them is never acceptable."[73]

86. In terms of equal protection, the Global Initiative To End All Corporal Punishment Of Children told us that, in its view, the current legislation protects children differently depending on their family situation. Its written submission made the point that physical punishment is prohibited for children looked after in foster care, but is not prohibited for children living in the parental home.[74]

87. While supporters of the Bill told us that children and adults should be given equal protection from physical punishment in law, those opposing the Bill told us that children, by definition, are not the same as adults and therefore should be treated differently under certain circumstances. They put forward the view that parents have to do many things for their children's well-being that they would not do for an adult.

[71] See Written evidence, CYPE Committee, CADRP 596, CADRP 625, CADRP 639, CADRP 174, CADRP 507, CADRP 498, CADRP 544, CADRP 551.

[72] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

[73] Written evidence, CYPE Committee, CADRP 502 – Humanists UK.

[74] Written evidence, CYPE Committee, CADRP 519 – Global Initiative To End All Corporal Punishment Of Children.

Some views on "equal protection" from those opposing the Bill

"This Bill is based, in part, on the false assumption that children are the same as adults and must be treated in the same way. This disregards the vulnerability and developmental needs of children as well as the responsibility of parents to protect their children and meet their needs". **Independent Psychology Associates (CADRP 494)**

"Other areas of the law demonstrate that children cannot be treated identically to adults with respect to personal and bodily autonomy. The Children Act 2004, for example, is predicated on the basis that there is such a thing as parental responsibility and rights, allowing parents (and, in rare cases, other adults) routinely to make decisions on behalf of children in every area of their lives. This is clearly not true of adults except under very narrow, specific circumstances. But for children it is good, right and essential that this obvious necessity should be recognised in law". **The Christian Institute (CADRP 609)**

"Children are not small adults - we often have to physically interact with them against their will but for their good". **Individual (CADRP 401)**

"To say that children should have the same rights as adults is wrong. Children are not adults and parents need to do things for their children which are necessary to compensate for the child's lack of experience, lack of awareness of dangers, and the need for the child to learn correct behaviour. Other methods of discipline, such as confiscating something or sending them to their room are not treated as theft or false imprisonment. Nobody claims "inequality" on these issues and it is wrong to apply this argument to smacking". **Individual (CADRP 571)**

"[...] this is a flawed argument because there are all sorts of things which parents do to children as part of their care and nurture which it would be illegal to do to an adult e.g. send them out of the room, remove their possessions, remove them from a situation against their will, decide what they eat etc. No punishment at all is appropriate between adults because it is legitimate only in the unique authority relationship between a parent and child". **Individual (CADRP 558)**

Keeping children safe

88. Of those opposing the Bill, some told us that this Bill will stop parents keeping their children safe. This was a particular concern in respect of young children. Examples given included children running into the road, a child putting a hand into a fire, or putting their fingers near an electricity socket.

89. The Explanatory Memorandum sets out the Welsh Government's view that "the common law already acknowledges the necessity (and lawfulness) of certain physical interventions carried out by parents, or other adults, in the exercise of

parental authority in relation to children, even where (but for this acknowledgement) the interventions would constitute assault or battery".[75] It goes on to say:

> "The legality of these interventions does not derive from the existence of the defence of reasonable punishment, as they are not intended to constitute physical punishment. This means that certain physical interventions by a parent in relation to a child are permissible even where, in the context of two adults, those interventions would not necessarily be permitted. An example might be the physical intervention necessary to keep a child safe from harm, such as physically stopping a child from running into a road (as opposed to any physical intervention intended to punish a child for running into a road) or physically restraining a child to keep them from injuring themselves or others. Other examples might be the use of reasonable force to dress a child, or to brush a child's teeth. The exercise of parental authority may also require physical interventions which are necessary for the purpose of using alternatives to physical punishment, as a means of encouraging positive behaviour and keeping children safe. This would include, for example, carrying a child to a time out area."[76]

90. The Bill's Explanatory Notes aim to explain how such a case would be considered in practice:

> "This kind of case is perhaps best illustrated by considering the differences between the use of force genuinely necessary to brush an unwilling child's teeth for the purposes of maintaining good dental hygiene and aggressive tooth brushing intended to cause a child pain as a punishment for failing to co-operate."[77]

91. Heather Keating, Professor of Criminal Law, also told us that the Bill will "not prevent parents from intervening where needed to protect children from harming themselves (e.g. from running into a road)".[78]

92. Children are Unbeatable (CAU) told us it supported the Welsh Government's approach in this regard:

[75] Explanatory Memorandum, Welsh Government, para 3.32, page 14.

[76] Explanatory Memorandum, Welsh Government, para 3.33, page 14.

[77] Explanatory Memorandum, Welsh Government, para 27, page 65.

[78] Written evidence, CYPE Committee, CADRP 642 – Heather Keating – Professor of Criminal Law.

> "CAU Cymru agrees with Welsh Government's statement in the Explanatory Memorandum that the removal of the defence will not prevent parents from intervening to keep their child safe, to move them from danger or to prevent their child from causing harm to another person or property. Such physical interventions are not punishments and would be covered by existing common law defences which would be unaffected. Normal parenting physical interactions would not be affected by removal of the defence."[79]

93. Despite this position being set out in the Explanatory Memorandum, some of the individuals who responded to our consultation in a personal capacity expressed concerns that the Bill will not allow this.

Individual concern that the Bill will stop parents keeping children safe

"Children sometimes need a tap to prevent them getting into danger". **Individual (CADRP 14)**

"Reasonable smacking is used as a means of alerting children to hazards before they understand verbal warnings, preventing children from causing serious harm to themselves". **Individual (CADRP 109)**

"Real love gives real boundaries – to keep them [children] safe. I smack my two year-old when he tries to touch the oven, or throws stones at his brother". **Individual (CADRP 10)**

"A slap of a child about to stick his fingers in an electrical socket for the 10th time, by a loving parent, is entirely for the good of the child. It's the opposite of harming. The Bill seeks to create a criminal offence of strict liability. We cannot tolerate that in a civilised society". **Individual (CADRP 409)**

2. 2. The use of physical punishment

The effectiveness of physical punishment

94. In addition to the view that physical punishment is harmful to children, we heard evidence from some of those supporting the Bill which states their view that physical punishment is not an effective way to discipline children.

[79] Written evidence, CYPE Committee, CADRP 572 – 'Sdim Curo Plant/Children are Unbeatable Cymru.

95. The Royal College of General Practitioners told us:

> "There are concerns that parental physical punishment is linked to childhood behaviour problems through modelling and legitimising aggression and violence. Several psychological theories predict physical punishment will make children's behaviour worse not better."[80]

96. Children are Unbeatable,[81] Newport Mind,[82] Swansea Bay UHB,[83] Play Wales,[84] and Children in Wales[85] all suggested that physical punishment is not effective. Barnardo's Cymru expressed the view that:

> "[…] research also highlights that physical punishment is less effective in creating proper frameworks and boundaries supporting behavioural expectations."[86]

97. Two themes in this regard emerged from the evidence of those individuals who responded in a personal capacity in support of the Bill:

- more effective alternatives to physical punishment exist to discipline a child;
- there is no research evidence to suggest that physical punishment is effective or beneficial.

Views of individuals supporting the Bill about the effectiveness of physical punishment

"The[re] is no evidence that physical punishment has any positive effects whatsoever. […] There are much more constructive ways of managing conflict with children that teach them important skills in non-violent conflict resolution. Hitting them undermines that process". **Dr Joan Durrant - Child-Clinical Psychologist and Professor (CADRP 640)**

"There is extensive research evidence that physical punishment is ineffective, and it can cause considerable harm both in childhood and in later life". **Individual (CADRP 281)**

[80] Written evidence, CYPE Committee, CARDP 498 – Royal College of General Practitioners.

[81] Written evidence, CYPE Committee, CADRP 572 –'Sdim Curo Plant/Children are Unbeatable Cymru.

[82] Written evidence, CYPE Committee, CADRP 596 – Newport Mind.

[83] Written evidence, CYPE Committee, CADRP 174 – Swansea Bay University Health Board.

[84] Written evidence, CYPE Committee, CADRP 421 – Play Wales.

[85] Written evidence, CYPE Committee, CADRP 482 – Children in Wales.

[86] Written evidence, CYPE Committee, CADRP 501 – Barnardo's Cymru.

"[There is] overwhelming research evidence to show that the physical punishment of children is ineffective and has the potential to cause significant and lasting harm". **Individual (CADRP 403)**

"Physical punishment is ineffective". **Dr Elizabeth Gershoff - Professor of Human Development and Family Sciences (CADRP 453)**

Potential for children to copy adults' behaviour

98. One issue which was cited by many in support of the Bill is that physical punishment can lead to children copying or mimicking adults' behaviour if they are physically punished. We were told that, as children often imitate their parents or adults, physical punishment can become a learned behaviour, setting a bad precedent for children's conduct by leading them to believe that violence is a way to solve a problem and/or control another person's behaviour.

99. This was a clear theme among the parents we met on 6 June 2019 and who supported the Bill. A summary of some of their views includes:

- allowing parents to smack children "normalises" violence for the child;
- aggression from a parent may be passed on to the child who can then become aggressive with other children;
- children see violence as a way of dealing with a problem if someone has done something wrong.

100. The counterargument to imitation of parents was put forward by an individual responding in a personal capacity who told us:

> "This argument is flawed because reasonable chastisement is not violent but lovingly explained and administered in a controlled way. Children understand the unique authority relationship between parent and child and we do not find them imitating this or other forms of loving discipline e.g. time outs/removal of privileges on other children."[87]

101. However Clybiau Plant Cymru Kids Clubs told us:

[87] Written evidence, CYPE Committee, CADRP 558 – Individual.

> "[…] by using physical punishment against a child, adults are modelling that violence is a solution to a problem which could have impacts on how children respond when they are faced with challenges."[88]

102. In written evidence, the British Association of Social Workers (BASW) Cymru told us that the current defence "could send a contradictory and confusing message to children". It went on to say that, if they see smacking, "children may model this behaviour and could find themselves being punished for doing so".[89]

103. In oral evidence, Allison Hulmes, National Director for Wales for BASW Cymru, confirmed that she believed imitation to be a risk of physical punishment of children as a consequence of:

> "[…] many years of experience of having directly witnessed the behaviour, and also supervising and supporting social workers who are, again, directly describing the modelling behaviours of children—so, modelling negative behaviours displayed by their parents."[90]

104. Dr Dave Williams, Divisional Director, Family Therapy Services, Aneurin Bevan University Health Board, told us of his experience:

> "You see young children who, when they get angry, say, 'I'm going to smack you' and you can see that they are re-enacting the behaviour of their parents when they're dealing with their siblings and their friends. They only get to specialist services because they're doing some other stuff as well, but they've added the tool of physical chastisement as one of their behaviours, and that's not a healthy thing for children to be developing."[91]

Views of some individuals supporting the Bill on children copying adults

"[Smacking] risks teaching children that physical assault is an acceptable response to disagreeing with a person's words or actions, setting an entirely unpleasant precedent for their conduct as adults". **Individual (CADRP 38)**

"Children learn by example and it is not OK to teach them that certain behaviour makes physical punishment acceptable". **Individual (CADRP 156)**

[88] Written evidence, CYPE Committee, CADRP 646 – Clybiau Plant Cymru Kids Clubs.

[89] Written evidence, CYPE Committee, CADRP 283 – British Association of Social Workers Cymru.

[90] Oral evidence, CYPE Committee, RoP [para 216], 16 May 2019.

[91] Oral evidence, CYPE Committee, RoP [para 33], 22 May 2019.

"We teach children not to hurt others and that it is wrong to use violence in any form. How can a child be expected to learn that if they are smacked?". Individual (CADRP 212)

"Children learn from the adults around them and I feel that resolving a situation by hitting a child only serves to teach them that they should deal with difficult situations the same way. Children then hit children". Individual (CADRP 338)

"It [hitting a child] teaches the child that violence is the way to getting what you want [...] A child can grow up believing that hitting/assault is the best way to control others". Individual (CADRP 527)

105. The Deputy Minister told us the current law sends:

> "[...] a confused message to children. It says, 'It's okay for me to hit you, but don't you hit anybody else'."[92]

Does physical punishment harm children?

106. There are strong opinions on both sides of the debate about whether physical punishment is harmful to children. This was reflected in the volume of responses to our consultation that commented on this aspect of our scrutiny.

107. In addition to personal opinion and experiences, there is a significant amount of academic work on this issue. Again we received a high volume of information about the academic evidence and were also provided with copies of many research reports and articles. We are very grateful to all those who have contributed to our knowledge base, including a wide range of UK-based and international academics who have studied this issue over many years.

108. Our report does not seek to set out all the academic evidence with which we have been provided. That is already in the public domain. What this report seeks to do is give an overview of what we have heard and our view on it.

109. The other issue raised with us was concerns about potential harm from other methods of non-physical discipline. That is dealt with elsewhere in paragraphs 155-162 of this report.

110. The Bill's Explanatory Memorandum says that "key research and evidence which has been considered by the Welsh Government"[93] shows, in summary:

[92] Oral evidence, CYPE Committee, RoP [para 6], 12 June 2019.

[93] Explanatory Memorandum, Welsh Government, page 33.

- the majority of researchers in the field make the judgement that all physical punishment under all conditions is potentially harmful to children;
- although there is no definitive evidence that "reasonable" physical punishment causes negative outcomes for children, there is evidence that it is associated with negative outcomes;
- there is no reliable evidence demonstrating that "reasonable" physical punishment has long-term developmental benefits, or is more effective at changing short-term behaviour, relative to other, non-physical means.[94]

111. The information in the Explanatory Memorandum is largely based on the Parental Physical Punishment Child Outcomes and Attitudes 2018 report published by the Public Policy Institute for Wales (now Wales Centre for Public Policy).[95] It was commissioned by the Welsh Government to review the evidence on children's attitudes towards physical punishment, and the links between parental physical punishment and child outcomes. The evidence we have received on this report's findings is set out later in this section.

Views of respondents who told us physical punishment harms children

112. There was a substantial volume of evidence from those who support the Bill and who told us that physical punishment harms children. There was also a substantial volume of academic evidence provided in support of this view.

113. Physical punishment being viewed as harmful was a clear theme among the parents we met on 6 June 2019 and who support the Bill. For example, we were told:

- "My step-dad hit me and I felt frightened";
- "Being physically punished definitely affects you throughout life";
- "I wish someone had reported my step-dad".[96]

[94] Explanatory Memorandum, Welsh Government, page 33.

[95] Public Policy Institute Wales, Parental Physical Punishment Child Outcomes and Attitudes (2018), July 2018 [accessed 7 July 2019].

[96] Different person to the first quote about a step-parent.

114. Almost without exception, those supporting the Bill told us that physical punishment harms children. Public Health Wales,[97] the Children's Commissioner for Wales,[98] Cwm Taf Morgannwg University Health Board,[99] Aneurin Bevan University Health Board,[100] and Newport Mind[101] all referred to a potential link between physical punishment and Adverse Childhood Experiences (ACEs).[102]

115. The Royal College of General Practitioners referred to the volume of academic studies and explained some of the challenges it presented. However, it went on to say:

> "The balance of evidence seems sufficiently clear and compelling to inform us that parental use of physical punishment of children plays no useful role in their upbringing and poses only risks to their development."[103]

116. We heard from the Royal College of Psychiatrists that, in its view:

> "All studies around mental health in childhood have found that physical punishment (such as pushing, grabbing, shoving, spanking, slapping, hitting) is significantly associated with behaviour disorders, anxiety disorders, depression and hopelessness, with later studies finding associations with suicide attempts, low self-esteem, hostility and emotional instability. There is also significant evidence that physical childhood punishment is associated with increases in aggressive behaviours, including delinquent, anti-social and even criminal behaviour."[104]

117. NSPCC Cymru/Wales referred to its report, Equally Protected, published in 2015[105] and told us:

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[97] Written evidence, CYPE Committee, CADRP 614 – Public Health Wales.

[98] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

[99] Written evidence, CYPE Committee, CADRP 544 – Cwm Taf Morgannwg University Health Board.

[100] Written evidence, CYPE Committee, CADRP 611 – Aneurin Bevan University Health Board.

[101] Written evidence, CYPE Committee, CADRP 596 – Newport Mind.

[102] "ACEs" are traumatic experiences that occur before the age of 18 and are remembered throughout adulthood.

[103] Written evidence, CYPE Committee, CADRP 498 – Royal College of General Practitioners.

[104] Written evidence, CYPE Committee, CADRP 639 – Royal College of Psychiatrists Wales.

[105] NSPCC Cymru/Wales, Equally Protected: A review of the evidence on the physical punishment of children, 2015 [accessed 7 July 2019].

> "Although opponents to this Bill claim the evidence is contested, in our view it is clear: there is overwhelming evidence that physical punishment causes children harm. [...] In the foreword Professor Sir Michael Marmot concluded 'The international evidence could not be any clearer- physical punishment has the potential to damage children and carries the risk of escalation into physical abuse'."[106]

118. Dr Anja Heilmann, a Public Health Academic and one of the authors of the Equally Protected report, told us:

> "In sum, the evidence for detrimental effects of physical punishment is vast and importantly, it is consistent. Physical punishment is not effective in achieving parenting goals. It tends to make difficult behaviour worse and carries a serious risk of escalation into injurious abuse."[107]

119. Dr Elizabeth Gershoff, Professor of Human Development and Family Sciences, University of Texas, referred to two meta-analyses of the body of research which she has conducted. Dr Gershoff highlighted to us key points from this research, including:

- "physical punishment is a form of violence against children. Euphemisms such as "smacking" make it easier for citizens to accept the practice but do not minimize the fact that physical punishment causes physical and emotional harm to children";
- "physical punishment is ineffective";
- "physical punishment is linked almost entirely with negative outcomes for children, including increased aggressive behaviors, increased mental health problems, and lower cognitive ability";
- "harm from physical punishment extends into adulthood and is recognized as an Adverse Childhood Experience".[108]

120. In her written response to our consultation, Dr Joan Durrant, Child-Clinical Psychologist and Professor in the Department of Community Health Sciences, College of Medicine, University of Manitoba, told us:

[106] Written evidence, CYPE Committee, CADRP 641 – NSPCC Cymru/Wales.

[107] Written evidence, CYPE Committee, CADRP 612 – Dr Anja Heilmann – Public Health Academic.

[108] Written evidence, CYPE Committee, CADRP 453 – Dr Elizabeth Gershoff – Professor of Human Development and Family Sciences.

> "Physical punishment has been demonstrated to have solely negative outcomes for children in virtually every study that has examined its effects, regardless of where the study is conducted, the age of the children, or the outcomes measured. It consistently and robustly predicts higher levels of aggression in children, weaker parent-child relationships, more mental health problems, and a substantially high risk of physical injury. […] The[re] is no evidence that physical punishment has any positive effects whatsoever."[109]

121. Given the volume of academic evidence, and the differences of viewpoints in terms of whether physical punishment is harmful to children, we were keen to further explore this issue in our oral evidence sessions.

122. Dr Katherine Shelton, Senior Lecturer in Psychology at Cardiff University and representing the Equal Protection Network Cymru, was asked to comment on the difference of views about the academic evidence. She told us:

> "I can be unequivocal in saying the evidence supports and the evidence is clear that physical punishment harms children and it has lasting impacts into adolescence and adulthood. And you can look across research designs from correlation, from looking at families followed across time and from experimental designs, and the weight of evidence is complete convergence on that. […] If you look to the peer-reviewed literature in the best scientific outlets in the world, the evidence is consistent and clear: it harms children to be physically punished in the home."[110]

123. Sally Jenkins, then Chair of the All Wales Heads of Children's Services and representing the Association of Directors of Social Services, told us:

> "What we know is that children themselves, […] really find physical punishment demeaning and harmful, and for children it is an emotionally damaging experience. Now, there may be disagreement about that, there will be different views on that, but that's the voice of the child in this debate. The voice of the child is very clear that physical punishment is for them harmful."[111]

[109] Written evidence, CYPE Committee, CADRP 640 – Dr Joan Durrant – Child-Clinical Psychologist and Professor.
[110] Oral evidence, CYPE Committee, RoP [para 400], 2 May 2019.
[111] Oral evidence, CYPE Committee, RoP [para 8], 8 May 2019.

124. We consider the evidence we received in relation to children's views about "reasonable punishment" and the Bill in section 2.6 of this report.

125. Huw David, Welsh Local Government Association Spokesperson for Health and Social Care and Leader of Bridgend County Borough Council, gave us the local authority perspective:

> "The state's paramount role is to protect children from harm. That is our legal responsibility, it's our moral responsibility, and we will discharge that. And there is obviously a view—it's a view that is enshrined in the UN Convention on the Rights of the Child—that physical punishment, physical harm to a child is harm to a child, and we should be preventing that and act to prevent that."[112]

126. When questioned about whether the research evidence pointed to a potential for harm rather than an evidenced link, Andy James, representing the Equal Protection Network Cymru, said:

> "It's the potential. There will be some cases, probably, where it wouldn't happen, but in many cases it does."[113]

127. The Children's Commissioner for Wales made a number of points about the efficacy of the academic evidence:

- "to have fundamentally unchallengeable causal evidence, one needs to carry out experimental studies, of course. None of us are going to be proposing carrying out experimental studies where we smack some children and not smack others. That was done in the past, but we certainly wouldn't be doing it now";
- "The evidence is unusually strong in terms of associations, and different methodologies have been used to show this. We've had prospective studies, so not just retrospective studies where people will look back and say whether they were smacked or not in the past, but prospective studies";
- "There's a whole unusual richness of evidence to show that smacking is less effective than other techniques and has strong associations with harmful outcomes for children";

[112] Oral evidence, CYPE Committee, RoP [para 33], 8 May 2019.

[113] Oral evidence, CYPE Committee, RoP [para 422], 2 May 2019.

- "There's this huge richness of evidence and we just cannot ignore that. I cannot ignore that. I've got 20 years' experience as a social sciences academic and as a professor, and it's unusual in family life to have this level of evidence. Because it's been such a disputed area, people have researched it more and more".[114]

Wales Centre for Public Policy (Public Policy Institute for Wales) report

128. The Explanatory Memorandum sets out that the Welsh Government commissioned the Wales Centre for Public Policy (then named Public Policy Institute for Wales (PPIW)) to undertake a review of the evidence about children's attitudes towards physical punishment and the link between parental physical punishment and child outcomes.

129. The Welsh Government commissioned research, Parental Physical Punishment Child Outcomes and Attitudes, looked at the research evidence about the link between physical punishment and negative outcomes, and whether there is evidence that the outcomes are caused by (rather than just associated with) physical punishment.[115]

130. The report also refers to different academic evidence and says:

> "there are areas of agreement, and experts do not generally contest that the evidence shows that:
>
> - Children's views towards parental physical punishment are generally negative;
> - There is strong evidence that severe physical punishment and child abuse are harmful to child development;
> - There is no replicated evidence to show that parental usage of physical punishment improves long-term developmental health;
> - Physical punishment is no more effective at changing short term behaviour than other forms of non-physical discipline, for defiant children."[116]

[114] Oral evidence, CYPE Committee, RoP [paras 591-594], 2 May 2019.

[115] Public Policy Institute Wales, Parental Physical Punishment Child Outcomes and Attitudes (2018), July 2018.

[116] Public Policy Institute Wales, Parental Physical Punishment Child Outcomes and Attitudes (2018), July 2018.

131. The Explanatory Memorandum sets out that this review, published in July 2018:

> "[…] indicates that, overall, the balance of evidence supports the following conclusions:
>
> - Severe physical punishment and child abuse are harmful to child development;
> - Although there is no definitive evidence that 'reasonable' physical punishment causes negative outcomes for children, there is evidence that it is associated with negative outcomes;
> - There is no reliable evidence demonstrating that 'reasonable' physical punishment has long-term developmental benefits, or is more effective at changing short-term behaviour, relative to other, non-physical means;
> - Physical punishment for defiant children is no more effective at changing short-term behaviour than other forms of non-physical discipline;
> - The majority of researchers in the field make the judgement that all physical punishment under all conditions is potentially harmful to children."[117]

132. The Explanatory Memorandum states:

> "[…] in terms of the links between physical punishment and child outcomes, the [PPIW] report explains there are several hundred studies and that these do not all come to the same conclusions. The review authors' view is:
>
> *'[…] the evidence does not definitively show that "reasonable" parental physical punishment causes negative outcomes. But there is evidence of an association with negative outcomes, and no evidence of benefits, either in terms of long-term developmental benefits, or in terms of its efficacy in influencing short-term changes to behaviour relative to other, non-physical means'.*"[118]

[117] Explanatory Memorandum, Welsh Government, para 3.47, page 17.

[118] Explanatory Memorandum, Welsh Government, para 3.48, pages 17-18.

133. Many of the written submissions opposing the Bill referred to the sentence in the PPIW report which said "in our view the evidence does not definitively show that 'reasonable' parental physical punishment causes negative outcomes". We therefore sought to explore this further in oral evidence.

134. Representatives of the Equal Protection Network Cymru told us they found the report's findings "very confusing" and that they "found it very frustrating [...] as it didn't tie in with what we knew".[119]

135. The Children's Commissioner for Wales told us that the PPIW report was cautious, but not "incorrect":

> "The Government, of course, have relied on the evidence from the PPIW. I think the conclusions of that research, when they looked at all of the studies, were cautious, I would say, compared to the strength of the evidence that is there. The Government, of course, have relied on those conclusions as they commissioned them. But, my view is that it is strong. The overwhelming majority, about 99 per cent of studies, find this association of negative outcomes."[120]

136. Dr Rowena Christmas, representing the Royal College of General Practitioners, referred to academic evidence and told us "there seems to be a compelling, broad range of possible negative outcomes".[121] Asked about the PPIW report, she said:

> "I felt it was quite reserved. I read that first and then I read the actual studies, and I felt, if I'd been writing the paper, I might have been a little bit stronger saying that, actually, the evidence from the studies is quite strong that there are adverse outcomes from parental physical punishment, whereas this is a bit more sitting on the fence, isn't it?"[122]

137. Children are Unbeatable Cymru shared these concerns:

> "The evidence is clear. Using physical punishment is ineffective and can cause considerable harm. We disagree with the cautious conclusions of

[119] Oral evidence, CYPE Committee, RoP [para 426], 2 May 2019.

[120] Oral evidence, CYPE Committee, RoP [para 598], 2 May 2019.

[121] Oral evidence, CYPE Committee, RoP [para 309], 22 May 2019.

[122] Oral evidence, CYPE Committee, RoP [para 328], 22 May 2019.

> the review commissioned by the Welsh Government from the Public Policy Institute Wales."[123]

138. Dr Joan Durrant, Child-Clinical Psychologist and Professor in the Department of Community Health Sciences, College of Medicine, University of Manitoba, told us:

> "I note that the [PPIW] report places much emphasis on the question of causality, stating that "there has been significant debate about whether there is a causal link between physical punishment and negative child outcomes", and that there are "two schools of thought: the anti-physical punishment and the conditional physical punishment positions". Having systematically reviewed the evidence published over the decade from 2005-2015, I disagree with this framing of the existing body of literature. Those who hold what the report describes as the 'conditional physical punishment position' are a small group of US researchers around Prof. Robert Larzelere, and theirs can only be considered a minority view. The arguments brought forward by Larzelere and his colleagues have been repeatedly refuted."[124]

139. Dr Durrant goes on to say:

> "The vast majority of the available evidence from longitudinal, well controlled studies consistently shows detrimental impacts of physical punishment on child behaviour and well-being. Further, I am very concerned that the PPIW report appears to downplay the consistently found links between physical punishment and an increased risk of injurious abuse."[125]

140. When the Deputy Minister was asked about suggestions (including the Equal Protection Network Cymru's) that the PPIW report did not reflect the strength of the evidence, she responded:

> "We were very keen to get as balanced research as we possibly could, and we didn't want to just put forward views that we thought agreed with our point of view. So, we were trying to give a balanced point of

[123] Written evidence, CYPE Committee, CADRP 572 – 'Sdim Curo Plant / Children are Unbeatable Cymru.

[124] Written evidence, CYPE Committee, CADRP 640 – Dr Joan Durrant – Child-Clinical Psychologist and Professor.

[125] Written evidence, CYPE Committee, CADRP 640 – Dr Joan Durrant – Child-Clinical Psychologist and Professor.

> view, but we did commission the Wales Centre for Public Policy to do an independent literature review and we're honestly reporting to you what they said. But they did make it clear, again, which I think I've said in previous evidence sessions, that all physical punishment, under all conditions, is potentially harmful to children. And certainly, there is no peer-reviewed research that says that physically punishing a child is going to improve things, has favourable outcomes. So, I understand what Equal Protection Network Cymru are saying, because there is a lot of very strong evidence, but we're giving you the evidence that we had from the research that we commissioned."[126]

Views of respondents who do not think physical punishment is harmful

141. Be Reasonable Wales told us research has not proved smacking is harmful.[127]

142. We also heard from an academic who opposes the Bill, Professor Robert Larzelere, who provided us with details of several research studies he has undertaken over time. He told us:

> "This bill implies that the 90% of parents who used smacking in previous generations were invariably harming their children when they decided that smacking was the best disciplinary choice at that moment. A better alternative is to identify the most appropriate smacking, which is to use it non-abusively (open-handed to the buttocks when not out-of-control due to anger) to back-up milder disciplinary tactics, such as timeout in children near the age range of 2 to 6."[128]

143. Another individual responding to our consultation in a personal capacity questioned the basis of the academic evidence which sets out that physical punishment can lead to negative outcomes for children:

> "[...] the truth is that all methods of discipline are potentially harmful/linked to negative outcomes if used disproportionately or harshly. When studied rigorously the evidence clearly discriminates between the outcomes of differing degrees and contexts of physical discipline."[129]

[126] Oral evidence, CYPE Committee, RoP [para 18], 12 June 2019.

[127] Written evidence, CYPE Committee, CADRP 92 – Be Reasonable Wales.

[128] Written evidence, CYPE Committee, CADRP 559 – Robert E Larzelere – Professor.

[129] Written evidence, CYPE Committee, CADRP 558 – Individual.

144. Parent campaigner, Sally Gobbett, told us:

> "I think, also, we forget that a child who is not lovingly disciplined and who grows up to have anti-social behaviours et cetera will be far more severely punished by society and nature as they go into adulthood than the light, infrequent discipline that might be received in childhood from a loving parent."[130]

145. Many individuals who oppose the Bill and who responded to our consultation in a personal capacity told us that physical punishment is not harmful.

Some views from those opposing the Bill that physical punishment is not harmful

"A recent poll showed that over 80 percent of adults were smacked as a child and did not think they were abused". **Individual (CADRP 140)**

"A slapped bum did me no harm". **Individual (CADRP 145)**

"My husband and I gave all four of our children a smack when we thought they needed it and they have grown up into well adjusted adults and we remain a close family". **Individual (CADRP 147)**

"From my personal experience as one who was physically disciplined by loving parents I am so grateful that they restrained me quickly and purposefully". **Individual (CADRP 164)**

"The majority of adults today were smacked when they were children with no adverse effects". **Individual (CADRP 392)**

"[...] most adults were smacked as children but do NOT view their parents as child abusers". **Individual (CADRP 429)**

"The Government's own publication document recognises that there is no evidence that light, infrequent physical discipline, in the context of a loving parenting dynamic has any negative outcomes whatsoever". **Individual (CADRP 181)**

"There is no evidence that mild physical punishment harms children". **Individual (CADRP 525)**

"Most parenting practices are harmless if used moderately and lovingly, but harmful if used excessively or harshly e.g. time-outs, verbal, reward systems, praise, screen-time etc. We require a scientific evidence base to demonstrate precisely where those lines exist to guide parents and punish abusers, rather than creating indiscriminate blanket

[130] Oral evidence, CYPE Committee, RoP [para 211], 2 May 2019.

bans of particular 'potentially' harmful practices. To be consistent, just and equitable to all families, then ALL 'potentially' harmful methods of discipline must be criminalised as well. This would become untenable". **Individual (CADRP 558)**

"An occasional & light infrequent smack in the context of a loving parent-child relationship is not harmful in any way to the child". **Individual (CADRP 617)**

146. When asked about the evidence that physical punishment is harmful, the Deputy Minister told us:

> "There's certainly no evidence showing that a light smack does any good for children. That's certainly absolutely true. The only way you could get a proper evidential survey is if you did a trial, and you had a trial where you had some children who were smacked and some children who weren't, and compare them. And, of course, you would never do that, because that would really be quite unethical, to say, 'We'll set up a trial and we'll have a group of children who we'll allow to be smacked and a group of children who wouldn't.' So, it is very difficult to get any actual evidence, but I think that the research that we've looked at and the research that we've commissioned—the overall view is that there is the potential, certainly, for harm from any form of physical punishment."[131]

147. The Deputy Minister went on to say:

> "[…] there are no benefits associated with physical punishment […] and there is association with negative outcomes, but that's different than saying that negative outcomes are a result of it. So, I think that's the research point being made. But the Wales Centre for Public Policy review of the evidence did actually conclude that 'The majority of researchers in the field make the judgement that the balance of evidence is sufficient to support the claim that all physical punishment under all conditions is potentially harmful to child development.'."[132]

A potential pathway to more serious abuse?

148. Some of the concerns raised by those in support of the Bill related to their view that some physical punishment could be a potential pathway that escalates

[131] Oral evidence, CYPE Committee, RoP [para 10], 2 May 2019.

[132] Oral evidence, CYPE Committee, RoP [paras 27-28], 2 May 2019.

into more serious forms of abuse. This was a theme which emerged in the written evidence from individuals.

Some views of supporters of the Bill about the potential for physical punishment to escalate into more serious forms of abuse.

"Serious physical abuse of a child invariably has physical punishment as a factor. Not everyone knows when to stop and physical punishment often happens at a time of heightened emotion". **Individual (CADRP 281)**

"[…] most incidents of serious assault on children begin with an acceptance of corporal punishment". **Joan van Niekerk, Consultant (CADRP 346)**

"Physical punishment does not work and because it does not work there is a danger of it escalating into physical abuse". **Individuals (CADRP 313, 361, 427, 622)**

"It should be recognised that in some cases, particularly where stressed parents are struggling in difficult circumstances, there is a risk that low-level smacking can escalate into more severe and life-threatening levels of physical abuse". **Jonathan Evans, Professor of Youth Justice Policy and Practice, University of South Wales (CADRP 520)**

149. The Royal College of Psychiatrists (RCP) told us there are "currently over 100 psychiatrists and trainees working in Child and Adolescent Mental Health Services (CAMHS) across Wales. All too often they find themselves working with children who are subjected to physical punishment or abuse and are subsequently using mental health services as a result".[133]

150. The RCP went on to say:

> "Physical punishment has the propensity to escalate over time and the effectiveness in controlling the child's behaviour decreases as he/she becomes impervious to the abuse, which often encourages parents to then increase the intensity of the punishment, often causing difficulties in the child / parent relationship."[134]

151. In oral evidence, Allison Hulmes, representing BASW Cymru, emphasised:

> "I think it's highly significant that we do have cases of child death where parents have said that they were chastising a 'naughty child', and that's escalated into significant harm and the death of a child. There are a number of cases to support that as being a factor in the continuum

[133] Written evidence, CYPE Committee, CADRP 639 – Royal College of Psychiatrists.

[134] Written evidence, CYPE Committee, CADRP 639 – Royal College of Psychiatrists.

> that's led up to significant injury and the death of a child. And I also think that there is a significant body of evidence to support that physical chastisement leads to an escalation in physical punishment."[135]

152. Welsh Women's Aid told us that "all physical chastisement carries the risk of escalating into serious assault". It went on to say "this is largely due to the fact that this form of discipline is ineffective and therefore can lead to increased severity".[136]

153. NSPCC Cymru/Wales's written evidence echoed this view:

> "As less and less parents use physical punishment there will be fewer negative outcomes for children and it will stop cases of physical punishment escalating into physical abuse. It is important to remember that physical abuse is not a small problem in Wales. It is an adverse childhood experience (ACE) and the Public Health Wales research into ACEs found that 17% of adults grew up with physical abuse in their childhoods."[137]

154. Jane Randall, Chair of the National Independent Safeguarding Board, told us:

> "That it is a continuum is clear. It isn't always the case, clearly, but I think, once you allow a physical response to frustrations or challenge, what you know is, when you're managing behaviours, often, you have to increase, if you like, the stimulus, to get the desired response. So, when one smack doesn't work, do you then go to two or three or four to get the response that you're looking for? So, I think there is clear evidence that it can lead to an escalation."[138]

Potential harm from some non-physical methods of discipline

155. Concerns were raised with us about the potential harm that might arise from other forms of non-physical discipline, such as time out or isolation. We heard from some respondents to our consultation that parents might turn to "more harmful" methods of discipline as an unintended consequence of the Bill.

