



Thursday 19 April 2007

He Mana tō ia Tamaiti Every **Child** Counts

Media kit on the Crimes (Substituted Section 59) Amendment Bill

Section 59: Highlighting the facts, dispelling the myths

This media kit provides clear information about the evidence in support of amending Section 59 of the Crimes Act 1961 to provide for the safety of children.

It addresses the myths and misinformation surrounding the debate about the Crimes (Substituted Section 59) Amendment Bill. The Bill is nearing its third reading in Parliament.

This bill is an amended version of the original Crimes (Abolition of Force as a Justification for Child Discipline Bill introduced by Green Party Social Development Spokesperson Sue Bradford on 9 June 2005. The amended bill was recommended by the Justice and Electoral Select Committee in its report to Parliament on 20 November 2006. The committee made its recommendations after listening to, reading and discussing 1700 submissions from the public.

Enclosed:

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2. Dispelling the myths.
3. Organisations supporting changes to Section 59.
4. Eminent Swedish experts comment on misrepresentation of the effect of the Swedish corporal punishment ban.
5. Key dates leading to the proposed changes to Section 59.
6. Contact details for media spokespeople supporting changes to Section 59.

We trust this material will better inform consideration of, and reporting on, the bill in the weeks ahead.

Yours sincerely

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I. An overview of the evidence

Fact: Section 59 of the Crimes Act 1961 allows some parents to get away with serious acts of violence against children

Some people claim that the Section 59 defence has only been used six or seven times in 16 years. It is difficult to know how many times it has been used successfully or unsuccessfully because District Court cases are not reported centrally and only reach widespread attention if reported in the media.

The cases that have come to light publicly, however, indicate that Section 59 has been successfully used as a defence in some extreme cases of assault on a child. This works against the ability to bring prosecutions, much less achieve convictions, even when the assault is serious.

Fact: New Zealand has one of the worst rates of child death by maltreatment

Debate about repealing Section 59 must be considered in the context of New Zealand's child abuse and death by maltreatment rates.

New Zealand is among the top six OECD countries for child death by maltreatment¹ and homicide is the third leading cause of death for those under 15 years old, following drowning and motor vehicle deaths.² The majority of these homicides are perpetrated by parents or caregivers.³

Fact: Physical punishment is a demonstrated risk factor in child abuse

Child abuse deaths usually begin with physical punishment which escalates in a context of frustration with the child, anger, and a belief that physical force can stop unwanted behaviour.⁴

To prevent such deaths and reduce the use of violence against children, we must reach a point where parents do not rely on physical punishment as the preferred means of guiding a child's behaviour.

Relying on physical punishment increases the chances of abuse because physical punishment doesn't improve children's behaviour and there is a risk of higher levels of violence being used in response to the deteriorating behaviour of the child.

The continuing use of physical punishment from one generation to the next simply perpetuates the cycle of violence.

"It has been demonstrated that abusive parents are more likely to have received physical punishment as children than are non-abusive parents."⁵

Fact: Hitting children is harmful

Many modern parents and parenting experts do not regard hitting as an effective disciplinary tool. While evidence indicates that mild physical discipline in a loving and otherwise non-

¹ UNICEF Innocenti Research Centre, *A League Table of Child Maltreatment Deaths in Rich Nations*, Issue 5, Italy, 2003, pg 4

² Office of the Children's Commissioner and Children's Issues Centre, *The Discipline and Guidance of Children: A Summary of Research*, Wellington, 2004, p4

³ Mike Doolan, *Child Death by Homicide: An examination of incidence in New Zealand 1991-2000*, Te Awaatea Review, August 2004, p 7

⁴ Joan Durrant and Staffan Janson, *Law Reform, Corporal Punishment and Child Abuse: The case of Sweden*, Canada, October 2004, p 21

⁵ Joan Durrant, PhD, University of Manitoba, Canada, *International Perspectives on Discipline*, presentation to the Littlies Lobby, Wellington, June 2004, p 5

violent home may not harm children there is a considerable body of evidence to show that moderate or harsh physical discipline does damage children.⁶

Neurobiologists have shown that the fear caused by acts of violence produces stress hormones that impede a child's learning and brain development (for example, see www.brainwavetrust.org.nz)

Physical punishment has been shown to contribute to a range of negative outcomes, including:

- Lessons are not learned and the ability to reason via experiencing consequences is not developed
- Reduced problem solving skills
- Reduced quality of child/ parent relationships
- Increased child aggression
- Decreased child mental health
- Increased chances of child abuse
- Increased delinquent and anti-social behaviour in childhood and adulthood
- Increased chances of the child going on to abuse their own partner or child,⁷ and
- Impaired marital relationship/ partnerships in adulthood.⁸

Fact: Experts say there are links between physical punishment, child abuse and the law

Since the 1970s, research has shown that the majority of child abuse cases come about in the context of parents punishing the child.⁹

This misuse of physical punishment is linked to the law and to the social norms that approve of violence:

“Laws that provide a legal defence to parents or caregivers charged with assaulting their child effectively approve of physical punishment and this contributes to the physical abuse of children.”¹⁰

“Societal messages that convey the appropriateness of physical punishment increase the likelihood of its use, and thereby, set the stage for physical abuse.”¹¹

Section 59 of the Crimes Act is based on an out-of-date and dangerous principle, that force is an approved part of child-rearing. The law needs to be updated to take account of current knowledge and aspirations to reduce incidences of violence and improve child wellbeing.

