This ancient defence of “reasonable chastisement” came to Ireland from English common law. Through its colonial past, England has been responsible for rooting this legal defence in over 70 countries and territories throughout the world. The basis is the 1860 Case: This defence originated from a decision in R v Hopley in 1860 where Chief Justice Cockburn [2F&F 202] proclaimed that:

*By the law of England, a parent ... may for the purpose of correcting what is evil in the child, inflict moderate and reasonable corporal punishment...*

It was also confirmed in Children Act 1908 (when Ireland was part of the UK).

Over the years we have seen legislative changes:

In relation to Schools it was:
- Prohibited in 1982 by a Department of Education Circular
- Abolition of the common law rule in respect of immunity of teachers from criminal liability for punishing pupils (Non-Fatal Offences Against the Person Act 1997)

*The rule of law under which teachers are immune from criminal liability in respect of physical chastisement of pupils is hereby abolished*

In further legislation we repealed corporal punishment in the following settings:
- 1997 – in penal institutions
- 1997 – as a criminal sentence (whipping)
- 2001 – in youth justice detention centres
- 2004 – in Special Care children’s residential (detention) settings

The Children Act 2011 repealed the Children Act 1908 Act but the common law defence remained.

Prior to change in law in Ireland in 2015, a common law rule of the defence of “reasonable and moderate chastisement” in disciplining children existed. Parents could invoke the defence when facing prosecution under criminal law for assault and physical cruelty of a child. *The Grey Areas* remained: Standards for foster care & residential centres prohibited corporal punishment but this was not underpinned by legislation and some child minders could use the defence.

Whilst we had laws on the statute books that criminalised people for committing violence against children (Children’s Act 2001 include the offence of ‘cruelty to children’; our Non-Fatal Offences Against the Persons Act 1997 included the defence of assault and serious assault) parents and people caring for less than four children in the home could plead the defence of reasonable chastisement if they were being tried by our courts. This defence was being used and not only that it created real problems for social workers that were working with vulnerable families where children were being subjected to ill-treatment and harm. They weren’t definitively able to say no you can’t hit your child.
Through a joint amendment by then Senator Jillian van Turnhout and the Government to the Children First Act 2015 corporal punishment was abolished. In effect, the Non-Fatal Offences Against the Person Act 1997 was amended to abolish the common law defence of reasonable chastisement.

**Legislative process of Children First Act 2015** in relation to abolition of corporal punishment note by Jillian van Turnhout

On 23 September 2015, in the Seanad (upper house), I tabled an amendment at Committee Stage of the Children First Bill 2014 to repeal the defence of reasonable chastisement. Minister for Children and Youth Affairs, Dr James Reilly TD, requested time for consideration of the amendment adding: “If I have my way we will have this defence of ‘reasonable chastisement’ removed from the Statute Book.”

Henceforth, a considerable amount of work went on behind the scenes.

On 21 October 2015, at Report Stage in the Seanad, by way of a joint amendment with Government, we successfully amended the Children First Bill 2014 to secure the abolition of the defence of reasonable chastisement. In effect, the Non-Fatal Offences Against the Person Act 1997 was amended to abolish the common law defence of reasonable chastisement.

The Bill returned to the Dáil (lower house) for final consideration on 11 November 2015. This is procedural. The Children First Bill 2014 started its legislative process in the Dáil. If the other house, (in this case the Seanad), makes an amendment, the originating house (in this case the Dáil), has an opportunity to review the amendment. As you will see from this link: https://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2014/3014/document1.htm the only amendments considered by the Dáil were the amendments made by the Seanad. They did not change a single thing at this stage.

Here is a link to the debate in the Dáil https://www.kildarestreet.com/debates/?id=2015-11-11a.535&s=%22Children+First+Bill%22 As you will see from the debate the members who spoke were in full support of the amendments from the Seanad. There were questions in relation to other aspects of the Children First Bill but they were of a general nature. NOTHING was changed when the Bill returned to the Dáil.

On 19 November 2015, the Children First Act 2015 was signed by the President into law. On 15 December 2015, Minister Reilly, Minister for Children and Youth Affairs commenced the sections of the Act in relation to the abolition of the common law defence of reasonable chastisement. http://www.irishstatutebook.ie/eli/2015/si/555/made/en/print
*Government amendments are denoted by an asterisk

1. In page 5, line 12, to delete “and to provide for related matters.” and substitute the following:

“to provide for the abolition of the common law defence of reasonable chastisement and, for that purpose, to amend the Non-Fatal Offences Against the Person Act 1997; and to provide for related matters.”.

—Senator Jillian van Turnhout.

2. In page 20, after line 21, to insert the following:

“PART 5

Miscellaneous

Abolition of defence of reasonable chastisement

28. The Non-Fatal Offences Against the Person Act 1997 is amended by the insertion of the following section after section 24:

“24A.(1) The common law defence of reasonable chastisement is abolished.

(2) Subsection (1) shall not apply in respect of proceedings brought against a person for an offence consisting in whole or in part of any act done by the person before the commencement of section 28 of the Children First Act 2015, whether those proceedings were brought before, on or after such commencement.

(3) This section shall not affect the operation of section 24.”.

—Senator Jillian van Turnhout.