[135] Oral evidence, CYPE Committee, RoP [para 194], 16 May 2019.

[136] Written evidence, CYPE Committee, CADRP 625 – Welsh Women's Aid.

[137] Written evidence, CYPE Committee, CADRP 641 – NSPCC Cymru/Wales.

[138] Oral evidence, CYPE Committee, RoP [para 194], 22 May 2019.

156. Parent campaigner, Sally Gobbett, told us:

> "I also have evidence here that other methods of discipline, whether they're positive or negative, if you can make that distinction, are also linked to harmful outcomes if they're used disproportionately or in the wrong way. So, for example, there is evidence that the processing of emotional pain in the brain is actually in the same area as physical pain, so when a child is isolated in their bedroom or excluded by an angry parent, they are experiencing, actually, the same sort of pain as physical pain."[139]

157. Independent Psychology Associates told us that physical punishment is less harmful than some other non-physical such as "mind games".[140]

158. These concerns were echoed by some of the opponents of the Bill who responded to our consultation. They told us that alternatives to physical punishment, including psychological or emotional discipline, can be far more harmful in the long run.

Some views from those opposing the Bill about the potential harm from some non-physical methods of discipline

"Young children can be more traumatised by alternatives [to physical punishment] such as the naughty step because they cannot remember why they are in trouble, only that they have been ostracised". **Individual (CADRP 48)**

"All forms of discipline, be they verbal correction or admonition, the naughty step, isolation in a bedroom, removal of privileges etc etc can be horribly abusive if done in the wrong way". **Individual (CADRP 176)**

"Whilst I accept there are circumstances in which it could be harmful to use physical punishment, there are also all sorts of non physical punishments that are equally damaging". **Individual (CADRP 533)**

"Regular shouting at children has been shown to be damaging […] Is shouting to be made illegal?". **Individual (CADRP 451)**

"Children will endure alternative psychologically damaging and longer lasting punishments because the State will have removed the scope for a gentle, harmless warning". **Individual (CADRP 484)**

[139] Oral evidence, CYPE Committee, RoP [para 201], 2 May 2019.

[140] Written evidence, CYPE Committee, CADRP 494 – Independent Psychology Associates.

"Limiting the disciplinary options available to parents will force parents to other methods to excess or use methods that are harmful to children in other ways eg shouting/ isolation/ removal of privileges/ grounding/ emotional blackmail/ insincere praise/ shaming/ bribery with rewards/ empty threats/ coercion, etc Many of these methods are much more drawn-out than a smack, create resentment and mistrust and disrupt the parent-child relationship much more". **Individual (CADRP 558)**

159. In contrast, representatives of the Equal Protection Network Cymru told us "there is nothing more harmful than physically hurting a child"[141] and suggested that the positive parenting campaign is there to help parents to learn about positive ways of disciplining children.[142]

160. When questioned on her view, the Children's Commissioner for Wales told us:

> "I just don't feel, for me, that's a very positive argument, to say that, 'If I'm not allowed to do this negative thing, I'll do another negative thing'.[...] So, I don't really like the use of that argument, but I fully accept that there are other forms of parenting that also can cause harm to children, but they're not currently supported in the legislation."[143]

161. When asked whether non-physical punishment such as isolation can be damaging to a child, Jan Pickles, Member of the National Independent Safeguarding Board, said:

> "[...] sending a child to a room and isolating them for several hours would be a very, very harmful thing to do. What we aim to do, and I think the removal of this defence could actually open up this conversation about, 'What are the good ways in order—?' Whether it be a naughty step, or 'You can't play with your favourite toy for half an hour'—what's proportionate and what's responsible, to give people some tools to manage the everyday ups and downs and conflict that occur when you're parenting."[144]

162. Dr Rowena Christmas, representing the Royal College of General Practitioners, was asked about concerns raised with us that other types of non-physical punishment, such as isolation, can be equally damaging to children. She told us:

[141] Oral evidence, CYPE Committee, RoP [para 556], 2 May 2019.

[142] Oral evidence, CYPE Committee, RoP [para 561], 2 May 2019.

[143] Oral evidence, CYPE Committee, RoP [para 632], 2 May 2019.

[144] Oral evidence, CYPE Committee, RoP [para 192], 22 May 2019.

> "I quite agree that we need to make sure that all punishments are reasonable and proportionate. For example, verbal chastisement can be damaging as well. If you really aggressively shout at a child, I don't condone that either. I think sending a child to their room for an hour or so—that sounds excessive, certainly for a young child. I think you sit on the naughty step, for instance, for a minute of your age. So, a three-year-old child will be put on the naughty step for three minutes, with a clear explanation that they are going to be put on the naughty step, why they are and what the outcomes are. So, no, I don't think we can bring this Bill in and then allow all sorts of other non-physical punishments to be approved of. We need to carry on carefully parenting, advising parents how to parent appropriately."[145]

A public health issue?

163. We heard polarised opinions on the issue of "state intervention". On the one hand, a number of respondents who supported the Bill told us that physical punishment is a public health issue and as such it is an appropriate intervention by the Welsh Government. These views are dealt with in this section of the report. On the other hand, opponents of the Bill firmly believed its provisions will result in the state intervening inappropriately and excessively in family life. The evidence we heard on the role of the state in family life is set out in the next section.

164. Children are Unbeatable Cymru told us:

> "[…] law has a role in setting standards of what is acceptable and has already been used to address key public health issues, such as to ban smoking in public places and in cars with children present."[146]

165. This was a view shared by the Global Initiative To End All Corporal Punishment Of Children who told us that "it's a public health issue" and "governments must lead in regulating harmful behaviours".[147]

166. When asked his view, Dr Dave Williams, Divisional Director, Family Therapy Services, Aneurin Bevan University Health Board, told us:

[145] Oral evidence, CYPE Committee, RoP [para 343], 22 May 2019.

[146] Written evidence, CYPE Committee, CADRP 572 – 'Sdim Curo Plant/Children are Unbeatable Cymru.

[147] Written evidence, CYPE Committee, CADRP 519 – Global Initiative To End All Corporal Punishment Of Children.

> "It's a public health issue, because it's about culturally how we raise our children to be healthy, well-regarded, psychologically and physically well. It's not an intervention issue, it's a health issue."[148]

167. Some of those individuals who responded to our consultation in a personal capacity also made the point that, in their view, physical punishment is a public health issue rather than a private matter. They compared the Bill with other public health initiatives for example prohibiting smoking in certain public places or requiring the use of seatbelts in cars. Some people told us that the Welsh Government needs to lead the way on public health issues, even if that is unpopular at the time.

Some views from those supporting the Bill that physical punishment is a public health issue

"Public education alone is not enough to ensure children are protected, much like smoking with children in cars, legal measures were needed to ensure children's health is protected". **Elizabeth Davies, Service Manager (CADRP 232)**

"The law sets standards and governments often introduce new laws to address key public health issues, as with smoking in public spaces and using seat belts in cars. Physical punishment has the potential to cause long term harm and has no benefits, so it's a public health issue on which Welsh Government needs to act". **Individual (CADRP 281)**

"Physical punishment of children has no benefits and has the potential to cause serious harm, therefore it is a public health issue. Welsh Government has already legislated to address other public health issues such as smoking in public places, so it's logical for them to legislate to end the physical punishment of children as well". **Individual (CADRP 347)**

"By legislating the Welsh Government will be sending an unambiguous message about the need to raise our children in positive and non-violent ways. The well being of our country's children is a clear public health matter which the Welsh Government has an obvious and valid role in taking the lead on". **Individual (CADRP 403)**

"Passing a statute that removes the defence for physical punishment sends an unambiguous public health message that any form of violence is damaging to health and well-being". **Jonathan Evans, Professor of Youth Justice Policy and Practice, University of South Wales (CADRP 520)**

[148] Oral evidence, CYPE Committee, RoP [para 48], 22 May 2019.

2. 3. The role of the state in family life

168. One theme which has featured prominently in the debate about this Bill is the role of the state. While those supporting the Bill argue that the state must prioritise its role to safeguard children in the widest sense, those opposing the Bill suggest it is illustrative of a "nanny state" approach, and that it is a disproportionate intervention that has the potential to damage the trust between public bodies and families.

169. The majority of submissions from individuals responding to our consultation in a personal capacity did not support the Bill. They believed that it is parents who are best placed to decide on the appropriate punishment or discipline for a child, not the government. As a consequence, they believed the Bill demonstrates state interference in family life and infringes parental rights and, in some cases, religious beliefs.

Some views from those opposing the Bill about the role of the state in family life

"Each child is different and their parents know how best to inculcate the right values in them. Legislating how parents should raise their children is a very dangerous thing to do". **Individual (CADRP 382)**

"It is not the government's place to tell parents how they should parent their children". **Individual (CADRP 100)**

"[…] the creeping intrusion of the State in family affairs is a slippery slope". **Individual (CADRP 219)**

"The abolition of the defence of reasonable punishment would seriously undermine the principle that parents are responsible for bringing up their children, not the state, council or another body". **Individual (CADRP 510)**

"The proposed legislation is an intrusion of the State into private and family life that has until recent decades been foreign to British democratic values". **Individual (CADRP 265)**

"This bill infringes on the right for parents to discipline their children as they see fit. This is the state taking more control than it should, it is dictatorial". **Individual (CADRP 568)**

"Parents will basically lack the God-given authority to lovingly discipline their children. Authority is seen throughout the Bible and as a Christian I firmly believe that in the right circumstances and in love that physical discipline is appropriate". **Individual (CADRP 262)**

170. This was also a strong theme among parents with whom we spoke in discussion groups on 6 June 2019 who opposed the Bill. They believed:

- discipline should be a parental decision not a decision for government;
- this Bill represents too much interference by the state;
- there is a strong consensus that it is not appropriate for the government to tell parents how to raise a child;
- this Bill will lead to the equivalent of the government "being at the family breakfast table and policing what goes on".

171. These concerns about state interference in family life were also raised by the majority of organisations opposed to the Bill: Be Reasonable Wales,[149] Independent Psychology Associates,[150] Brynteg Village Church,[151] and the Evangelical Alliance.[152]

172. The Evangelical Alliance told us:

> "[…] it is respectfully submitted that these legislative provisions risk a significant breakdown of trust between the public and public services. In our view, this is particularly germane where public opposition to the bill remains strong (76%) (supra). As such, there is an obvious risk that proposed legislation in this area will be widely construed as a misconceived imposition that lacks public support. It is notable that Dr Ashley Frawley a Senior Lecturer at Swansea University has argued a smacking ban would be 'Wedging the state and a host of self-styled "experts" between parents and their children'."[153]

173. Anne McGillivray, a retired Professor of Law at the University of Manitoba, provided an alternative view on the role of the state in respect of the use of physical punishment on children:

> "People also worry about the reaction of those whose religious beliefs or training supports child assault. While freedom of thought, conscience and belief is a fundamental human right, all rights stop short at the violation of the rights of others. Children have the clear right at

[149] Written evidence, CYPE Committee, CADRP 92 – Be Reasonable Wales.

[150] Written evidence, CYPE Committee, CADRP 494 – Independent Psychology Associates.

[151] Written evidence, CYPE Committee, CADRP 547 – Brynteg Village Church.

[152] Written evidence, CYPE Committee, CADRP 644 – Evangelical Alliance.

[153] Written evidence, CYPE Committee, CADRP 644 – Evangelical Alliance.

> international law to not be subjected to violence. Corporal punishment however light is violence. No right of mine can justify my violation of a right of yours. The hyper-protection given to religious belief in state law is highly problematic and is not consistent with the international obligations of states."[154]

174. Dr Rowena Christmas, representing the Royal College of General Practitioner's provided an alternative view on how some parents may view the Bill. She gave an example from her practice saying:

> "I think 85 per cent of people, when they smack their children, say that they're experiencing moderate or high levels of anger. So, in actual fact, quite often, mums in particular will come and see me very remorseful, very racked with guilt and upset that they've smacked their child, they wish they hadn't, and that's quite a common presentation to come in. They'd come to see me because they feel stressed and anxious and perhaps depressed, so they come to the GP about that, rather than saying, 'Could you help me parent my child?' That's not—that's just part of what comes out of the consultation, but the presentation is: 'I'm worried about myself; I'm not behaving in the way I want to be behaving."[155]

2. 4. "Criminalising" parents?

175. Another very significant theme from the Bill's opponents is their view that it will "criminalise" parents. The issue of prosecution estimates, including in terms of impact on the Police, the Crown Prosecution Service and the potential unintended consequences of Disclosure and Barring Checks (DBS) on parents, is dealt with in chapter 3 of this report. This section of the report sets out the evidence we have heard about the *principle* that parents could be "criminalised".

176. The Bill's Explanatory Memorandum includes a section entitled "Impact on parents: potential criminalisation, interference in private lives and rights of families". It says:

- "One of the aims of the awareness raising strategy will be to ensure that, so far as possible, parents are aware of the change in the law before it comes into force. This will put them in a position to choose not to

[154] Written evidence, CYPE Committee, CADRP 384 – Anne McGillivray – Professor of Law, University of Manitoba (retired).

[155] Oral evidence, CYPE Committee, RoP [para 299], 22 May 2019.

physically punish their children, and thereby avoid the risk of being charged with a criminal offence";[156]

- "It is possible that some parents who physically punish their children will be charged, prosecuted and convicted, or offered a statutory out of court disposal which would be disclosed as conviction information on an enhanced Disclosure and Barring Service check, in situations where previously the defence of reasonable punishment may have been available";[157]
- "the defence currently in existence is not an absolute defence";[158]
- "normal day to day activities, and physical interventions to protect the child or others, would still be lawful after removal of the defence";[159]
- "The police and CPS are key stakeholders in the implementation of this proposed change in the law. We have consulted and met with them and with social services to work through their processes for handling allegations of physical punishment of children. The police and CPS are not bodies within our direct control but all parties agree that a proportionate response in the best interests of the child is essential";[160]
- "[....] parents who physically punish their children following the commencement of the legislation will commit an offence and may, therefore, be charged with the criminal offence of assault or battery. This potential impact was raised as a concern in some of the responses to the consultation".[161]

Concerns that the Bill will "criminalise" parents

177. The majority of individuals responding to our consultation in a personal capacity did not support the Bill. One of the main reasons cited was that the Bill could "criminalise" loving parents.

[156] Explanatory Memorandum, Welsh Government, para 4.9, page 24.
[157] Explanatory Memorandum, Welsh Government, para 4.10, page 24.
[158] Explanatory Memorandum, Welsh Government, para 4.10, page 24.
[159] Explanatory Memorandum, Welsh Government, para 4.10, page 24.
[160] Explanatory Memorandum, Welsh Government, para 4.11, page 25.
[161] Explanatory Memorandum, Welsh Government, para 2, Annex 4, page 72.

Some views from those opposing the Bill concerned about the potential for parents being "criminalised"

"[…] this bill, if passed, would criminalise loving parents such as myself and my wife who occasionally use reasonable corporal punishment to make clear to our children the kind of behaviour that cannot be condoned or accepted in a home where behavioural boundaries are in place to create a safe and loving space for the building of family". **Individual (CADRP 32)**

"[…] loving parents, who are trying their best to raise their children as well as they can, could end up being criminalised and perhaps charged with assault, when they are not at fault. This undermines parents' own responsibility for their children and could bring devastating consequences for the family unit". **Individual (CADRP 59)**

"This proposed Bill will never prevent bad parents from abusing their children but will deny loving parents access to an important tool which they may need recourse to in the context of raising a well balanced and happy child". **Individual (CADRP 445)**

"The criminalising of loving parents would do more harm than good to their children". **Individual (CADRP 452)**

"[…] if this Bill is passed and becomes Law, parents will potentially become criminals by breaking that law. These parents in all other ways could be loving, caring, sacrificial parents but for one badly constituted law would then become criminals legitimately prosecuted by the State and would face the consequences of that legal action". **Individual (CADRP 585)**

178. This was also a strong theme from parents who came to talk to us on 6 June 2019 who opposed the Bill. Some of the things we were told included:

- "the Bill could have a negative impact on families";
- "it could lead to a criminal record and in turn could lead to loss of your home if you are renting";
- "even a knock on the door from the Police could lead to a loss of livelihood";
- "it will criminalise parents and create a record of the investigation even if there is no prosecution";
- "loving parents are concerned for children when they are little and that is why they should have the right to choose the right methods of discipline".

179. In written evidence, Be Reasonable Wales,[162] Independent Psychology Associates,[163] and the Evangelical Alliance[164] stated that the Bill would "criminalise" parents.

Evidence refuting concerns about "criminalisation"

180. Given the concerns raised with us about "criminalisation", we sought to explore this further in oral evidence.

181. Andy James, representing the Equal Protection Network Cymru, told us:

> "We understand the concern over this issue and the use of the term 'criminalisation'. Personally, and I think collectively, we think that that's a deliberate attempt to inflame the debate, really, and alarm people, because it hasn't materialised in other countries in any concerning way."[165]

182. He referred to the evidential and public interest tests that the Crown Prosecution Service have to consider before taking forward a prosecution. He also said that if, following an awareness raising campaign, there were to be 37-38 prosecutions over a five year period,[166] "you might think that that's justifiable, because it may be that those eight to 10 cases [a year] are the most serious ones, where people are wilfully not complying with the law".[167]

183. Jeff Cuthbert, Police and Crime Commissioner for Gwent and Chair of the All-Wales Policing Group, told us that the Bill "is not about penalising and the criminalising of parents".[168]

184. Dr Dave Williams, Divisional Director, Family Therapy Services, Aneurin Bevan University Health Board, told us "it's about promoting the positive behaviours to move away from the edge of the cliff [...] rather than policing the edge of the cliff so you can catch people".[169] He went on to say:

[162] Written evidence, CYPE Committee, CADRP 92 – Be Reasonable Wales.

[163] Written evidence, CYPE Committee, CADRP 494 – Independent Psychology Associates.

[164] Written evidence, CYPE Committee, CADRP 644 – Evangelical Alliance.

[165] Oral evidence, CYPE Committee, RoP [para 492], 2 May 2019.

[166] Oral evidence, CYPE Committee, RoP [para 494], 2 May 2019.

[167] Oral evidence, CYPE Committee, RoP [para 496], 2 May 2019.

[168] Oral evidence, CYPE Committee, RoP [para 98], 8 May 2019.

[169] Oral evidence, CYPE Committee, RoP [para 83], 22 May 2019.

> "[…] I think if we're dependent on enforcing the law, we haven't used the law properly, because it is about sending the message. Because it's a public health message, as you say, so if you're ending up saying, 'How do we manage all the criminal convictions we've got?', clearly the support hasn't worked properly."[170]

185. When questioned in oral evidence, Barry Hughes, Chief Crown Prosecutor for Wales, told us:

> "There is a huge body of legislation out there that outlaws certain offences, and I think probably about—. There are over—. From memory—please never hold me to this—but, from memory, there are something like 10,000 criminal offences; we probably prosecute 5 per cent of those in any given year. There are some offences on the statute—. I've been prosecuting for 32 years now; there are some offences that I've never come near and probably never will. But, nonetheless, the fact those offences exist sets out in terms what is acceptable and what is not acceptable. So, we have various defences to do with Acts. I remember seeing some about Antarctic stations and offences that might be committed there. Well, they're not something that we do, but it sets out what's tolerant—what's tolerable, sorry, and what isn't. So, the fact that we might not have many prosecutions is, for me, not a reason not to say that we shouldn't signify that certain behaviour is or is not acceptable. Clearly, we don't wish to criminalise everything—that would be a nonsense—or to attempt to set the boundaries by almost micromanaging what individuals do and don't do. The criminal law provides a general framework within which to operate, which most people tend to understand. So, awareness is important and it comes back to that point."[171]

186. The written evidence from organisations in support of the Bill also sought to dispute concerns that this Bill would lead to the "criminalisation" of parents. Several referred to the Crown Prosecution Service evidential and public interest tests, suggesting these would filter out the vast majority of cases.

187. Humanists UK shared its view that:

> "Since the defence of reasonable punishment is relatively rare […] it is unlikely that its abolition will lead to a sudden slew of cases that might

[170] Oral evidence, CYPE Committee, RoP [para 81], 22 May 2019.

[171] Oral evidence, CYPE Committee, RoP [para 145], 6 June 2019.

> previously have drawn on it. Rather, it seems reasonable to expect that it will merely encourage parents to think about other, more effective, methods by which to manage the behaviour of their children which also respects their human rights."[172]

188. Some individuals who responded in support of the Bill told us it would not necessarily lead to "criminalisation" if other remedies (such as out of court disposals, which are discussed in more detail in chapter 3) are applied when a parent is found to have used physical punishment. They argued that the Bill can open the door to better awareness of — and training on — alternative parenting methods and the potential harm caused by physical punishment.

Some views from those in favour of the Bill refuting concerns about parents being "criminalised"

"This [removing the defence of reasonable punishment] does not lead to criminalization; it simply leads professionals to provide services to those who need alternatives". **Individual (CADRP 355)**

"There is an understandable concern that we may criminalise some essentially decent, but hard pressed parents who may – because of exhaustion, stress and exasperation - lose patience and self-control, and use corporal punishment as a last, desperate resort. It is worth recalling here that in those countries where physical punishment is illegal, the prisons are not bulging with parents convicted of 'light smacking'". **Jonathan Evans, Professor of Youth Justice Policy and Practice, University of South Wales (CADRP 520)**

"I am concerned that there has been scaremongering surrounding the Bill and, consequently, a great deal of misinformation. For example, the Bill does NOT seek to criminalise parents and it does NOT create a new criminal offence. For this reason I am glad that there will be a concerted effort and drive to provide accurate information regarding the Bill and address any misinformation". **Individual (CADRP 566)**

2. 5. Children's rights

189. The Welsh Government states clearly that the overarching objective of this Bill is to protect children's rights.[173] Almost without exception, those in support of the Bill all state clearly that the abolition of the defence of reasonable punishment will, in their view, help promote and protect children's rights. Many respondents also told us that this Bill is consistent with the Welsh Government's

[172] Written evidence, CYPE Committee, CADRP 502 – Humanists UK.

[173] Explanatory Memorandum, Welsh Government, para viii, page 5.

due regard duty in the *Rights of Children and Young Persons (Wales) Measure 2011*.

190. The Bill's Explanatory Memorandum states:

> "The overarching objective of the Bill is to protect children's rights by prohibiting physical punishment by parents. The United Nations Committee on the Rights of the Child recognises that any physical punishment of children, however minor, is incompatible with the human rights of children under the United Nations Convention on the Rights of the Child (UNCRC) Article 19, and has called for it to be abolished. It has issued a general comment to highlight its recognition of the right of the child to respect of their human dignity, physical integrity and equal protection under the law.
>
> The Welsh Government considers that the Bill brings Wales in line with recommendations of the UN Committee on the Rights of the Child. It also accords with the recommendations of a number of other key international bodies such as the UN Human Rights Council and the UN Committee on the Elimination of Discrimination Against Women."[174]

191. The Bill's Children's Rights Impact Assessment goes on to say:

> "For the majority of children, the family home is where they will realise many of the rights as recognised by the UNCRC. The Welsh Government considers that parents have a pivotal role as guardians and advocates of children's rights with a responsibility on the state to assist, influence and support parents in this role. The aim of the legislation is to remove the defence of reasonable punishment and help protect children's rights. This, combined with a package of support intends to prompt parents to parent in a positive manner that considers and reflects children's rights."[175]

192. In 2011, the Welsh Government incorporated the United Nations Convention on the Rights of the Child (UNCRC) into domestic law through its *Rights of Children and Young Persons (Wales) Measure 2011*. The UNCRC gives children and young people up to the age of 18 a wide range of rights, including rights to protection, health, family, education, culture and leisure. The UN Committee on the Rights of the Child is a panel of international experts on children and young

[174] Explanatory Memorandum, Welsh Government, paras 3.37-3.38, page 15.

[175] Welsh Government, Children's Rights Impact Assessment [accessed 22 July 2019].

people whose role is to scrutinise governments progress in implementing the UNCRC.

193. In March 2007, the UN Committee on the Rights of the Child published *General Comment No 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)*. This states:

> "The Convention on the Rights of the Child and other international human rights instruments recognize the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law. The Committee is issuing this general comment to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.
>
> Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies."[176]

194. In 2016, the UN Committee on the Rights of the Child reviewed for the fifth time what progress has been made in delivering the rights of children and young people since the UK Government signed up to the UNCRC in 1989. Its verdict is based on: written evidence from the UK and devolved governments; all four UK Children's Commissioners; national reports from Non-Governmental Organisations as well as evidence provided by children and young people. Representatives of the United Nations visited the UK and Wales to meet with stakeholders and children and young people. Subsequently Welsh and UK representatives went to Geneva to give further evidence and answer questions about what more the UK and Welsh Governments needed to do to fully implement the UNCRC.

195. Following this UK-wide review, in 2016 the UN Committee on the Rights of the Child made more than 150 recommendations for change in its review of progress. Specifically in respect of "corporal punishment" the UN Committee on

[176] UN Committee on the Rights of the Child, General Comment No 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), March 2016 [accessed 22 July 2019].

the Rights of the Child made the following recommendation to the UK and devolved nations:

> "With reference to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and its previous recommendations, the Committee urges the State party, in all devolved administrations, overseas territories and Crown dependencies, to:
>
> (a)Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as "reasonable chastisement";
>
> (b)Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;
>
> (c)Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing."[177]

196. Upholding and protecting children's rights was a key feature in the submissions put forward by almost all the organisations and individuals in support of the Bill. For example, UNICEF UK told us:

> "The UN Committee on the Rights of the Child emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties."[178]

197. The Wales UNCRC Monitoring Group told us its view of how this applies in Wales:

> "The principles of this Bill are compliant with, and will support the due regard obligation placed upon the Welsh Government through the Rights of Children and Young Persons (Wales) Measure 2011. The Child Rights Impact Assessment (CRIA) and the Explanatory Memorandum

[177] UN Committee on the Rights of the Child, General Comment No 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), March 2016.

[178] Written evidence, CYPE Committee, CADRP 294 – UNICEF UK.

> reinforce that legislative changes are consistent to present obligations and commitments placed upon the Welsh Government."[179]

198. Similarly the Observatory on the Human Rights of Children at Swansea University referred to *General comment number 8 on the right of the child to protection from corporal punishment*:

> "The proposal put forward by the Welsh Government will ensure that Welsh law is consistent with the UK's international human rights obligations, and will provide children with equal protection against criminal assault as that presently enjoyed by adults in Wales [...] recognising a child's rights to protection [...] is consistent with the 'due regard' duty in the rights of Children and Young Persons (Wales) Measure 2011."[180]

199. Some of the relevant themes among those individuals who responded to our consultation in support of the Bill included that the UN Committee on the Rights of the Child has called repeatedly on the UK to enact legal reform to remove the defence of reasonable punishment. We were told that this Bill is necessary to enable the Welsh Government to fulfil its obligations under the UN Convention on the Rights of the Child.

Some views from those in favour of the Bill in respect of children's rights

"It [the Bill] will resolve the issue that the current law is incompatible with obligations under international treaties to which England and Wales are signatories". **Heather Keating, Professor of Criminal Law (CADRP 642)**

"Removing this defence is consistent with the "due regard" duty outlined in the Rights of Children and Young Persons (Wales) Measure 2011". **Individual (CADRP 347)**

"The current "reasonable punishment" defence is an anachronism which undermines Welsh Government's approach to promoting positive and non-violent parenting methods across Wales [...] There should be no legal defences or loopholes available to adults for harming children in any way in 21st Century Wales and to allow the status quo to continue flagrantly flies in the face of our country's commitment to children's rights". **Individual (CADRP 403)**

"In Wales where children's rights has formed the basis of policy, it is contradictory to allow the current defence to remain". **Individual (CADRP 488)**

[179] Written evidence, CYPE Committee, CADRP 592 – Wales UNCRC Monitoring Group.

[180] Written evidence, CYPE Committee, CADRP 335 – Observatory on Human Rights of Children.

"The dissonance between how we now think about children and their rights, and the law permitting child corporal punishment inherited or resurrected from long-dead notions of paternal power, is rapidly increasing. This has a chilling effect on policy developments meant to protect children from violence, it confuses police response to domestic violence, and it leaves social workers in high confusion about what to tell parents. The corporal punishment defence gives dangerously mixed messages about good parenting". **Anne McGillivray, Professor of Law, University of Manitoba (retired) (CADRP 384)**

200. We asked Be Reasonable Wales if it accepted that the UN has repeatedly called for this defence to be repealed from the law across the whole of the UK. Jamie Gillies, representing the group, told us:

> "I would go to the declaration on the rights of the child itself and the relevant articles in there. So, I've got in front of me here article 19, which states that children should be protected from 'all forms of…violence', and we absolutely agree with that. But what we'd say is that reasonable chastisement is not violence, in our view. Also, the convention does not specify what forms of punishment parents should use, but says that discipline involving violence is unacceptable. So, again, Wales already prohibits violence against children—the law's clear on that—and it all depends on your definition of violence."[181]

201. We asked Be Reasonable Wales to clarify whether they believed the UN Committee is incorrect in calling for the defence of reasonable chastisement to be repealed. Sally Gobbett, parent campaigner, told us:

> "I'm saying they're inconsistent because there are all sorts of other things that are causing pain to children that we do, or are recommended now as disciplinary approaches, like sending a child to their room. If they're going to be consistent in application of article 19, then if they're calling pain violence, we need to eradicate anything that could potentially have a negative outcome for a child if used wrongly, in which case we're on very, very tricky territory."[182]

2. 6. Stakeholder and public opinion

202. During our scrutiny we have been very conscious of the strength of feeling on both sides of the debate. Before we agreed our own approach to evidence gathering we looked at the wide range of sources of public opinion that had

[181] Oral evidence, CYPE Committee, RoP [para 239], 2 May 2019.

[182] Oral evidence, CYPE Committee, RoP [para 257], 2 May 2019.

already been published. We found that, over time, there have been a number of consultation exercises, polls, and pieces of research which have the stated aim of gauging parent, child, public, and stakeholder opinion on the issue of physical punishment. These have been commissioned by different organisations and bodies, and have asked different questions. As such, they have shown differing results.

203. In January 2018, the Welsh Government published a range of consultation documents which it stated was to inform the development of a legislative proposal to remove this defence of reasonable punishment.[183] These included a table showing a history of previous studies to gauge public opinion. In August 2018, the Welsh Government published its summary of the 1,741 responses.[184] The first question and the responses received are set out below:

Question 1

Do you think our legislative proposal to remove the defence of reasonable punishment and prevent the use of corporal punishment will help achieve our stated aim of protecting children's rights? If no, why not?

Response	Number	Percentage
Yes	870	50.3%
No	832	48.1%
Don't know	26	1.5%
Total	**1728**	**100%**

NB: There were 13 blank responses to this question

204. Of the 832 who responded "no" to this question, 765 responded setting out reasons for their opposition.[185]

205. The Welsh Government's consultation document also refers to a 2014 YouGov survey:

> "A 2014 YouGov survey for the Western Mail asked 1,009 adults living in Wales 'Do you think parents/guardians should or should not be banned from smacking their children?' 69% felt smacking should not be banned; 19% thought it should be banned and 13% said they didn't know. The survey did not, however, specify whether the respondents

[183] Welsh Government, Consultation Documents: Legislative Proposal To Remove The Defence Of Reasonable Punishment, January 2018 [accessed 22 July 2019].

[184] Welsh Government, Consultation Documents: Summary of responses, August 2018 [accessed 22 July 2019].

[185] Welsh Government, Consultation Documents: Summary of responses, August 2018, page 9.

were current parents or not, with the majority (over half) being over 40 and nearly a third of the sample over 60."[186]

206. Other relevant Welsh Government commissioned reports include:

- **Parental attitudes towards managing young children's behaviour (2017)**: involved telephone surveys with 269 parents (or guardians) of young children who had previously taken part in the 2016-17 National Survey for Wales. This survey was broadly a repeat of previous research undertaken in 2015 with the aim of informing the preparatory work for this Bill. The report found that the balance of public opinion "lies with those who think smacking should not be allowed". When asked if there should be a complete ban, 48% agreed and 39% disagreed. The report says "there has been a small change in support for the ban since 2015 (when 46% agreed and 43% disagreed) but is not statistically significant";[187]
- **Wales Centre for Public Policy: Parental Physical Punishment Child Outcomes and Attitudes** (2018): pages 3 and 4 include a section on Children's Attitudes Towards Parental Physical Punishment;[188]
- **Welsh Government Baseline Survey of public attitudes to physical punishment of children (June 2019)**: this sets out that 58% of the public already thought the law did not allow parents to smack their children.[189]

207. Be Reasonable Wales's website includes a section on public opinion.[190] This includes details of an online poll undertaken in January 2017 and states:

- the poll reflected the interviews of 1019 Welsh adults between 13 and 25 January 2017;
- data were weighted to be demographically representative;

[186] Welsh Government, Consultation Document: Legislative Proposal To Remove The Defence Of Reasonable Punishment, January 2018, page 22.

[187] Welsh Government, Parental attitudes towards managing young children's behaviour: Executive Summary, July 2018 [accessed 22 July 2019].

[188] Public Policy Institute Wales, Parental Physical Punishment Child Outcomes and Attitudes (2018), July 2018.

[189] Welsh Government, Baseline Survey of public attitudes to physical punishment of children, June 2019 [accessed 22 July 2019].

[190] Be Reasonable Wales, Public Opinion, [accessed 22 July 2019].

- 76% of the respondents state that parental smacking should not be a criminal offence.[191]

Our written consultation

208. We launched a public consultation on the Bill on 2 April 2019. The consultation closed on 14 May 2019. 650 online responses were received.

209. The consultation asked respondents to state whether they supported, partly supported, did not support, or did not have a view on the Bill's general principles, and to outline their reasons why. The consultation also asked questions about:

- whether legislation was needed to deliver what the Bill was trying to achieve;
- potential barriers to the Bill's implementation;
- any unintended consequences arising from the Bill;
- the Bill's financial implications;
- any other comments in relation to the Bill.

210. Three categories of people responded to the consultation:

- individuals responding in a personal capacity (562 of the 650 responses: 86.5%);
- organisations (59 of the 650 responses: 9.1%);
- individuals responding in a professional capacity (29 of the 650 responses: 4.5%).

211. The majority of respondents, when all categories of respondent are taken together, did not support the general principles of the Bill (390 of the 650 responses; 60%). 36.6% of respondents (238 of the 650 responses) supported the Bill's general principles, with 3.1% (20 of the 650 responses) being partly in support and 0.3% (2 of the 650 responses) not having a view.

[191] ComRes, Be Reasonable Wales Survey: A survey of British adults on behalf of Be Reasonable on smacking, July 2017 [accessed 22 July 2019].

212. Of those who responded as individuals in a personal capacity, the majority did not support the Bill's general principles (381 of the 562 responses in that category; 67.8%).

213. Of the organisations that responded, the vast majority supported the Bill's general principles (52 of the 59 responses in that category; 88.1%)

214. Similarly, of those who responded as individuals in a professional capacity, the vast majority supported the Bill's general principles (25 of the 29 responses in that category; 86.2%)

215. In addition to and to supplement the Committee's own analysis of the consultation responses received, the Office for National Statistics Data Science Campus used Data Science techniques to analyse the free text responses. The ONS provided the Committee with a report on its analysis of the responses and attended a Committee meeting to present its findings.[192]

216. We sought targeted written evidence on specific issues, writing to the following organisations to ask specific questions of relevance:

- Ministry of Justice, due to its non-devolved responsibility for the police and Her Majesty's Courts and Tribunal Service;
- Intermediaries for Justice, in light of references in the Explanatory Memorandum to their work in supporting child witnesses, and issues relating to their availability in Wales;
- Sentencing Council for England and Wales, in light of its role setting guidelines on sentencing for the judiciary and criminal justice professionals and its role of aiming to increase public understanding of sentencing;
- New Zealand Children's Commissioner, in light of references in the Explanatory Memorandum to legislation passed in NZ to remove the defence of reasonable punishment there;
- Family First New Zealand, as the main campaign group opposing the legislation in New Zealand;

[192] Data Science Campus, Office for National Statistics, *Data Science to analyse responses to the National Assembly for Wales Children, Young People and Education Committee's consultation on the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill*, June 2019 – the full report is available on our website.