Adults who actually kill children may well be a group apart and some consider that a change in the law will make very little difference to these individuals in the short term.

There are many children who are chronically maltreated and harshly disciplined, however, who do not die and who may not even come to the notice of authorities. For those children, the law change in combination with positive parenting and anti-violence initiatives, may lead

⁶ For example, see Office of the Children's Commissioner and Children's Issues Centre, *The Discipline and Guidance of Children: A Summary of Research*, Wellington, 2004.

⁷ Durrant and Janson, *Law Reform, Corporal Punishment and Child Abuse: The case of Sweden*, pp16-17

⁸ Alicia D. Cast, David Schweingruber (Iowa State University) and Nancy Berns (Drake University), *Childhood Physical Punishment and Problem Solving in Marriage*, Journal of Interpersonal Violence, Volume 21 Number 2, February 2006, Sage Publications

⁹ Durrant, *International Perspectives on Discipline*, pp12-17

¹⁰ Durrant, *International Perspectives on Discipline*, p 4

¹¹ Joan Durrant, PhD, *Physical Punishment and Physical Abuse*, published in *Children*, a newsletter from the Office of the Children's Commissioner, Wellington, June 2004, No. 50, p 5

to more positive childhoods and make them less at risk of being violent themselves in adulthood.

Fact: Consistent laws and public education will support parents to use effective, non-violent, discipline strategies

Successive governments have invested in a range of programmes to reduce family violence and promote positive parenting. However, by providing a legal defence to parents or caregivers charged with assaulting their child, Section 59 of the Crimes Act effectively approves of physical punishment and thereby increases the likelihood of its use.

Clarifying the law and making it consistent with efforts to reduce violence against children will support parents to use positive parenting techniques, especially if there is a subsequent increase in the promotion and funding of positive parenting programmes. Positive parenting enhances the prospects for optimal child development and helps break inter-generational cycles of violence.

Law change will send an unambiguous message that physical punishment in the home is not necessary, expected or appropriate.

The social approval of physical punishment raises the threshold for violence in the next generation.¹² International experience, however, demonstrates that public attitudes about the acceptability of violence in the context of parenting, and child injury and death rates, can improve. This requires legislative change combined with comprehensive positive parenting education and clear communication about the purpose of the law change.

Legislative change and public education can significantly reduce the use and acceptability of physical punishments, thereby improving the safety of children and reducing child abuse rates.

Following legislative change in the 1950s, and public education, only 11 percent of Swedes were positively inclined toward even mild forms of corporal punishment by 1994¹³ and the generation raised without physical punishment is particularly opposed to it. The use of physical punishment declined dramatically from the 1950s through until the 1980s and the prevalence, frequency and harshness of physical punishment have declined dramatically in Sweden over two generations.¹⁴ Deaths due specifically to child physical abuse are almost non-existent in Sweden.¹⁵

Sweden's rate of child death by maltreatment is significantly lower than New Zealand's, at 0.5 per 100,000.¹⁶ This is down from 1.0 per 100,000 in the 1970s.¹⁷

Fact: New Zealand children experience harsh physical punishment

Physical discipline is still the norm in many homes in New Zealand and often its use cannot be described as trivial. To change this norm we need a new standard – one where physical discipline is not excused or endorsed.

Recent research concludes that around half of New Zealand children experience discipline that can be described as "harsh" or not "reasonable".¹⁸

¹² Durrant, *International Perspectives on Discipline*, p 4

¹³ Joan Durrant, PhD, *Law Reform and Corporal Punishment in Sweden*, Canada 2005, p 5

¹⁴ Durrant and Janson, *Law Reform, Corporal Punishment and Child Abuse: the case of Sweden*, p 16

¹⁵ Ibid. p 25

¹⁶ UNICEF Innocenti Research Centre, *A League Table of Child Maltreatment Deaths in Rich Nations*, pg 4

¹⁷ Ibid. p 9

¹⁸ Dobbs, *Insights: Children and Young People Speak out about Family Discipline*, as quoted at http://www.savethechildren.org.nz/new_zealand/newsroom/insights.mainpage.html, 2005.

