

**The Bill Blackwood  
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**Corporal Punishment for Criminal Offenders**

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**A Leadership White Paper  
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## **ABSTRACT**

Corporal punishment to help reduce repeat offenders is relevant to contemporary law enforcement because taxpayers are footing the bill for justice, and justice is not being carried out. Crime has been around for a long time and is not going to go away any time soon. Society sets the tone for what punishment is appropriate for criminal offenders to help deter future criminal acts. Front line law enforcement officers are dealing with these criminals on a daily basis, and officers are finding that these criminals have a criminal record that is pages long.

The position of the researcher is that it is time to rethink the liberal ideals that imprisonment and rehabilitation are the best ways for bringing down the crime rate in the US. Corporal punishment was more socially acceptable 200 years ago, but in recent years, it has slowly been pushed out by society. Additionally, new technologies of today should be considered when it comes to the punishment of criminal offenders. The types of information used to support the researcher's position are Internet sites, books, and journals.

The recommendation drawn from this position paper is that incarceration is not working because jails are overcrowded, and the cost burden on the taxpayer is astronomical. Crime within the prison system is causing problems for inmates, guards, and civilians. Recidivism rates are out of control, so it is time to bring back the methods that were used before prison and implement a way of conducting corporal punishment in a humane way that will punish the offender and make him realize that there are consequences for his actions, and unlawful behavior will not be tolerated.

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## INTRODUCTION

The sentencing of criminal offenders draws more attention from the public and the media than any other stage of the criminal process. In high profile cases, the sentencing phase receives the most attention from media, victim's advocates, and even politicians. If the offender has prior convictions, social reactions become far more negative. When a repeat offender gets arrested again on additional charges, it raises questions about the effectiveness of the judiciary and legislative process. One of the most basic functions of the judicial process is to protect the public from being victims of crime.

Punishment of criminal offenders in today's judicial system is not always consistent. Probation seems to be a common theme for criminal offenders, and for law enforcement officers, it is not uncommon to make an arrest on an offender who is on probation for multiple offenses. Criminal offenders must be punished in a way that will deter future crime. The way it stands now, there is no real punishment for the offender when a crime is committed; they either go to jail/prison, are fined, or they receive probation and are released back into the community. Pain is part of the definition of punishment. The origin of the word pain is the Latin *poena*, which means pain, punishment, or penalty. American society has taken this theory out of the equation by not applying pain to the punishment of criminal offenders, and as a result, there is a high repeat criminal offender rate and jails are overcrowded. All of this is paid for by the taxpayer. The punishment given out today is not concrete. Punishment must clearly inflict pain to the offenders. It is not that society needs to resort back to 200 years ago, when hands were cut off if one was a thief, the tongue would be cut off if one was a

blasphemer, and criminals were whipped on their backs until they collapsed and died, but something has to change.

The problem of overcrowded jails is not going to go away if society continues on the same path in the judicial system. It is not fair to society to offer early outs to offenders who are being punished for their actions. Corporal punishment has not been used in the United States for many years. Prison has been the solution to how criminals pay for their crimes, yet prison itself exposes criminals to prison violence, neglect, harsh diet, and mental abuse. In many cases, this goes beyond mere corporal punishments that would be performed in a controlled environment with medical staff standing by to attend to the offender. Criminals get off too easily; corporal punishment is a sensible and humane method of punishment compared to prison.

## **POSITION**

The United States criminal justice policies have produced an astronomical number of imprisonments in this country. According to Alexander (2009), the number of inmates locked up in this country between 1970 and 2005 grew by a historically unprecedented 700%. Alexander found that this number equates to almost 25% of the prisoners in the entire world. He stated, "If all our prisoners were confined in one city, that city would be the fourth largest in the country" (Alexander, 2009, p. 3). In 2005, state prisons, at the end of the year, held a total number of inmates of 1,296,700. This number was the total for all violent offenses, murders, robberies, assault, rape/sexual assault, property crime, drug offenses, and public order offenses (Sable, 2008). This all comes at a rate of \$67.55 per day to house a prison inmate (American Correctional Association, 2006).

Criminal justice data showed that the national re-arrest rate is 63% for adult offenders and can be as high as 84% for juveniles (Open Society Institute, 1997). Data also showed that 76% of the state prison population has a previous criminal history of prior convictions. The data from 1997 showed that people with violent offenses made up nearly half of those with prior convictions. Also, 59% of repeat offenders have more than two previous convictions, and 43% have more than three convictions (Open Society Institute, 1997). For the majority of these offenders, the threat of going to prison did not seem to deter their behavior (BJS, 2003).