- **United Nations Committee on the Rights of the Child,** as the body of 18 Independent experts that monitors implementation of the Convention on the Rights of the Child;
- **Teaching Unions**, given the potential role of teachers in making referrals;
- **Her Majesty's Prison and Probation Service**, given its responsibilities in relation to offender management;
- **Magistrates Association**, as representatives of the magistracy in England and Wales.

217. Three handwritten letters about the Bill were also received.[193] They all opposed the proposed legislation.

What the Youth Parliament told us

218. To enable the voice of children and young people to be heard as part of our scrutiny, we invited the Welsh Youth Parliament to consider the general principles of the Bill. In regional meetings in April 2019, Welsh Youth Parliament Members discussed and considered the Bill's general principles, and held a secret ballot on the question:

> "Do you support the principles of the Childcare (Abolition of Defence of Reasonable Punishment) (Wales) Bill?"

219. The majority of the Welsh Youth Parliament Members supported the Bill. The result of the secret ballot was as follows:

- Yes: 42 (70%)
- No: 12 (20%)
- Abstain: 2 (3.3%)
- Not present to vote: 4 (6.6%).[194]

Other views from children and young people

220. A range of organisations have submitted written evidence to our consultation outlining the views of children and young people:

[193] CYPE Committee, Handwritten letters about the Bill, April-May 2019.

[194] Correspondence, Welsh Youth Parliament to the CYPE Committee, 1 May 2019.

- Lleisiau Bach-Little Voices is a Big Lottery funded approach used by the Observatory on Human Rights of Children (Swansea and Bangor University, Wales) to empower children as researchers and advocates. It submitted information from work it has conducted with 6-10 year olds about reasonable punishment. In response to the question "should the law be changed to protect children under 18 from being assaulted by a parent or carer as reasonable punishment?", 95.6% of the children participating answered yes;[195]

- UNICEF UK is a charity that advocates for the protection of children's rights. In its consultation response it refers to work it undertook in 2018 asking over 1,000 young people in Wales what they thought about changing the law in relation to physical punishment. Of the children who participated in primary schools, 72% supported a change in the law; in secondary schools, 56% supported a change;[196]

- The Children's Commissioner for Wales's written response to our consultation refers to her work with children and young people. She refers to information in her 2017/18 Annual Report outlining views submitted to her about physical punishment from primary school children. Comments include:

    - "Children should be protected not smacked."

    - "Smacking can always go too far, where do you draw the line?"

    - "Some people think you have to smack children for them to learn how to behave. I disagree, it is completely unnecessary."[197]

221. The Children's Commissioner for Wales told us that "the overwhelming majority [of children] seem to be against the physical punishment of children and many are amazed that it isn't already prohibited in a modern democratic country like Wales, that formally respects human rights".[198]

222. NSPCC Cymru/Wales told us that it consulted with children and young people who have used NSPCC services in north and south Wales. In written

[195] CYPE Committee, Information from Lleisiau Bach-Little Voices, May 2019.

[196] Written evidence, CYPE Committee, CADRP 294 – UNICEF UK.

[197] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

[198] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

evidence they told us they all supported this legislation, and some of the views expressed were:

- "not fair";
- "Shouldn't be aloud [sic]. I feel upset, horrible, angry, horrified";
- "It is not right. Physically abusing an adult get the other adult punished, but physically abusing a child could have a worse affect in the long run";
- "Everybody should be treated the same!!";
- "Unreasonable as they still have feelings";
- "It's wrong and it's not right to assault another person";
- "I fear for my own safety and others with this law in place I'll feel more secure".[199]

223. In written evidence, the Royal College of General Practitioners told us:

> "Children's attitudes towards parental physical punishment vary but are generally negative. Younger children and those who have experienced physical punishment are more likely to support its use. Nonetheless, children view physical punishment as the most severe type of discipline and report that it hurts them both physically and emotionally. Some children associate it with angry parents who later regret their actions. Some describe feeling scared, sad and unloved and say that it negatively affected their relationship with their parents. Some children think that parental physical punishment encourages children to use physical violence and suggest that restricting privilege is a more effective form of discipline, being longer lasting, causing more inconvenience and giving the opportunity to reflect on their actions. The available evidence suggests that children believe that discipline and punishment, when explained and administered fairly, can play an important role in a child's healthy development."[200]

Views we heard about the weight of public opinion

224. A key theme from those opposing the Bill is that the weight of public opinion is not in favour of the proposed legislation. In contrast, supporters of the Bill

[199] Written evidence, CYPE Committee, CADRP 641 – NSPCC Cymru/Wales.

[200] Written evidence, CYPE Committee, CADRP 498 – Royal College of General Practitioners.

argued that governments sometimes need to lead public opinion in respect of public health issues (see section 2.2 of this report for more detail).

Some views on public opinion from those opposing the Bill

"Polling consistently shows that people support the right for parents to choose how to discipline their children". **Individual (CADRP 10)**

"Three quarters of people in Wales do not agree with the making of light smacking a criminal offence". **Individual (CADRP 99)**

"The public opinion is against making smacking children a crime". **Individual (CADRP 164)**

"Public opinion appears to be very much against the implementation of this Bill". **Individual (CADRP 264)**

225. The Evangelical Alliance told us:

> "[…] politicians should broadly reflect the views and voices of the people they represent. In pursuing this legislation there is a considerable risk that politicians in Wales are demonstrating a clear disconnect with the views and wishes of their electorate."[201]

226. These concerns were echoed by Be Reasonable Wales:

> "Supporters of this legislation are out of step with public opinion which shows that three-quarters oppose a smacking ban, and two thirds support smacking in some circumstances."[202]

227. Sally Gobbett, parent campaigner, told us:

> "I feel that we're targeting young parents because we know that they have been re-educated by some of the Government's media campaign—you could call it propaganda—and actually, they're most likely to say what we want them to hear."[203]

228. She went on to say:

> "I do think there's also a very conscious re-education in public attitudes, which is in the consultation document. What I think is very interesting

[201] Written evidence, CYPE Committee, CADRP 644 – Evangelical Alliance.

[202] Written evidence, CYPE Committee, CADRP 92 – Be Reasonable Wales.

[203] Oral evidence, CYPE Committee, RoP [para 235], 2 May 2019.

> and ironic is that it says that public awareness campaigns alone are not considered to be sufficiently effective, and that there's evidence that, where legal threat is there as well, together, then there's greater change in public attitudes. I see that as coercion, and I also think it's ironic, because we have these messages in terms of parenting, positive parenting—you only need praise and reward, you don't need all these negative sanctions—and yet from a state perspective you're showing that positive messages alone are not sufficient to change public attitudes, we need negative sanctions as well."[204]

229. The Deputy Minister referred to the recently published Welsh Government Baseline Survey of public attitudes to physical punishment of children (June 2019)[205] and told us:

> "I'm personally very reassured that 58 per cent of the public think the law doesn't allow that to happen because I think, well, they're not hitting their children, so we're over 50 per cent of where we want to get. So, I think that is a good thing, but it does highlight the fact that the legislation, as it is, is confused. I think it makes a very good case for saying that we do need to simplify this legislation. We need much greater clarity in the law for professionals who are working and trying to help parents, and for parents themselves. So, I think that this is a case for saying that it's very important that we carry out this legislation to make it all much clearer. But I am pleased that 58 per cent of the public think the law has already changed."[206]

230. The Deputy Minister went on to say:

> "I think that our representative surveys that we've carried out do show considerable support for the Bill [...] particularly from parents with young children under seven. That's where the support does lie. And it's older people who are much less likely to support the legislation, and I think it's all linked to what many of us were used to, what happened in our childhoods, when it was accepted and it was part of the time that this was what you did. But we have moved on now and we're in a different era. So, I think many older people, because they smacked their

[204] Oral evidence, CYPE Committee, RoP [para 288], 2 May 2019.

[205] Welsh Government, Baseline Survey of public attitudes to physical punishment of children, June 2019 [accessed 22 July 2019].

[206] Oral evidence, CYPE Committee, RoP [para 209], 12 June 2019.

> children or were smacked themselves, have felt a degree of resistance, perhaps, to the Bill. But as I say, I think times have changed."[207]

If public attitudes are changing, is a new law needed?

231. Some of the evidence from individuals who do not support the Bill suggested that given, over time, fewer parents are using physical punishment, legislative change is not needed. Some respondents argued that an education campaign could deliver what the Welsh Government is trying to achieve. We were also told that this proposed legislation is a disproportionate response to the issue it seeks to address.

232. A Welsh Government 2017 report, *Parental attitudes towards managing young children's behaviour*, compared parents' responses to a similar survey undertaken two years previously. The 2017 report stated:

> "A majority of parents (81%) disagreed with the statement it is sometimes necessary to smack a naughty child and only 11% agreed with it. Comparing this with findings to the equivalent question in 2015 (71% disagreed, 25% agreed) shows that parents are now less likely to report that it is sometimes necessary to smack a naughty child."[208]

233. Be Reasonable Wales told us that "changing the public's attitude towards smacking could be approached via an educational campaign".[209] These views were shared by the Evangelical Alliance who told us that "investment in education would be a more proportionate way to tackle this issue as compared to potential criminalisation".[210]

Some views of those opposing the Bill on whether a law is needed

[The Bill is a]"sledgehammer to crack a nut". **Individual (CADRP 35)**

"[…] this is an exaggerated response to a genuine challenge. I completely understand your concern but it is an overreaction". **Individual (CADRP 341)**

"This is a WHALE to catch a mackerel". **Individual (CADRP 553)**

[207] Oral evidence, CYPE Committee, RoP [paras 217-219], 12 June 2019.

[208] Welsh Government, Parental attitudes towards managing young children's behaviour (2017), 11 July 2018.

[209] Written evidence, CYPE Committee, CADRP 92 – Be Reasonable Wales.

[210] Written evidence, CYPE Committee, CADRP 644 – Evangelical Alliance.

"I would suggest that education of parents, not legislation, is a far more effective, lasting and worthwhile method of protecting children". **Individual (CADRP 583)**

"Helping and supporting parents on how to raise their children should be our main focus of attention". **Individual (CADRP 621)**

234. Those in favour of the Bill suggest that public attitudes are changing and that it is a positive step that the law is "catching up" with current parenting styles. Some argued that attitudes will only fully change when the law changes. For example, the response submitted jointly to our consultation from the Association of Directors of Social Services, the Welsh Local Government Association and the Association of Directors of Education Wales stated:

> "[The Bill] will help accelerate a cultural change that is already taking place in Wales and will continue to do so over time."[211]

235. Action for Children told us that "public education alone won't end physical punishment".[212]

236. Dr Joan Durrant, Child-Clinical Psychologist and Professor in the Department of Community Health Sciences, College of Medicine, University of Manitoba, told us:

> "Laws permitting or justifying physical punishment contradict public education aimed at ending it. Many parents rely on the defence to justify their violence and resist change. The law tells us what is 'right'. The current law tells caregivers that hitting children is the right thing to do. For parents who believe in hitting, the law trumps the public education message."[213]

237. Heather Keating, Professor of Criminal Law, shared the view that:

> "[...] legislation is needed to help change attitudes towards the use of physical punishment. Evidence from other jurisdictions supports the view that reform often takes place against a backdrop where there is some decline in its use but also resistance to reform. Well drafted

[211] Written evidence, CYPE Committee, CADRP 551 – ADSS, WLGA and ADEW.

[212] Written evidence, CYPE Committee, CADRP 582 – Action for Children.

[213] Written evidence, CYPE Committee, CADRP 640 – Dr Joan Durrant, Child-Clinical Psychologist and Professor.

> legislation sends a strong message (which in turn would enable front line professionals to give clear advice)."[214]

238. Dr Anja Heilmann, Public Health Academic, told us that her review of cross-country studies on the effects of legislation showed:

> "[…] physical punishment declines faster in countries where it is prohibited. Further, there is evidence that the combination of law reform and long-term public education is more effective in changing attitudes and behaviours than either strategy alone."[215]

Some views of those supporting the Bill on whether a law is needed

"Government needs to lead by example […] Whilst public education is extremely important this alone is not enough and a change in the law is vital". **Individual (CADRP 522)**

"While the law in Wales condones physical punishment, it is impossible to promote the message that it is wrong and unacceptable; the law should go hand in hand with positive parenting campaigns". **Individual (CADRP 488)**

"[…] it has to be mandated by law, otherwise it won't happen". **Individual (CADRP 168)**

"Experience from the 54 states which have now enacted a legal ban shows that public education alone is not enough to significantly reduce prevalence of physical punishment. Studies have shown that public education must be accompanied by a prohibition in legislation to be truly effective". **Individual (CADRP 400)**

239. When questioned on the issue of whether this law is needed, the Deputy Minister told us that whilst attitudes are changing, legislation "helps move change along". She also suggested that if the defence of reasonable punishment remains:

> "[…] it will always mean that for a very minority group of parents, they will feel that they have got the right to use physical punishment against their child, and I just think it's something we should get rid of."[216]

[214] Written evidence, CYPE Committee, CADRP 642 – Heather Keating, Professor of Criminal Law.

[215] Written evidence, CYPE Committee, CADRP 612 – Dr Anja Heilmann, Public Health Academic.

[216] Oral evidence, CYPE Committee, RoP [para 36], 12 June 2019.

2. 7. The timing of this Bill: is it a priority?

240. This Bill takes forward a commitment in the Labour Party 2016 election manifesto. The Welsh Government's Programme For Government *Taking Wales Forward 2016-2021* included a commitment to "seek cross party support for legislation to end the defence of 'Reasonable Punishment'".[217]

241. We have received evidence from both sides of the debate regarding timing and whether the Bill is a good use of legislative time. On the one hand we have been told by some that the Welsh Government should be prioritising more important things such as tackling childhood obesity or improving the NHS. On the other hand, we have heard the view that the current law is out-dated and must be changed.

242. The Equal Protection Network Cymru suggested to us that it was time for change:

> "All adults are protected from physical punishment by the law. The existence of the 'reasonable punishment' defence in the Children Act 2004 is an anachronistic anomaly which fails to respect children's human rights and leaves vulnerable children at risk. Removal of a defence that has no place in 21st Century Wales is the logical next step."[218]

243. This was a viewpoint echoed by Children are Unbeatable Cymru:

> "The legal defence of 'reasonable punishment' is a relic of a time when it was also considered justifiable to physically admonish servants, employees and even for men to 'reasonably' hit their wives. It has no place in 21st century Wales."[219]

244. The Welsh NHS Confederation also suggested that it was time for change:

> "The proposed Bill is a clear demonstration that Wales is working towards being a forward-looking nation that seeks to stamp-out historical attitudes towards how to chastise children that were, in many

[217] Welsh Government, Taking Wales Forward 2016-2021, page 9.

[218] Written evidence, CYPE Committee, CARDP 481 – Equal Protection Network Cymru.

[219] Written evidence, CYPE Committee, CADRP 572 – 'Sdim Curo Plant/Children are Unbeatable Cymru.

cases, then leading to significant emotional and mental harm to children and young people."[220]

245. In evidence from individuals in support of the Bill, some expressed the view that physical punishment of children is an outdated approach to discipline and the Bill is long overdue. We were referred to the fact that legislation has already made it unacceptable to use physical punishment in other environments such as in care settings or education.

Some views of those supporting the Bill on whether a law is needed

"Abolishing the defence is long overdue. The defence harks back to a time when men were allowed to hit their wives, their servants and their children. It is an anomaly that in 2019 parents are allowed to hit their children as long as it is deemed reasonable punishment. We do not sanction the hitting of any other humans by humans - just children. Why?". **Individual (CADRP 397)**

"It's time to put an end to an outdated, ineffective practice". **Individual (CADRP 347)**

"We no longer consider hitting intimate partners acceptable when a generation ago, it would not have raised eyebrows. Why do we consider hitting children--who are vulnerable and necessarily attached and dependent on those who hit them--acceptable?". **Individual (CADRP 355)**

"[...] there are no clubs or facilities in Wales that allow adults to physically hit children. All of them encourage the adults in charge to use positive parenting principles. Children and young people need consistency in the responses they get from adults. It cannot be right for society to say you cannot use physical punishment in one setting but go ahead and hit a youngster if you are related to them". **Individual (CADRP 521)**

246. There were however strong opinions on the other side of the debate. For example some of the parents we met on 6 June 2019 who opposed the Bill told us that this proposed law will take the Government's time away from more serious problems it should be dealing with.

247. This was a view shared by many of the opponents of the Bill who responded to our consultation. We heard views suggesting that there are more important things than a Bill of this nature to legislate on, to resource and to take the National Assembly's time.

[220] Written evidence, CYPE Committee, CADRP 650 – The Welsh NHS Confederation.

Some views of those opposing the Bill on whether a law is needed

Many alternative priorities for legislation/resources/the Assembly's time were listed by those opposed to the Bill, including:

- the NHS **(CADRP 25, 273, 286, 318, 379, 539)**
- education **(CADRP 83, 273, 286, 289, 318, 333, 391, 449, 473)**
- funding social services **(CADRP 105, 574, 333)**
- homelessness **(CADRP 152, 199, 286, 432)**
- improving the lives of abused children **(CADRP 170, 217, 261, 320, 443)**
- parent support services **(CADRP 225, 228, 268, 327, 376, 401, 496, 575)**
- child poverty **(CADRP 286, 328, 473, 564)**.

"There is more harm done by giving children sweets so why don't you outlaw them". **Individual (CADRP 42)**

"Far more and long term damage is done to children by making them obese, so perhaps it is these parents that should be the subject of law". **Individual (CADRP 440)**

248. When we asked whether this Bill was a priority in terms of legislative time, the Deputy Minister told us:

> "I think it's an absolute priority, because I think it's a very fundamental issue. I think the sort of society you want to bring up your children in—and looking after and nourishing children is probably the most important thing that we can do. And, of course, you could say we're at quite a crisis time at the moment, really, and the Brexit issue and all these sort of issues, but, really, I think the Welsh Government has always said that we're absolutely determined that that doesn't distract us from doing the bread-and-butter stuff that we've planned to do. And, of course, this was a commitment in our manifesto. It's something has been discussed in the Assembly for many, many years."[221]

249. Referring to the use of "smacking" as a form of punishment the Deputy Minister went on to say:

> "Many people did it, and many of us were physically punished, but we've moved on, we're in a different time, and we're in a different

[221] Oral evidence, CYPE Committee, RoP [para 14], 2 May 2019.

> atmosphere now, really, and I just think with the worldwide move to get rid of physical punishment, we want Wales to be up there in the front."[222]

2. 8. The experiences of other countries

250. The issue of what we can learn from other countries is something that the Welsh Government and respondents to our consultation both placed an emphasis on in the context of this Bill.

251. A Welsh Government commissioned 2017 report, *Legislating to prohibit parental physical punishment of children*, stated:

> "As of 1 May 2018, 53 countries have made the physical punishment of children unlawful. Some countries have abolished the defence of reasonable punishment in their criminal law. Other countries, some of which had first abolished the defence of reasonable punishment, have incorporated into their Civil Codes laws which explicitly prohibit the physical punishment of children by parents. Other countries are considering reform."[223]

252. However, The Christian Institute told us that "a cursory glance at some of those countries which have a ban in place reveals diverse legal structures and different levels of legislation". It refers to the Welsh Government's consultation document and says of the 53 countries "only 4 are common law jurisdictions".[224]

253. The Bill's Explanatory Memorandum states:

> "Only four of these countries have legal systems based on a common law jurisdiction and of these only three have ended physical punishment of children using the criminal law: Ireland, New Zealand and Malta."[225]

254. Some evidence from individuals in support of the Bill included views that, where similar legislation has been passed elsewhere, there is no evidence of a rise

[222] Oral evidence, CYPE Committee, RoP [para 17], 2 May 2019.

[223] Wales Centre for Public Policy, Legislating to prohibit parental physical punishment of children (2018), 2 November 2018.

[224] Written evidence, CYPE Committee, CADRP 609 – The Christian Institute.

[225] Explanatory Memorandum, Welsh Government, para 2, Annex 6, page 89.

in the "criminalisation" of parents or in unintended consequences such as the breakdown of discipline or families. For example, one respondent told us:

> "It is worth noting that in all the countries that have changed the law on this issue, none of the 'doom's day scenarios' regarding criminalisation of parents or services being overflowed with reports have been shown to be true, and none of these countries have changed the law back either."[226]

255. Set out below is the evidence we have heard about what the experience of New Zealand and Sweden can tell us given:

- they are the two main countries cited in the responses to our consultation;
- the Welsh Government has used data from New Zealand in the Bill's Explanatory Memorandum (chapter 3 of this report considers the implications of data modelling on prosecution rates in Wales in more detail).

New Zealand

256. The Bill's Explanatory Memorandum uses data from New Zealand to model some data relating to Wales. It says although Ireland has removed the common law defence of reasonable punishment, relevant data on their investigations/the number of prosecutions since the legislation was passed has not been published "so we cannot draw a conclusion as to the extent of the impact following the change to the legislation there".[227]

257. In respect of New Zealand, the Explanatory Memorandum says:

> "Lessons could be learnt from the experience in New Zealand as it has a number of parallels with Wales. It is a small developed country, with a common law-derived legal and political system. […] In the absence of any other data to make more firm estimates, New Zealand has been used as a proxy for the purposes of assessing the impact of law change on the police and justice system. However, caution must be taken in

[226] Written evidence, CYPE Committee, CADRP 347 – Individual.

[227] Explanatory Memorandum, Welsh Government, para 4, Annex 6, page 89.

> making concrete assumptions and cost projections based on the New Zealand data: there are a number of caveats, as explained below."[228]

258. We note that while New Zealand prohibited physical punishment in 2007, in a non-binding referendum two years later, the vast majority (87.4%) of those who participated (turnout was 56.1%) voted "no" in response to the question "should a smack as part of good parental correction be a criminal offence in New Zealand?".[229] The result of the referendum was non-binding and the New Zealand government did not change the law in response to the outcome.

259. In terms of her view on why that might be, the Children's Commissioner for Wales told us:

> "New Zealand stands out, really, amongst the other countries that have legislated in having this continued high-level debate many years after the legislation, and I think there are lessons for us to learn from what happened in New Zealand. One lesson for us to learn is that the law wasn't passed in what I would call a clean way. In an attempt to placate, actually, the different parties, the law actually became less a law about children's rights—it became much more a law about parenting practices, and it tried to codify parenting practices and say it's okay to smack in this circumstance, and not in others. So, I think it left a lack of clarity, which left some confusion, and it also left perhaps a feeling amongst those who were against the change in law that the Government isn't wholeheartedly in support of this, so we can probably get this reversed."[230]

260. However, in its written evidence, Be Reasonable Wales told us:

> "In New Zealand there has been great confusion following a change in the law, resulting in perfectly innocent parents facing harsh sanctions and unjustified interference in family life."[231]

261. The opposition to the legislation in New Zealand is something we sought to find out more about. We wrote to the New Zealand Children's Commissioner, in light of references in the Explanatory Memorandum to legislation passed in New Zealand to remove the defence of reasonable punishment there. We also wrote to

[228] Explanatory Memorandum, Welsh Government, para 5, Annex 6, page 89.

[229] New Zealand Electoral Commission, Citizens Initiated Referendum 2009 - Final Result, 25 August 2009 [accessed 24 July 2019].

[230] Oral evidence, CYPE Committee, RoP [para 615], 2 May 2019.

[231] Written evidence, CYPE Committee, CADRP 92 – Be Reasonable Wales.

Family First New Zealand, the main campaign group opposing the legislation in New Zealand.

262. In New Zealand, section 59 of the Crimes Act 1961 relates to "parental control" and sets out circumstances in which reasonable force is justified. It allows police the discretion not to prosecute where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.[232]

263. The response we received from Bob McCoskrie, National Director of Family First New Zealand, included a legal opinion it had commissioned in 2018 about the impact of the change in the law.[233] This legal opinion states:

> "In our opinion, statements made by politicians to the effect that 'good parents' will not be criminalised for lightly smacking their child appear to be inconsistent with the legal effect of the amendments to section 59 and the cases we have analysed, which confirm our interpretation of section 59."[234]

264. Family First New Zealand also provided us with a written submission in which it "examines the social indicators relating to child abuse affecting our children and families in the years leading up to the ban on smacking and then since the law was passed" to see if there have been any improvements. The Executive Summary includes the following points:

- emotional abuse found by CYF[235] has decreased since 2013 but is still 360% higher than 2001;
- rates of neglect and ill-treatment of children have decreased in the past two years but are still unacceptably high each year, with a 45% increase in police rates since the law change;
- child homicides continue to be a blot on New Zealand's image. New Zealand has one of the highest rates of child abuse deaths in the OECD;

[232] New Zealand Legislation, Crimes Act 1961, [accessed 22 July 2019].

[233] CYPE Committee, Information from Family First New Zealand, including the legal opinion it commissioned, 11 April 2019.

[234] CYPE Committee, Information from Family First New Zealand, including the legal opinion it commissioned, 11 April 2019.

[235] At the time the report was written in 2006, Child, Youth and Family (CYF) was the government agency with statutory responsibility for child protection. It was replaced by a new Ministry for Vulnerable Children in 2017.

- there has been a statistically significant increase in children diagnosed with emotional / behavioural problems (including depression, anxiety disorder, and ADHD) – a 132% increase since the smacking law was introduced.[236]

265. The office of the New Zealand Children's Commissioner referred us to the latest data published in April 2019 which showed that parents reporting that they used physical punishment had decreased from 10.4% in 2006/7 (when the law was changed) to 4.5% in 2017/18.[237] The letter goes on to say:

> "I understand that New Zealand's experience has been misrepresented in some international jurisdictions, including that due to this legislation we now have had [an] increase in parents being prosecuted, [an] increase in referral[s] to social services and child removal[s] from their families related to this issue, and [an] increase in violent behaviour from children and young people. I would like to advi[s]e you that these reports are simply not true."[238]

266. We also received written evidence from Save the Children New Zealand. It told us that "in New Zealand there is a correlation between the change of the law to protect children from physical punishment and declining public tolerance of physically punishing children".[239]

Sweden

267. Sweden was the first country to prohibit physical punishment when it did so in 1979. Many of those individuals who oppose the proposed legislation in Wales expressed concerns about the impact this change in the law has had in Sweden.

268. The Be Reasonable Wales website says "figures from Sweden show […] child-on-child violence increased by 1,791% between 1984 and 2010" and suggests a link to parental authority being undermined following introduction of the ban in

[236] CYPE Committee, Information from Family First New Zealand, including the legal opinion it commissioned, 11 April 2019.

[237] New Zealand Ministry of Health Data, April 2019 [accessed 22 July 2019] – Child respondents (aged 0–14 years) are defined as having experienced physical punishment in past 4 weeks if the child's parent or caregiver answered "Physical punishment, such as smacking" from a list provided to answer the question: thinking back over the past 4 weeks, when [child's name] misbehaved, which of the following, if any, have you done?

[238] CYPE Committee, Information from New Zealand's Children's Commissioner, 12 April 2019.

[239] Written evidence, CYPE Committee, CADRP 560 – Save the Children New Zealand.

1979.[240] These figures were cited in the consultation responses we had from individuals who oppose the Bill. They told us that following the passing of similar legislation in Sweden, child-on-child violence has increased.

269. We note that these 2010 statistics in respect of reported "alleged criminal assaults against 7-14 year olds" by those aged under 15 also show large percentage increases in older adults allegedly committing assaults against children. These statistics also show percentage increases in all age cohorts from 30 upwards who were born before the change in the law. For example, the percentage increase in assaults by those between the ages of 40-49 is 828% which is higher than those born after the change in the law aged between 20-24, among whom there is a 250% increase. We also note that there is no evidence of a causal link.

270. In a 2010, Professor Robert Larzelere co-authored the article "Swedish Trends in Criminal Assaults against Minors since Banning Spanking, 1981-2010".[241] The abstract for this article states:

> "The rates of all assaults increased dramatically. Compared to 1981, criminal statistics in 2010 included about 22 times as many cases of physical child abuse, 24 times as many assaults by minors against minors, and 73 times as many rapes of minors under the age of 15. Although the first cohort born after the spanking ban showed a smaller percentage increase in perpetrating assaults against minors than other age cohorts, those born since the spanking ban had almost a 12-fold increase in perpetrations altogether, compared to a 7-fold increase for older age cohorts. Although some increases might reflect changes in reporting practices, their magnitude and consistency suggest that part of these increases are real. Recent increases may be due to expanding proscriptions against nonphysical disciplinary consequences."[242]

271. In his response to our consultation, Professor Larzelere refutes claims made by other academics such as Dr Joan Durrant, Emeritus Professor Staffan Janson, and Associate Professor Pernilla Leviner that these increases may be explained by an increased willingness to report. Professor Larzelere says:

[240] Be Reasonable Wales website [accessed 8 July 2019].

[241] Article abstract: Robert E. Larzelere, Taren Swindle and Byron R. Johnson, Swedish Trends in Criminal Assaults against Minors since Banning Spanking, 1981-2010, International Journal of Criminology and Sociology, 2013, 2, 129-137 [accessed 8 July 2019].

[242] Article abstract: Robert E. Larzelere1, Taren Swindle and Byron R. Johnson, Swedish Trends in Criminal Assaults against Minors since Banning Spanking, 1981-2010, International Journal of Criminology and Sociology, 2013, 2, 129-137 [accessed 8 July 2019].

> "If the escalating trend in criminal assaults can be explained by decreasing tolerance of minor assaults, then attempted rape reports should have increased more than completed rape reports during this time period. The results were the complete opposite: Alleged rapes of children under the age of 15 increased from 24 in 1981 to 1,762 in 2010, more than a 73-fold increase. In contrast, allegations of attempted rapes of children that young increased "only" 2.8 times (24 in 1981 to 68 in 2010). Although increased willingness to report rapes may have accounted for part of these increases, some of this 73-fold increase is likely because a small, but increasing number of boys never learn to accept "No" from their mothers."[243]

272. We heard other concerns in another written submission which referred to the change of law in Sweden in 1979:

> "Psychiatrist David Eberhard argues that it has left parents unable to correct their children in any way. This in turn has led to the breakdown of discipline in schools, falling grades, a rise in anxiety disorders among teens with a link to suicide attempts."[244]

273. Be Reasonable Wales also referred to these concerns:

> "David Eberhard, a prominent Swedish psychiatrist, has warned that the Swedish attitude to parenting, which started with a ban on reasonable chastisement in 1979, has led to growing truancy rates, a rise in anxiety disorders amongst teenagers, and a declining performance in international educational league tables."[245]

274. We note David Eberhard's website suggests the book which contains this detail is available in Swedish only.[246] We asked Be Reasonable Wales if they had been able to source the full explanation of the statistical evidence in the text or whether the evidence available at this stage was from associated press articles.[247] Jamie Gillies confirmed that he was aware that the author is intending to translate his work into English.[248]

[243] Written evidence, CYPE Committee, CADRP 559 – Robert R Larzelere – Professor.

[244] Written evidence, CYPE Committee, CADRP 470 – Individual.

[245] Written evidence, CYPE Committee, CADRP 92 – Be Reasonable Wales.

[246] David Eberhard website [accessed 22 July 2019].

[247] The Independent, Was Sweden right to spare the rod? A new book has attacked the 1979 decision to ban smacking, October 2013 [accessed 22 July 2019].

[248] Oral evidence, CYPE Committee, RoP [para 374], 2 May 2019.

275. Children in Wales provided us with a copy of a document by Emeritus Professor Staffan Janson (May 2019), entitled *The positive impact of the corporal punishment ban in Sweden.*[249] An extract of the note states:

> "[…] well-performed scientific studies have confirmed that corporal punishment of children have similar detrimental effects on children´s health and development as physical abuse. In 1979, this was not known for sure. The ban was rather based on experiences of severe child abuse cases in the 1960s and a long-standing discussion about child rights.
>
> […] While almost all parents spanked his or her child at least once during the last year in the 1960s, this is very rare nowadays."[250]

276. The Children's Commissioner for Wales told us her view on some of the evidence regarding whether there had been a negative impact on children and families in Sweden following the law change, in particular the evidence from Professor Robert Larzelere. She told us:

> "I spent some time at the beginning of the session talking about the quality of the evidence, and that study would not, in my view, pass that quality threshold whatsoever. […] Sweden is consistently in the top five of children's well-being scores, and all the others in the top five also have passed this law. I'm not making that correlation."[251]

277. When asked about her view on the international evidence, the Deputy Minister said:

> "I think we have, as far as possible, looked at international evidence where this legislation has been introduced. It's different for different countries, so I know it's difficult to get anything that's absolutely linked. But I don't agree that it's a bit of a chance, really. I think we are preparing very well and very carefully. As the team who have been working on this have worked through the preparation for the Bill, lots of issues have arisen as they've done that, and so you have to do that, I think, alongside the actual practical implications with the groups that are coming together, and I think the point at which we've done that is probably just about right, really."[252]

[249] Written evidence, CYPE Committee, CADRP 482 – Children in Wales.

[250] Written evidence, CYPE Committee, CADRP 482 – Children in Wales.

[251] Oral evidence, CYPE Committee, RoP [para 685], 2 May 2019.

[252] Oral evidence, CYPE Committee, RoP [para 25], 12 June 2019.

Our view on the Bill's general principles

278. As a Committee, we fully recognise that there are strongly held views on both sides of this debate about whether this Bill should become law. We thank all those who submitted evidence setting out their views and those parents and representatives of organisations who have come to speak directly with us. You will see that your contributions are reflected in this report and have contributed to our consideration and scrutiny of this Bill.

279. We have received a wide range of information, heard a wide range of opinions and given detailed consideration to the breadth of evidence available to us.

280. An important part of our work has been to hear from those working on the front line, delivering services and having a statutory responsibility to protect children and act in their best interest. Those we have spoken with include the Police, the Crown Prosecution Service, Social Services, teacher representatives and a wide range of Health Professionals including General Practitioners, Nurses, Health Visitors, Paediatricians and Psychiatrists.

281. Without exception, they have told us that this Bill will improve their ability to protect children living in Wales because it will make the law clear. We have been told that, as a result, this will help them better protect children, including those at the "hard end" of the child protection system. Professionals told us that this Bill will make a significant difference because it provides a clear line for them and, importantly, a clear boundary that parents, children and the wider public can clearly understand.

282. We acknowledge that the majority of individuals who responded to our consultation in a personal capacity did not support the general principles of this Bill. We heard a wide range of reasons for their opposition and we have reflected on these views in detail in our report.

283. The majority of responses from individuals have focused on how removing the defence of reasonable punishment will impact on parents. We have to be very clear that our primary concern as a Committee must be to weigh up what the evidence tells us about the impact this Bill could or will have on children, and whether it will improve the protection the law provides for them.

284. The academic evidence we have considered focuses on a range of issues. These include consideration of the evidence about the short- and long-term

impacts of physical punishment on children, and academic work which focusses on the impact on child outcomes in countries which have already prohibited it.

285. On balance, the majority of our Committee believes there is a strong argument that this Bill will reduce the risk of potential harm to children and young people. We are not convinced that there is a potential for high numbers of prosecutions as a result of this Bill. There is simply no evidence for that, and that is not the view of the Police or the Crown Prosecution Service either. The detailed evidence underpinning this conclusion is outlined in chapter 3.

286. Wales was seen to lead the way for children and young people and received international recognition when it introduced the *Rights of Children and Young Persons (Wales) Measure 2011*. This was the first legislation of its kind in the UK, embedding the United Nations Convention on the Rights of the Child into domestic law. We, and our predecessor committees, have consistently told the Welsh Government that this legislative commitment to rights must be made a reality in children's lives.

287. The UN Committee on the Rights of the Child has been very explicit that it wants the law on physical punishment changed in the UK. Most recently, in 2016, it said we should "prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as reasonable chastisement". The majority of our Committee believes that, as a country, we cannot pick and choose the articles of the Convention with which we comply. For us, passing this legislation will be a clear example of how these existing legislative duties can be translated into a meaningful reality for children in Wales.