In 2005, a research survey of 80 children aged between five and 14 years old, found that only four of those children had never experienced physical punishment.¹⁹

The research found many children reported experiences of physical punishment that can be described as harsh. Some reported being hit around the head or with implements. Many children said physical punishment was the first line of discipline used by parents, rather than a last resort.

The responses of children participating in that survey also indicated:

- Parental disciplinary messages were not understood
- Discipline was delivered inconsistently and without implicit instruction to children
- Physical discipline is a negative and ineffective experience that causes resentment and fear
- More effective discipline was time out, removing privileges or being grounded, and
- Parents should stop being angry and communicate about what the child had done wrong and what the rules are.

The organisations and individuals who promote physical punishment are relatively few, and many of them have strong religious convictions with some alarming notions about the nature of children.

Some research suggests that between 10% and 20% of New Zealanders rear their children without the use of physical punishment²⁰ and that number is probably growing. The evidence about harms caused by physical punishment would suggest these are not the children and young people out of control, in trouble with the law, or violent.

Fact: Positive parenting is safer and more effective than physical punishment

Children, and an increasing number of parents, perceive physical punishment to be negative and ineffective in teaching children to behave well.

Research commissioned by the Littlies Lobby, conducted by UMR Insight, showed that 71% of parents surveyed thought smacking was the least effective way to guide children to behave well.²¹

Of those parents surveyed, 96% said praising and encouraging good behaviour was the most effective strategy. Leading by example was a close second. Other effective strategies which rated higher than physical punishment, included giving small rewards for tasks well done, talking to children about what was right and wrong, taking time out, and taking away privileges. Certainly, children observe the behaviour of their role models and this is likely to be the biggest influence on them.

Fact: Section 59 discriminates against children

New Zealand's failure to grant children the same legal protection as adults is discriminatory and demonstrates a less than wholehearted commitment to the human rights of children.

As it stands, Section 59 provides protection to adults when they assault a child but does nothing to protect children. Indeed, children are the only group in our society against

¹⁹ Ibid.

²⁰ Millichamp et al, New Zealand Medical Journal 2006, 119, 1228, 1818, and Fergusson, D., Lynskey, M. *Physical punishment during childhood and adjustment in young adulthood*, Child Abuse and Neglect 1997, 21, 7, 617-630.

²¹ Website www.littlieslobby.org.nz/documents/LL_Research_Highlights_Parents_Views.pdf, 2005.

whom the law condones the use of violence. Removing the Section 59 defence would help ensure that children are provided with the same legal protection as adults (and pets) in relation to physical assault.

There is no good reason to discriminate against children by providing protection under the law to those who assault them. Children are our most vulnerable citizens, with an important role in the development of New Zealand's society and economy. They deserve to have their rights to protection upheld in New Zealand law.

The Children's Commissioner reports that:

"Meeting children's civil and political rights means children are treated with dignity and respect and learn to treat others in the same way. It does not require other sectors in society to forgo their rights. Meeting children's economic, social and cultural rights may require their needs to be prioritised over the needs of others. However, the impact of children failing to reach their full potential is to the detriment of everyone in society."²²

Amending Section 59 to address the legal anomaly that provides protection to a person assaulting a child while not protecting the child, would also address another anomaly created by court decisions.

Courts have held that Section 59 and Section 2 of the Crimes Act have the effect that a protection order cannot be obtained on the basis of physical violence to a child if the violence alleged is no more than reasonable force used to correct a child.

This results in the anomalous situation that if a man slaps or hits his partner in the sight or hearing of a child a protection order can be made in favour of the child. However, if a man hits his child using reasonable force by way of punishment the court cannot make a protection order in favour of the child.

Fact: Section 59 breaches international law

In addition to endorsing ineffective and dangerous punishment practices, Section 59 is inconsistent with international law such as the United Nations Convention on the Rights of Child (UNCROC).

The preamble to UNCROC recognises the "inherent dignity and equal and inalienable rights of all members of the human family" and confirms that children require "special safeguards and care, including appropriate legal protection" because of their physical and mental immaturity.

Article 19 of UNCROC states that children have a human right to protection from all forms of violence and abuse. It calls on signatory states to take:

"... all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse ... while in the care of parents, legal guardians or any other person who has the care of the child."

New Zealand's retention of the statutory defence provided by Section 59 has attracted criticism from relevant United Nations committees, including the Committee on the Rights of the Child and the Committee against Torture.