Corporal punishment has been around since ancient times, and it is still used today in many countries. Singapore uses corporal punishment as a crime deterrent. According to a Los Angeles Times article, "Singapore Justice System Gives U.S. Examples for Thought" (as cited in Litschauer, 2002), it made a comparison between Singapore and Los Angeles. Both areas have roughly the same population; however, the crime rates were very different. Singapore, in 1993, which uses corporal punishment, reported 58 murders, 80 rapes, 1,008 robberies, and approximately 3,100 thefts of a vehicle. Los Angeles, on the other hand, in 1993, reported 1,100 homicides, 1,855 rapes, 39,227 robberies, and approximately 66,000 thefts of motor vehicle.

Corporal punishment would be far less degrading than going to prison and being subjected to the well known strip searches that are performed in prisons every day. It could be considered degrading to strip down naked in front of a prison guard who has to do a thorough bodily inspection that is just short of a medical physical. Corporal punishment does not have to be carried out in front of large amounts of people. Corporal punishment only requires the medical staff and the officer charged with

carrying out the punishment. This would be better than subjecting inmates to open showers, latrines, and strip searches. According to Mariner (2001), in a journal article entitled, "No Escape: Male Rape in US Prisons", they stated, "In December 2000, the Prison Journal published a study based on a survey of inmates in seven men's prison facilities in four states. The results showed that 21% of the inmates" (p. 103) had experienced at least one episode of pressured or forced sexual contact since being incarcerated. At least 7% had been raped in their facility. Statistically, these findings would calculate to the national level a total of at least 140,000 inmates who have been raped in US prisons.

Acute pain is an effective way to administer corporal punishment. Technology today could make it possible to bring back corporal punishment that can be administered in a way that would not be cruel or unusual. There have been studies done in psychology laboratories to examine the effects of corporal punishment on a variety of different animals. In laboratory studies, a rat would be placed on a metal grid in a cage and released. Upon the release of the rat, it would promptly go to a food bowl and begin eating the food. At that point, an electric shock would be administered to the rat, and it would squeal, drop the food, and run around the cage. The shock would last a couple of seconds, and the rat would huddle into a corner of the cage. After a few minutes, the food is placed back into the cage and the rat goes directly to the food and begins eating again. Again the shock is activated, and again the same behavior from the rat. The food is immediately dropped, a squeal is let out, and the rat runs around for a few seconds, until the shock stops. This experiment goes on a few more times, until the rat has no desire to eat the food any longer. The experiment proves that acute

corporal punishment had successfully taken away the desire for the rat to eat the food. (Newman, 1995)

During the time when the Constitution was written and for many years afterwards, corporal punishment was an acceptable means of punishment. However, corporal punishment has not been used in the United States for many years. Perhaps the most influential reason that corporal punishment is not used in the US is because there are people who believe that corporal punishment is a violation of the eighth amendment to the constitution. The United States Constitution gives each state the right to legislate its own punishments. The only way to violate that right is if it could be proven that a particular punishment was cruel and unusual, which would be a violation of the 8th Amendment to the Constitution that guarantees protection against cruel and unusual punishment. A number of legal scholars and historians argue that it is false to believe that the phrase "cruel and unusual," which is written in the constitution and included in the Bill of Rights was intended to exclude bodily punishments that include mutilation or brutal acts (Granucci, 1969).

According to Straus (1994), a Professor of Sociology and co-director of the Family Research Laboratory at the University of New Hampshire, corporal punishment of children is the use of physical force to experience pain and not injury for the correction or control of a child behavior. Common forms of corporal punishment include slapping, pushing, spanking, and grabbing. Across America, these are perfectly legal acts for parents and guardians. In a National Opinion Research Study conducted in 1986, 84% in people over the age of 18 believed that "It is sometimes necessary to give a child a good hard spanking" (as cited in Child Trends, 2002, Table 2). Over 90% of



parents have used corporal punishment on their children (Wauchope & Straus, 1990). The results of this study showed that a large percentage of the population appears to agree that corporal punishment is an acceptable means of discipline.

## **COUNTER POSITION**

In the 18<sup>th</sup> century, philosophers questioned the concept of corporal punishment. They theorized that inflicting pain was not effective for long term deterrence of wrong behavior. Some philosophers believed that punishment should come in the form of reformation as apposed to retribution. This is when the ideas of prisons were introduced in an effort to reduce crime and reform the prisoners (Bentham, 1983).

Some people believe that corporal punishment does not deter crime. According to American Psychological Association (Conger, 1975.), corporal punishment would most likely have a negative impact, such as rage and hostility if the punishment is not administered correctly. Due to the many factors and conditions that have to be considered, it would be tough to administer corporal punishment in an effective manner (Conger, 1975.).