288. However, among those of us who support this Bill progressing to the next stage of the legislative process, we are very clear that it is crucial that two things are in place to ensure that this Bill works for the benefit of children and their families:

- Firstly a wide ranging awareness raising campaign is essential. This is fundamental to the success of this legislation and therefore, in our view, there must be a duty for Welsh Government to deliver this placed clearly on the face of the Bill.
- Secondly there must be universal support available to parents across Wales. There is much more that must be done to help families with the inevitable challenges that parenting brings.

289. Both these issues, the detailed evidence underpinning them, and our accompanying recommendations are dealt with later in this report.

290. With regard to the clarity of the law and the definitions provided on the face of the Bill, we agree with the Deputy Minister that the wording used is appropriate.

Recommendation 1. That the National Assembly, taking into account the wide range of evidence provided to us as part of our Stage 1 scrutiny and the recommendations we make in this report, agree the general principles of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill. Suzy Davies AM and Janet Finch-Saunders AM do not support this recommendation.

3. Implementing the Bill

How the Bill will be implemented in practice was a key part of our scrutiny. The impact of removing a defence that currently exists as part of our criminal law required us to consider the likely approach of the non-devolved organisations responsible for our criminal justice system, most obviously the police and prosecution services. The adequacy of support available to parents to remain within the boundaries of the proposed law was also an important area of consideration, as was the examination of the plans to ensure that the public and professionals alike are aware of the Bill's implications.

3. 1. The Welsh Government's plans for implementation

291. In preparation for the Bill's enactment, the Welsh Government has created an Implementation Group. It met formally for the first time in May 2019.

292. The role of the Group will be to "consider and make recommendations about how to implement any changes required in [the] most practical and effective way".[253] It will comprise "all the key people who will implement the Act",[254] including representatives from the police, police and crime commissioners, social services, the health and education sectors,[255] CAFCASS,[256] and the courts service.[257]

293. The Deputy Minister explained that its activity is likely to be structured in the following workstreams:

- advice, guidance, support and information for parents;

[253] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

[254] Oral evidence, CYPE Committee, RoP [para 40], 2 May 2019.

[255] Oral evidence, CYPE Committee, RoP [para 40], 2 May 2019.

[256] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, containing CAFCASS Cymru's response, 4 June 2019.

[257] Correspondence, Ministry of Justice to the CYPE Committee, 14 May 2019.

- data collection, monitoring and evaluation;
- operational processes, procedures, guidance and interaction between agencies;
- out of court disposals, including possible diversionary schemes.[258]

294. When asked about their involvement to date in the work of the Implementation Group, representatives speaking on behalf of local government, social services and education,[259] police and police and crime commissioners,[260] health,[261] the National Independent Safeguarding Board,[262] and the Crown Prosecution Service[263] confirmed they were satisfied with their levels of engagement.

295. The importance of the Implementation Group's role in identifying and mitigating the Bill's potential unintended consequences was emphasised by witnesses, including the Children's Commissioner for Wales[264] and the Equal Protection Network Cymru.[265]

296. When asked whether the Group's work should have begun earlier given the importance attributed to it by stakeholders, the Deputy Minister explained that a balance needed to be struck between making necessary preparations and not assuming the Bill would be agreed by the National Assembly.[266] She stated that a staged approach was necessary, and that she was confident that the legislation would be implemented in a "very practical and workable way".[267]

297. The Deputy Minister acknowledged "it's very difficult, bringing in this legislation that hasn't been done before" but pointed to experience in Ireland:

> "[…] they introduced similar legislation through an amendment to a Bill, and had no detailed preparation for bringing in the Bill, and in fact

[258] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.
[259] Oral evidence, CYPE Committee, RoP [para 21], 8 May 2019.
[260] Oral evidence, CYPE Committee, RoP [para 42], 16 May 2019.
[261] Oral evidence, CYPE Committee, RoP [para 54], 22 May 2019.
[262] Oral evidence, CYPE Committee, RoP [paras 205-207], 22 May 2019.
[263] Oral evidence, CYPE Committee, RoP [para 40], 6 June 2019.
[264] Oral evidence, CYPE Committee, RoP [para 627], 2 May 2019.
[265] Oral evidence, CYPE Committee, RoP [para 544], 2 May 2019.
[266] Oral evidence, CYPE Committee, RoP [para 22], 12 June 2019.
[267] Oral evidence, CYPE Committee, RoP [paras 21-23], 12 June 2019.

> there's no evidence that this has caused any difficulties, and no significant negative impacts or increase in workload."[268]

The coming into force of the Bill's main provision

298. Some of those who gave evidence to us suggested that time was needed between the Bill receiving Royal Assent and its substantive provision — to remove the defence of reasonable punishment — coming into force. This, they argued, was to ensure sufficient time to make adequate preparations for the Bill's implementation.

299. The Crown Prosecution Service welcomed the "reasonable period" that had been promised between the Bill's passing and its commencement. This, it argued, would:

> "[…] allow provision of information and support to parents and to raise awareness of the legislative change."[269]

300. The Chief Crown Prosecutor added that a period of time between Royal Assent and commencement would provide the opportunity to make sure the necessary guidance (discussed later in this chapter) could be updated in order to be "fit for purpose".[270]

301. The Children's Commissioner for Wales agreed that a suitable period of time would be needed after Royal Assent to provide the training, awareness and documentation necessary to achieve the Bill's aims.[271] However, she and the Children are Unbeatable Cymru campaign wanted to see its provisions come into force before the end of the Fifth Assembly (Spring 2021).[272] The Children's Commissioner called for a commencement date to be put on the face of the Bill, pointing to similar legislation proposed in Scotland which specifies that provisions will come into force 12 months after Royal Assent.[273]

302. The Deputy Minister confirmed that, should the Bill pass, there will be "about a two year period" between Royal Assent and its commencement. She explained:

[268] Oral evidence, CYPE Committee, RoP [para 21], 12 June 2019.

[269] Written evidence, CYPE Committee, CADRP 293 – Crown Prosecution Service.

[270] Oral evidence, CYPE Committee, RoP [paras 31 and 79], 6 June 2019.

[271] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

[272] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales and CADRP 572 – 'Sdim Curo Plant/Children are Unbeatable.

[273] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

> "I think it's important to give a good chunk of time, really, for the lead-in, so that as many people as possible are made aware, so there's much less likelihood of there being instances of the law being broken."[274]

OUR VIEW

303. It is clear to us from the evidence we have gathered that the role of the Implementation Group will be vital to the implementation of this Bill. Many of the key decisions to which we refer later in this chapter rest with the Implementation Group and the four workstreams that sit under it.

304. We recognise that a balance needs to be struck between progressing work and not pre-empting the National Assembly's agreement to the Bill. Nevertheless, given the close balance of public opinion on the removal of the defence, and the reassurances the public (and some services) clearly need in relation to the range of potential barriers and unintended consequences, we believe that the work of the Implementation Group needs to proceed at pace with a sufficient level of transparency. This will enable all those affected by the Bill to follow the development of the thinking that underpins its implementation.

Recommendation 2. That the Welsh Government ensure the work of the Bill Implementation Group proceeds at pace, and with a sufficient level of transparency for ongoing scrutiny of its work to continue as the Bill progresses through its stages.

305. On the balance of the evidence outlined later in this chapter, we agree that, should the Bill be agreed by the National Assembly, sufficient time for adequate preparations to be made by the Welsh Government and public services for the Bill's implementation should pass between Royal Assent and commencement.

Recommendation 3. That the Welsh Government allow sufficient time between Royal Assent and commencement of the Bill's substantive provision (to remove the defence of reasonable punishment) and for the Deputy Minister to keep the National Assembly updated on her plans in this regard. We believe this time will be needed to enable the provision of information and support to parents, to raise awareness of the legislative change, and to update the necessary training and guidance, all of which we conclude are crucial to the effective and proportionate implementation of the Bill and the delivery of its stated aims.

[274] Oral evidence, CYPE Committee, RoP [para 115], 2 May 2019.

3. 2. Non-devolved services

306. As the Bill would remove the common law defence of reasonable punishment in Wales, its enactment would impact on areas of service provision and policy not devolved to the National Assembly. This would include matters relating to the criminal justice system, specifically the police, the prosecution service and the courts.

Reports of an incident of physical punishment to the police

307. Police representatives confirmed the Explanatory Memorandum's baseline figure of around 274 cases of reasonable punishment reported to the police in Wales per year.[275] They emphasised that this was an estimate only, based on a retrospective audit carried out by the four polices forces in Wales, as data on the specific question has not been gathered under the current law.[276]

308. The Bill's Explanatory Memorandum refers to the fact that according to New Zealand police data, in the five years following legislation prohibiting physical punishment, compared to their baseline, reports to the police of child assaults (including smacking and minor acts of physical discipline) occurred on average twice as often as they had before the legislation.[277] The Explanatory Memorandum lists the differences between Wales and New Zealand which might have an effect on the rates of physical punishment of children, including:

- differences between the legislation in New Zealand and what is proposed in Wales;
- law enforcement in New Zealand is distinct to that in Wales;
- the age of child covered by the legislation;
- population differences;
- parenting support and awareness raising about the legislation.[278]

309. Representatives of the police and the police and crime commissioners explained that they supported the Bill[279] because its intention "is not to bring

[275] Explanatory Memorandum, Welsh Government, page 50.

[276] Oral evidence, CYPE Committee, RoP [para 74], 16 May 2019.

[277] Explanatory Memorandum, Welsh Government, page 51.

[278] Explanatory Memorandum, Welsh Government, para 8.34, page 48.

[279] Written evidence, CYPE Committee, CADRP 387 – Welsh Chief Officer Group and All Wales Policing Group.

about more law enforcement per se, but to achieve a wider shift in terms of attitudes to the rights of children, and that is what we are full square behind".[280] A number of witnesses also stated that reports may be made to social services rather than the police – see section 3.5 of this report for more details.

310. In terms of handling reports to the police, Matt Jukes, Chief Constable of South Wales Police, explained:

- contact from a member of the public relating to an alleged assault against a child would usually lead to a decision to deploy an officer, with the level of urgency depending on the circumstances;[281]
- in relation to whether an individual would be arrested, much more work is now done under voluntary attendance and interviews "and many of the cases we might imagine under this legislative change would probably fall into that";[282]
- reports from officers attending incidents of this nature would reach "some form of multi-agency safeguarding arrangements" for assessment;[283]
- while the number of likely reports if the Bill passes is a "moot point", current numbers of cases relating to physical punishment are very low[284] and "it's unlikely, suddenly, that people who were not picking up the phone to report things to us are going to start, in vast numbers, picking up the phone to report things to us".[285]

Charging, prosecutions and out of court disposals

311. Once the police have completed their investigations into any given case, they can decide to:

- take no further action;
- use an out of court disposal;

[280] Oral evidence, CYPE Committee, RoP [para 86], 16 May 2019.
[281] Oral evidence, CYPE Committee, RoP [para 76], 16 May 2019.
[282] Oral evidence, CYPE Committee, RoP [para 77], 16 May 2019.
[283] Oral evidence, CYPE Committee, RoP [para 78], 16 May 2019.
[284] Oral evidence, CYPE Committee, RoP [para 52], 16 May 2019.
[285] Oral evidence, CYPE Committee, RoP [para 134], 16 May 2019.

- charge an individual or refer the case to the Crown Prosecution Service for advice on how to proceed, which is followed by the CPS making a decision on whether an individual should be charged, and what that charge should be.

312. The objection to the Bill cited most often in our consultation responses related to the risk of parents being prosecuted as a consequence of the defence's removal. Concerns expressed about the principle of "criminalising" parents are considered in section 2.4 of this report.

Charging and prosecution

313. While Be Reasonable Wales referred to the "massive uncertainty" introduced for parents and police by removing the defence of reasonable punishment,[286] the Equal Protection Network Cymru emphasised:

> "[...] the purpose of the Bill is not to prosecute parents and to haul them before the courts. The purpose is to reduce and prevent the physical punishment of children across the country."[287]

314. The Bill's Explanatory Memorandum states:

> "The police and CPS [...] agree that a proportionate response [to a case of physical punishment] in the best interests of the child is essential."[288]

315. In terms of the number of prosecutions that might occur in Wales as a result of the legislation, the Explanatory Memorandum explains:

- in the absence of any other reliable data to make estimates, police data from New Zealand has been used as a proxy to provide an estimate of potential numbers of cases prosecuted in Wales in the five years following commencement;
- the estimated numbers for Wales are based on Wales having around 60% of the numbers of 0-14 year olds compared with New Zealand (the legislation in New Zealand applies to 0-14 Year olds);
- subject to the caveat of being estimates only and robust monitoring being required following commencement to accurately measure the numbers, the estimated number of cases prosecuted over 5 years is 38,

[286] Oral evidence, CYPE Committee, RoP [para 385], 2 May 2019.

[287] Oral evidence, CYPE Committee, RoP [para 496], 2 May 2019.

[288] Explanatory Memorandum, Welsh Government, para 4.11, page 25.

with an expectation that the numbers of cases prosecuted would level off as awareness of the law change increases.[289]

316. Views on the likely numbers of prosecutions varied. Evidence submitted by organisations and individuals responding in a professional capacity anticipated very small numbers of prosecutions. They pointed to experiences in other countries where similar laws had been passed without parents being prosecuted at any "concerning level".[290] They suggested those who talked of the Bill "criminalising" parents were "fearmongering".[291] Those against the Bill warned that no "cast-iron figure" could be given for the likely number of convictions and questioned the sophistication of reporting methods in countries operating similar laws.[292]

What we heard from people about charging and prosecution

"[…] data from the police liaison unit infers that there would be around 1,300 investigations into smacking as an assault after the law changes in the first five years of implementation. So, how many parents are we going to see criminalised for actions that we'd now call smacking or reasonable chastisement in the first years of implementation?". **Be Reasonable Wales (RoP [para 209], 2 May 2019)**

"[…] the vast majority of cases that would be investigated would be dealt with below that threshold of prosecution". **Equal Protection Network Cymru (RoP [para 496], 2 May 2019)**

"Good parents could be criminalised". **The Christian Institute (CADRP 609)**

"[…] the proposed Bill allows for potential criminal liability for parents who lightly smack their children". **Evangelical Alliance (CADRP 644)**

"There is no evidence of negative consequences in any of the 54 countries that have prohibited physical punishment. On the contrary, approval and use of physical punishment have declined and there is no evidence that prosecutions or child apprehensions have increased". **Dr Joan Durrant - Child-Clinical Psychologist and Professor (CADRP 640)**

[289] Explanatory Memorandum, Welsh Government, paras 8.40-8.41, page 51.

[290] Oral evidence, CYPE Committee, RoP [para 492], 12 May 2019.

[291] Oral evidence, CYPE Committee, RoP [para 504 and 492], 12 May 2019.

[292] Oral evidence, CYPE Committee, RoP [paras 385 and 318], 12 May 2019.

317. Matt Jukes, Chief Constable of South Wales Police, told us he did not anticipate a high number of people being charged and/or prosecuted under this Bill, because:

- there is a move towards diverting people away from the criminal justice system;
- the evidential and public interest tests that apply for a prosecution to be pursued are high.[293]

318. He explained that while the evidential and public interest tests are a matter for the CPS, "we [the police] use that same test in our decision making as well". He went on to say:

> "We will no doubt, in some cases, conclude that the public interest is not served by—and the CPS would—prosecution but by some other form of intervention."[294]

Box 1: The CPS's evidential and public interest tests

The evidential test

The prosecutor must first decide whether or not there is enough evidence against the defendant for a realistic prospect of conviction. This means that the magistrates or jury are more likely than not to convict the defendant of the charge. If there is not a realistic prospect of conviction, the case must not go ahead, no matter how important or serious it may be. It is the duty of every Crown Prosecutor to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not only for the purpose of obtaining a conviction.

The public interest test

If the Crown Prosecutor decides that there is a realistic prospect of conviction they must then consider whether it is in the public interest to prosecute the defendant. While the public interest will vary from case to case, broadly speaking the more serious an alleged offence the more likely it will be that a prosecution is needed in the public interest.

A prosecution is less likely to be needed if, for example, a court would be likely to fix a minimal or token penalty, or the loss or harm connected with the offence was minor and the result of a single incident. The interests of the victim are an important factor when considering the public interest. Crown Prosecutors will always take into account

[293] Oral evidence, CYPE Committee, RoP [para 80], 16 May 2019.

[294] Oral evidence, CYPE Committee, RoP [para 80], 16 May 2019.

the consequences for the victim and any views expressed by the victim or victims' family.

Deciding not to prosecute

If the Crown Prosecutor decides that a prosecution should not go ahead, the case will be stopped. The decisions made by the CPS are based on publicly available, clear and visible legal guidance.

Source: Crown Prosecution Service, The decision to charge [accessed 29 June 2019].

319. When asked about charging and prosecution if the defence is removed, the Chief Crown Prosecutor for Wales, Barry Hughes, told us:

- it is a matter for the police to decide whether they refer a case to the CPS;
- under the current law it is unlikely that something like a "light smack to the leg" would come to the CPS because the police would consider reasonable chastisement to provide a defence;
- if that defence is removed, "then obviously there is a greater possibility that it would be referred to the CPS";
- "I would like to think—and I think this is what will probably happen in practice—that the police would take a view that the evidential test may have been satisfied because the defence had been removed, but it wouldn't be in the public interest to prosecute".[295]

320. He went on to explain:

> "It may be that the police decide that it is [in the public interest to prosecute]—it may have been two smacks, three smacks, so it moves towards the end of the spectrum that would suggest that matters are becoming rather more serious. So, it may be referred to the CPS for a charging decision. We would then apply independently the same test, and we would probably conclude that the evidential stage was met in that instance because the defence no longer exists, which takes us on to considering the public interest [...] every case is going to be unique on its own facts, but in the circumstances that I've described, if it is just a light smack and it's a one-off and there's no history of this, it would

[295] Oral evidence, CYPE Committee, RoP [para 20], 6 June 2019.

> probably be the sort of offence we'd decide it wouldn't be in the public interest to prosecute."[296]

321. The Chief Crown Prosecutor for Wales also explained:

- with the removal of the defence, the public interest test would "come into the fore that much more quickly", but that "the essence of it is about proportionality, and trying to come up with an approach that is proportionate to the offending";[297]
- the chances of prosecution are "pretty low, but they're greater than they are presently";[298]
- the numbers of prosecutions are likely to be small – "I would be very surprised if we were to prosecute anything other than low single figures a year, if that much";[299]
- the burden of proof would be the prosecution's and they would need to establish their case beyond a reasonable doubt;[300]
- the law exists to set out "what is acceptable, what is not acceptable. It doesn't necessarily mean we need to use the law for that, but it signifies how society views a certain behaviour".[301]

322. While the Deputy Minister acknowledged the difficulty establishing a baseline for the likely number of cases that would fall under this Bill, she stated:

> "[…] we don't anticipate that there will be a significant number of prosecutions."[302]

323. The Deputy Minister reiterated that the purpose of the Bill is to protect children, and to change behaviour through awareness raising which she hoped would reduce prosecutions to single figures a year.[303] She also stated that the Welsh Government wanted to "make quite sure that there is a proportionate response to any possible offence that has been committed", referring to the

[296] Oral evidence, CYPE Committee, RoP [para 21], 6 June 2019.
[297] Oral evidence, CYPE Committee, RoP [para 96], 6 June 2019.
[298] Oral evidence, CYPE Committee, RoP [para 88], 6 June 2019.
[299] Oral evidence, CYPE Committee, RoP [para 85], 6 June 2019.
[300] Oral evidence, CYPE Committee, RoP [para 67], 6 June 2019.
[301] Oral evidence, CYPE Committee, RoP [para 59], 6 June 2019.
[302] Oral evidence, CYPE Committee, RoP [para 38], 2 May 2019.
[303] Oral evidence, CYPE Committee, RoP [para 38], 2 May 2019.

requirements on the police and the CPS only to charge and prosecute where there is sufficient evidence and where it is in the public interest (which would include consideration of the child's interests).[304]

Child witnesses and Registered Intermediaries

324. The Bill's Explanatory Memorandum makes reference to the potential for evidence of physical punishment to be gathered from child witnesses.[305]

325. The Explanatory Memorandum states that Registered Intermediaries[306]:

- must be considered for use at court in every case involving a child witness;
- would not necessarily be used if there was unequivocal evidence, such as CCTV or a witness statement;
- will be paid for by the police for the investigative stage and by the CPS if the case gets to court.[307]

326. While the Explanatory Memorandum states that there was a shortage of Registered Intermediaries in Wales, particularly those who are Welsh speaking, both the Deputy Minister and the Chief Crown Prosecutor for Wales pointed to a recent Ministry of Justice recruitment exercise that they said had addressed this gap.[308]

327. When asked if he was concerned that the availability of Registered Intermediaries could be a barrier to the Bill's implementation, the Chief Crown Prosecutor said:

> "[...] it has the potential to serve as a barrier, but in practice, I don't think it would be a barrier. I think, particularly given the very low numbers

[304] Oral evidence, CYPE Committee, RoP [para 39], 2 May 2019.

[305] Explanatory Memorandum, Welsh Government, paras 28-29, pages 76-77.

[306] Registered intermediaries are communication specialists (e.g. speech and language therapists, psychologists) who will assist to ensure answers are communicated more effectively during police interview and when giving evidence at trial. They are recruited, trained and accredited by the Ministry of Justice.

[307] Explanatory Memorandum, Welsh Government, page 76.

[308] Oral evidence, CYPE Committee, RoP [para 75], 2 May 2019 and RoP [para 147], 6 June 2019.

> we're talking about, we would be able to manage it. I've got no significant concerns, I have to say."[309]

328. The Welsh Chief Officer Group's and All Wales Policing Group's joint response to our consultation raised concerns about the potential for child witnesses to be removed from their parents' custody during an investigation:

> "[...] in some cases the evidence of a child against their parent would be needed to support and proceed with a prosecution. In these cases, to prevent interference with the prosecution and as part of a safeguarding measure the child or parent would not be able to reside together."[310]

329. Given the potential seriousness of this unintended consequence, we questioned Matt Jukes, Chief Constable of South Wales Police, in more detail. He responded that it was flagged as one of the Bill's potential unintended consequences, but that he would not weigh them all equally. He added

> "[...] this is no different than the situation now. In situations where children are witnesses, in matters that particularly go to their parents as the alleged offender, of course we have to make decisions about interference with witnesses, but more fundamentally, we're making decisions every single day about whether a child can remain in the home that they're in now. [...] We do know that parental incarceration is one of the adverse childhood experiences that has a consequence in later life, and so, I think in that public interest test there will always be a question about whether prosecuting a parent on the evidence of their child is going to be in [...] the public interest."[311]

Out of court disposals

330. The Bill's Explanatory Memorandum states that, should the Bill be enacted, the Welsh Government anticipates out of court disposals may be offered to a parent found to have punished their child physically, depending on the circumstances of the case.[312]

331. Out of court disposals are a type of disposal for a criminal act, generally issued by the police. Their aim is to allow quick and proportionate handling of

[309] Oral evidence, CYPE Committee, RoP [para 147], 6 June 2019.

[310] Written evidence, CYPE Committee, CADRP 387 – Welsh Chief Officer Group and All Wales Policing Group.

[311] Oral evidence, CYPE Committee, RoP [para 120-121], 6 June 2019.

[312] Explanatory Memorandum, Welsh Government, para 18, page 75.

low-level, often first-time, offending which could be resolved more appropriately without a prosecution in court. They include cautions and community resolutions.

Box 2: Cautions and community resolutions

Cautions are given to anyone aged 10 or over for minor crimes, subject to admission of an offence. A caution is not a criminal conviction, but forms part of a person's criminal record and may be revealed as part of a DBS standard or enhanced check.

Community resolutions are informal non-statutory disposals used for dealing with less serious crime and anti-social behaviour where the offender accepts responsibility. It can be offered with a diversion scheme e.g. advice and support on positive ways to provide discipline to children. It does not form part of a person's criminal record but may be revealed as part of a DBS enhanced check.

Source: Explanatory Memorandum, pages 75-76

332. The Children's Commissioner for Wales,[313] the Police,[314] and the Chief Prosecutor for Wales[315] referred to out of court disposals as an alternative to prosecution for an individual being investigated for the first time for using physical punishment on their child. Matt Jukes, Chief Constable of South Wales Police, stated:

> "[…] diversion and other interventions, other than criminal justice, will be key if the intention of Government is not to bring more parents directly through the core criminal justice system."[316]

333. He went on to explain that while out of court disposals are not a devolved matter, and no duty can be put on the police to use them under the constitutional settlement, drivers for ensuring that key public services work together to deliver alternatives to criminal justice were crucial.[317] The Police and Crime Commissioner for Gwent, Jeff Cuthbert, emphasised the importance of committing to diversionary schemes in order to signal that the Bill's aim is to safeguard children's well-being rather than to penalise or "criminalise" parents.[318]

334. Among the parents who supported the Bill with whom we spoke in discussion groups on 6 June 2019, the point was made that it would be

[313] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

[314] Oral evidence, CYPE Committee, RoP [para 98], 16 May 2019.

[315] Oral evidence, CYPE Committee, RoP [para 85], 6 June 2019.

[316] Oral evidence, CYPE Committee, RoP [para 51], 16 May 2019.

[317] Oral evidence, CYPE Committee, RoP [para 56], 16 May 2019.

[318] Oral evidence, CYPE Committee, RoP [para 98], 16 May 2019.

worthwhile having "speed awareness type" courses where parents could choose to attend a course rather than face prosecution.

335. When asked about diversionary schemes, the Deputy Minister said they could be a "very important" way to avoid a parent being prosecuted.[319] She explained that discussions with the police were underway, and that the Implementation Group would be asked to discuss diversionary schemes "as one of the key things that we wanted to bring in".[320]

336. The Deputy Minister acknowledged that the use of out of court disposals is not a devolved responsibility, but stated that work would be undertaken with the Home Office, the Ministry of Justice, the CPS, the police, and the police and crime commissioners to consider suitable interventions.[321] She explained that exploratory work was underway with the Police Liaison Unit in Wales to develop "a suitable diversion scheme, with a focus on advice and support on positive alternatives to physical punishment" to be potentially given through a community resolution order rather than a caution.[322]

337. The Deputy Minister confirmed in writing that:

- a dedicated work-stream had been established by the Implementation Group to consider out of court disposals and diversions;
- options for such disposals and diversions will range from a leaflet or online e-learning "course" to a face-to-face group session;
- costs will vary according to the options agreed, but will be estimated on the assumption that the police's current figure of 274 cases will increase by 100% after the Bill comes into force (based on data in New Zealand that demonstrated a doubling of reports after similar legislation was introduced there).[323]

338. When asked if parents would be expected to pay to participate in diversionary schemes developed for the purpose of this legislation, the Deputy Minister stated that discussions had not reached that level of detail but she would

[319] Oral evidence, CYPE Committee, RoP [para 188], 2 May 2019.

[320] Oral evidence, CYPE Committee, RoP [para 188], 2 May 2019.

[321] Oral evidence, CYPE Committee, RoP [paras 150 and 152], 12 June 2019.

[322] Oral evidence, CYPE Committee, RoP [para 152], 12 June 2019.

[323] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

be "very surprised if parents had to pay to go on a course" and would not see that being "very helpful".[324]

Recording information and Disclosure and Barring Service (DBS) checks

339. Employers can check the criminal record of someone applying for a job. This is known as a Disclosure and Barring Service (DBS) check. The most detailed of the DBS checks – the enhanced check – can show any information held by local police that is considered relevant to the role.[325] This includes non-conviction data.

340. A number of individuals who responded to our consultation cited the Bill's potential impact on parents' employment prospects — if they were investigated and/or prosecuted, for physically punishing their child — as a reason not to support it. Be Reasonable Wales asked:

> "How many parents are going to have police cautions, which would appear in Disclosure and Barring Service checks and affect, potentially, their employment?"[326]

341. Some parents with whom we spoke in discussion groups on 6 June 2019 who opposed the Bill raised concerns that a record of any investigation would be created even if a prosecution was not pursued. They were worried that this could be picked up in DBS checks, potentially impacting negatively on parents' employment prospects.

342. Police representatives highlighted that, regardless of whether an arrest, charge or prosecution were pursued, information about any incidents reported to them would be recorded on their systems:

> "[…] if you call the police, you get the police, and if you get the police, information about those families goes on to police systems, not because we wish to surveille families, but because we wish to protect the children who are living in them."[327]

343. They added:

[324] Oral evidence, CYPE Committee, RoP [para 190], 2 May 2019.

[325] UK Government, DBS check, [accessed 5 July 2019].

[326] Oral evidence, CYPE Committee, RoP [para 209], 2 May 2019.

[327] Oral evidence, CYPE Committee, RoP [para 84], 16 May 2019.

- the threshold for recording an incident as a crime is very low, "so they will get recorded as crimes";[328]
- while the consequences of holding such records needed to be considered from a family court and disclosure perspective, such records are all "being managed now in many, many cases, absent of this change, because, of course, dealing with allegations around assaults on children is not something we're not already doing in many, many cases";[329]
- allegations of assault against a child will "never be filtered from the considerations for, particularly, an enhanced disclosure and barring application [...] but the more likely disclosures will come where there are multiple reports or the reports have resulted in some action";[330]
- the disclosure of information from the police to other bodies, including the Disclosure and Barring Service (DBS), have to be proportionate, "so, we [the police] work very hard to contextualise our disclosures, particularly in relation to cases where no further action has been taken";[331]
- if the Bill were to pass, further consideration would need to be given to how incidents of physical punishment in Wales would be recorded while continuing to ensure consistency of crime reporting with the rest of the UK and in line with Home Office Counting Rules.[332]

344. When asked about the potential impact of the Bill in relation to the recording and disclosure of non-conviction data, the Deputy Minister stated that the issue applies beyond this proposed legislation. However, she acknowledged the potential impact for those in professions such as teaching or childcare who require enhanced certificates. She went on to explain:

> "[...] when disclosing information held locally, the police follow the quality assurance framework, and information must pass certain tests, which are related to considerations of relevance, substantiality and proportionality, and considerations of the safety aspects as well of disclosing information. And the police must record their thought

[328] Oral evidence, CYPE Committee, RoP [para 129], 16 May 2019.

[329] Oral evidence, CYPE Committee, RoP [para 51], 16 May 2019.

[330] Oral evidence, CYPE Committee, RoP [para 131], 16 May 2019.

[331] Oral evidence, CYPE Committee, RoP [para 134], 16 May 2019.

[332] Written evidence, CYPE Committee, CADRP 387 – Welsh Chief Officer Group and All Wales Policing Group.

> process, their rationale, explaining how and why they reached all of their conclusions and their decisions. And this information is then assessed by the chief officer to determine whether it's reasonable to believe that it's relevant, and whether, in their opinion, it ought to be disclosed. Information should only be disclosed if it meets both of those requirements."[333]

345. The Deputy Minister's official added that the police and DBS already have to consider whether to disclose information of this nature, and that a "very, very small proportion" of non-conviction information is currently released to an employer during a recruitment process. Based on that information, she stated that disclosure would be expected to remain "at a very low level" under the Bill.[334]

346. The Deputy Minister confirmed in writing that in Wales in the year 2018-19, of the 2,582 enhanced/standard DBS applications despatched:

- 2,536 of 2,582 (98.2%) were despatched "clean" (i.e. there was no recorded information of any sort);
- 44 of 2,582 (1.7%) were despatched containing information on convictions/cautions;
- 2 of 2,582 (0.1%) were despatched containing non-conviction data (local police force "approved" information).[335]

347. The Deputy Minister stated in correspondence that "clear guidance" on the inputting of information to the relevant national database would be "essential" in relation to conviction and non-conviction data and that these and the associated costs "are matters of detailed implementation which we will discuss further with the police and others as required".[336] She emphasised, however, that in relation to the DBS process more generally, she did not expect the Bill to necessitate any changes and reiterated that the process was governed by UK primary legislation.[337]

[333] Oral evidence, CYPE Committee, RoP [para 156], 12 June 2019.

[334] Oral evidence, CYPE Committee, RoP [para 165], 12 June 2019.

[335] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

[336] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

[337] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

Divergence in law between Wales and England

348. The Bill's Explanatory Memorandum states:

> "While a large increase in the volume of cases coming before the criminal courts is not anticipated, there will be a need to ensure legal professionals are aware of the change in the law, particularly as there will be a divergence in the law between England and Wales."[338]

349. The CPS's response to our consultation highlighted:

> "Wales intends to abolish a defence that will still apply in England. The geographical proximity, single prosecuting authority and court structure covering England and Wales create potential barriers."[339]

350. We asked the Chief Crown Prosecutor for Wales to elaborate on the CPS's written evidence in relation to the impact of this divergence in law between Wales and England. He said:

- there would be more cases that would pass the evidential stage in Wales than there would be in England, because the defence would still apply there, raising issues of public awareness, particularly for those travelling to Wales from England (where the defence will continue to exist).[340] Section 3.4 of this report considers the issue of raising awareness of the law among visitors to Wales in more detail;
- policy guidance and charging standards would need to be updated and re-issued to reflect the changes, but he was content that the CPS Code enables potential divergence of Welsh law to be taken into account meaning that the CPS is sufficiently flexible;[341]
- a certain degree of divergence of laws already exists in the UK and is recognised by the CPS e.g. using an electric collar on a pet or picking cockles in certain areas are offences in Wales but not England,[342] and

[338] Explanatory Memorandum, Welsh Government, para 40, page 78.

[339] Written evidence, CYPE Committee, CADRP 293 – Crown Prosecution Service.

[340] Oral evidence, CYPE Committee, RoP [para 28], 6 June 2019.

[341] Oral evidence, CYPE Committee, RoP [para 28], 6 June 2019.

[342] Oral evidence, CYPE Committee, RoP [para 58], 6 June 2019.

you can be disqualified for driving in Scotland with 22 µg of alcohol in 100 ml of breath, whereas in England and Wales, the limit is 35 µg;[343]

- awareness of the divergence would need to be raised among prosecutors who practice on both sides of the border.[344]

Box 3: Relevant CPS Guidance

The **Code for Crown Prosecutors** is a public document, issued by the Director of Public Prosecutions that sets out the general principles Crown Prosecutors should follow when they make decisions on cases.

The **Charging Standard** sets out how to approach charging decisions and prosecutions in cases involving various offences against the person. It is designed to assist prosecutors and police officers in selecting the most appropriate charge, in the light of the facts that can be proved, at the earliest possible opportunity.

Source: Crown Prosecution Service, Offences against the Person, incorporating the Charging Standard [accessed 29 June 2019].

351. With regard to changes to CPS Charging Standards and Guidance, the Chief Crown Prosecutor for Wales stated that any necessary updates would be made so that they were appropriate for use in Wales and England, and that the guidance in relation to the public interest test would probably require more work than in relation to the evidential test.[345] He was confident, however, that this would be achieved and the guidance would be "fit for purpose" by the anticipated commencement date.[346]

352. When asked if updated guidance on how the proposed law would apply should be available now, to enable people to understand how the Bill's provisions would work in practice, he said:

> "I honestly don't think that would necessarily be helpful. […] What we would envisage is that we would simply want to take the present public interest factors, which are set out, in my view, very clearly in the code for Crown prosecutors, and we would provide a degree of detail around those that relates more specifically to the issues that we're discussing here. So, it would be taking principles of generality and according them a degree of specificity. And we'd need to work that up as we go along,

[343] Oral evidence, CYPE Committee, RoP [para 29], 6 June 2019.

[344] Oral evidence, CYPE Committee, RoP [para 48], 6 June 2019.

[345] Oral evidence, CYPE Committee, RoP [paras 32 and 42], 6 June 2019.

[346] Oral evidence, CYPE Committee, RoP [para 79], 6 June 2019.