In 2003, the United Nations Committee on the Rights of the Child said:

"The Committee is deeply concerned that despite a review of legislation, the State party has still not amended Section 59 of the Crimes Act 1961, which allows parents to use reasonable force to discipline their children. While welcoming the Government's public education campaign to promote positive, non-violent forms of discipline within the home, the Committee emphasizes that the Convention requires the protection of children from all forms of violence, which includes corporal punishment in the family,

²² Dr Cindy Kiro, Children's Commissioner, *Briefing to the Incoming Minister*, p 7, Wellington, 2005.

and which should be accompanied by awareness-raising campaigns on the law and on children's right to protection."²³

²³ Ministry of Youth Development website: www.myd.govt.nz/uploads/docs/1.5.3closing-obs-2003.pdf

2. Dispelling the myths

Myth: There's an 'anti-smacking bill' before Parliament

It is inevitable that a bill with a moniker like the Crimes (Substituted Section 59) Amendment Bill would get a nickname. Unfortunately, the title 'anti-smacking' bill used by many is not an accurate description, and rather than clarify its intent has tended to trivialise it as well as cause unnecessary alarm among parents. A more appropriate nickname would be the child discipline bill.

The bill is not about the occasional 'smack'. Its intent is to amend Section 59 of the Crimes Act 1961, which currently enables parents and/or carers charged with assaulting their children the opportunity to defend their actions in court, on the grounds that the force used was reasonable and in the interests of correction.

It is a bill which focuses on defence, not the prosecution. The Police and legislators have made it clear that if the bill was passed parents and carers who do not end up in court now would not end up in the courts in future.

Of course, concerns about a child being physically abused by a parent or carer that were lodged with the police and/or Child, Youth and Family, would follow the procedure they do now. [see Myth: parents will be criminalised if Section 59 is repealed].

The Crimes (Substituted Section 59) Amendment Bill is not the original bill proposed by Green Party Member of Parliament Sue Bradford. It was recommended by the majority of the Justice and Electoral Select Committee in its report to Parliament following consideration of over 1700 submissions.

Myth: Parents will be criminalised if Section 59 is repealed

Removing Section 59 will not criminalise loving parents. It will make it easier to protect children from assault.

Section 2(1) of the Crimes Act 1961 defines assault as 'the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable grounds that he has, present ability to effect his purpose.'

A 'smack' falls within that definition and is therefore illegal under present law.

Section 59 provides a defence should the smacking parent be prosecuted.

If the Crimes (Substituted Section 59) Amendment Bill becomes law it will remove the defence and make all use of force for correction illegal. It will thereby provide children with the same legal protections as adults.

All assaults between adults are illegal, but minor assaults do not usually get prosecuted. The police consistently say that while they will have to investigate any complaints of assault on a child they can use discretion in deciding when to prosecute. The Police and Child Youth and Family have said they would work together to develop guidelines if new law is enacted.

Complaints made to the Police or Child Youth and Family of suspected ill-treatment are usually investigated in the first instance by a social worker under the Children, Young Persons and Their Families Act. This is likely to continue. Current practice sees the Police referring parents to parenting education and anger management programmes in the first instance. They are unlikely to take trivial cases to court.

Official advice to Cabinet confirms that loving parents are unlikely to be unnecessarily criminalised following repeal of Section 59:

“There are significant safeguards in the justice system to minimise the risk of parents being prosecuted for trivial offences and it is not feasible or necessary to develop a specific mechanism to manage this risk.”²⁴

Child, Youth and Family made it very clear in their submission to the Select Committee that their practice would not change if Section 59 is repealed and that the guiding principle “of minimal intervention in family life to ensure the safety of a child” will remain.

Child welfare and community groups have publicly stated they will monitor the use and interpretation of the Bill if adopted into law.

Myth: There's nothing wrong with smacking, it didn't do me any harm

Smacking is a euphemism for hitting or striking. When an adult hits a child it is the imposition of a bigger person's force on a smaller person.

While some people argue that they should be able to use physical punishment because “it didn't do me any harm”, physical punishment is a risk factor for child abuse and a variety of other negative outcomes:

“There is overwhelming consistency in the findings of studies indicating that long-term, parental use of physical punishment is associated with negative outcomes for children.”²⁵

The negative outcomes associated with physical punishment include:

- Lessons are not learned and ability to reason via experiencing consequences is not developed
- Reduced problem solving skills
- Reduced quality of child/ parent relationships
- Increased child aggression
- Decreased child mental health
- Increased chances of child abuse
- Increased delinquent and anti-social behaviour in childhood and adulthood,
- Increased chances of the child going on to abuse their own partner or child,²⁶ and
- Impaired marital relationship/ partnerships in adulthood.²⁷

Myth: My children will turn out bad if I don't hit them

Repeal of Section 59 is about discouraging the use of physical punishment but it is not anti-discipline or unsupportive of parents.

Children need firm, consistent discipline to guide their development and behaviour. This involves talking about, explaining and demonstrating the behaviour we wish to see from our children so they can eventually take responsibility for their own behaviour.