Today, there are many people that are against the ideals of corporal punishment because they feel that it is degrading and humiliating to the offender. Some argue that corporal punishment may cause psychological problems, including depression. Straus (1994) provided data that corporal punishment of children can increase one's chances of becoming depressed. German psychologist Richard von Krafft-Ebing suggested that children receiving corporal punishment at school may develop a tendency towards sadistic and masochistic behavior (von Krafft-Ebing, 1892/1978).

There can be a few economic incentives when it comes to keeping criminals in prison. There are state and federal monies available through grants based on the prison population. Housing a prison in a state also involves a need for jobs, such as law enforcement, health care, construction, public libraries, and more. The federal government distributes over \$140 billion in grant money to state and local governments based on their prison population (Lawrence & Travis, 2004).

According to the 8<sup>th</sup> amendment to the constitution, it is unconstitutional to use cruel or unusual punishment. In *Furman V. Georgia* (1972), Justice Brennan illustrated four principals to determine if a punishment is cruel or unusual. The first is the punishment cannot be degrading to human dignity. The second is any severe punishment that is obviously done in a subjective manner could be unconstitutional. The third is that if the punishment is clearly rejected by society as a whole, it could be cruel or unusual. The last is that any punishment that is obviously unnecessary would be a violation of the eighth amendment.

Corporal punishment is still legal in much of the United States. There have been studies that show that corporal punishment in schools may have a negative impact on academic performance. One study done showed that a school that allowed corporal punishment had lower scores on a standardized test than a school that still allowed corporal punishment (The Center for Effective Discipline, n.d.). Some feel that the schools that practice corporal punishment create a threatening learning environment for the overall student body and not just the students subjected to the punishment (Safran & Oswald, 2003). According to The Society for Adolescent Medicine (2003), children exposed to corporal punishment suffer from antisocial behavior, difficulty concentrating,

weak relationships with their peers, lower school achievements, and they had a higher dropout rate. Parents of children that are exposed to corporal punishment in school sometimes feel that they have to choose between getting an education for their child, and the physical well being of their child. In states that allow corporal punishment, some parents feel that they have no way to opt out of the corporal punishment because there is no legal recourse; the only option is to pull their child out of school (Safran & Oswald, 2003).

## **CONCLUSION**

It is time for a change in how society views the punishment of criminal offenders. A clear and direct punishment should be administered immediately and in such a manner that will change the behavior of the violator and make him or her want to follow the rules and be a functioning member of society. A large percentage of Americans use corporal punishments in their own homes to correct bad behavior in children, and many have had corporal punishment used on them when they were children. When administered correctly as a means of discipline and not anger or rage, corporal punishment is a quick and immediate way to change a behavior. Once the punishment is given, the violator can be released back to the community with no time in prison, which is a place where there are negative influences of gangs, prison violence, mental stress, and exposure to bad morals. Corporal punishment will not break up families, marriages, communities, and careers like incarceration do, nor will it increase taxes and welfare costs as much as mass incarceration (Straus, 1994).

Corporal punishment could be offered as an alternative to jail/ prison. It could be the decision of the violator of what he or she wants and, therefore, could not be

considered as cruel or unusual, but rather a voluntary choice that was made. If a violator is given the option of choosing between jail or corporal punishment and makes the decision to take corporal punishment, it allows them to return to their lives without delay, and it cuts down on the cost burden for the taxpayers. Giving the violator a choice makes that person part of the process and may help reduce the amount of resentment towards the criminal justice system by violators and families of the violator.

Since the 18<sup>th</sup> century society has been raising the bar of what is socially acceptable for punishment. Prisoners have slowly been given more and more rights, liberties and entitlements such as air conditioning and cable TV. Recidivism rates are high and getting higher ("U.S. Prisons Overcrowded," 2007). This all amount to a higher cost for society. There are not a lot of studies in the US measuring the effectiveness of corporal punishment, but when comparing Singapore to Los Angeles CA, the statistics are pretty clear that corporal punishment does affect crime rates in a positive manner (as cited in Litschauer, 2002). Lab tests on animals show that acute pain does reflect a change in behavior (Newman, 1995). When the founding fathers wrote the constitution which protects Americans from cruel or unusual punishment, corporal punishment was used. Society as a whole determines what is cruel and unusual, and society has allowed the judicial system to evolve to what it is today. Society has the right to bring back corporal punishment and try new methods to decrease the crime rate in the United States and the cost burden of repeat criminal offenders.

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