> and I think you'd run a risk of putting the cart before the horse, if I may put it like that."[347]

353. The Police and Crime Commissioner for Gwent, Jeff Cuthbert, emphasised the importance of ensuring that other statutory bodies beyond the police and CPS were aware of the divergence in the law, including Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services.[348]

354. The Deputy Minister acknowledged the need for guidance to be amended if the Bill becomes law, and stated that the CPS had representation on the Implementation Group to ensure that the necessary details are discussed and agreed with all relevant parties.[349] The Deputy Minister's official added that more detailed conversations about the evidential and public interest tests, including the "pragmatic and proportionate" consideration of the best interests of the child, would take place as part of the implementation period.[350]

Impact on police, Crown Prosecution Service and court capacity

355. The Bill's Explanatory Memorandum states:

> "To take account of concerns about the potential impact on public bodies, we have engaged with relevant public bodies [...] Together, we have considered the impact on resources and on how they could work to ensure consistent implementation across Wales, so that parents can have a reasonable expectation of how allegations will be dealt with, wherever they live in Wales."[351]

356. The Explanatory Memorandum also states that while the Welsh Government anticipates the Bill will have an impact on the justice system and the police, predicting its impact accurately is complex due to:

- there being no precedent in the UK for removal of the defence, and there being only limited relevant data from other countries to indicate the likely increase in referrals/prosecutions following the removal of the defence;

[347] Oral evidence, CYPE Committee, RoP [para 54], 6 June 2019

[348] Oral evidence, CYPE Committee, RoP [para 96], 16 May 2019.

[349] Oral evidence, CYPE Committee, RoP [para 67], 2 May 2019.

[350] Oral evidence, CYPE Committee, RoP [para 92], 2 May 2019.

[351] Explanatory Memorandum, Welsh Government, para 4.12, page 25.

- outcomes being dependent on societal attitudes, awareness of and responses towards the new legislation;
- outcomes depending on Crown Prosecution and justice policy in relation to the new legislation.[352]

357. The impact of the Bill on the capacity of the police and the courts, and the potential diversion from what were perceived to be more serious child protection cases, was cited by a significant number of individuals who responded to our consultation as a reason for not supporting the proposal to remove the defence. Be Reasonable Wales also raised concerns about the impact the Bill would have on police and court capacity.[353] This was also an issue raised by some of those in support of the Bill – Clybiau Plant Cymru Kids Clubs suggested that the Bill could place greater demands on the police (and social services) which, in turn, could impact on wider issues around child safety.[354]

358. In relation to their capacity to deal with the legislative change, police representatives stated:

> "Unless it [the Bill] absolutely unlocks the floodgates of reports, this is not going to destabilise our delivery in front-line operational policing."[355]

359. The Chief Crown Prosecutor for Wales said:

> "[…] my take on it is the number of offences is likely to be very small and we would probably have two or three specialists trained in this so that any case that comes through goes to people who've got a close network and can talk to each other."[356]

360. The Chief Crown Prosecutor for Wales also emphasised that maintaining a clear record of any cases referred to the CPS after enactment would be important to review progress and measure impact later down the line.[357] However, he argued that as prosecution "is not the first port of call" for the provisions of the Bill, he did

[352] Explanatory Memorandum, Welsh Government, pages 44-47.

[353] Written evidence, CYPE Committee, CADRP 92 – Be Reasonable.

[354] Written evidence, CYPE Committee, CADRP 646 – Clybiau Plant Cymru Kids Clubs.

[355] Oral evidence, CYPE Committee, RoP [para 180], 16 May 2019.

[356] Oral evidence, CYPE Committee, RoP [para 21], 6 June 2019.

[357] Oral evidence, CYPE Committee, RoP [para 83], 6 June 2019.

not foresee prosecuting "anything other than low single figures a year, if that much".[358]

361. We wrote to the Ministry for Justice to ask for its view on the Bill's implications for the workload of services within its remit. It stated that its concerns about the "unknown effect the policy will have on the number of cases reported, with corresponding impact on policing, the CPS and court volumes" had been discussed with the Welsh Government.[359] It reported:

- the CPS does not anticipate significant increases in workload;
- regarding criminal courts, Her Majesty's Courts and Tribunal Service (HMCTS) expects "minimal impact" on caseload for the Magistrates Courts, but highlighted potential issues around child witnesses as magistrates courts are not set up to accommodate their needs (issues relating to child witnesses are dealt with in more detail in paragraphs 324-329 of this report);
- HMCTS had "serious concerns" that use of the removal of the defence by feuding parents could delay proceedings in the family court "which is already under pressure" (the issue of malicious reporting is dealt with in more detail in section 3.5 of this report).[360]

362. When asked about the likely impact of the Bill on the service capacity of the police, CPS and courts, the Deputy Minister responded:

> "I think we have to rely on what the people who run those organisations are telling us. Certainly, the CPS say that they can cope. CAFCASS say that they can cope […] the other important thing to recognise is that this area of work is already dealt with by all these people. So, the CPS is already involved in changing its guidance all the time, so it's not going to be much of an impact for them to actually have to do that over this issue. […] I accept that we're working in a situation where there's a general pressure on public services, but I think this area that we're legislating on here is part of what everybody's doing already. And so I don't see it as such a big thing in terms of impact."[361]

[358] Oral evidence, CYPE Committee, RoP [para 85], 6 June 2019.

[359] Correspondence, Ministry of Justice to the CYPE Committee, 14 May 2019.

[360] Correspondence, Ministry of Justice to the CYPE Committee, 14 May 2019.

[361] Oral evidence, CYPE Committee, RoP [para 177], 12 June 2019.

OUR VIEW

363. We recognise and understand the apprehension with which a significant proportion of respondents to our consultation view the removal of the defence of reasonable punishment and its potential to lead to implications for parents. However, we are assured by the views of senior representatives of the criminal justice system that a proportionate response to reports will be adopted and a significant number of charges or prosecutions are very unlikely to arise as a consequence of this Bill. We also welcome the Deputy Minister's categorical statement that the aim of this Bill is "to protect children" and that she wants "to make quite sure that there is a proportionate response to any possible offence that has been committed".[362]

364. Nevertheless, we do not dismiss the concerns of those whose opposition to the Bill is founded on the belief that it could "criminalise" parents. We believe that important steps need to be taken to ensure that this Bill does not have a disproportionate impact on families — including in terms of prosecution — and that those steps are clearly defined and communicated to the public and professionals alike.

365. In our view, the development of appropriate out of court disposals will be essential to ensuring that the Bill does not lead to unintended prosecutions. These disposals should focus on positive alternatives to physical punishment and on encouraging rather than penalising parents, whose role we both value and recognise to be frequently challenging.

366. Further details about how out of court disposals will work in practice in the context of this Bill need to be agreed as soon as possible. This is essential to provide clarity about how the law will be implemented and important in order to assure the public that the vast majority of cases currently captured under the defence of reasonable punishment will not lead to parents being prosecuted.

367. Linked to this, careful consideration of the release of non-conviction data as part of disclosures for DBS is crucial. We note the very low figures of non-conviction data released in 2018-19, and the steps in place to assess the proportionality of releasing information under standard and enhanced checks. While we recognise that this is a non-devolved area, it is essential that the Welsh Government work with non-devolved services (and UK Government departments where necessary) to develop very clear guidance for police forces in Wales about

[362] Oral evidence, CYPE Committee, RoP [para 39], 2 May 2019.

the recording of information relating to investigation of allegations of the physical punishment of a child. Strict guidelines must also remain in place in relation to the release of information under DBS applications.

368. While we are reassured that the low numbers of cases anticipated to reach a charge or prosecution mean that the police and CPS are unlikely to be overwhelmed, we welcome the work underway to establish more robust baselines for the number of cases of physical punishment of a child that are likely to arise. We believe this is particularly important in light of the Welsh Government's aim of increasing awareness of the issue among the general public, which we recognise could have an impact on the number of reported concerns about physical punishment.

Recommendation 4. That the Welsh Government work with the police, Crown Prosecution Service and relevant UK Government departments to develop, as a matter of priority, a clear pathway to divert cases that would currently be captured under the defence of reasonable punishment away from the criminal justice system, where appropriate and proportionate to do so. Such diversionary schemes should focus on encouraging and supporting parents rather than penalising them.

Recommendation 5. That the Welsh Government work with the police and relevant UK Government departments to develop, as a matter of priority, clear guidance for police forces in Wales about the recording of information relating to investigation of allegations of the physical punishment of a child(ren).

Recommendation 6. That the Welsh Government continue its work to establish a more robust baseline for the number of cases of physical punishment of a child, and provide updates to the National Assembly on a regular basis.

3. 3. Devolved services

369. Those in favour and against the Bill were largely united in the importance they attached to supporting families and ensuring that all parents have access to services and information that can support them in this role. However, while some supporters of the Bill saw the legislation's passage as an opportunity to increase engagement with — and awareness of — positive parenting and additional support, opponents questioned the need, wisdom, and likely success of changing the law to achieve this aim.

Availability and capacity of services to support families

370. The Bill's Explanatory Memorandum states:

> "Providing information and support to parents and raising awareness of the legislative change is part of the plan for implementing the legislation, alongside the ongoing provision of advice and support on positive alternatives to physical punishment. A reasonable period after Royal Assent and before the new arrangements are brought into force is proposed, to allow sufficient time to allow for this. As part of the preparation for implementation, we will work with key stakeholders in Wales to consider what, if any, additional support [...] is required."[363]

371. There was a strong consensus among those in favour of the Bill that support for parents, including alternative methods to physical punishment and "positive parenting" information, needed to be in place alongside this legislation. It was argued that this was necessary if the aim of reducing physical punishment of children was to be achieved, and any unintended consequences arising from the Bill (including "criminalisation") mitigated.[364] This view was summarised by BASW Cymru:

> "[...] it's an imperative that legislative change be accompanied by support services and information for parents that conveys messages about positive parenting and alternatives to physical punishment instead of introducing a 'blame' culture, where they risk being criminalised instead of supported and educated about appropriate and less harmful parenting strategies."[365]

372. However, questions were raised about the universal availability of support services in Wales. Early Years Wales highlighted that existing parenting support is often only available as part of a targeted programme either in designated areas (such as Flying Start) or "may only become available following undesirable incidents".[366] The Children's Commissioner for Wales told us that "much more" is needed to support parents to understand and find the best way to parent. She added that help was needed for parents – regardless of their social class or culture – to find "new options" when disciplining their children.[367] The WLGA summarised the position as follows:

[363] Explanatory Memorandum, Welsh Government, para 4.8, page 24.

[364] Oral evidence, CYPE Committee, RoP [para 68], 8 May 2019 and RoP [para 547], 2 May 2019.

[365] Written evidence, CYPE Committee, CADRP 283 – British Association of Social Workers (BASW) Cymru.

[366] Written evidence, CYPE Committee, CADRP 536 – Early Years Wales.

[367] Oral evidence, CYPE Committee, RoP [paras 634 and 635], 2 May 2019.

> "[…] we need to ensure that there is that support available to parents and carers that do sometimes struggle with parenting, and that needs to be a universal offer across Wales. If we're to progress with this, that has to be an option that is offered to every parent in Wales."[368]

What we heard from people about support for families

"I think the government should commit to ensuring that there are free open access parenting programmes available to all Welsh parents where parents have the opportunity to meet other parents. At the moment, parenting programmes are available only through a professional referral, thus stigmatising the attendees". **Individual (CADRP 521)**

"[…] innovative far reaching public education will be necessary .This should be for ALL parents as this is not an issue which just affects poorer families". **Individual (CADRP 522)**

"There should be, alongside the bill, plans to provide more parenting support in a way that does not stigmatise parents e.g. through health visiting". **Individual (CADRP 527)**

Among the parents with whom we spoke on 6 June 2019 in discussion groups, there was a concern—regardless of whether they opposed or supported the Bill—that support services for parents lacked resource. Among those who supported the Bill there was an acknowledgement that there were significant gaps in services supporting and education parents in effective ways of parenting that did not involve physical punishment.

373. Where parenting support is currently available there were concerns about its capacity and, in some cases, its effectiveness. The National Independent Safeguarding Board highlighted "gaps" in service provision, whilst health service representatives acknowledged that support was "patchy" across Wales, despite most health boards being committed to developing preventative services.[369] BASW Cymru stated that not enough support services were available to which parents could be directed, and that the current number of care proceedings suggests a problem with existing services:

> "The numbers are telling us that something isn't right at the early intervention and prevention end. So, either we're not doing enough of it, either we're not doing it right, or we simply aren't doing it."[370]

[368] Oral evidence, CYPE Committee, RoP [para 14], 8 May 2019.

[369] Oral evidence, CYPE Committee, RoP [paras 227 and 93], 22 May 2019.

[370] Oral evidence, CYPE Committee, RoP [para 326], 16 May 2019.

374. Health boards and social services raised the potential for an increase in demand for support services as a consequence of the Bill and the awareness raising campaign surrounding it.[371] Dr Dave Williams, Divisional Director, Family Therapy Services, Aneurin Bevan University Health Board, explained that risks associated with services' capacity could be mitigated by approaching targeted and universal services more flexibly (universal services are discussed in more detail in section 3.4 of this report):

> "It's blurring the boundaries so that we don't have postcode lines that say, 'You're Flying Start, you can get enhanced, but if you're two doors down the road, then you don't'. It is about developing that menu and having less black-and-white boundaries, if you like, so that we are able to have the flexibility for those pockets of families who need the Flying Start-type level of intervention but actually don't live in a Flying Start area—that they're able to access the bits of the menu they require."[372]

375. Members of the National Independent Safeguarding Board explained that the amount of support available at the moment diminishes as children get older:

> "[…] families struggling to deal with adolescents would find that there are fewer services available to support them. We've seen a contraction in the provision of youth services that would've traditionally been able to support young people, particularly in their communities. But parenting support groups for that age group, I'd say, are few and far between."[373]

376. Responding to concerns about the impact a lack of support services could have on the effective implementation of the Bill, the Deputy Minister stated that the proposed legislation had been developed as part of a wider package of universal and targeted support for parents and children.[374] However, she acknowledged that more support was needed for parents in the early years as early intervention is "key to many of the issues that we have to deal with later

[371] Written evidence, CYPE Committee, CADRP 174 – Swansea Bay University Heath Board, CADRP 650 – Welsh NHS Confederation and oral evidence, RoP [para 25], 8 May 2019.

[372] Oral evidence, CYPE Committee, RoP [para 109], 22 May 2019.

[373] Oral evidence, CYPE Committee, RoP [para 222], 22 May 2019.

[374] Oral evidence, CYPE Committee, RoP [para 97], 12 June 2019.

on".[375] The Deputy Minister recognised the need to "work hard at this to reach every family"[376] and announced that she had asked officials to:

> "[...] carry out a mapping exercise to see where the support is and where the gaps are or opportunities to do more, particularly around information and advice on positive alternatives to physical punishment, but also more widely. So, we are looking to see where the gaps are."[377]

377. The Deputy Minister confirmed to us in writing that the mapping exercise will be undertaken during summer 2019 with external and internal stakeholders. She also explained:

> "The findings of the exercise will determine what, if any additional parenting support, advice and information is required to support behaviour change alongside the Bill, as well as identifying any gaps in current provision. The findings will be reported to me by the end of September."[378]

378. When asked whether the Welsh Government would make a commitment to provide funding to fill any gaps identified by the mapping exercise in the universal offer of parenting support for families, the Deputy Minister stated that the Welsh Government "will certainly consider it at that point".[379]

379. With regard to concerns about support for parents with older children, the Deputy Minister committed to expanding the age range of the Welsh Government's *Parenting: Give it Time* campaign from 0-7 years to 0-18 years.[380]

Fear of engaging with support services

380. Some individual responses to our consultation warned that the Bill could lead to parents avoiding engaging with support services for fear of investigation and/or prosecution.

[375] Oral evidence, CYPE Committee, RoP [para 104], 12 June 2019.

[376] Oral evidence, CYPE Committee, RoP [para 145], 12 June 2019.

[377] Oral evidence, CYPE Committee, RoP [para 98], 12 June 2019.

[378] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

[379] Oral evidence, CYPE Committee, RoP [paras 225-226], 12 June 2019.

[380] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

What we heard about the Bill's potential impact on engagement with services

"It [the Bill] will certainly put [up] barriers to parents seeking support from the authorities if they are struggling". **Individual (CADRP 176)**

"There exists in many families a caution about involvement with social services. It is my belief that a fear of possible prosecution will tend to increase the reluctance to seek or receive help even when necessary". **Individual (CADRP 552)**

"[…] the removal of this defence could actually open up this conversation about […] what's proportionate and what's responsible, to give people some tools to manage the everyday ups and downs and conflict that occur when you're parenting". **Dr Dave Williams, Aneurin Bevan University Health Board (RoP [para 192], 22 May 2019)**

"Creating a culture of suspicion and fear will push parenting problems underground where people might previously have asked for help from professional services or their neighbours and friends". **Individual (CADRP 558)**

"The Bill will damage the relationship between parents and professionals". **Individual (CADRP 564)**

Some parents with whom we spoke on 6 June 2019 in discussion groups, and who opposed the Bill, worried that the proposed legislation would create a culture of fear and suspicion and undermine people's trust in professionals.

381. When we put this point to health service representatives they recognised that fear of engaging with services was a possible risk, but stated that key to avoiding this would be the tone of public messages about the Bill.[381]

382. The Royal College of General Practitioners' representative elaborated:

> "[…] if a parent smacks their child and doesn't want to tell us, we're probably not going to know. If it's a light smack that doesn't leave a mark, we're not really going to know and we can't change that. But even in that situation, we can bring it up and talk about good parenting and what's the right way. And so this law's still useful, even if we've got parents who are smacking their children but aren't presenting that information to us."[382]

383. The National Independent Safeguarding Board commented that a change in culture is needed for parents to engage proactively with support services:

[381] Oral evidence, CYPE Committee, RoP [paras 96 and 97], 22 May 2019.

[382] Oral evidence, CYPE Committee, RoP [para 414], 22 May 2019.

> "In Europe, what we see with child protection is that people come forward and ask services for help. Culturally, in the UK, we have a culture where children's services are seen as intervening as opposed to being invited in. The cultural change, I think, that we need to achieve is where people, when they're having a hard time, can say, 'I need a bit of help', and I think this can help towards that."[383]

Social services

384. Concern that the proposed legislation could cause an increase in referrals to social services was raised by supporters and opponents of the Bill. Many of the Bill's opponents also argued that the removal of the defence would lead to "trivial" cases of smacking diverting already "over-stretched" services away from "more serious" cases, and to children potentially being taken into the care of local authorities.

Workload

385. Responding to concerns about the likely numbers of referrals to social services if the Bill is enacted, Sally Jenkins, then Chair of the Heads of Children's Services Wales and representing the Association of Directors of Social Services, told us:

> "We know that it's likely, from some of the work we've already done, that [the Bill] is not opening floodgates for a sudden sea of referrals to children's services."[384]

What we heard from people about the Bill's impact on social services' workload

"[…] public bodies are already overstretched and may therefore not be able to cope with a potential influx of new referrals". **Early Years Wales (CADRP 536)**

"Enforcement of this will create unnecessary pressure on social services and policing, draining much needed resources from already over-stretched departments". **Individual (CADRP 523)**

"Genuinely violent individuals will be missed by social workers and police as they are called to investigate Mrs Jones who smacked her child on the hand". **Individual (CADRP 253)**

[383] Oral evidence, CYPE Committee, RoP [para 170], 22 May 2019.

[384] Oral evidence, CYPE Committee, RoP [para 130], 8 May 2019.

"Police and social workers are already at breaking point. Let them get on with the important things". **Individual (CADRP 471)**

"There's no evidence to support that there's going to be an opening of the floodgates". **BASW Cymru (RoP [para 268], 16 May 2019)**

"The police and social services are already investigating assaults on children every day. But what will change is that that defence will not be available; if they go forward to prosecute, it won't be available to deploy by parents". **Equal Protection Network Cymru (RoP [para 501], 2 May 2019)**

Among the parents with whom we spoke on 6 June 2019 in discussion groups there was a worry — regardless of whether they opposed or supported the Bill — that social services would not be able to handle the extra workload the Bill could potentially create. The parents who opposed the Bill were concerned that social services were already overstretched and cases currently captured under the defence would divert them from more serious things.

386. With regard to the Bill's impact on service capacity, Sally Jenkins explained:

- a peak in referrals was likely as a result of the Bill but that would settle;[385]
- assessing the likely impact of the Bill on social services, including out of hours support, would be part of the Implementation Group's work, but difficulty knowing what the impact of the Bill and its associated awareness campaign might be on the number of referrals should not be allowed to undermine the aim of protecting children's rights;[386]
- social services looks at any case involving physical punishment if it causes concern now, regardless of the Bill's existence;[387]
- it was not likely the Bill would divert resources from children's services.[388]

387. Huw David representing the Welsh Local Government Association, described social services' capacity being at "breaking point". While he emphasised local government's support for the Bill, he stressed the importance of providing adequate resources for support, early intervention and prevention services hand in hand with the legislation.[389]

[385] Oral evidence, CYPE Committee, RoP [para 60], 8 May 2019.

[386] Oral evidence, CYPE Committee, RoP [paras 24, 25 and 100], 8 May 2019.

[387] Oral evidence, CYPE Committee, RoP [para 89], 8 May 2019.

[388] Oral evidence, CYPE Committee, RoP [para 130], 8 May 2019.

[389] Oral evidence, CYPE Committee, RoP [para 35], 8 May 2019.

388. Although BASW Cymru raised concerns about significant pressures on social workers,[390] its National Director for Wales, Allison Hulmes, said most cases "would have come our way anyway".[391] She also believed the Bill would help by removing a defence that left people unclear about what was acceptable in terms of physical punishment. She argued that the removal of the defence would make social workers' decisions "much simpler".[392] More details about the Bill's impact on the clarity of the law is provided in section 2.1 of this report.

389. The Deputy Minister acknowledged the difficulties the Welsh Government has encountered making a robust and accurate estimate of what the potential increase in social services referrals might be, namely:

- the lack of precedent in the UK for removing the defence (and therefore no requirement on services to record or report incidents of physical punishment);
- data collected about social services in other countries with similar laws being either insufficient or incomparable. [393]

390. She explained, however, that:

- while she recognises the need to look at the realities and practicalities, the sector is very strongly in favour of the Bill;[394]
- there may be an "initial upturn" in reports as a consequence of the awareness raising campaign, but she does not expect this to remain/continue increasing;[395]
- the Welsh Government is working with four local authorities to establish a baseline and this would continue to be monitored post-implementation if the Bill is passed;[396]

[390] Written evidence, CYPE Committee, CADRP 283 – British Association of Social Workers (BASW) Cymru.

[391] Oral evidence, CYPE Committee, RoP [para 255], 16 May 2019.

[392] Oral evidence, CYPE Committee, RoP [paras 192], 16 May 2019.

[393] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

[394] Oral evidence, CYPE Committee, RoP [para 73], 12 June 2019.

[395] Oral evidence, CYPE Committee, RoP [para 73], 12 June 2019.

[396] Oral evidence, CYPE Committee, RoP [paras 154 and 166], 2 May 2019.

- out of hours services would not be expected to do anything different or new but the Welsh Government would be working with them to consider any of the Bill's implications;[397]
- social services in other countries where similar laws exist, including Ireland and New Zealand, "have not been overwhelmed".[398]

391. The Deputy Minister concluded:

> "I don't think, really, we have to fear that social services would be overwhelmed, but we must be prepared, and we must get this data and monitor it closely."[399]

Thresholds for intervention

392. The Bill's Explanatory Memorandum outlines information regarding the threshold for social services intervention and child protection process. It states that if social services believe a child is suffering, or is likely to suffer, significant harm, they can investigate as necessary in order to decide whether action to safeguard or promote the child's welfare is required.[400]

393. The Explanatory Memorandum further explains:

> "If the defence of reasonable punishment is removed, social services would have a duty to report allegations of physical punishment to the police as a potential crime. They have indicated that following a proportionate assessment, in accordance with existing multi-agency child protection procedures, a strategy discussion would need to be held to discuss details of the allegations; assess risk; and agree whether the enquiry will be conducted by the police, social services or jointly. The strategy discussion would involve social services, the police, health and other bodies such as the referring agency. More than one discussion may be necessary."[401]

[397] Oral evidence, CYPE Committee, RoP [para 174], 2 May 2019.

[398] Oral evidence, CYPE Committee, RoP [para 74], 12 June 2019.

[399] Oral evidence, CYPE Committee, RoP [para 74], 12 June 2019.

[400] Explanatory Memorandum, Welsh Government, para 47, page 79.

[401] Explanatory Memorandum, Welsh Government, para 51, page 80.

What we heard from people about the threshold for social services' engagement

"Are you going to take children away from their parents a result of a light smacking?". **Individual (CADRP 17)**

"If a parent is penalised for smacking they could lose [...] custody of their children". **Individual (CADRP 24)**

"It would be likely to increase the numbers taken into care [...] causing trauma to both the parents and children supposedly being protected". **Individual (CADRP 15)**

"Parents and children could be separated causing untold damage to families". **Individual (CADRP 100)**

"[...] the threshold for state intervention is already high. It's set high and it's set high for the right reasons". **BASW Cymru (RoP [para 272], 16 May 2019)**

394. When asked about the threshold for intervention by social services, Sally Jenkins, then Chair of the Heads of Children's Services Wales and representing the Association of Directors of Social Services, indicated that the existing threshold is already high:

> "In terms of thresholds for children's services, we would not be anticipating a huge number of referrals to us. There may be a small number of referrals that come through. What we know from other nations is that it will peak and then settle. We recognise that's likely to happen. Because we also know that this is actually quite a rare occurrence currently; this is not a defence that's being used with great frequency, this is not something that is happening. And if we look at the data, we know that the incidents of children, and the number of parents who now recognise this as an acceptable form of punishment, has steadily declined over the last 15 to 20 years. So it's diminishing as it is."[402]

395. She explained that while there would be a proportionate paper assessment of each incident to look at what has happened and investigate, a high number of cases would result in no further action:

> "[...] the number of referrals that we currently get from the police that we take absolutely no action on is extraordinary [...] there are countless

[402] Oral evidence, CYPE Committee, RoP [para 60], 8 May 2019.

> referrals made by agencies to local authorities that we take no action on."[403]

396. Huw David, representing the WLGA, explained that while preventative support might be offered by social services as a consequence of a report, more significant action was unlikely as a consequence of the removal of the defence:

> "[…] to be clear, there is no way that we want long-term involvement in any child's life, but particularly not in the lives of children who have been smacked by their parents. That is not going to be the result of this legislation, trust me, because […] we haven't got the resources to be involved in children's lives."[404]

397. In response to concerns about the Bill leading to long-term intervention in a family's life, including more children going into care, Sally Jenkins stated:

> "[there are] very few numbers of families where we have long-term intervention currently, even where there is what would be perceived as very significant abuse."[405]

398. Responding to concerns about thresholds for social services interventions, the Deputy Minister reiterated that professionals do not anticipate a significant increase in referrals.[406] She also emphasised that cases may not "get as far as social services" because schemes could be used as a way of "diverting parents out of the system".[407] With regard to concerns that the threshold for social services intervention would change, the Deputy Minister stated that she did not expect this to be the case.[408] In correspondence to the Committee, the Deputy Minister explained:

> "As now, it is anticipated that, if the legislation is enacted, a significant proportion of incidents of physical punishment will not require a response under the child protection process."[409]

[403] Oral evidence, CYPE Committee, RoP [paras 72 and 74], 8 May 2019.
[404] Oral evidence, CYPE Committee, RoP [para 68], 8 May 2019.
[405] Oral evidence, CYPE Committee, RoP [para 59], 8 May 2019.
[406] Oral evidence, CYPE Committee, RoP [para 72], 12 June 2019.
[407] Oral evidence, CYPE Committee, RoP [para 181], 2 May 2019.
[408] Oral evidence, CYPE Committee, RoP [para 52], 12 June 2019.
[409] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

Education and schools

399. The Bill's Explanatory Memorandum explains:

- school governing bodies, local education authorities and further education institutions must make arrangements to safeguard and promote the welfare of children;
- the individual responsibilities of teachers will depend on their role in relation to child protection in their school;
- currently if a child reports to a teacher that their parent has "smacked" them, or they witness a child being "smacked", the teacher would report the incident in line with agreed practice. It would then be for social services or the police, depending on the nature of the incident, to investigate and determine what action, if any, to take;
- corporal punishment was prohibited in all state maintained schools in 1987 and in independent schools in 1999.[410]

400. The National Association of Head Teachers Cymru suggested that further support materials and training resources would be needed to enable schools to understand the Bill's implications for them.[411] They also called on the Welsh Government to consider:

> "Outlining expectations to be placed upon schools in managing parents / families who do not adhere to the principles within the Bill."[412]

401. The training and guidance available for professionals is considered in more detail in section 3.4 of this report.

What we heard from people about the role of schools in the Bill's implementation

"For schools with significant mobility (the number of pupils arriving and or leaving a school within a single academic year) and when a significant proportion of the mobile families arrive from outside Wales, there will need to be clear, easily accessible and consistent support resources for schools to swiftly and constructively engage with parents about the legislation in Wales - particularly for families where, culturally,

[410] Explanatory Memorandum, Welsh Government, paras 55-57, pages 80-81.

[411] Written evidence, CYPE Committee, CADRP 610 – National Association of Head Teachers (NAHT) Cymru.

[412] Written evidence, CYPE Committee, CADRP 610 – National Association of Head Teachers (NAHT) Cymru.

physical punishment is not only allowed but considered an integral part of parenting". **National Association of Head Teachers (CADRP 610)**

"[...] teachers and other staff working in schools and education are key communicators with parents - including those who are hard to reach - and need to be engaged and skilled up to provide clear support and advice to parents". **Equal Protection Network Cymru (CADRP 481)**

402. Alistair Birch, representing the Association of Directors of Education Wales (ADEW), said:

- schools have an "absolutely fundamental" role to play in supporting families due to the trust and relationships between staff and parents/pupil;
- clarity about — and awareness of — the existing duty on education professionals to report would remain key, and that the "duty to report will always be there";
- specialist safeguarding leads in schools would judge whether the reports they received demonstrated significant enough risk to refer the case to social services and/or the police;
- beyond this stage it would be for the police, social services or a multi-agency team if one existed (see section 3.5 of this report for more details on the multi-agency approach) to apply their professional judgement to the question of whether the threshold for intervention had been reached.[413]

403. The Deputy Minister explained that the education sector was represented on the Welsh Government's Implementation Group and that, in her view, the sector was very supportive of the Bill. She added that training for school staff would need to be incorporated within existing programmes, and would form part of the whole-school approach to mental health and well-being. She emphasised that regardless of the Bill, school staff are expected to report any concerns about physical punishment under existing arrangements.[414]

[413] Oral evidence, CYPE Committee, RoP [paras 105-109], 8 May 2019.

[414] Oral evidence, CYPE Committee, RoP [paras 108, 110, 112, 123 and 137], 12 June 2019.

Health

404. The Bill's Explanatory Memorandum points to research commissioned by the Welsh Government which showed that in 2017, among parents, the second most popular source of advice and information about managing their children's behaviour was a health care professional. The internet was the most popular.[415]

405. The Bill's Explanatory Memorandum states that healthcare practitioners including midwives, health visitors, children's nurses, general practitioners and paediatricians (especially community paediatricians) will have "a key role in providing clear and consistent advice to parents and carers about the change in the law". It further states that "all healthcare staff receive safeguarding training to a level and at a frequency appropriate to their role and any changes to legislation would be included and discussed in that training".[416]

406. The Welsh NHS Confederation highlighted the potential for increased demand for safeguarding children's reports to social services and the police as a result of the Bill. It argued that this would require monitoring as:

> "This would likely impact health resources as the safeguarding team support health professionals in the safeguarding process."[417]

407. However, Dr Lorna Price, representing the Royal College of Paediatrics and Child Health, explained that she did not anticipate a big increase in requests for child protection medicals coming to paediatricians:

> "I don't think there will be a huge increase in work for paediatricians having to undertake further child protection medicals, because the situation in which the defence of reasonable punishment is going to be used, where a smack has only resulted in slight reddening of the skin that's very transient, there's not going to be an injury for a paediatrician to examine and document hours later. It may well be, if there's an allegation or a smacking incident witnessed, that social services or police would make initial inquiries, but, if there's no visible injury, they're not going to bring that child for a medical."[418]

[415] Explanatory Memorandum, Welsh Government, page 17.

[416] Explanatory Memorandum, Welsh Government, paras 64-65, page 82.

[417] Written evidence, CYPE Committee, CADRP 650 – Welsh NHS Confederation.

[418] Oral evidence, CYPE Committee, RoP [para 306], 22 May 2019.

408. Representatives of health professionals told us that they did not anticipate an increase in their workload as a consequence of the Bill.[419] They stated that they viewed the matter as part of their day-to-day work so did not see it impacting on their capacity.[420] The Royal College of Nursing's representative stated that the removal of the defence would "add weight" to advice already given on positive parenting and behaviour management techniques.[421] Section 2.1 of this report sets out health professionals' support for the Bill in terms of the clarity they believe it will provide them in their work. Section 3.4 sets out their comments on training and guidance for health professionals.

Children and Family Court Advisory and Support Service

409. The Bill's Explanatory Memorandum lists the Children and Family Court Advisory and Support Service (CAFCASS) Cymru as one of the organisations likely to be affected by the Bill's implementation.

Box 4: The work of CAFCASS Cymru

CAFCASS Cymru provides advice to the Family Court as to a child's best interests in both public and private law cases.

Its role is to provide expert child-focused advice and support, safeguard children and make sure their voices are heard in family courts across Wales so that decisions are made in their best interests. It only becomes involved in a family law case when required by the court.

If separating parents decide they cannot agree on the best arrangements for their child/ren CAFCASS is appointed by the court to advise. This is called a Child Arrangements case or a private law case.

410. The Explanatory Memorandum states:

- CAFCASS Cymru would have to report issues relating to allegations of parental physical punishment to the court (if involved) and the court would have to potentially adjudicate on an increased number of issues. This could lead to increased workloads and possible delays;
- it is likely the removal of the defence will add to the information being provided to the court. If CAFCASS Cymru has active involvement with a

[419] Oral evidence, CYPE Committee, RoP [para 334], 22 May 2019.

[420] Oral evidence, CYPE Committee, RoP [para 306, 436 and 438], 22 May 2019.

[421] Oral evidence, CYPE Committee, RoP [para 335], 22 May 2019.

> family and comes across such issues (or if they are alleged) then it will have a duty to report these to social services and the court which could lead to some additional work.[422]

411. We wrote to CAFCASS Cymru to ask about the Bill's impact on its capacity. Its response acknowledged that it was difficult to quantify the potential impact of a possible increase in allegations of common assault against a child or children of parents involved in a family court case, but it would monitor the situation.[423] It went on to state:

- in some cases allegations of physical chastisement of children that would constitute criminal behaviour if the Bill is passed are already made and litigated in the Family Court as part of the "finding of fact" process;
- it is likely that the removal of the defence will add to the information being provided to the court but CAFCASS is content that any additional reporting will be absorbed into the work it already does as part of its reporting to court;
- CAFCASS is satisfied that the Bill "will not change the work it does but will add a layer of extra information to be considered as part of the cases in which it is involved. It will carefully monitor the situation and raise any impacts or issues as is sees fit".[424]

412. The impact of malicious reporting was also raised in relation to CAFCASS Cymru's work – this is dealt with in section 3.5 of this report.

413. When asked about the Bill's impact on CAFCASS the Deputy Minister said:

> "CAFCASS are confident that they can deal with the cases that they have. As you know, there's been a big increase in the numbers that CAFCASS is dealing with already, and they have managed to very successfully cope with the demand. So, I've got every confidence that they will be able to cope with it."[425]

[422] Explanatory Memorandum, Welsh Government, paras 41-44, pages 78-79.

[423] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, containing CAFCASS Cymru's response, 4 June 2019.

[424] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, containing CAFCASS Cymru's response, 4 June 2019.

[425] Oral evidence, CYPE Committee, RoP [para 80], 12 June 2019.

OUR VIEW

414. It is clear to us that without sufficient support in place for parents and families, this Bill will at best fail to achieve its aims, and at worst lead to a number of undesirable unintended consequences.

415. Early intervention and prevention services are key to ensuring that our public services are able to stem the flow of issues across many areas of child development. Matters relating to child behaviour and parental discipline are no exception.

416. We welcome the Welsh Government's decision to undertake a mapping exercise to establish where gaps in support for parents may exist, and the fact that it will take place this summer. We expect the Welsh Government to act on its conclusions with similar pace.

417. Based on our work on this Bill and previous scrutiny work in this area, we remain concerned that a significant step-change is needed before high quality, universal support will be available for parents of children and young people across the age range. We acknowledge that this will not come without a financial cost. We believe that significant work is needed to ensure that this strategic investment and coordinated approach is delivered, for the early years in particular. We believe this Bill makes this work even more urgent.