Between 10% and 20% percent of New Zealanders rear their children without the use of physical punishment.²⁸ These children are less likely to get into trouble with the law, with

²⁴ *Cabinet Paper presented to the Cabinet Policy Committee, Section 59 of the Crimes Act 1961: Legislative Options, (POL (03) 39), Wellington, 17 March 2003, p 10*

²⁵ Office of the Children's Commissioner and Children's Issues Centre, *The Discipline and Guidance of Children: A Summary of Research*, Wellington, 2004 , p 15

²⁶ Ibid. pp16-17

²⁷ Alicia D. Cast, David Schweingruber (Iowa State University) and Nancy Berns (Drake University), *Childhood Physical Punishment and Problem Solving in Marriage*, Journal of Interpersonal Violence, Volume 21 Number 2, February 2006, Sage Publications

substance abuse and with mental health problems than children who have received harsh and severe physical punishment.

Changing Section 59 would enable the government to build on the growing awareness that there are alternatives to physical punishment and that these alternatives are more effective than hitting children are.

A review of international research concludes that there is very little support for the view that physical punishment 'works' to achieve immediate compliance.²⁹

An unambiguous message about the unacceptability of physical punishment would support parents to employ non-violent discipline techniques.

Using violence to punish a child has the opposite affect of consistent, positive discipline and can result in even worse behaviour. In studies that observe children's behaviour at different points of time, higher rates of misbehaviour occurred two and four years later for children who were smacked versus those who experienced little or no corporal punishment.³⁰

"Most research shows that hitting children increases the likelihood of disruptive behaviour."³¹

"Many parents are not particularly happy with the effectiveness of physical punishment or with the distress it causes, and say that they used it because they did not know what else to do."³²

Physical punishment is increasingly regarded as a detrimental model for conflict resolution. It contributes to violent and criminal behaviour in adulthood, poor conflict resolution skills in marriage³³, as well as to a general community tolerance for violence against children.³⁴

Myth: The government has no right to interfere in issues such as child discipline

The law protects citizens from assault wherever they may be, in the home, on the street or in their workplace. Section 59, as it stands, is an intrusion into the family in that it defends parents who are prosecuted for assault on their children. The new bill limits that intrusion by placing children on the same footing as others with a number of exceptions that cover the ordinary practices of parenthood, such as restraint against harm.

It is the state's responsibility to ensure that its laws serve all its citizens well, reflect current knowledge and research, and do not discriminate against any sector.

The state has exercised power over the family home, particularly to protect citizens from harm, for a long time. Laws about incest, domestic violence, spousal rape, the fencing of swimming pools, and laws that identify a parent's responsibility to the health and education of children are all examples of areas in which there are legal constraints on a person's actions in the home.

It is difficult to justify retaining a law that is incongruent with research showing that physical punishment is harmful; that sometimes serves children poorly in court; is inconsistent with other laws to protect children and reduce violence; and contravenes international law.

²⁸ Millichamp et al, New Zealand Medical Journal 2006, 119, 1228, 1818, and Fergusson, D., Lynskey, M. *Physical punishment during childhood and adjustment in young adulthood*, Child Abuse and Neglect 1997, 21, 7, 617-630.

²⁹ Children's Issues Centre and Office of the Children's Commissioner, *The Discipline and Guidance of Children: A Summary of Research*, p 14

³⁰ Ibid. p 15

³¹ Ibid. p 4

³² Ibid. p 9

³³ Cast, Schweingruber and Berns, *Childhood Physical Punishment and Problem Solving in Marriage*, 2006

³⁴ Nicola Taylor, *Physical Punishment of children: international legal developments*, p 3

Myth: Law change will not help reduce child abuse

The citing of extreme cases of child abuse as evidence that a law change will be ineffective is a wilful distraction from the likely benefits to the large group of children who are subject to a damaging degree of violence that does not result in death or severe external injuries but whose opportunities in life are compromised by the violence they experience in the name of discipline.

Law change and public education will be a step towards changing the culture of violence against children and this will, in time, help to address child abuse.

In 1996 The Ministry of Health cited research carried out by the Office of the Commissioner for Children (1994) which identified three themes dominant within New Zealand society which actively support the development and maintenance of abusive behaviours towards children and which create barriers to the prevention of child abuse.³⁵ These three themes were: a view of children as the property of parents; parents having rights over children; and a prevalence of attitudes, including the active support of the rights of parents and nominated others to hit or assault children as part of a regime of physical punishment.³⁶

Myth: If the law is changed, parents won't be able to use strategies such as 'time out'

Proponents of physical punishment have suggested that removing Section 59 would mean parents were unable to restrain a child to keep them safe. This assertion has been addressed by government officials, who conclude:

“Where restraint or control rather than correction is used to protect the health and safety of a child, a defence of necessity or good motive would be available.”³⁷

The bill's intentions are clear: to reduce violence to children by explicitly banning the use of force for correction purposes, while also reassuring parents that they can forcibly control their children in certain circumstances, such as holding a child about to run on the road. Hitting is never necessary as part of control.

The bill, as amended by the Select Committee, provides for the use of force, such as restraint, as follows:

- (1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of:
 - (a) preventing or minimising harm to the child or another person; or
 - (b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or
 - (c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or
 - (d) performing the normal daily tasks that are incidental to good care and parenting.

The review being proposed in the Labour Party's Supplementary Order Paper will provide an opportunity not only to monitor whether or not parents are being prosecuted for trivial incidents but also whether the new law is being interpreted in ways that will still excuse any hitting in cases that go to court.

³⁵Public Health Group, Ministry of Health, *Child Abuse Prevention: The health sector's contribution to the Strengthening Families Initiative*, Public Health Issues 1995-96 series, Wellington, 1996, p16

³⁶ Ibid. p16

³⁷ Ministers of Justice and Police, *Supplementary Paper – Section 59 of the Crimes Act 1961: Implications of Repeal or Amendment*, Cabinet Paper (CAB (01) 645), 2 November 2001, p 2

Myth: Families will be torn apart if the law is changed

One of the guiding principles of the Children, Young Persons and their Families Act is the need to maintain and strengthen the relationship between children and family, whanau, hapu and iwi.

At Select Committee hearings, Child Youth and Family said the bill would not interfere with current procedures relating to the removal of children at risk.

There is no evidence of families being torn apart in other countries where the equivalent of Section 59 has been removed.

However, reporting rates for incidents of violence against children have increased in those countries as tolerance for violence has reduced. [See 'Eminent Swedish experts paper'].

Myth: Where parents are separated, they will be able to make vindictive claims and accuse each other of physical punishment

Family Court judges have for years expressed disapproval of hitting children, and factor this when deciding on the best day-to-day care arrangements and contact plans for children.

The use of physical punishment is unlikely to be a deciding factor unless it is at the serious end of the scale. Judges do not usually rely on the evidence of one person alone, when making these decisions. Judges often make it a condition of care and contact orders that a parent or carer shall not use physical punishment on a child.

Myth: We should define in law what reasonable force is and how children can be hit safely

We don't define in law the extent to which adults may be assaulted so why should we do it for children? It could be argued that children need greater protection than adults as they are developing both emotionally and physically and are dependant on, and vulnerable to, the care of others.

Given the evidence that physical punishment is a harmful and risky practice it would be wrong to define physical punishment as somehow okay. Further, norms around parenting change as we gain more insights into child development and effective parenting. As such, any attempt to define reasonable force in 2007 is unlikely to be an acceptable definition in the future.

The National Member of Parliament, Chester Borrows, has proposed an amendment to restrict use of force to assaults that cause no more than "transitory and trifling" harm. The term "transitory and trifling" is problematic as it is open to interpretation and its use in Canada has led to the acquittal of parents who have been very heavy handed.

The proposed amendment does not take account of the evidence showing that hitting children is harmful and would still support the conditions that might result in child abuse by perpetuating the belief that hitting children is okay.

Myth: The vast majority of New Zealanders are in favour of physical punishment

While some suggest that Kiwi parents favour physical punishment, research commissioned by the Littlies Lobby, conducted by UMR Insight, showed that 71% of parents surveyed thought smacking was the least effective way to guide children to behave well.³⁸

Ninety-six percent of parents said "praising and encouraging good behaviour" was the most effective. This was closely followed by "leading by example". Other effective strategies that rated higher than physical punishment were giving small rewards for tasks

³⁸ Website www.littlieslobby.org.nz/documents/LL_Research_Highlights_Parents_Views.pdf, 2005.

well done; talking to children about what is right and wrong; taking time out; and taking away privileges.

All Members of Parliament recognise that the levels of violence against children are unacceptable and the Select Committee that considered the Section 59 law change, and looked at the evidence, unanimously agreed that the law had to change.

Myth: Countries that have removed their equivalent to Section 59 have seen no improvement in child safety

A lot of claims and counter claims are bandied around about the impact of similar legislation on children in Sweden. Last year a group of well-known experts from Sweden soundly challenged claims of increased child abuse, youth crime and unhelpful state intervention. [see the Eminent Swedish experts paper enclosed in this media kit].

What is very clear from ongoing tracking of public attitudes in Sweden is that very few parents approve of corporal punishment and that very few of the children surveyed (less than 10%) report ever experiencing corporal punishment.