Recommendation 7. That the Welsh Government, to inform Members' tabling and consideration of amendments, make available before the start of Stage 3:

- the conclusions of its exercise to map the support available for parents;
- details of the strategic investment that will be made to deliver the step-change in universal support services for parents that we believe is necessary.

418. With regard to the Bill's impact on the capacity of social services, health, education, and CAFCASS Cymru, we note the assurances from their senior representatives that they do not anticipate that report and referral "floodgates" will open. We nevertheless remain cautious of stating that "everything will be fine" given that this will be a change in legislation.

419. Services that are widely acknowledged to be under significant pressure cannot — and should not — be expected to absorb any unanticipated resource implications arising from the Bill's implementation. We believe the Welsh

Government should make a clear statement that it will commit to: monitoring closely the impact of the Bill on services' resources; financing the implications of the removal of the defence as fully as it transpires to be necessary; and providing public assurances that no other frontline services will be affected as a consequence of the Bill diverting resources.

Recommendation 8. That the Welsh Government make a clear statement that it will commit to:

- monitoring closely the impact of the Bill on services' resources;
- financing the implications of the removal of the defence as fully as necessary over time; and
- providing public assurances that no other frontline services will be affected as a consequence of the Bill diverting resources.

3. 4. Awareness of the Bill

420. The pivotal importance of raising awareness of the Bill among the public and professionals alike was a key theme in the evidence we received. Supporters of the Bill were unanimous in their view that its intended outcomes would be more likely achieved (and potential barriers and unintended consequences mitigated) if the Bill is accompanied by a comprehensive, far-reaching awareness campaign.

421. The evidence we received also suggested the awareness raising campaign would need to focus on some specific population groups, including young children and some harder to reach groups. The evidence about awareness raising amongst specific groups is dealt with in this section of our report. Wider issues about how the Bill could impact on specific groups are dealt with in chapter 4.

422. With regard to achieving the Bill's aims, the Explanatory Memorandum places public and professional awareness raising on a par, in terms of importance, with changing the law and providing support to parents:

> "The intended effect of the Bill, together with an awareness-raising campaign and support for parents, is to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales."[426]

423. The Explanatory Memorandum outlines that:

[426] Explanatory Memorandum, Welsh Government, para ix, page 5.

- experience from other countries shows a change in the law, accompanied by an awareness raising campaign and support for parents, can lead to a decline in physical punishment and a change in attitudes;
- where campaigns have been less intensive, there is a similar downward trend, but with a more limited impact;
- legislation and communications need to work hand-in-hand to deliver policy objectives;
- where a change in the law is not accompanied by a publicity campaign, or a campaign is not sustained, knowledge of the law is less widespread.[427]

424. It goes on to state:

> "This highlights the importance of considering sustained awareness raising, not only in the period leading up to commencement of the legislation, but also following it, to consolidate messages about alternatives to physical punishment and positive ways to set boundaries for children. Therefore, the Welsh Government recognises that a change in law must be accompanied by sustained awareness raising in Wales."[428]

425. The Welsh Government has provided potential costs over a seven-year period for three awareness raising campaign options:

- Option A – "a low intensity campaign [which] would allow for two bursts of agreed activity in each year": £1,286,000;
- Option B – "a medium intensity campaign in each year, with two-to-three substantial bursts of agreed activity in each year": £2,116,000;
- Option C – "a high intensity campaign, with large bursts of agreed activity in each quarter of the year leading up to and after commencement": £2,716,000.[429]

[427] Explanatory Memorandum, Welsh Government, paras 8.24-8.25, page 42.

[428] Explanatory Memorandum, Welsh Government, paras 8.25-8.26, page 42.

[429] Explanatory Memorandum, Welsh Government, page 43.

Public awareness

426. The Welsh NHS Confederation's response reflected the view of many respondents:

> "The introduction of the Bill in isolation will not achieve change; societal change is only achieved with sustained programmes of promotion and support."[430]

427. More detail about the evidence we received about a public awareness campaign alone being insufficient to deliver the Welsh Government's aims is provided in chapter 2 of this report.

428. The Equal Protection Network Cymru acknowledged that there was still "lots of work to be done" to deliver clear messages that reassure parents and address fears relating to the Bill.[431]

What we heard from people about the need for public awareness of the Bill

"I think that it is essential that there is a specific and far-reaching Welsh Government-led public information campaign about the legislation, similar to the one that was used regarding the change in law on organ donation in 2015". **Individual (CADRP 462)**

"[…] the Government intend to provide information and support for parents. This we believe is vital and we support the proposals for a sustained public awareness campaign". **NSPCC Cymru/Wales (CADRP 641)**

"The Bill could benefit from more explicit plans for educating the public about the law and about alternatives to physical punishment". **Dr Elizabeth Gershoff - Professor of Human Development and Family Sciences (CADRP 453)**

"Any public information strategy should be well resourced". **Individual (CADRP 347)**

"It's not just about, 'you must not smack your child'; it will have to be about 'there are positive ways of parenting', which we need to promote instead of using physical punishment". **National Independent Safeguarding Board (RoP [para 238], 22 May 2019)**

Among the parents with whom we spoke on 6 June 2019 in discussion groups there was a strong view — regardless of whether they opposed or supported the Bill — that the public would need to be properly and fully informed about it, if passed. Those

[430] Written evidence, CYPE Committee, CADRP 650 – Welsh NHS Confederation.

[431] Oral evidence, CYPE Committee, RoP [para 495], 2 May 2019.

parents who supported the Bill said awareness raising was vital to tackle what they viewed to be misinformation and to dispel fears about the "criminalisation" of parents.

429. Police representatives described awareness raising as "absolutely crucial",[432] explaining:

> "[…] we need to be sure that the public understand what the intention of any legislative change is, how it's been driven, and the basis for any actions we take[…] It would be a lonely place to be if we were having to answer all the questions that arise from that."[433]

430. Local government representatives also emphasised the importance of a "major awareness-raising campaign […] because we need to take families, carers and parents with us on this".[434]

431. Health representatives emphasised the importance of the tone of the messaging used in the awareness campaign:

> "[…] it needs to be a public health message rather than a criminal law message."[435]

432. The Children's Commissioner for Wales recognised the importance of an awareness raising and education campaign to the success of the legislative proposal. While she recognised that calculating costs "is not an exact science", she commented that the scale of the resources set aside by the Welsh Government was "substantially less" than for the legislation that changed the approach to organ donation in Wales.[436] More detail about the costs associated with the awareness campaign is provided in chapter 5 of our report.

433. The Equal Protection Network Cymru recognised the Welsh Government's work over recent years to promote positive parenting messages, but raised concerns about the "limited reach" of key communication mechanisms identified in relation to this Bill:

> "Great emphasis needs to be placed on integrating the message into the public education messages across governmental departments.

[432] Oral evidence, CYPE Committee, RoP [para 90], 16 May 2019.

[433] Oral evidence, CYPE Committee, RoP [para 95], 16 May 2019.

[434] Oral evidence, CYPE Committee, RoP [para 14], 8 May 2019.

[435] Oral evidence, CYPE Committee, RoP [para 88], 22 May 2019.

[436] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

> While we welcome the Welsh Government's Parenting. Give it time. initiative, its reach is limited."[437]

434. When asked about the awareness-raising campaign, the Deputy Minister emphasised the importance of it running alongside the legislative changes:

> "The legislation I don't think will serve its purpose unless it goes along with an awareness-raising campaign, and the research that has been done has shown that, in countries where the defence has been removed and there has been an awareness campaign, behaviour does change, but you really need to have the two things together."[438]

435. The Deputy Minister explained:

> "[…] we are planning a very wide-ranging, intensive information programme, because we think it's really important that, as well as bringing in the law, we bring in the awareness of the law, so that the public and parents are fully aware that it will not be legal to physically punish your child after this is introduced."[439]

436. Responding to concerns about the resources set aside for the awareness-raising campaign, the Deputy Minister confirmed that £2.2 million would be available for the "advertising, awareness-raising campaign" over 6 years.[440] When asked if that was enough, particularly with reference to the spend on the campaign around the Human Transplantation (Wales) Act, the Deputy Minister's official stated that the Welsh Government was "as confident as we can be at this moment in time".[441]

437. With regard to the methods and audiences for the awareness-raising campaigns, the Deputy Minister stated:

- the communications campaign will target the entire population of Wales as most people come into contact with children;
- the audience will be broken down and messages will be tailored for a number of different groups, with scoping work to be undertaken over

[437] Written evidence, CYPE Committee, CADRP 481 – Equal Protection Network Cymru.

[438] Oral evidence, CYPE Committee, RoP [para 113], 2 May 2019.

[439] Oral evidence, CYPE Committee, RoP [para 34], 2 May 2019.

[440] Oral evidence, CYPE Committee, RoP [para 181], 12 June 2019.

[441] Oral evidence, CYPE Committee, RoP [para 195], 12 June 2019.

the coming months to consider what messages resonate best – and the most effective ways to communicate – with different groups;

- the communications plan will include extensive engagement with stakeholders who are key to the implementation of the legislation, for example the police, Crown Prosecution Service, Disclosure and Barring Service, and frontline professionals and organisations who work with children and families including social services, health, and education professionals.[442]

A duty to raise awareness on the face of the Bill?

438. Hywel Dda University Health Board raised the issue of whether the Bill should include a duty on its face requiring the Welsh Ministers to promote public awareness and understanding about the effect of the new legislation:

> "The Welsh Government may want to consider following the Scottish model which places a duty on Scottish Ministers to promote public awareness and understanding about the effect of the Bill. Certain groups and individuals may oppose the change and they need information and to be educated that it is not appropriate to physically punish a child."[443]

Box 5: The duty in the Scottish Bill (as introduced in September 2018)

"The Scottish Ministers must take such steps as they consider appropriate to promote public awareness and understanding about the effect of section 1".[444]

439. The Office of the Police and Crime Commissioner (PCC) for Gwent shared concerns about public opinion:

> "[…] the potential for public resistance to the Bill through misunderstanding or confusion over its implications may pose the largest barrier to its implementation."[445]

[442] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

[443] Written evidence, CYPE Committee, CADRP 507 – Hywel Dda University Health Board.

[444] Section 1 of the Bill abolishes the defence of reasonable chastisement in Scots law. Scottish Parliament, Children (Equal Protection from Assault) (Scotland) Bill, [accessed 29 June 2019].

[445] Written evidence, CYPE Committee, CADRP 626 – Office of Police and Crime Commissioner for Gwent.

440. When asked whether he agreed with the Deputy Minister that a duty on the face of the Bill was not necessary, Jeff Cuthbert, PCC for Gwent, said:

> "[...] in the implementation group that the Deputy Minister has set up, one of the work strands will be on the issue of awareness raising. Whether that changes the Minister's point of view on that, I can't say. Regardless, the principle of awareness raising I think is absolutely embedded, and it will proceed."[446]

441. BASW Cymru called for a duty to be placed on the face of the Bill.[447] Barnardo's Cymru, on the other hand, argued against:

> "We note that some questions have been raised as to the placing of a duty to inform the public on the face of the Bill. Barnardo's Cymru would suggest that the simplicity of the Bill should be protected with additional statutory function described in subordinate legislation."[448]

442. Representatives of the Royal Colleges of General Practitioners and Paediatrics and Child Health indicated that their priority was to ensure that the Bill passes, and stated that they would only support the addition of a duty to deliver a public awareness campaign if it did not "impede" that process.[449] Both the Children's Commissioner for Wales and the Equal Protection Network Cymru said they trusted the Welsh Government's commitment to a public awareness campaign so did not feel strongly about a duty being placed on the face of the Bill.[450]

443. The National Independent Safeguarding Board's representatives suggested that any duty on the face of the Bill would need to be sufficiently flexible to allow messaging and methods to evolve as time passed and behaviours changed.[451] The Equal Protection Network Cymru went further, stating that they would not want to limit the campaign's potential by placing detail on the Bill's face.[452]

444. Responding to calls for a duty to deliver a public awareness campaign to be placed on the face of the Bill, the Deputy Minister stated:

[446] Oral evidence, CYPE Committee, RoP [para 93], 16 May 2019.

[447] Oral evidence, CYPE Committee, RoP [para 291], 16 May 2019.

[448] Written evidence, CYPE Committee, CADRP 501 – Barnardo's Cymru.

[449] Oral evidence, CYPE Committee, RoP [paras 420, 424 and 426], 22 May 2019.

[450] Oral evidence, CYPE Committee, RoP [paras 672 and 521], 2 May 2019.

[451] Oral evidence, CYPE Committee, RoP [paras 244-247], 2 May 2019.

[452] Oral evidence, CYPE Committee, RoP [para 521], 2 May 2019.

- a campaign is essential but a duty on the face of the Bill is not necessary because there is an absolute commitment from the Welsh Government in the Explanatory Memorandum;[453]
- Welsh Ministers have sufficient powers to run the necessary campaign so it is not necessary to place it on the face of the Bill;[454]
- she is keen to maintain the Bill's simplicity to avoid adding any complications or creating any unintended consequences, but was prepared to consider the suggestion.[455]

Children and young people

445. Research cited in the Bill's Equality Impact Assessment suggests that children aged between two and nine experience physical punishment more frequently than children of other ages. It also suggests that the use of physical punishment appears to peak for children between the ages of three and five.[456]

446. We asked the Deputy Minister to outline how the Welsh Government had or would consider raising awareness of the legislation among children, including pre-school children. In particular we asked to know more about the methods being developed (and how), and her assessment of the likely level of resource required for such activity. In her response, the Deputy Minister told us:

> "In order to do this in the most effective and appropriate way we are currently consulting with experts in the third sector on best practice within this specialist area of communication. The main forum for this is the Bill's Expert Stakeholder Group which comprises representation from the Children's Commissioner for Wales, NSPCC Cymru / Wales, Barnardo's Cymru, Children in Wales, Save the Children and Action for Children.
>
> Our intention is to consult with Young Wales, through Children in Wales, before Royal Assent in order to hear their views which will help inform and shape our engagement plans, should the Bill become law. We will also be meeting with organisations such as Cwlwm to discuss how to ensure that adults who care for pre-school aged children are

[453] Oral evidence, CYPE Committee, RoP [para 102], 2 May 2019 and RoP [para 211], 12 June 2019.

[454] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

[455] Oral evidence, CYPE Committee, RoP [para 104], 2 May 2019.

[456] Equality Impact Assessment, Welsh Government, page 4 [accessed 1 July 2019].

> aware of the legislation and to ensure that they have appropriate resources."[457]

447. The Deputy Minister also told us that "it would be more appropriate to embed awareness-raising within existing initiatives so that it can be framed and discussed within the children's rights context in a safe and appropriate setting". She went on to say:

> "[...] officials will be working with colleagues who are overseeing the development of the new curriculum, to ensure that the objectives of the legislation are considered as part of this work."[458]

448. We also asked the Children's Commissioner for Wales her view on the next steps the Welsh Government should be considering in preparation for raising awareness of the legislation among children, including pre-school children. She responded:

> "There have been constructive discussions about this topic at the Welsh Government's Expert Stakeholder Group and there are clear commitments to continue working with the third sector and my team on finalising their plans."[459]

449. The Children's Commissioner for Wales also set out in detail her views on the need for "input and insight from children and young people" and detailed information about "what engagement activities could look like". She concluded by focusing on outcomes:

> "I think it's important to outline here what the proposed outcomes of this work should be. For me, the ultimate aim of any communications work targeted at children and young people about this positive development is simple: for children and young people to know that it is illegal to punish children in Wales in any way that causes pain.
>
> Again, I'm reassured by the discussions taking place at the expert stakeholder group about what and how to effectively evaluate any communications work."[460]

[457] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 12 July 2019.

[458] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 12 July 2019.

[459] Correspondence, Children's Commissioner for Wales to the CYPE Committee, 11 July 2019.

[460] Correspondence, Children's Commissioner for Wales to the CYPE Committee, 11 July 2019.

Hard to reach groups

450. Children in Wales, Action for Children and Play Wales highlighted the need to ensure that hard to reach groups were made aware of the legislative changes:

> "Some families and communities may be harder to reach with information and support; Welsh Government needs to make sure that they receive the information they need."[461]

What we heard about raising awareness of the Bill among harder to reach groups

"Any public information campaign must make sure that all communities, including those who are harder to reach and support, can receive the information and support they need to prepare for a change in the law". **Individual (CADRP 347)**

"Need to get the message out to everyone including children and families who are hard to reach". **Caren Brown, Team Around the Family Gwynedd (CADRP 351)**

"I believe that many ethnic minorities will not be aware of the change in the law or its implications and these may be the groups which more often use parental smacking as a matter of conscience". **Individual (CADRP 558)**

451. Hafal and the Equal Protection Network Cymru emphasised the importance of ensuring support and information is provided to harder to reach groups. This included parents with mental health issues, parents in disadvantaged communities, or communities "where language or culture mean they [parents] do not routinely access mainstream sources of information and services".[462]

452. The Deputy Minister recognised the need "to work hard at this to reach every family".[463] In correspondence, she pointed to the Bill's Equality Impact Assessment which indicates that, as part of the awareness raising campaign, the Welsh Government will work closely with a range of communities in Wales, including through "existing networks and trusted agencies" who work with groups with different protected characteristics (e.g. age, disability, race, gender, sexual orientation, and low-income household).[464] She further explained:

[461] Written evidence, CYPE Committee, CADRP 421 – Play Wales, CADRP 482 – Children in Wales and CADRP 582 – Action for Children.

[462] Written evidence, CYPE Committee, CADRP 394 – Hafal and CADRP 481 – Equal Protection Network Cymru.

[463] Oral evidence, CYPE Committee, RoP [para 145], 12 June 2019.

[464] Equality Impact Assessment, Welsh Government, page 12 [accessed 1 July 2019].

> "In our communications work we will be looking at effective messages for a range of audiences [...], recognising where individuals have different needs, rather than expecting that one message will work for everyone."[465]

Healthy Child Wales Programme

453. The potential role of the Healthy Child Wales Programme (HCWP) in raising awareness of the Bill and parenting methods was raised during the course of our scrutiny.

Box 6: The Healthy Child Wales Programme

The Healthy Child Wales Programme (HCWP) sets out what planned contacts children and their families can expect from their health boards from maternity service handover to the first years of schooling (0-7 years). At these planned contacts health visitors may provide parents with appropriate *Parenting. Give it Time* resources, which provide a range of information, including on brain development, potty training, tantrums, mealtimes and bedtimes. *Bump, Baby and Beyond* also provides parents with a range of information including on pregnancy, breastfeeding, weaning, mealtimes, sleeping, temper tantrums and toilet training.

The Welsh Government expects that every child and family will be offered the HCWP. The programme underpins the concept of progressive universalism and aims to identify a minimum set of key interventions to all families with pre-school children, irrespective of need. For some families there will be a need to increase intervention to facilitate more intensive support.[466]

454. Given its aim of being a universal programme, we asked witnesses whether they envisaged the HCWP having a role to play in raising parents' awareness about the proposed legislation. Michelle Moseley, speaking on behalf of the Royal College of Nursing, confirmed that raising awareness of the removal of the defence could be incorporated into the HCWP. She explained that messages about positive parenting were already embedded in the programme but added that the legislation "would give us some more impetus in stressing the importance of not smacking".[467] Dr Dave Williams, Divisional Director, Family Therapy Services, Aneurin Bevan University Health Board, believed the

[465] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

[466] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

[467] Oral evidence, CYPE Committee, RoP [paras 350 and 451], 22 May 2019.

programme had an important role to play in ensuring that messages reached "a variety of different people".[468]

455. When we queried the current capacity and reach of the HWCP, health representatives acknowledged that universality had not yet been achieved everywhere due to capacity constraints.[469] Dr Dave Williams, Divisional Director, Family Therapy Services, Aneurin Bevan University Health Board, explained that health boards were investing in this area to ensure that the programme would be available to everyone within the next two years.[470] He also referred to work underway to adopt models of support involving professionals other than health visitors, to manage current pressures.[471]

456. Responding to questions about the potential role of the HCWP in raising awareness about the removal of the defence, the Deputy Minister stated that the programme and health visitors were "crucial". She went on to say:

> "[...] there will be great opportunity for them to promote positive parenting in a much stronger way than they're able to do at the moment, because the fact that you have this defence does mean that the professionals aren't able to make it as clear as they want to make it that positive parenting is the way that they'd like families to go."[472]

457. When the proportion of contacts made with parents through the HCWP (particularly at the point a child is three and a half years old, where only 53.2% of children in Wales were reported as being contacted) was put to the Deputy Minister, she responded:

> "We've got to rely on a range of ways of reaching parents, and I think that there are other times when there is a much higher ratio of children and families seen. [...] with the mapping exercise that we've already mentioned, we're going to identify where there are gaps or where we can do more."[473]

[468] Oral evidence, CYPE Committee, RoP [para 105], 22 May 2019.
[469] Oral evidence, CYPE Committee, RoP [para 448], 22 May 2019.
[470] Oral evidence, CYPE Committee, RoP [para 103], 22 May 2019.
[471] Oral evidence, CYPE Committee, RoP [para 128], 22 May 2019.
[472] Oral evidence, CYPE Committee, RoP [para 129], 12 June 2019.
[473] Oral evidence, CYPE Committee, RoP [para 131], 12 June 2019.

Visitors to Wales

458. Visitors to Wales needing to be aware of the removal of the defence was highlighted as a potential concern by individual respondents to our consultation, and by the Police[474] and the Chief Crown Prosecutor for Wales.[475]

459. Police representatives and the Chief Crown Prosecutor for Wales stated that it was the responsibility of any individual visiting a country to ensure that they were aware of the relevant law and that "ignorance of the law is no defence".[476] However, Matt Jukes, Chief Constable of South Wales Police, highlighted:

> "I think it's worth us just recognising that, at some point, there will be a case, if this legislation passes, of somebody protesting that point [being unaware of the law], potentially, and we should think about what can be achieved to raise awareness. But there are some communities who are with us longer, from outside of Wales and outside the UK, who we could probably spend more time on than perhaps the next person getting off the flight."[477]

460. In its response to our consultation, the CPS stated:

> "[…] we consider that further action is required in England – whether through advertising in national newspapers or other such action decided on in planning the awareness raising campaign."[478]

461. When asked about cross-border issues, the Children's Commissioner for Wales expected a high level of awareness of the removal of the defence, particularly as a result of similar changes in Scotland. She added that it was our individual responsibility to know the laws of any country we visit, but that a proportionate response to cases of physical punishment of children was expected. She pointed to the fact that there exists a difference in law between the Republic and Northern Ireland in relation to the defence of reasonable punishment and she told us that no cross-border issues have been reported there.[479]

462. The Deputy Minister explained to us in correspondence that work would be carried out during the passage of the Bill to establish the most effective methods

[474] Oral evidence, CYPE Committee, RoP [para 94], 16 May 2019.

[475] Oral evidence, CYPE Committee, RoP [para 28], 6 June 2019.

[476] Oral evidence, CYPE Committee, RoP [para 113], 16 May and RoP [para 122], 6 June 2019.

[477] Oral evidence, CYPE Committee, RoP [para 114], 16 May 2019.

[478] Written evidence, CADRP 293 – Crown Prosecution Service.

[479] Oral evidence, CYPE Committee, RoP [para 680], 2 May 2019.

of raising awareness with visitors to Wales.[480] She also said that the Welsh Government would seek as much UK-wide publicity as possible, and that the passage of a similar Bill in Scotland may mean that England would be alone in maintaining the defence within 12 months.[481] She emphasised, however, that the responsibility to be aware of norms and laws rests with the traveller.[482]

Professionals' awareness

463. The Bill's Explanatory Memorandum states:

> "The Welsh Government intends to engage with professionals who work with children and families, to ensure they are fully aware of the Bill and, if the Bill is passed, are in a position to communicate the impact of the legislative change to the families they work with, and support them with alternative methods for guiding and providing boundaries for their children. This could involve revising existing guidance or training, or developing new guidance and training approaches."[483]

464. The Children's Commissioner for Wales stated:

> "I think they [the Welsh Government] need to raise awareness of parents and professionals, including front-line professionals, like assistants in school and people like that, so not just at the top level of professions."[484]

Training and guidance

465. In our scrutiny of the Bill, we were keen to establish how significant a task it is to update and amend all the relevant guidance and policies, given the breadth of agencies and services involved. We also sought to establish how long this would take and how much it would cost.

466. The Bill's Explanatory Memorandum outlines:

> "As a result of removing the defence of reasonable punishment any organisation and public service involved with the safeguarding of children will need to review guidance and training to ensure their

[480] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

[481] Oral evidence, CYPE Committee, RoP [paras 117 and 120], 2 May 2019.

[482] Oral evidence, CYPE Committee, RoP [para 119], 2 May 2019.

[483] Explanatory Memorandum, Welsh Government, para 4.14, page 25.

[484] Oral evidence, CYPE Committee, RoP [para 676], 2 May 2019.

> policies and procedures are up to date. The justice system, public services such as some health related services, education including schools, and some third sector organisations will have to be aware of the change in the law. They will need to ensure that practice and processes reflect the change in the law as well as raising awareness among employees through training and guidance. Any costs associated with such training and guidance are expected to be minimal."[485]

467. In terms of the resources required to deliver the relevant training and guidance, the Explanatory Memorandum explains:

> "[...] some transitional costs are expected relating to updating guidance and training for staff, for public bodies including the police, local authorities (in respect of both social services and education), the health sector, and voluntary organisations who work with children. The exact cost is unknown but is expected to be minimal."[486]

What we heard about the need for professional training and guidance on the Bill

"Professionals working for families should be well prepared for the change and know both what to say and how to act". **Individual (CADRP 347)**

"Adequate national training for frontline staff working with families" is needed. **Caren Brown, Team Around the Family Gwynedd (CADRP 351)**

"Teachers and other professionals will require training on what the change in the law will mean but this can be easily assimilated into existing child protection and safeguarding courses". **Individual (CADRP 428)**

"Welsh Government should also consult directly with frontline professionals to establish what kinds of guidance and training would be needed to support them". **Individual (CADRP 462)**

"Provided training and guidance is given to key professionals, I do not envisage unintended consequences". **Jonathan Evans, Professor of Youth Justice Policy and Practice, University of South Wales (CADRP 520)**

468. In relation to **health services**, the Explanatory Memorandum states that all healthcare staff receive safeguarding training to a level and at a frequency appropriate to their role, and any changes to legislation would be included and

[485] Explanatory Memorandum, Welsh Government, para 8.19, page 41.

[486] Explanatory Memorandum, Welsh Government, para 8.46, page 52.

discussed in that training.[487] Representatives of the Royal Colleges of Nursing, General Practitioners, and Paediatrics and Child Health, confirmed this and did not foresee that including the proposed change in the law would be problematic or burdensome to incorporate into their practice and training.[488] Nicola Edwards, Head of Safeguarding at Swansea Bay University Health Board, explained:

> "[…] each time with new legislation with things that are changed, obviously from examples of the violence against women and social services and well-being legislation, training is key and tweaked each time, and updated on a regular basis. […] it's not going to be insurmountable, because we already have those things in place in health boards."[489]

469. With regard to **social services**, the Explanatory Memorandum explains that discussions regarding any changes needed to current guidance and training concerning the safeguarding, support and care of children are ongoing.[490] In relation to the All-Wales Child Protection Procedures specifically, it states:

> "The All Wales Child Protection Procedures provide common standards to guide child protection work for every local safeguarding board in Wales, and all professionals who work with children and families. The procedures are regularly revised, and it is expected that any changes as a result of the Bill will be part of the normal cycle of revisions."[491]

470. Sally Jenkins, then Chair of the All Wales Heads of Children Services and representing the Association of Directors of Social Services, believed that the proposed change to the law, and the training and guidance to accompany it, would align with existing work and improve things by adding clarity:

> "[…] our teachers, our social workers, our health workers, our police officers already get substantial training around child protection, around safeguarding, around adverse childhood experiences and around a trauma-informed approach to children. What this does is it layers a clarity on that. But rather than having a part of that training, which has

[487] Explanatory Memorandum, Welsh Government, para 65, page 82.

[488] Oral evidence, CYPE Committee, RoP [paras 336-337, 354-355 and 357], 22 May 2019.

[489] Oral evidence, CYPE Committee, RoP [paras 64 and 66], 22 May 2019.

[490] Explanatory Memorandum, Welsh Government, para 53, page 80.

[491] Explanatory Memorandum, Welsh Government, para 8.47, page 52.

> to deal with this [the defence] as an aspect—that is no longer there; it is a clear message for all professions."[492]

471. Allison Hulmes, National Director for Wales for British Association of Social Workers Cymru, warned that if additional training were found to be needed, dedicated resource would need to be given as "training budgets in local authorities are slashed to the bone".[493]

472. The Explanatory Memorandum states that safeguarding arrangements in **schools** may need to be reviewed to reflect the removal of the defence.[494] Alistair Birch, representing the Association of Directors of Education Wales, told us that all staff receive safeguarding training already which would continue,[495] but that:

> "[…] in terms of the Bill, there needs to be the clarity—ambiguity would be bad—in terms of making sure that safeguarding leads within all schools have the right training and support. So, really, that's the key element."[496]

473. With regard to the **police,** the Explanatory Memorandum states that they "have highlighted the need for guidance on the way in which a report of common assault against a child is recorded by the police in Wales".[497] On training, Matt Jukes, Chief Constable of South Wales Police, warned:

> "We do train people all the time, but actually there's a whole host of other things we need to train people on as well, and every time they're in training, they're not on the street, and this doesn't feel like a quick memo you circulate to staff. It feels like something that you need to spend time with staff to explain so that we don't get the perverse outcomes that are a risk. So, I'm concerned that we resource that programme and would welcome any support from Government."[498]

474. In relation to the **courts**, the Explanatory Memorandum refers to "a need to ensure legal professionals are aware of the change in the law, particularly as there

[492] Oral evidence, CYPE Committee, RoP [para 132], 8 May 2019.
[493] Oral evidence, CYPE Committee, RoP [para 315], 16 May 2019.
[494] Explanatory Memorandum, Welsh Government, para 63, page 81.
[495] Oral evidence, CYPE Committee, RoP [para 105], 8 May 2019.
[496] Oral evidence, CYPE Committee, RoP [para 27], 8 May 2019.
[497] Explanatory Memorandum, Welsh Government, para 15, page 74.
[498] Oral evidence, CYPE Committee, RoP [para 175], 16 May 2019.

will be a divergence in the law between England and Wales".[499] The Ministry of Justice told us:

> "The Judicial College will need to be aware of the difference in England and Wales. If tourists from England are charged with an offence they would likely appoint a lawyer in England from their local area. Therefore it is important that solicitors operating in England are also made aware of the law changing in Wales [...] the Solicitors Regulation Authority is one way of raising awareness among solicitors about the divergence."[500]

475. The Explanatory Memorandum refers to the need for the Director of Public Prosecutions to revise guidance applying to the **Crown Prosecution Service** across England and Wales to reflect the different legal positions in the two countries, should the defence be removed in Wales.[501] This is discussed in more detail in section 3.2 of this report.

476. The Explanatory Memorandum also states that the Welsh Government will need to engage with **relevant unregulated non-educational settings** to ensure they are aware of the law change and able to incorporate it in their safeguarding processes.[502]

477. The National Independent Safeguarding Board emphasised that training on the Bill would form part of continuous professional development across relevant professions:

> "Any sort of developments in our thinking in safeguarding always come with additional training, which, ideally and usually, is multiprofessional; that's what the regional boards do. So, you have those conversations in your training together, as well as in single agency groups [...] And it wouldn't be isolated training; it would be integrated into the messages that people are already receiving. [...] So, it's not asking people to do something that is vastly different to what they're already doing."[503]

[499] Explanatory Memorandum, Welsh Government, para 40, page 78.

[500] Correspondence, Ministry of Justice to the CYPE Committee, 14 May 2019.

[501] Explanatory Memorandum, Welsh Government, para 34, page 77.

[502] Explanatory Memorandum, Welsh Government, para 61, page 81.

[503] Oral evidence, CYPE Committee, RoP [paras 254, 257 and 259], 16 May 2019.

478. In relation to guidance, the National Independent Safeguarding Board did not foresee significant revisions to the All-Wales Child Protection Guidance being necessary.[504]

479. The Children's Commissioner for Wales emphasised the importance of clear guidance:

> "[…] we will need clarity for both parents and for professionals on what the law means and what it means that they should do. I've had conversations with many people who would be charged with implementing this and what they want is clear guidance on what they should do if this situation arises—'What should I do next?'"[505]

480. On training, the Deputy Minister commented on the judiciary and teachers specifically. She stated that the Lord Chief Justice (LCJ) is responsible for the training of the judiciary in England and Wales and that those responsibilities are exercised through the Judicial College:

> "The Welsh Government has a commitment to consult the LCJ and engage with his Judicial Office on proposals which bring changes to the criminal law or which may have an effect on the operation of the judiciary and the courts and tribunals system. As is the case with all Bills, the LCJ's Office have been kept informed of these proposals and are aware that the Bill has been introduced."[506]

481. When asked about the concerns of the National Association of Head Teachers about how training of teachers would be resourced, the Deputy Minister responded:

> "[…] teachers are updated on different parts of childcare legislation now, and have in-service training days and training courses. And, certainly, perhaps this would be part of that—part of the training that teachers get. This would have to be incorporated into that […] I wouldn't have seen it would need something completely separate. […] I would have thought it [the cost] would be minimal. They already have training

[504] Oral evidence, CYPE Committee, RoP [para 209], 22 May 2019.

[505] Oral evidence, CYPE Committee, RoP [paras 627-628], 2 May 2019.

[506] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

> courses about childcare issues, and this would be something that would be absorbed into that."[507]

482. On guidance, the Deputy Minister told us:

> "The updating of Welsh Government guidance is a routine activity which officials regularly undertake to ensure such guidance remains compliant with any changes to legislation or procedures. As such, we would expect this to be covered by administrative running costs, with little or no additional costs in this respect."[508]

483. She went on to explain:

> "The Implementation Group will consider whether guidance provided by other public bodies needs updating. As we are not creating a new offence we expect existing guidance, across public bodies, to be updated, rather than produced from scratch. [...] In many cases guidance on the operation of the defence of reasonable punishment is only one aspect of broader guidance which covers a wide range of safeguarding or criminal justice issues."[509]

484. With respect to the All-Wales Child Protection Procedures (AWCPP), the Minister confirmed that new Wales Safeguarding Procedures (WSP) will replace the AWCPP and the Policy and Procedures for the Protection of Vulnerable Adults (PoVA) by autumn 2019. She stated that they will be hosted by Social Care Wales, produced in "digital format which will enable ease of access, review and update", and that responsibility for keeping them current will be the Regional Safeguarding Boards'. She concluded:

> "As part of their [the WSP project board] work they will consider the consequent implications (should the Bill be passed) for updating the WSP as part of the sustainable arrangements made to keep the WSP current and informed by changes to practice, case law and guidance.

[507] Oral evidence, CYPE Committee, RoP [paras 112-116], 12 June 2019.

[508] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

[509] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

> The WSP Project Board members will be invited to contribute to the work of the Implementation Group."[510]

Speaking out

485. Sally Gobbett, a parent campaigner who opposes the Bill, raised concerns about professionals fearing to speak out against the proposed legislation:

> "I know that there are people in professional capacities, in healthcare, in police and social services who would agree with my position, but are scared to say so because of the implications for them professionally, and such like."[511]

486. When we put this concern to the British Association of Social Workers Cymru, Allison Hulmes, National Director for Wales, said she did not recognise this as an issue:

> "I don't think that we've created an environment where social workers would fear expressing their views. So, that's not a set of circumstances that I really recognise. And also, if those views were held, they are so in the minority."[512]

OUR VIEW

487. We agree entirely with the view that the introduction of this Bill in isolation will not achieve the change it aims to deliver. Nevertheless, we also agree that a public awareness campaign on its own risks being undermined by the retention in law of a defence of reasonable punishment.

488. We note that a similar Bill progressing through the Scottish Parliament at the moment includes a duty on Scottish Ministers to promote public awareness and understanding about the effect of the legislation. We further note that the *Human Transplantation (Wales) Act 2013* placed a duty on the Welsh Ministers to provide information and increase awareness about transplantation.

489. We recognise the Deputy Minister's and a number of key stakeholders' desire to retain the simplicity of the Bill as currently drafted, and acknowledge that this is underpinned by a wish to avoid creating unnecessary complexity, rigidity, or

[510] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 25 April 2019.