Seventeen countries have now introduced in law a specific prohibition on physical punishment:

- Sweden (1979)
- Finland (1983)
- Norway (1987)
- Austria (1989)
- Cyprus (1994)
- Denmark (1997)
- Latvia (1998)
- Croatia (1999)
- Bulgaria (2000)
- Germany (2000)
- Israel (2000)
- Iceland (2003)
- Romania (2004)
- Ukraine (2004)
- Hungary (2005)
- Greece (2006)
- The Netherlands (2007)

In addition, in both Italy and Portugal, the Supreme Courts have ruled that physical punishment is unlawful and legislative reviews are now underway. In Belgium, the constitution has been amended to explicitly refer to children's rights and consideration is being given to enshrining these protections in law.³⁹

³⁹ End All Corporal Punishment, <http://www.endcorporalpunishment.org/pages/frame.html>

These organisations work for children's interests in New Zealand.

They provide services or information to almost every family in New Zealand.

In the interests of children and families, they all support the Crimes (Substituted section 59) Amendment Bill sponsored by Sue Bradford and recommended by the majority of the Justice and Electoral Select Committee.

This bill is not anti-family or anti-parent. Rather, it will in time lead to many New Zealand children having more positive childhoods.

The following organisations wish to congratulate the politicians who are voting for this bill.



Royal NZ Plunket Society
Barnardos New Zealand
Presbyterian Support New Zealand
Save the Children NZ
UNICEF
The Children's Commissioner
Families Commission
Child Poverty Action Group New Zealand
EPOCH NZ
Every Child Counts
Children's Issues Centre University of Otago
Human Rights Foundation
Parents Centres NZ Inc
IHC
Child Helpline Trust
National Collective of Independent Women's Refuges
Christchurch Women's Refuge
The Paediatric Society of New Zealand
NZCCS - community disability support
NZ Family Planning Association
National Council of Women New Zealand
Jigsaw
Action for Children and Youth Aotearoa
Home and Family Counselling (Auckland)
Christchurch Methodist Mission
Christchurch Resettlement Services
Home and Family Society Christchurch
Waipuna Youth and Community Trust (Christchurch)
Violence Free Waitakere
ParentingWorx
Starfish Charitable Trust
Women's International League for Peace and Freedom
Inner City Group for Men
United in Civil Union Trust
OMEP Aotearoa/New Zealand
Soulway Church Masterton
Hauraki Safety Network
North Shore Women's Centre
Wesley Community Action
Stopping Violence Services Nelson
Nelson Rape and Sexual Abuse Network
Queenstown Lakes Family Centre
Quaker Peace and Service
Across Social Services Palmerston North
Parent and Family Counselling Whangarei
Your Day Trust
Living Without Violence Waiheke
YouthLaw
National Network of Stopping Violence Services
Relationship Services
The Body Shop
Start Inc (Christchurch)
New Zealand Psychological Society
Karanga Mai Early Learning Centre
Motu Weka Early Learning Center

Key dates leading to changes to Section 59 of the Crimes Act

In the nineteenth century, the legal use of physical punishment was widespread: judicial, educational, work related, and in the family (wives, children and servants). Furthermore, even a casual reading of the literature and newspapers of the time show that its use was accepted and normal.

- 1867** Offences against the Person Act made provision for the whipping of boys under 16 a punishment on conviction for certain offences.
- 1893** Criminal Code Act gave statutory recognition to the long established English common law principle that parents and schoolteachers could use reasonable chastisement to correct the behaviour of children under their authority. The Criminal Code Act also confirmed the right of employers to hit their servants and apprentices and increased the number of crimes for which flogging and whipping could be given as a judicial punishment. Under-16-year olds could be whipped with a rod for 30 criminal offences. Over-16 year-olds could be flogged with a cat of nine tails.
- 1908** Crimes Act confirmed the right of parents and teachers to use corporal punishment.
- 1935** Cadogan Report (United Kingdom) urged the repeal of laws, which allowed the birching of young people, the Committee finding that it was not a suitable or effective method of punishment.
- 1935** Last judicial flogging in New Zealand.
- 1941** Crimes Amendment Act abolished judicial whipping of boys.
- 1948** Corporal punishment as a judicial penalty abolished in the United Kingdom but continued as a punishment in prisons and approved schools.
- 1959** United Nations Declaration on the Rights of the Child stated that children should enjoy special protection including legal safeguards and protection from all forms of cruelty.
- 1960** Barry Report (United Kingdom) unanimously opposed the reintroduction of corporal punishment as a judicial punishment finding no evidence that it was an effective deterrent.
- 1961** Crimes Act included statutory confirmation (Section 59) of the common law principle that parents, care providers and schoolteachers could use force to correct the behaviour of children.
- 1964** Society for the Discouragement of Physical Punishment in Schools established by Professor Basil James.
- 1968** Justice Department Report 'Crime in New Zealand' concluded that corporal punishment was objectionable because it was ineffective as a deterrent, degrading, and unsuitable as a means of punishing juveniles.
- 1976** International Covenant on Civil and Political Rights (later ratified by New Zealand) stated that no person should be subjected to cruel, inhuman or degrading treatment or punishment.
- 1978** European Court of Human Rights in *Tyrer v United Kingdom* held that the judicial birching of a 15-year-old boy in the Isle of Man was 'degrading punishment' and breached the European Convention on Human Rights.
- 1978** Parliamentary Select Committee on Violent Offending decided that legislation should not be used to change parental attitudes to smacking despite a submission by the Justice Department that the "alleged special potency of corporal punishment was a myth."
- 1979** Sweden was the first country in the world to prohibit all corporal punishment of children. Sweden has since been followed by Finland, Denmark, Norway, Austria, Cyprus, Latvia and Croatia.
- 1979** Penal Policy Review Committee of the Department of Justice advised that the reintroduction of corporal punishment as a judicial penalty would damage New Zealand's international reputation.