[511] Oral evidence, CYPE Committee, RoP [para 234], 2 May 2019.

[512] Oral evidence, CYPE Committee, RoP [para 299], 16 May 2019.

unintended consequences. However, a public awareness campaign that is described by the Welsh Government as "essential" to the delivery of the Bill's aims justifies, in our view, the certainty of statutory status.

490. We do not doubt the current Welsh Government's intention to deliver this public awareness campaign. However, while future administrations will inherit the laws we pass, they may not share the same level of commitment to the mechanisms that are key to their effective implementation. As such, we believe the Bill should be amended to include a duty on the Welsh Ministers to provide information and increase awareness about the effect of the legislation. In recognition of the concerns about retaining flexibility and avoiding unintended consequences, we do not think this duty need be complex or rigid, but we do believe that the requirement to uphold it ought to be written in statute.

491. We agree that the responsibility for being aware of rules and laws rests on the shoulders of any individual visiting another country. We also agree that awareness of this Bill is likely to be assisted by the almost simultaneous progress of a similar law in Scotland. Nevertheless, given the porous nature of our border, we welcome the Welsh Government's commitment to identifying the best ways to raise public and professional awareness in England of the Bill's implications for people visiting Wales.

492. We note that the Equality Impact Assessment does not refer to the risk that younger children might not be able to articulate their concerns and that age may be a barrier to them reporting incidents of physical punishment. As such, the EIA does not suggest any actions to mitigate this risk.

493. We believe that more detail about the Welsh Government's consideration of this matter should have been provided in the documentation accompanying the Bill. Nevertheless, we are reassured by the confirmation from the Deputy Minister and the Children's Commissioner that work is underway to ensure awareness-raising with children and young people, and that this work involves key stakeholders. We firmly support the Children's Commissioner's view that input and insight from children and young people is needed in the development of the approach.

494. We agree that all opportunities to inform parents about the law and the wider support available for parenting should be taken. Beyond the public awareness campaign itself, we think the Healthy Child Wales Programme — once fully rolled out — provides a very important opportunity to communicate these messages to all parents. We strongly believe that universal messaging — and support — is needed, and we agree with the Children's Commissioner for Wales

that physical punishment of children is not unique to any particular group or section of society. However, we remain concerned about the levels of contacts made with families through the Healthy Child Wales Programme, both in general, and in respect of it being a key vehicle to deliver the awareness raising needed to ensure the successful implementation of this Bill. We intend to monitor this issue and want to see clear progress between now and the end of this Assembly.

495. In addition to informing children and young people about the Bill's impact on their physical punishment, we also believe equipping children, young people and adults to become parents and carers of the future is key. In our view, positive parenting messages and tools should be embedded in the curriculum and as part of universal ante-natal support. Waiting until people become parents before introducing this form of support misses many early opportunities.

496. The training and guidance available to professionals across services is key to the effective implementation of this Bill. While we note stakeholders' views that the Bill would necessitate updates rather than entirely new provision, we believe that this will be crucial in ensuring confidence, clarity and consistency in the approach to handling allegations of the physical punishment of a child(ren).

Recommendation 9. That the Welsh Government amend the Bill to include a duty on the Welsh Ministers to provide information and increase awareness about the effect of the legislation. The information provided should include details about the support available to parents to learn and use alternatives to physical punishment when disciplining their children.

Recommendation 10. That the Welsh Government, before the start of Stage 3, provide a written update to the National Assembly on its awareness raising plans with children and young people. This update should include an indication of how the new curriculum will:

- raise awareness of the Bill and how it affects them as children and young people;
- equip children and young people to become parents and carers of the future.

Recommendation 11. That the Welsh Government include planning for increasing awareness of the Bill's impact on visitors to Wales in the work of the Bill Implementation Group.

Recommendation 12. That the Welsh Government provide, before the start of Stage 3, a written update on:

- how the Healthy Child Wales Programme will incorporate messages about the removal of the defence of reasonable punishment;
- what steps it will take to improve the uptake of the Healthy Child Wales programme across Wales in order to ensure that all children and families receive the full number of scheduled contacts;
- how universal ante-natal support will also incorporate and deliver messages about the Bill and positive parenting.

3. 5. Other implementation issues

Monitoring and evaluation

497. Given the concerns raised with us about the potential impact of this Bill, we wanted to explore how its impact would be monitored over time.

498. The Bill's Explanatory Memorandum commits to monitoring and evaluating the Bill's impact, if passed:

> "The intention is to set up an Implementation Group which will monitor the potential impacts of the legislation after commencement, including the resource implications."[513]

499. It further details that:

- the effect of the Bill will be measured in a number of ways, including through research and evaluation as well as developing routine data collection with stakeholders;
- representative surveys will be used to track public awareness of the change in legislation, changes in attitude towards physical punishment of children and prevalence of parents reporting they use physical punishment;
- the Welsh Government will work with the police, social services and the courts to agree the collection of relevant data for a period prior to implementation in order to establish baselines. Data collection will continue following commencement in order to monitor the impact of

[513] Explanatory Memorandum, Welsh Government, para 9.24, page 60.

the Bill and will, wherever possible, be aligned with existing activity or other relevant work.[514]

What we heard about the importance of monitoring and evaluating the Bill

"All the consequences of a change in the law aren't always obvious at the start, so there needs to be a way of monitoring implementation and working with organisations and public bodies before the law comes into effect as well as in the early years after implementation". **Individuals (CADRP 281 and 287)**

"How will it be monitored? How will it be evaluated?". **Individual (CADRP 255)**

"We would support a review of the legislation (which in this case should also consider the wider context of Welsh Government parenting support services) after a reasonable period of time". **Save the Children (CADRP 581)**

"Given Welsh Government's commitment to prohibiting the physical punishment of children there needs to be a way of measuring the impact of the change in the law and any associated public education initiatives. Few of the countries who have changed the law have ensured that mechanisms for tracking progress are in place from the outset". **Equal Protection Network Cymru (CADRP 481)**

"Does it have a time limit if passed and proven not to be successful or viable. Can it be revoked? How will it be assessed and monitored and by whom?". **Individual (CADRP 376)**

"How will the legislation be monitored? So much of what goes on in families is unseen". **Public Health Wales (CADRP 614)**

"[...] the underlying law and case law surrounding parental physical punishment is not clear. I am supportive of the commitment to assess the implementation of the reform". **Heather Keating, Professor of Criminal Law (CADRP 642)**

500. The Crown Prosecution Service stated:

> "We are encouraged by the comprehensive approach being taken in securing data after the legislation comes into force. In our view such data will assist in determining whether the Welsh Government's approach delivers on the principles behind the legislation."[515]

501. The CPS did, however, raise concerns about difficulties that may be encountered collecting and collating meaningful data. This, it argued, could

[514] Explanatory Memorandum, Welsh Government, paras 10.3-10.5, page 61.

[515] Written evidence, CYPE Committee, CADRP 293 – Crown Prosecution Service.

impact on how meaningful any future assessment of the impact of the Bill would be.[516]

502. Police representatives also commented on the importance of monitoring and evaluation, emphasising the need for this to be undertaken on a multi-agency basis to understand the operation and impact of the legislation.[517] The Chief Crown Prosecutor for Wales explained that the CPS would review cases at key points with colleagues from other services, to shape and improve the way they are prosecuted:

> "I can foresee that, after this legislation came in, we might get 18 months, two years down the road, and I can see us sitting in a room with some of the cases we've prosecuted, maybe cases we've decided not to prosecute, with the police and interested parties from both sides, to have a discussion about how we're doing with it all. And I'd like to think that the Welsh Government would be involved in that as well."[518]

503. Matt Jukes, Chief Constable of South Wales Police, highlighted to us that changes to police systems may be required to monitor cases because they operate on an England and Wales basis and the law is only changing in Wales.[519] The Chief Prosecutor for Wales made a similar point, stating that CPS records would need to be kept manually. He thought this would be "fine" because the number of cases anticipated was low.[520]

504. With regard to devolved services, BASW Cymru emphasised the importance of monitoring implementation:

> "We have to monitor. There have to be robust mechanisms to monitor post implementation."[521]

505. The Deputy Minister's official emphasised to us the importance of collecting data, and the Welsh Government's plans to do so. She contrasted this with arrangements in other countries, where similar laws had been passed without

[516] Written evidence, CYPE Committee, CADRP 293 – Crown Prosecution Service.

[517] Oral evidence, CYPE Committee, RoP [paras 62-63], 16 May 2019.

[518] Oral evidence, CYPE Committee, RoP [para 86], 6 June 2019.

[519] Oral evidence, CYPE Committee, RoP [para 145], 16 May 2019.

[520] Oral evidence, CYPE Committee, RoP [para 83], 6 June 2019.

[521] Oral evidence, CYPE Committee, RoP [para 284], 16 May 2019.

comprehensive data collection being in place across all relevant services.[522] The Deputy Minister confirmed her view that monitoring and evaluation is:

> "[…] very important because we need to know what is the effect of the legislation we'll be bringing in. So, we will be having ongoing evaluation, we will be bringing in an independent body to evaluate. We have got ongoing monitoring and we've got ongoing monitoring surveys looking at what are the views of the public."[523]

OUR VIEW

506. We welcome the Deputy Minister's plans to monitor and evaluate the impact of the Bill, if passed. We further welcome her intention to begin the monitoring work prior to the commencement of the Bill's substantive provision in order to establish a robust baseline against which to measure the legislation's impact.

507. We believe that robust monitoring and independent evaluation will be vital for the purpose of:

- assessing whether the Bill is achieving its intended aims without leading to any negative, unintended or unanticipated consequences;
- assisting with improving the general public's understanding of the Bill's impact *as implemented*, rather than its *anticipated* impact;
- enabling the Welsh Government to establish whether the crucial elements accompanying the Bill — namely the public awareness campaign and support for parents — need to be adjusted to achieve the overall aim of changing behaviour in relation to the physical punishment of children.

508. Given the importance attributed to assessing the effectiveness of the legislation in delivering its aims, we believe that a duty to review and report on the Bill's implementation should be placed on its face (for the same reasons as those outlined in section 3.4 in relation to the need for the Bill to be amended to include a duty to provide information and increase awareness). We note that some Welsh Acts include such provisions requiring post-implementation evaluation, for example the *Agricultural Sector (Wales) Act 2014* and the *Public Health (Minimum Price for Alcohol) (Wales) Act 2018*.

[522] Oral evidence, CYPE Committee, RoP [para 142], 2 May 2019.

[523] Oral evidence, CYPE Committee, RoP [para 40], 12 June 2019.

Recommendation 13. That the Welsh Government amend the Bill to include a duty on the Welsh Ministers to:

- undertake post-implementation evaluation of the Bill, within three years of the Bill's substantive provision (to remove the defence of reasonable punishment) coming into force;
- report the findings of such an evaluation to the National Assembly.[524]

509. We note the evidence from the police and the CPS about the challenges of collecting relevant and meaningful data, especially within systems that operate on an England and Wales basis. We urge the Welsh Government to ensure that the Implementation Group looks closely at this as part of its preparatory work.

Recommendation 14. That the Welsh Government ensure the Bill Implementation Group identifies — in cooperation with all relevant services — robust methods for capturing meaningful data relating to the Bill. The purpose of this data will be to enable meaningful assessment and evaluation of the Bill's impact, which will be crucial in identifying any unintended consequences and/or areas that may need additional support or resource during the early years of its implementation.

What to do if you see/learn of the physical punishment of a child?

510. We asked Sally Jenkins, then Chair of the All Wales Heads of Children Services and representing the Association of Directors of Social Services, whether people would be encouraged, if this Bill is passed, to contact social services departments if they see a child being physically punished. She answered:

> "We already encourage members of the public to contact social services or the police, depending on the circumstances […] If a child is being smacked now, we would ask that people contact. We have a duty to report, as professionals. But if you were walking out, and you saw something happening to a child, in the same way as if you saw something to an adult […] I think that the challenge is about, we've all probably, sadly, witnessed incidents in the doctor's reception, or in a supermarket, and we've failed to do something about it. And I think we

[524] We have chosen a period of three years in recognition of the fact that a two-year implementation period is anticipated in advance of the Bill's substantive provision coming into force, and to enable the legislation's impact to be measured during the lifetime of the next Assembly.

> then walk away and feel pretty guilty about that, realistically, when you see something happening to a child in a particular circumstance. I think we can't ignore the fact that a child is being assaulted in those circumstances."[525]

511. When asked whether people ought to report instances of physical punishment of a child if they saw or were aware of them, the majority of witnesses either said it was a matter for each individual to judge (as is the case in relation to the current laws relating to the assault of a person of any age)[526] or that social services should be first port of call.[527]

512. In the case of frontline health, social services and education staff, it was confirmed by their representatives that they are already duty bound in a professional capacity to report any concerns about physical punishment to social services for consideration, regardless of this Bill.[528]

513. Members of the National Independent Safeguarding Board told us they believed the Bill would increase people's confidence to intervene in a situation involving physical punishment.[529] Rachel Thomas from the office of the Children's Commissioner for Wales referred to a case in Ireland, where she told us its legislation had given an individual the confidence to report a sighting of physical punishment of a child which later led to the uncovering of a case of serious child abuse.[530] Opponents of the Bill worry, however, that it would create potential for unfounded claims of abuse, particularly from children who they suggest may not realise the implications.

What we heard from those who are worried about children making unfounded allegations

"There is a serious danger of false allegations by children against their parents, for example if children resent being told off or being denied something they can fabricate stories that can incriminate their parents in order to punish them". Individual (CADRP 460)

[525] Oral evidence, CYPE Committee, RoP [paras 46-51], 8 May 2019.

[526] Oral evidence, CYPE Committee, RoP [paras 34 and 485], 2 May 2019.

[527] Oral evidence, CYPE Committee, RoP [paras 34 and 47], 8 May 2019.

[528] Oral evidence, CYPE Committee, RoP [para 29], 8 May 2019 and RoP [paras 217 and 436], 22 May 2019.

[529] Oral evidence, CYPE Committee, RoP [para 157], 22 May 2019.

[530] Oral evidence, CYPE Committee, RoP [para 650], 2 May 2019.

"It will enable people who witness a child being hit by its parents to tell them to stop". **Individual (CADRP 467)**

An unintended consequence of the Bill could be "children making un-thought-through decisions to 'tell on' their parents e.g. at school". **Individual (CADRP 558)**

"[…] some children can play on the Bill by having false accusations on their parents or any legal guardians". **Individual (CADRP 344)**

514. The Children's Commissioner for Wales emphasised that reporting would be a matter of personal judgement:

> "[…] the same applies to any aspect of life where we've passed laws, especially laws that we've been less familiar with and need to come to terms with. The same would happen if you saw people smoking cannabis on the street or something like that […] People do make judgment calls as to how to treat people dropping litter. […] There won't be a positive duty on members of the public to suddenly start reporting everything."[531]

515. When asked what a member of the public should do if the Bill became law and they saw a parent physically punishing their child, the Deputy Minister stated "it would be up to the individual" and that they would be relied on "to do what they think is right in that circumstance".[532] She added that there would be a "long lead-in" between the Bill's passing and its commencement to make people "as aware as they possibly can" be of the change in the law.[533]

516. In terms of the likely source of reports of physical punishment (to any public service), the Deputy Minister said she thought it would be "mixed". She added that an increase in reports could occur as a consequence of improved awareness, but that other professionals, for example in schools, are already required to report awareness of any such incidents.[534] She acknowledged that "it's likely there will be a small rise" in reporting, but did not specify whether she anticipated this would be to the police and/or social services.[535]

[531] Oral evidence, CYPE Committee, RoP [paras 647-648], 2 May 2019.

[532] Oral evidence, CYPE Committee, RoP [para 34], 2 May 2019.

[533] Oral evidence, CYPE Committee, RoP [para 34], 2 May 2019.

[534] Oral evidence, CYPE Committee, RoP [para 91], 12 June 2019.

[535] Oral evidence, CYPE Committee, RoP [para 91], 12 June 2019.

Malicious reporting

517. The potential for reporting cases of physical punishment of children for malicious reasons was raised by organisations and individuals who responded to our consultation. In particular, some fear that the removal of the defence will be used in cases of parental disputes about child access arrangements that are being dealt with in the family court.

What we heard about malicious reporting

"Malicious neighbours and other ill-informed people will be on the phone to the police every time they can". **Individual (CADRP 141)**

"Possibly malicious accusations where parents are estranged for example". **Individual (CADRP 43)**

"Possible malicious prosecution / false claims". **Individual (CADRP 365)**

"We get well-founded complaints by people who've lived with coercive, controlling partners, who now feel free to make that allegation, because they're estranged. We get malice and vexation within relationships that are dissembling. We already have to work out the difference between the two". **Chief Constable Matt Jukes (RoP [para 156], 16 May 2019)**

"There is already lots of malicious reporting to social services and police. But we don't see any reason why there'd be an increase of this sort of malicious reporting on the introduction of this legislation. Any malicious reports would be investigated by police and social services, as they would investigate any other report. I would imagine that if it's malicious, there will be insufficient evidence". **Equal Protection Network Cymru (RoP [para 517], 2 May 2019)**

Some parents with whom we spoke in discussion groups on 6 June 2019 who opposed the Bill raised the issue of malicious reporting, particularly in times of family breakdown. They were particularly concerned to know how these would be dealt with. Among the parents who supported the Bill, the point was made that the Bill would make it clearer for a by-stander to know what to do.

518. The Bill's Explanatory Memorandum acknowledges the potential for reporting to occur in family proceedings in particular:

> "Awareness of the change in the law could lead to an increase in allegations of parental physical punishment in cases where a parent is

> seeking to further their cause against the other parent in a family related case."[536]

519. The Ministry of Justice outlined the concerns of Her Majesty's Courts and Tribunal Service (HMCTS):

> "HMCTS have serious concerns that feuding parents may, following removal of the defence, use the change to further their cause against the other parent in separation or divorce [...] one parent may fabricate an episode of smacking as a reason for non-contact with the other parent and for the involvement of the police."[537]

520. When this was put to police representatives and the Chief Crown Prosecutor for Wales, they (and the National Independent Safeguarding Board's representatives) said that such cases already occurred under the current law.[538] However, the Chief Crown Prosecutor acknowledged:

> "There is greater potential for it [malicious reporting] to increase. I think the numbers, again, will be tiny, and dwarfed by the number of cases where we have to deal with the fallout between a relationship breakdown between partners [...] I can see it potentially arising. It's not something that would cause me concern, simply because we already have a well-developed approach to dealing with the way in which we evaluate the evidence from parties who may well have a particular position that they want to reinforce, sometimes through exaggeration of basic facts, and sometimes through fabrication."[539]

521. Matt Jukes, Chief Constable of South Wales Police, emphasised the importance of a multi-agency approach for ensuring that the context of an allegation is fully understood and true or false accusations are identified.[540] Multi-agency working is dealt with in more detail in the next section.

522. When asked about the risk of malicious reporting, the Children's Commissioner for Wales responded:

[536] Explanatory Memorandum, Welsh Government, para 41, page 78.

[537] Correspondence, Ministry of Justice to the CYPE Committee, 14 May 2019.

[538] Oral evidence, CYPE Committee, RoP [para 136], 16 May 2019; RoP [para 252], 22 May 2019; and RoP [para 133], 6 June 2019.

[539] Oral evidence, CYPE Committee, RoP [para 133], 6 June 2019.

[540] Oral evidence, CYPE Committee, RoP [para 156], 16 May 2019.

> "We have discussed this with the head of the Children and Family Court Advisory and Support Service and he doesn't think that it will increase the volume of cases but he does think that it could be another element that will add to the complexity, but they already deal with very complex allegations and counter-allegations by parents. So, I have to say that I think they will take it in their stride, and I don't mean to trivialise it, but it is very much in the territory of what they're used to dealing with, and that would include currently allegations of smacking."[541]

523. We wrote to CAFCASS Cymru and asked specifically about the Bill's implications in terms of malicious reporting. The response we received stated:

> "Cafcass Cymru has not made any assessment of the risk of malicious reporting in private law cases but confirms this already happens on both this issue and on a range of other matters within cases. It is content the court has in place arrangements to deal with this, including 'finding of fact' hearings where there are disputed issues that are important in determining the implications on applications for safe contact between a child and the nonresident parent. However, what may change with the introduction of the criminal offence is the court may be required to wait until any criminal prosecution has concluded before considering the issue itself. This could result in delays in family proceedings, which could effectively be put on hold pending the outcome of the criminal trial. However, if there is ultimately a criminal conviction, the family court would not have to spend much time in making its own finding of fact and could probably proceed directly to a welfare determination. Cafcass Cymru will monitor the impact of the Bill's introduction in terms of whether such malicious reporting increases."[542]

524. Responding to concerns, the Deputy Minister said:

> "Unfortunately, there are malicious allegations, and I think the police, the CPS and the Children and Family Court Advisory and Support Service are very used to this. So, we have had discussions with CAFCASS, who will be part of the implementation group and who will be working with us to address these issues. But, no, we're very aware of

[541] Oral evidence, CYPE Committee, RoP [para 660], 2 May 2019.

[542] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, containing CAFCASS Cymru's response, 4 June 2019.

that. It's something that everybody's very used to dealing with at the moment, and there's no doubt that it is likely to occur."[543]

OUR VIEW

525. We note the Children's Commissioner for Wales and the Deputy Minister's view that the reporting of a case of physical punishment of a child is a matter of individual judgement. We further note the evidence that we have been given from frontline agencies that they would already expect any member of the public who became aware of — or witnessed — the physical punishment of a child to report anything that caused them concern.

526. However we recognise that, following the Bill's commencement, people may be reluctant and/or uncertain about what to do if they see or learn of a child being physically punished. We also recognise the concern that people may be unable to tell whether the physical interaction with the child is for the purpose of punishment. We believe that advice on what you can do and who you can speak to in such situations needs to form a central part of the public awareness campaign that is planned alongside this Bill.

527. We note the concerns raised about the potential for the removal of the defence to be used for malicious purposes, particularly where family proceedings are underway. We recognise that this is something that regrettably occurs under the current law and as such is something frontline agencies already deal with. We believe that activity to monitor the Bill's impact should pay particular attention to the number of reports of physical punishment of children found to be malicious. This will also be important for ensuring that the work of CAFCASS Cymru and the family courts is not affected disproportionately by this Bill.

Recommendation 15. That the Welsh Government ensure that, as part of the public awareness campaign accompanying the Bill, clear advice is provided on what people can do — and who people can speak to — if they believe they have seen or learned of a child being physically punished/assaulted.

Recommendation 16. That the Welsh Government ensure that activity to monitor the Bill's impact pays particular attention to the number of reports of physical punishment/assault of children that are found to be malicious. Evaluation activity on the Bill should include consideration of the impact

[543] Oral evidence, CYPE Committee, RoP [para 65], 2 May 2019.

allegations of physical punishment of a child have on the family courts and CAFCASS Cymru's workloads and timescales.

Multi-agency working

528. The Explanatory Memorandum states:

> "Local authorities are required to have arrangements in place to receive and respond to such reports. In some areas a Multi Agency Safeguarding Hub (MASH) approach is in place, in others social services are the point of contact for referrals."[544]

529. It also says:

- the police work on the basis of a multi-agency approach, with social services and other relevant services, in relation to potential child protection cases;[545]
- referrals of potential child protection cases can be through social services, or directly to the police; or, where multi-agency safeguarding hubs (MASH) are in place, through a MASH;[546]
- the police will seek, where possible, to make a joint decision with social services on the appropriate response to a child protection referral;[547]
- the Welsh Government is working with the police, CPS and social services to clarify police and social services processes, and how they work together to respond to reported incidents of parental assault on a child;[548]
- if the Bill is passed, work to consider any processes or guidance which may need to be put in place will continue.[549]

[544] Explanatory Memorandum, Welsh Government, para 49, page 79.
[545] Explanatory Memorandum, Welsh Government, para 30, page 77.
[546] Explanatory Memorandum, Welsh Government, para 31, page 77.
[547] Explanatory Memorandum, Welsh Government, para 32, page 77.
[548] Explanatory Memorandum, Welsh Government, para 9.4, page 56.
[549] Explanatory Memorandum, Welsh Government, para 9.4, page 56.

530. Matt Jukes, Chief Constable of South Wales Police, emphasised that if the Bill's goals are to be met, joint working with other agencies on its implementation will be vital.[550] He said:

> "My plea to the Assembly and to the Government is to come alongside us and help us build the impetus for the development of those multi-agency safeguarding hubs, which will mean that the goals that Government has, in passing this legislation, are really achieved in communities and in the lives of families."[551]

531. Additional information about MASHs submitted to us by the Police Liaison Unit explained:

> "[…] the Welsh Government have agreed to commission the scoping of an independent review on the effectiveness of MASHs which would seek to compare a pilot area to a control area, as well as conducting a literature review of existing academic evaluation. A multi-agency working group, consisting of a number of experts across different disciplines, is meeting in June to put forward a scope for this evaluation to take place."[552]

532. Health board representatives confirmed that MASHs did not exist everywhere, but that single points of contact were identified in all areas. They believed that the functions of a multi-agency team needed to be in place (whether as a MASH or in another form) to avoid a rise in convictions under this Bill.[553]

533. The Royal College of Nursing confirmed that multi-agency working was already happening, while the Royal College of General Practitioners said that the more services worked together, the easier and better their job would be.[554] The Royal College of Paediatrics and Child Health stated that multi-agency hubs were "desirable, but not essential" for the Bill's implementation.[555]

[550] Oral evidence, CYPE Committee, RoP [paras 43 and 157], 16 May 2019.

[551] Oral evidence, CYPE Committee, RoP [para 157], 16 May 2019.

[552] CYPE Committee, Information from the Police Liaison Unit following the oral evidence session on 16 May 2019.

[553] Oral evidence, CYPE Committee, RoP [paras 56, 58 and 60], 22 May 2019.

[554] Oral evidence, CYPE Committee, RoP [paras 382 and 384], 22 May 2019.

[555] Oral evidence, CYPE Committee, RoP [para 392], 22 May 2019.

534. The Deputy Minister stated that "the effective implementation of the Bill does not depend on MASHs" as services already work closely together on a day-to-day basis:

> "[…] there are already well-established mechanisms in place that enable this joint working to take place. I know that the MASHs are only in certain areas […] I think they're probably very good to have, actually, and very good to help the work, but it's [the Bill] certainly not dependent on them."[556]

535. The Deputy Minister's official stated that one of the Implementation Group's work strands would consider procedures and processes and look at how agencies work together. She added:

> "We're very alert to the fact that there are different organisations, different services, and that bringing them together, working in as consistent a way as possible, is really, really important. […] social services, the police and others are already committed to working together, and, actually, we just want to make sure that we develop those working practices in the best way possible, recognising that not every area will have a MASH, and reiterating, again, what the Deputy Minister has said—that the effectiveness of the Bill is not predicated on a MASH in every area, but it is important that all those organisations do work together in a consistent and appropriate way."[557]

OUR VIEW

536. We note the Deputy Minister's view that the Bill's implementation does not rely on the existence of Multi-Agency Safeguarding Hubs (MASHs) in all areas. However, we also note her comment that joint working is happening across services and is important for this Bill and beyond.

537. We recognise that there are different ways of delivering joint working across agencies, and that these may necessarily vary depending on the geography and demographics of different areas of Wales. We note the police's evidence that the Welsh Government has commissioned the scoping of an independent review on the effectiveness of MASHs and await its findings with interest.

[556] Oral evidence, CYPE Committee, RoP [para 60], 12 June 2019.

[557] Oral evidence, CYPE Committee, RoP [para 66], 12 June 2019.

538. While it is not our role to detail the exact model(s) of joint working that could be adopted to suit local needs, we believe that the functions of a multi-agency team are important for the Bill's implementation. We think they will be particularly important for mitigating potential unintended consequences arising from the Bill, most notably concerns about an increase in the charging or prosecution of parents. As such, we welcome the Welsh Government's confirmation that the Implementation Group will look at how agencies work together and urge it to ensure that this work is completed at pace, and before the final amending stage.

Recommendation 17. That the Welsh Government ensure that the Bill Implementation Group, before the start of Stage 3:

- considers the results of the independent review on the effectiveness of Multi-Agency Safeguarding Hubs;
- uses the findings of this review, and other relevant research on multi-agency working, to inform its approach to planning, resourcing and delivering the joint working necessary for the effective implementation of this Bill.

Impact on families

539. The impact of the removal of the defence of reasonable punishment on families was a key theme in the consultation responses submitted by the Bill's opponents. The most cited concern related to the "criminalisation" of parents, which is dealt with in more detail in section 2.4 of this report.

540. Be Reasonable Wales told us it is concerned that if the law is changed:

> "[…] the consequences for parents will be considerable. Anyone accused or convicted of assaulting a child – under the new definition – will be subject to long-term social services involvement in their family and social stigma."[558]

What we heard about the Bill's potential impact on the family unit and society

"We need to look not only at the potential suffering that exists now, but at what potential suffering will result when we remove this defence. I think far more potential suffering and unintended consequences will result, not least, obviously, a disruption of

[558] Written evidence, CYPE Committee, CADRP 92 – Be Reasonable.

secure, loving family situations". **Sally Gobbet, parent campaigner (RoP [para 210], 2 May 2019)**

"Enforcement would disrupt families. If a parent is penalised for smacking they could lose their job or even custody of their children. The potential trauma to any children in this scenario is unthinkable, and totally avoidable". **Individual (CADRP 52)**

"If passed the Bill will interfere in family life and damage families. Ultimately, this will undermine society". **Independent Psychology Associates (CADRP 494)**

"[…] many cases will remain inconclusive but could potentially cause months of disruption and even separation in a family's life". **Individual (CADRP 154)**

"People worry about intrusive policing and criminalizing otherwise decent parents. There is and always will be space in the justice system for the enlightened use of discretion by police, prosecution and the judiciary. It [the defence of reasonable punishment] has no place in the family". **Individual (CADRP 384)**

Some parents with whom we spoke on 6 June 2019 in discussion groups who opposed the Bill said that the law was a blunt instrument that could have a big impact on families who are investigated, by affecting their jobs and income.

541. Those responsible for the Bill's implementation, including social services, the police, the CPS, health services and the Deputy Minister, doubted the likelihood of parents being "criminalised" and / or children being taken into care, as detailed in sections 3.2 and 3.3 of this report.

542. The Bill's opponents also believe that a lack of "good discipline" (including physical punishment "where necessary") would undermine parental/adult authority and have a negative impact on children, families and society more generally:

- "[…] families will be stigmatised for disciplining children, resulting in a society that doesn't know any boundaries";[559]
- "Lack of discipline and control of children has very damaging consequences for all, and this bill will do nothing but undermine society at a moral, health and prosperity level";[560]

[559] Written evidence, CYPE Committee, CADRP 72 – Individual.

[560] Written evidence, CYPE Committee, CADRP 373 – Individual.

- "[…] all children need to be properly disciplined - which occasionally may mean a smack - otherwise lots of people suffer from their bad behaviour - the whole family, the school, neighbours and the child itself";[561]
- "Such a Bill would ensure a generation of children grow up in Wales who do not respect authority, and would not contribute positively to the society of which they are part";[562]
- "If a total smacking ban goes ahead there will be more ill-disciplined children and family turmoil".[563]

543. As detailed in section 2.2, we have heard evidence from some of those supporting the Bill which states that physical punishment is not an effective way to discipline children.

OUR VIEW

544. We have given careful consideration to the Bill's impact on families in Wales and recognise the concerns expressed by opponents of the Bill.

545. Earlier in this report we make recommendations relating to:

- providing adequate resource to support parents;
- delivering a comprehensive and far-reaching information and awareness raising campaign;
- ensuring that adequate out of court disposals are in place to divert, where appropriate, cases of physical punishment of children that would currently be captured by the defence, away from the criminal justice system.

546. We believe our recommendations, coupled with the evidence taken from representatives of relevant frontline services and the work underway to plan the implementation of the Bill, mean that concerns about the "criminalisation" of parents and the impact this could have on family life (including the loss of custody of children) are reduced to a minimum.

[561] Written evidence, CYPE Committee, CADRP 429 – Individual.

[562] Written evidence, CYPE Committee, CADRP 474 – Individual.

[563] Written evidence, CYPE Committee, CADRP 571 – Individual.

547. As outlined in chapter 2 of this report, the balance of evidence suggests physical punishment, in whatever form, is ineffective in managing the behaviour of children and we believe there is a strong argument that this Bill will reduce the risk of potential harm to our children and young people.

Recommendation 18. That the Welsh Government deliver a step-change in the provision of universal positive parenting support — both in the ante- and post-natal periods — and make the strategic investment that is needed to ensure all families in Wales have access to parenting support.

4. The Bill's impact on specific groups

The Bill's Equality Impact Assessment considers the proposed legislation's impact on specific groups. As part of our scrutiny, we sought to consider whether the Bill would impact certain members of our population disproportionately. This chapter summarises the evidence we heard and the views we drew.

548. The Bill's Equality Impact Assessment (EIA) sets out the Welsh Government's analysis of the Bill's impact on the following protected characteristics:

- Age;
- Disability;
- Gender Reassignment;
- Pregnancy and Maternity;
- Race;
- Religion, belief and non-belief;
- Sex / Gender;
- Sexual orientation;
- Marriage and civil partnership;
- Children and young people up to age 18;
- Low-income households.[564]

549. In section 3.4 of this report we have set out the evidence, and our views and recommendations, on the need for universal awareness raising of the Bill's implications. This includes consideration of the need to target specific groups. In section 3.3 of this report, we have set out our recommendations about the support needed for parents and families, including "harder to reach" groups.

[564] Equality Impact Assessment, Welsh Government [accessed 1 July 2019].

550. In this chapter, we outline the evidence we received about the impact the Bill could have on specific groups within the population.

4. 1. Women

551. The Bill's EIA states:

> "The change in the law may have slightly more of an impact on females than males. As lone parent families, are predominantly female, and at greater risk of living on low income, if charged these parents may have less resources to pay for legal advice. [...] However we anticipate that very few parents will be prosecuted so a very small number of parents would be affected."[565]

552. The EIA goes on to say:

> "Some research has explored whether mothers and fathers (or male and female caregivers) differ in their use of physical punishment. While evidence appears to be somewhat contradictory it does suggest mothers may use more minor and fathers more severe forms of punishment. It also suggests that while mothers were more likely to use physical punishment with younger children, fathers were more likely to physically punish their children when they were older."[566]

553. Parent campaigner, Sally Gobbett, raised concerns about how the Bill might have a disproportionate effect on women:

> "Amongst those people who are going to be in that wider network of people undergoing those procedures, remember that we have very, very vulnerable people, particularly women, who are probably going to be, in many cases, the primary carers—women in domestic violence situations; women with mental health problems who are not being provided for currently by our extremely thin mental health provision—who are already victims in our society and unsupported and who are then going to be criminalised further for something that we have not supported them in."[567]

[565] Equality Impact Assessment, Welsh Government, page 15 [accessed 1 July 2019].

[566] Equality Impact Assessment, Welsh Government, page 15 [accessed 1 July 2019].

[567] Oral evidence, CYPE Committee, RoP [para 350], 2 May 2019.

554. Responding to the concern that the Bill could have a disproportionate impact on women, the Children's Commissioner for Wales told us:

> "[…] people who attend parenting classes are overwhelmingly women. I don't think that's right, but they are. They've said, 'It's been great to be helped to find other ways,' so, I think there are more positive things that we can do than say, 'Well, carry on smacking because we know it's hard.' We actually also know it's harmful to children. So, I do think an awful lot of the focus of the debates around this have been about the impact on parents. We have to keep remembering, and, of course, it's my job to remind everyone, about the impact on children."[568]

555. We asked the Deputy Minister what assessment the Welsh Government has made of whether women, particularly vulnerable women, could be affected disproportionately by this Bill. In her response, the Deputy Minister referred to the EIA and said:

> "Although research has identified certain characteristics of parents or children as a risk factor in the use of physical punishment, a parent's decision to use physical punishment is complex. It may depend on a number of factors including personal choice and experience; family structure; the individual child and adult; stress and society/cultural norms. It is also important to recognise the limitations of some of the research around parental physical punishment which is a sensitive and complex area."[569]

556. In terms of the Bill's impact on vulnerable women, the Deputy Minister went on to say:

> "Our Parenting Support guidance includes specific sections highlighting the issues faced by parents whose situation may make them vulnerable (e.g. who have experienced domestic abuse, mental health problems or because they are young). The guidance provides practical strategies for those delivering parenting support to help them adapt services to ensure parents' needs are met."[570]

[568] Oral evidence, CYPE Committee, RoP [para 639], 2 May 2019.

[569] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

[570] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

4. 2. Different cultural and ethnic groups

557. This EIA states "there is some limited evidence that children from some ethnic groups may experience physical punishment more frequently due to the parents' ethnic or cultural origin". It goes on to say:

> "Minority ethnic parents face a number of different barriers to accessing services including discrimination; language and cultural barriers and a lack of awareness of services and how to access them' and also says that Gypsy and Traveller families 'may be reluctant to use services for fear of stigma and prejudice; have a lack of trust in service providers and may also have limited literacy."[571]

558. The EIA also states:

> "[...] on the whole the research into physical abuse and punishment in minority and ethnic groups is inconclusive and often contradictory'. It says that 'ethnicity can be confounded with other variables' which make it difficult to establish the influence of ethnic group status."[572]

559. The issue of different cultural or religious views about physical punishment was also raised with us by some of the parents we met on 6 June 2019. Some parents, both those supporting and those opposing the Bill, suggested that the proposed legislation could have more of an impact on some groups than others. Those in support of the Bill suggested that more support would be needed for these families in order for them to adapt the ways they discipline their children.

560. The Children's Commissioner for Wales also referred to the fact that physical punishment is used across the range of family settings and backgrounds:

> "I remember meeting parents, for example, who'd been supported through Flying Start, who talked about how transforming it had been to their relationships with their children to learn about different ways of responding to them. Because they'd been brought up with a lot of negativity, a lot of telling off, and part of that was also smacking, and how different it was just to be helped to learn new ways of responding to their children, because they had felt out of options. So, to just be helped to find new options—and that's not just a class-based thing, it's not people from one particular cultural group or anything. I think for

[571] Equality Impact Assessment, Welsh Government, pages 12-13 [accessed 1 July 2019].

[572] Equality Impact Assessment, Welsh Government, page 12 [accessed 1 July 2019].

> everybody, we need help and support in thinking about different ways of doing things."[573]

561. We asked the Deputy Minister about the extent to which this Bill might affect specific ethnic and cultural groups. We also asked for practical examples of how the Welsh Government intends to mitigate these potential impacts.

562. The Deputy Minister told us:

> "[...] this legislation will ensure children and young people from all ethnic groups would have the same protection from physical punishment if the law is enacted."[574]

563. The Deputy Minister went on to refer to awareness raising and told us the *Parenting. Give it Time* campaign which "provides practical tips and advice to parents on encouraging positive behaviour, boosting their child's confidence and supporting their development".[575] She explained that information is provided through a dedicated website, Facebook page and printed resources that are "available in ten minority community languages". We were also told that the "guidance highlights practical strategies for facilitating the engagement of those less likely to access support, including those from Gypsy and Traveller communities and other ethnic groups".[576]

564. In terms of communication and raising awareness, the Deputy Minister also told us:

> "The Welsh Government will use existing networks and trusted agencies who work with parents from minority ethnic groups to raise awareness of the change in the law and consider whether extra support, advice and information may be needed. In our communications work we will be looking at effective messages for a range of audiences, including for those from black and minority ethnic communities, recognising where

[573] Oral evidence, CYPE Committee, RoP [para 635], 2 May 2019.

[574] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

[575] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

[576] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

> individuals have different needs, rather than expecting that one message will work for everyone."[577]

4. 3. Low-income households

565. Public Health Wales told us it supports this Bill but says it could be "disproportionately applied to families from more socially disadvantaged groups".[578]

566. The Bill's EIA acknowledges that low income is as a risk factor in the use of physical punishment and that this may potentially have a negative impact specific to this group of parents. It goes on to say:

- parenting support, information and advice will be available to all parents;
- some information and advice may be more accessible to those on low income through the Welsh Government's family support programmes Flying Start and Families First, which should support them to use alternative methods to discipline children and avoid the risk of them being charged or prosecuted.[579]

567. When asked about her view on the potential for this Bill to have a disproportionate impact on low income families, and specifically our concern about parenting support available to low income families who live outside a Flying Start area, the Deputy Minister responded:

> "We are aware of the issue of reaching out to certain groups. We are running focus groups where we will be taking the different groups into account, and we will work with different groups, communities and organisations to make sure that they are aware of the change in the law."[580]

4. 4. Young children

568. Research cited in the EIA suggests that children aged between two and nine experience physical punishment more frequently than children of other ages. It

[577] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 1 July 2019.

[578] Written evidence, CYPE Committee, CADRP 614 – Public Health Wales.

[579] Equality Impact Assessment, Welsh Government, page 18 [accessed 1 July 2019].

[580] Oral evidence, CYPE Committee, RoP [para 224], 12 June 2019.

also suggests that the use of physical punishment appears to peak for children between the ages of three and five.[581]

569. In its response to our consultation, Public Health Wales questioned how the Bill would be implemented in terms of "very young children who are unable to voice their experiences".[582]

570. When we asked the Deputy Minister how the Welsh Government will ensure this Bill protects the youngest children who are unable to voice their experiences, she told us:

> "As currently happens, I would expect professionals, including those in health, education and childcare to be sufficiently tuned in to the voices of young children and have an awareness of changes in behaviour or other signs of distress which may indicate a family needs extra support. As is the case now I expect such staff to follow established procedures if they do have any concerns about a young child. This Bill does not change that."[583]

571. We also asked the Deputy Minister and the Children's Commissioner for Wales about their expectations for awareness raising of this legislation. Their views and our recommendations in this regard are set out in chapter 3 of this report.

OUR VIEW

572. Chapter 3 of our report outlines our views and recommendations about the need to ensure that both the awareness raising campaign accompanying this Bill, and the support for parents that needs to be provided to underpin it, are in place. We believe this is essential to ensuring that specific population groups are not impacted disproportionately by the proposed legislation.

573. Our recommendations 7 and 18 seek to ensure that there is a step change in the provision of universal parenting support so that all families get the support they need in respect of parental discipline.

[581] Equality Impact Assessment, Welsh Government, page 4 [accessed 1 July 2019].

[582] Written evidence, CYPE Committee, CADRP 614 – Public Health Wales.

[583] Correspondence, Deputy Minister for Health and Social Services to the CYPE Committee, 12 July 2019.

5. The Bill's financial implications

As part of our scrutiny of the Bill's general principles, we considered the Regulatory Impact Assessment, which assesses the Bill's costs and benefits. This chapter summarises the evidence we heard and the views we drew. It should be read alongside the Finance Committee's report,[584] which considers the Bill's financial implications in detail.

5. 1. The costs in the Regulatory Impact Assessment

574. The Regulatory Impact Assessment (RIA) within the Explanatory Memorandum sets out the costs and benefits for the Bill as a whole.

575. The **total cost** of the Bill is estimated at between **£2.3 and £3.7 million** between 2019-20 and 2026-27.[585] The RIA states that the total cost comprises both administrative and compliance costs:

- **administrative costs**: the Welsh Government has estimated these to be between **£1.3 and £2.7 million** and states that they will be necessary for the planned awareness campaign;
- **compliance costs**: the Welsh Government has estimated these to be between **£0.97 and £0.98 million** and states that they will be necessary for police and justice services. The RIA states that this is a "best estimate" only, because the lack of baseline information relating to the current levels of "reasonable punishment" means "the RIA will need to be followed up with data collection and monitoring both pre and post implementation to provide the most accurate information about the impact on public services and the justice system".[586]

[584] Finance Committee, Financial Implications of the Children (Abolition of Defence of Reasonable Punishment Bill) (Wales) Bill, 2 August 2019.

[585] Explanatory Memorandum, Welsh Government, page 30.

[586] Explanatory Memorandum, Welsh Government, pages 30-31.

5. 2. Awareness campaign costs

576. The Bill's RIA provides the costs of three options for the planned awareness raising strategy. It also provides details of the costs of other campaigns which have accompanied legislation in Wales and elsewhere.

577. The potential costs of the planned awareness campaign to accompany this Bill are estimated in the RIA over a seven-year period.[587] Over this period, a low-intensity option is costed at a total of £1.3 million, medium-intensity at £2.1 million, and high-intensity at £2.7 million. This compares to £1.75 million over two years and one month for the "second-hand smoking in cars campaign"[588] and £4.08 million over a six year period for the change in organ donation law[589] in Wales.

578. Table 1 overleaf shows that the amount of money the Welsh Government proposes to set aside for the campaign surrounding the abolition of the defence of reasonable punishment is less (even when the highest level of intensity is assumed) than that spent on the smoking in cars and organ donation campaigns.

Table 1: Costs of awareness campaigns accompanying legislation in Wales[590]

Law change	Overall cost	Campaign duration	Average annual cost
Smoking in cars	£1.75 million	2 years and 1 month	Approx. £840,000
Organ donation	£4.08 million	6 years	Approx. £680,000
Abolition of the defence of reasonable punishment	£2.72 million (high intensity)	6 years 3 months	Approx. £435,000

Source: Calculated from figures provided on pages 43-44 of the Bill's Explanatory Memorandum.

[587] The seven-year period runs from financial years 2019-20 to 2026-27. As Royal Assent in January 2020 has been assumed, 2019-20 has been calculated as covering a two-to-three month period only.

[588] This campaign was put in place to support the implementation of The Smoke-free (Private Vehicles) Regulations 2015. The Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill's Explanatory Memorandum explains that this campaign ran for 2 years and 1 month, from 2012-15, and included advertising on TV, radio, in the printed media, roadshows, events and a website. It also states that messages were disseminated amongst existing networks including Flying Start, Families First and the Family Information Service.

[589] This campaign was put in place to support the implementation of the Human Transplantation (Wales) Act 2013. The Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill's Explanatory Memorandum explains that this campaign ran for 6 years, from 2013, and included the cascading of messages across a "wide variety of media channels" and through supporting documentation delivered to every household in Wales.

[590] In this table the cost of each campaign has been rounded, as have the resulting average figures. It should also be noted that the costs are not spread evenly over years and the nature of each campaign is different.

579. In her response to our consultation on the Bill, the Children's Commissioner for Wales commented that the awareness campaign would be "a vital part of [the] success of these proposals" but that the figures quoted are "substantially less" than the costs of the organ donation campaign.[591] She went on to state:

> "I note that John Finnie MSP's estimate for a campaign in Scotland is £300,000; the Scottish Government put that figure at £20,000. This shows that it is not an exact science and there are a large number of variables."[592]

580. We asked the Deputy Minister whether she was confident that the amounts outlined in the RIA for the awareness campaign were sufficient. Her official responded:

> "We are as confident as we can be at this moment in time. We are obviously going to be working with focus groups and others to look at what sorts of messaging there will need to be. But in terms of the initial stages of the awareness campaign, we are, as I say, as confident as we can be, based on what we know."[593]

5. 3. Costs of updating relevant training, guidance and procedures

581. The RIA states that the exact cost of updating relevant training, guidance and procedures is unknown:

> "It is expected that there will be some transitional costs, relating to updating guidance and training for staff, for public bodies including the police, local authorities (in respect of both social services and education), the health sector, and voluntary organisations who work with children. The exact cost is unknown but is expected to be minimal."[594]

582. The RIA explains that this conclusion is drawn on the following basis:

- the All Wales Child Protection Procedures provide common standards to guide child protection work for every local safeguarding board in Wales, and guide the work of all professionals who work with children

[591] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

[592] Written evidence, CYPE Committee, CADRP 160 – Children's Commissioner for Wales.

[593] Oral evidence, CYPE Committee, RoP [para 195], 12 June 2019.

[594] Explanatory Memorandum, Welsh Government, para 8.46, page 52.

and families. The procedures are regularly revised, and it is expected that any changes to the procedures as a result of the Bill will be part of the normal cycle of revisions;

- it is expected relevant staff would already be aware of the defence of reasonable punishment, so notification of its removal should serve to clarify that no physical punishment of children by their parents is permissible following the legislation coming into force. While there may be an increase in the number of referrals/reported allegations of physical punishment, the process for professionals dealing with incidents of physical abuse should largely remain the same.[595]

583. The RIA also states that the Welsh Government's Bill Implementation Group will consider any changes to relevant bodies'/organisations' guidance (e.g. the Welsh Government, or education and social services departments in local authorities). It acknowledges that these "will need to be communicated to staff, alongside awareness raising of the change in the law" but:

> "Familiarisation and/or attending any update sessions are routine activities for those organisations involved so there should be no additional costs in this respect."[596]

584. As part of our scrutiny we asked frontline organisations about the impact of the Bill on training, guidance and procedures and the associated costs. The evidence we received and our views in relation to it are provided in chapter 3 of this report.

5. 4. The Bill's "unknown" costs

585. The RIA outlines the "unknown" costs associated with this Bill. It states that these include potential costs to:

- social services, as a result of a potential increase in referrals;
- family courts and CAFCASS Cymru, as a result of a potential increase in allegations of common assault against a child or children of parents involved in a family court case;
- the Crown Prosecution Service, as a result of a potentially higher volume of requests, for charging advice from the police;

[595] Explanatory Memorandum, Welsh Government, paras 8.47-8.48, page 52.

[596] Explanatory Memorandum, Welsh Government, paras 8.49-8.50, pages 52-53.

- provide the delivery of out of court disposals;
- review training and guidance offered by organisations involved in safeguarding of children, to ensure they are up to date.[597]

586. The RIA explains:

> "It has not been possible to quantify all of the potential costs arising from the bill, due to:
>
> - Limited or lack of evidence on which to base the likely, realistic scale of the impact;
> - The cost of a potential impact may vary according to individual circumstances."[598]

587. Some opponents of the Bill who responded to our consultation cited their concerns about unquantified costs.

Some views about the Bill's "unknown" costs

"The unquantified costs have not been included as costs at all [...] These could easily run into millions". **Individual (CADRP 84)**

"As a taxpayer, I would expect a full breakdown of how this would be costed and where the money would be allocated from". **Individual (CADRP 322)**

"The cost to investigate these things will mount and mount". **Individual (CADRP 253)**

"The health service, the police, the social services in our nation are desperately in need of additional funding. At such a time I regard it as obscene that such large sums (and - in significant areas - unknown sums) are being committed to this proposal". **Individual (CADRP 326)**

"Having unquantified costs attached to the impact upon social services, the CPS and others, seems somewhat misguided during such a lengthy period of austerity. Such services are already struggling to cope with cases that have resulted in loss of life, serious injury or the risk of both of those. There needs to be more detailed consideration towards the impact this Bill will have on those departments and an effective costing matrix established so that they can be effectively resourced in order to deliver the Bill". **Hafal (CADRP 394)**

[597] Explanatory Memorandum, Welsh Government, page 32.

[598] Explanatory Memorandum, Welsh Government, page 32.

588. Sally Jenkins, then Chair of the All Wales Heads of Children's Services and representing the Association of Directors of Social Services, described the "unknown costs" as "a challenge".[599] She added that social services representatives were committed to working with the Welsh Government to establish the costs. Huw David representing the WLGA elaborated:

> "[…] the reality is we're not going to know what the costs are until it's actually implemented, because we haven't implemented this before. And, therefore, I think there needs to be a commitment that, whatever the costs are, those costs are met because it is legislation that is being led by the National Assembly for Wales. And whilst we don't see it as levering in additional resources, we don't think it should be at the expense of current service provision to vulnerable families in Wales, and therefore it's important that it is properly and fully resourced."[600]

589. When asked her view about the unknown social services costs, Allison Hulmes, BASW Cymru's National Director, said "not being able to quantify is problematic, because we know that social services is buckling under the strain".[601] She added that providing adequate resources for the awareness campaign and support for parents was crucial to the Bill's success:

> "The evidence, I think, is quite clear that the intentions of any legislation to remove this defence have been supported by early intervention and prevention support. That comes with a resource implication. So, in order for this legislation to be successful, it's the sustained public awareness, combined with support—early intervention and prevention support. That needs to be resourced."[602]

590. Health Board representatives acknowledged that the Bill's costs were "very much an unknown".[603] However, Dr Dave Williams, Divisional Director, Family Therapy Services, Aneurin Bevan University Health Board, added:

> "But on the other hand, if it had caused the services to collapse [elsewhere], I think we'd know about it. So, there might be a [resource] requirement, but it's not cataclysmic or sea changing."[604]

[599] Oral evidence, CYPE Committee, RoP [para 140], 8 May 2019.

[600] Oral evidence, CYPE Committee, RoP [para 142] 8 May 2019.

[601] Oral evidence, CYPE Committee, RoP [para 309], 16 May 2019.

[602] Oral evidence, CYPE Committee, RoP [para 245], 16 May 2019.

[603] Oral evidence, CYPE Committee, RoP [para 130], 22 May 2019.

[604] Oral evidence, CYPE Committee, RoP [paras 131-133], 22 May 2019.

591. The Police and Crime Commissioner for Gwent, Jeff Cuthbert, and the Chief Constable of South Wales Police, Matt Jukes, both raised concerns about the funding of non-devolved services like the police. PCC Jeff Cuthbert expressed general concern about "more duties being placed on the police without equivalent rises in police funding".[605] CC Matt Jukes added:

> "[…] we have to get past this point that, as a non-devolved service, we sometimes don't attract the attention of funding. […] I don't think we're going to need to generate an army of investigators to deal with these new reports, but we need to monitor the impact; someone needs to fund that. We need to fund training; somebody needs to fund that. We may need systems changes; that might need support."[606]

592. Responding to questions about the Bill's financial implications for the CPS, the Chief Crown Prosecutor for Wales, Barry Hughes, answered:

> "If this legislation goes through, there will be minor financial consequences for us and I don't see any significant financial consequences in the period between now and the Bill becoming law."[607]

593. When asked whether the degree of "unknown costs" were a cause for concern, the Deputy Minister repeated that a baseline was difficult to estimate because there was no precedent in the UK for removing the defence. However, she also stated:

> "I believe it can be worked out and I believe it will be manageable, so I'm not worried about that. I think we can work it out."[608]

594. The Deputy Minister's official added:

> "This is much more an art rather than a science at the moment, because there is no requirement on any of those services to capture the data and the information that we would find useful in this period of time. So, we've given everything that we can, and in the explanatory memorandum we've also said that we will work with those different services and organisations to develop a data and monitoring process so that we can establish a baseline. But of course we didn't want to get

[605] Oral evidence, CYPE Committee, RoP [para 165], 16 May 2019.

[606] Oral evidence, CYPE Committee, RoP [paras 167-168], 16 May 2019.

[607] Oral evidence, CYPE Committee, RoP [para 81], 6 June 2019.

[608] Oral evidence, CYPE Committee, RoP [para 132], 2 May 2019.

> into a situation where we were requiring those services to do something ahead of the change in the law."[609]

595. Responding to concerns about "runaway costs", the Deputy Minister's official said:

> "[…] in terms of the information that we've provided on the police, that would appear to answer the question that it wouldn't necessarily be a runaway cost and, as we develop the information and evidence and database with social services and others, then we can make sure that we can provide that information as well."[610]

5. 5. A diversion of resources?

596. The Bill's potential to divert resources from other frontline services was raised as an issue in our consultation, particularly among individuals who opposed the Bill and responded in a personal capacity.

Some views about the potential diversion of resources

"Since these resources are limited resources, it will mean that they get diverted away from serious issues like child abuse/knife crime/other violent crime". **Individual (CADRP 257)**

"This Bill would divert funds from the already overburdened police and court systems so that real cases of cruelty are not dealt with properly". **Individual (CADRP 258)**

"Implementing this proposed Bill will divert finances from more pressing and obvious needs". **Individual (CADRP 470)**

"One of the main barriers I feel is funding. Resources are already stretched and if people are to be policing this bill also it will take resources away from areas where it is potentially more vital and cause more harm to children in the long term". **Individual (CADRP 497)**

"Social services police and children's services are already facing challenging financial environments. The implementation and policing of this bill will simply drain already scarce resources". **Individual (CADRP 570)**

Among the parents with whom we spoke in discussion groups on 6 June 2019, there was a concern—regardless of whether they supported or opposed the Bill—that the

[609] Oral evidence, CYPE Committee, RoP [para 141], 2 May 2019.

[610] Oral evidence, CYPE Committee, RoP [para 144], 2 May 2019.

removal of the defence of reasonable punishment could divert resources, particularly from frontline police and social services.

597. Jamie Gillies representing Be Reasonable Wales also raised concerns about the Bill diverting resources, particularly in relation to the police:

> "You're going to be compelling the police to pursue parents who smack their children and police budgets and time are already constrained. They're trying to identify children who are at risk of genuine abuse, so that's going to make it more of a challenge for them, if you compel them to investigate good families who just use very light physical discipline with their children. That's a very worrying scenario."[611]

598. Responding to the range of concerns we have heard about diverting police resources, Matt Jukes, Chief Constable of South Wales Police, emphasised the importance of providing adequate resource to fund the Bill's implementation. He also said:

> "The answer to, 'Where will it come from if not resourced?' is it'll have to come from somewhere else and our capacity to deal with all those other [policing] issues."[612]

599. The joint response submitted to our consultation by the Welsh Local Government Association, the Association of Directors of Social Services and the Association of Directors of Education warned:

> "[…] there will have to be careful consideration as to how the implementation of this legislation will be 'fully' resourced to avoid putting undue additional pressures on existing services."[613]

600. When asked whether introducing this legislation would divert resources from other areas of children's services, Sally Jenkins, then Chair of the All Wales Heads of Children's Services and representing the Association of Directors of Social Services, answered:

> "[…] no, I don't think it will divert resources from children's services."[614]

[611] Oral evidence, CYPE Committee, RoP [para 332], 2 May 2019.

[612] Oral evidence, CYPE Committee, RoP [para 170], 16 May 2019.

[613] Written evidence, CYPE Committee, CADRP 551 – ADSS, WLGA and ADEW.

[614] Oral evidence, CYPE Committee, RoP [para 130], 8 May 2019.

601. Responding to the same question, Dr Dave Williams Divisional Director, Family Therapy Services, Aneurin Bevan University Health Board, stated:

> "I'd be interested to see which front-line services they think we're diverting them from, because I honestly can't think of the front-line services we will be doing, and actually, in the long term, to a certain extent, that's the aim. If we were having to pick up the pieces of damaged adults and children where chastisement had played a part, that would be a good thing, wouldn't it?"[615]

602. When asked if the Bill would divert resources from other services, the Deputy Minister said:

> "This is a manifesto commitment so we will have to provide the money that is needed to effectively deliver this legislation."[616]

5. 6. "Preventative spending"?

603. The potential for the costs associated with the Bill to be viewed as "preventative spending"[617] was emphasised in our consultation, particularly among individuals and organisations who supported the proposed legislation. They argued that the investment in this legislation would result in savings, with fewer children and young people needing interventions from agencies such as social services in the longer term.

Some views about the Bill's costs representing "preventative spending"

"Training parents in positive discipline methods will, in the long run, prevent violence, and therefore, money will be saved". **Save the Children Sweden (CADRP 302)**

"We would see there being positive financial implications to the Bill as it should make cases of abuse against children more straightforward if the defence of Reasonable Punishment is removed. This current grey area can lengthen court cases whilst the defence is being explored". **Voices from Care Cymru (CADRP 362)**

"After changing the law far fewer children will experience any physical punishment because their parents will be guided by the law. It will also mean that people working with families can give a clearer message or intervene earlier. This will mean spending less on more costly interventions later as well as savings in the huge cost of providing

[615] Oral evidence, CYPE Committee, RoP [para 135], 22 May 2019.

[616] Oral evidence, CYPE Committee, RoP [para 134], 2 May 2019.

[617] "Preventative spending" is spending which focuses on preventing problems and eases future demand on services by intervening early.

services that children who have experienced ACEs such as physical abuse might need longer terms – into adulthood even". **Children in Wales (CADRP 482)**

"Barnardo's Cymru experience suggests that removing the defence while providing positive alternatives can only lead to long term savings for society more widely". **Barnardo's Cymru (CADRP 501)**

"Figures obtained from the Early Intervention Foundation by the NSPCC found that the overall financial cost of late intervention with children and young people to Wales was £1.15bn in 2014/15". **Action for Children (CADRP 582)**

"Such a law will promote preventative work and ultimately prevent more costly referrals to social services, the police and others who are responsible for safeguarding children. Physical abuse is one of the recognized ACES and can therefore reduce the number of children suffering from this trauma over the coming years". **Caren Brown, Team Around the Family Gwynedd (CADRP 351)**

604. The Equal Protection Network Cymru told us:

> "The assessment of the financial implications of the Bill appears comprehensive, however we believe that some of the long-term potential cost savings of earlier intervention may offset some of the costs identified."[618]

605. Its evidence refers to a "growing body of research evidence on the potential negative effects on a child of experiencing physical punishment […] which currently result in a demand for a range of services and resources". It concludes that removing the defence of reasonable punishment would have a positive impact on the effective delivery of a range of public services and a consequent reduction in demands on resources.[619]

606. The Children's Commissioner for Wales also argued that initial investment is needed to reap longer term finanical benefits:

> "[…] we're trying to become, through the future generations legislation, a more preventative nation. We know that this [the Bill] will be a preventative measure—I'm really confident about that—and it will lead to whole conversations about positive parenting and good practice in responding to children beyond its specific legislative intention. In the long term, I strongly believe that will lead to a reduction in burden on resources. But that is a long term, and, as with anything when we're

[618] Written evidence, CYPE Committee, CADRP 481 – Equal Protection Network Cymru.

[619] Written evidence, CYPE Committee, CADRP 481 – Equal Protection Network Cymru.

> thinking about prevention, that needs initial investment to reap the long-term benefits, which is very hard for Governments and local authorities and services to do, but I do think it is essential and we should all keep pushing for it."[620]

607. In relation to preventative spending, the Deputy Minister told us:

> "We know that evidence from other countries does show that, if we bring in this legislation and raise awareness, it does change people's attitudes, so there may, in the long term, be a saving if we do that."[621]

OUR VIEW

608. We note the information provided in the RIA about the Bill's administrative costs. We further note that the majority of these costs will arise as a consequence of the information and awareness campaign.

609. In chapter 3 we emphasise the pivotal importance we attach to raising awareness of the proposed legislation's effect if its aims are to be achieved and its unintended consequences avoided. To this end, our recommendation 9 calls on the Welsh Government to include a duty on the Welsh Ministers to provide information and increase awareness about the Bill on its face.

610. We note that the potential annual financial allocation for this Bill's awareness campaign is only approximately half the spend on the campaign relating to smoking in cars, and two-thirds of the spend on the campaign relating to organ donation (both of which are cited in the Bill's Explanatory Memorandum as examples of campaigns which have accompanied legislation). We would welcome a more detailed explanation of why this is the case.

Recommendation 19. That the Welsh Government provide a more detailed explanation of why the potential annual financial allocation for this Bill's awareness campaign is only approximately half the spend on the campaign relating to smoking in cars, and two-thirds of the spend on the campaign relating to organ donation (both of which are cited in the Bill's Explanatory Memorandum as examples of campaigns which have accompanied legislation).

611. We note the evidence presented to us about the uncertainties arising as a consequence of the Bill's "unknown" costs.

[620] Oral evidence, CYPE Committee, RoP [para 629], 2 May 2019.

[621] Oral evidence, CYPE Committee, RoP [para 273], 12 June 2019.

612. We recognise the difficulties the absence of meaningful information about cases of "reasonable punishment" poses to establishing a robust baseline. Nevertheless, as the Bill was one of the Welsh Government's key manifesto commitments in 2016, we believe work to establish a baseline should have begun much earlier than 2019.

613. We believe information about the "unknown" costs is key to allaying fears about the removal of the defence of reasonable punishment diverting resources from frontline public services.

Recommendation 20. That the Welsh Government, before the start of Stage 3, publish a revised Regulatory Impact Assessment providing more detailed estimates of the "unknown" costs to public services arising from the Bill.

614. We note the evidence presented to us about the potential to consider the Bill's costs as "preventative spending". While we agree that this may be the case in the longer term, we believe that such benefits will only be realised if support for parents is provided on a universal, adequately resourced basis.

615. In chapter 3 of this report we outline our views about the vital role universal support for parents will play in the effective implementation of this Bill. In recognition of this, our recommendations 7 and 18 call on the Welsh Government to provide details of the strategic investment we believe is needed to deliver the step-change in universal support services for families that is crucial to the achievement of this Bill's objectives.

Annex A – List of written evidence

Public consultation

All consultation responses can be viewed on our website.

Of the 650 valid responses we received to our consultation, 562 were submitted by individuals in a personal capacity, 29 by individuals responding in a professional capacity, and 59 by organisations.

The following responses were submitted by either an organisation or an individual in a professional capacity. All other responses were received from individuals in a personal capacity so their names have been removed in accordance with our privacy policy.

Name	Reference
Thomas Brooks - Retired Healthcare Management Consultant	CADRP-31
Matthew Yates - Clinical Psychologist	CADRP-67
Be Reasonable Wales	CADRP-92
CVSC Play Development Team	CADRP-117
Eric Hopley - Former Chair of Education and Former Governor	CADRP-127
Dr Jael Hill - Clinical Psychologist	CADRP-146
Children's Commissioner for Wales	CADRP-160
Nicola Lund - Teacher	CADRP-162
Debbie Whyte - Creche Co-ordinator	CADRP-169
Rachel Evans - Clinical Psychologist	CADRP-171
Swansea Bay University Health Board	CADRP-174
Elizabeth Davies - Service Manager	CADRP-232
BASW Cymru	CADRP-283
Kirsty Sanderson - Counsellor	CADRP-290
Betsi Cadwaladr University Health Board	CADRP-291
Crown Prosecution Service	CADRP-293
UNICEF UK	CADRP-294

Ian Hassall - Independent Children's Advocate	CADRP-298
Save the Children Sweden	CADRP-302
TGPCymru	CADRP-311
Observatory on Human Rights of Children	CADRP-335
Rhiannon Harvard - Youth Worker	CADRP-336
Joan van Niekerk - Consultant	CADRP-346
Caren Brown - Team Manager, Gwynedd Team Around the Family	CADRP-351
Flintshire County Council	CADRP-354
Voices From Care Cymru	CADRP-362
Rebecca Allen - Area Coordinator	CADRP-364
Linda German - Teaching assistant	CADRP-380
Anne McGillivray - Professor of Law University of Manitoba (retired)	CADRP-384
Welsh Chief Officer Group and All Wales Policing Group.	CADRP-387
Hafal	CADRP-394
Royal College of Nursing Wales	CADRP-406
Bill Garnett - Social Care Consultant	CADRP-407
Play Wales	CADRP-421
Daniella Kelly - Counsellor	CADRP-436
Christine Meirion - Self Employed Psycho Therapist	CADRP-439
Dr. Elizabeth Gershoff - Professor of Human Development and Family Sciences	CADRP-453
The Peace Centre	CADRP-457
Equal Protection Network Cymru	CADRP-481
Children in Wales	CADRP-482
National Independent Safeguarding Board	CADRP-489
Independent Psychology Associates	CADRP-494
Royal College of General Practitioners	CADRP-498
Barnardo's Cymru	CADRP-501
Humanists UK	CADRP-502

Mudiad Meithrin	CADRP-503
Royal College of Paediatrics and Child Health (RCPCH)	CADRP-504
Hywel Dda University Health Board	CADRP-507
Global Initiative to End All Corporal Punishment of Children	CADRP-519
Jonathan Evans - Professor of Youth Justice Policy and Practice	CADRP-520
Kristine Vaaler - School Governor	CADRP-526
Early Years Wales	CADRP-536
Southern Methodist University	CADRP-537
Cwm Taf Morgannwg Health Board	CADRP-544
Brynteg Village Church	CADRP-547
Association of Directors of Social Services Wales (ADSS Cymru); Welsh Local Government Association (WLGA); Association of Directors of Education in Wales (ADEW)	CADRP-551
Robert E Larzelere - Professor	CADRP-559
Save the Children New Zealand	CADRP-560
Intermediaries for Justice	CADRP-562
Children are Unbeatable Cymru	CADRP-572
Little Acorns	CADRP-573
Save the Children	CADRP-581
Action for Children	CADRP-582
Rhian Rees - Flying Start Manager	CADRP-587
Social Care Wales	CADRP-591
Wales UNCRC Monitoring Group	CADRP-592
Newport Mind	CADRP-596
ASCL Cymru	CADRP-597
The Christian Institute	CADRP-609
NAHT Cymru	CADRP-610
Aneurin Bevan University Health Board	CADRP-611
Dr Anja Heilmann - Public Health Academic	CADRP-612

Public Health Wales	CADRP-614
Welsh Women's Aid	CADRP-625
Office of Police and Crime Commissioner for Gwent	CADRP-626
Julie Doughty - Lecturer in Law	CADRP-628
Deborah Pitt-Retired Psychiatrist	CADRP-629
The Bar Council of England and Wales	CADRP-634
Nicola Barry - Childline Supervisor	CADRP-636
Royal College of Psychiatrists Wales	CADRP-639
Joan Durrant - Child-Clinical Psychologist and Professor	CADRP-640
NSPCC Cymru	CADRP-641
Heather Keating - Professor of Criminal law	CADRP-642
Equality and Human Rights Commission	CADRP-643
Evangelical Alliance	CADRP-644
Dr Mair Edwards - Clinical Psychologist	CADRP-645
Clybiau Plant Cymru Kids Club	CADRP-646
The Welsh NHS Confederation	CADRP-650

Targeted consultation

Responses received	Responses not received
Ministry of Justice	Magistrates Association
Family First New Zealand	Her Majesty's Prison and Probation Service
New Zealand Children's Commissioner	Teaching unions
Sentencing Council for England and Wales	United Nations Committee on the Rights of the Child

Correspondence and additional information

All correspondence relating to the Bill, and additional information submitted after evidence sessions, is available on our website.

Annex B – List of oral evidence sessions

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on our website.

Date	Name and Organisation
2 May 2019	Julie Morgan AM, Deputy Minister for Health and Social Services Karen Cornish, Deputy Director – Children & Families Division, Welsh Government Emma Gammon, Lawyer, Welsh Government Jamie Gillies, spokesman for Be Reasonable Wales Sally Gobbett, Parent campaigner Andy James, Interim Chair- Equal Protection Network Cymru Catriona Williams OBE, Chief Executive Officer - Children in Wales and representing the Equal Protection Network Cymru Vivienne Laing, Policy and Public Affairs Manager - NSPCC Wales and representing the Equal Protection Network Cymru Menna Thomas, Assistant Director (Policy) - Barnardo's Cymru and representing the Equal Protection Network Cymru Dr Katherine Shelton, Senior Lecturer in Psychology, Cardiff University and member of Academics for Equal Protection and representing the Equal Protection Network Cymru Sally Holland, Children's Commissioner for Wales Rachel Thomas, Head of Policy and Public Affairs, Children's Commissioner for Wales
8 May 2019	Sally Jenkins, Chair of All Wales Heads of Children's Services and representing the Association of Directors of Social Services Alastair Birch, Senior System Leader for Equalities and Safeguarding, Pembrokeshire County Council and representing the Association of Directors of Education Wales Cllr Huw David, Welsh Local Government Association Spokesperson for Health and Social Care and Leader of Bridgend County Borough Council
16 May 2019	Jeff Cuthbert, Police and Crime Commissioner for Gwent and Chair of the All Wales Policing Group Matt Jukes, Chief Constable for South Wales Police
22 May 2019	Dave Williams, Divisional Director - Family and Therapy Services, Aneurin Bevan University Health Board Nicola Edwards, Head of Safeguarding, Swansea Bay University Health Board Jane Randall, Chair – National Independent Safeguarding Board Jan Pickles, Member – National Independent Safeguarding Board

	Dr Lorna Price, Wales' representative on the Royal College of Paediatrics and Child Health's central Child Protection Committee Dr Rowena Christmas, representing the Royal College of General Practitioners Michelle Moseley, representing the Royal College of Nursing
6 June 2019	Barry Hughes, Chief Crown Prosecutor for Wales Kwame Biney, Senior Policy Advisor, Crown Prosecution Service Iwan Jenkins, Head of Complex Casework Unit, Crown Prosecution Service Wales
12 June 2019	Julie Morgan AM, Deputy Minister for Health and Social Services and Member in charge of the Bill Karen Cornish, Deputy Director – Children & Families Division, Welsh Government Emma Gammon, Lawyer, Welsh Government