- 1979** International Year of the Child. At a major conference on the Rights of the Child and the Law, James and Jane Ritchie argued strongly for the repeal of Section 59 of the Crimes Act to a mixed response.
- 1980** New Zealand Committee for Children established to carry on the initiatives from International Year of the Child. The Committee consistently opposed the use of corporal punishment.
- 1981** In 'Spare the Rod', the first comprehensive critique of corporal punishment of children in all its forms, the Ritchies made a strong case for legal reform.
- 1982** Human Rights Commission Report on children in Auckland residential homes heard from staff and residents of the physical ill treatment and punishment and questioned whether this amounted to cruel, inhuman, degrading treatment or punishment in terms of the Covenant on Civil and Political Rights.
- 1984** Labour government indicated its intention to abolish corporal punishment in schools and childcare centres.
- 1985** Child Care Centre Regulations removed the right to use corporal punishment in any Child Care Centre.
- 1986** Children and Young People (Residential Care) Regulations banned the use of corporal punishment in all residential institutions run by the Department of Social Welfare (now Child, Youth and Family).
- 1987** Ministerial Inquiry into Violence called for the abolition of corporal punishment.
- 1989** Children, Young Persons and their Families Act (New Zealand's most comprehensive child protection law) allowed the state to intervene to protect children from abuse and neglect. It has been held to be subject to Section 59, which permits parents and carers to hit children.
- 1989** Ministerial Inquiry into Pornography favoured the abolition of corporal punishment.
- 1989** New Zealand's first Commissioner for Children appointed. Dr Ian Hassall and successive Commissioners for Children continued to press for the repeal of 59.
- 1989** New Zealand University Law Review published an article by Professor John Caldwell reviewing the law of corporal punishment, and concluded with the comment that our descendants would probably be appalled by the legal power we gave adults to beat their children.
- 1990** Members of Parliament passed Education Amendment Act, a private member's Bill to abolish all corporal punishment in state and private schools, on a conscience vote.
- 1991** Department of Social Welfare policy on punishment for departmental foster parents and family home caregivers stressed that corporal punishment was unacceptable.
- 1993** United Nations Convention on the Rights of the Child ratified by New Zealand. The government undertook to take all legislative and administrative measures to protect children from all forms of physical violence, abuse or maltreatment and to further protect them from cruel, inhuman or degrading punishment.
- 1996** Domestic Violence Act provided for protection orders in cases of family or household violence (physical, sexual and/or psychological). Parliament agreed the definition of 'violence' should be subject to the right of parents in Section 59 to hit their children by way of correction.
- 1997** United Nations Committee on the Rights of the Child recommended that New Zealand review Section 59 of the Crimes Act and effectively ban all forms of physical violence towards children.
- 1997** EPOCH International branch opened in New Zealand dedicated to the ending of all physical punishment of children.
- 1997** European Court of Human Rights in A v United Kingdom held that the caning of a child by his stepfather amounted to an inhuman or degrading punishment and ordered the British government to pay NZ\$30,000 compensation.

- 1998** 'Children are Unbeatable', an alliance of New Zealand non-government organisations, was established to press for legal reform which would give children the same protection as adults.
- 1998** Department of Social Welfare ran a national publicity campaign to educate parents about more effective ways (than corporal punishment) to modify children's behaviour.
- 2003** The United Nations Committee on the Rights of the Child report on New Zealand's compliance with the United Nations Convention on the Rights of the Child, strongly condemned the country's failure to repeal Section 59 despite previously requests that it do so.
- 2005** 9 June the Private Member's Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill was introduced by Green Party Social Development Spokesperson, Sue Bradford.
- 2005** 27 July, the First Reading of the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill. The bill was referred to the Justice and Electoral Committee for public and private submissions.
- 2006** 20 November, the Justice and Electoral Select Committee reported back to Parliament on the bill, after considering 1700 public submissions.
- 2007** 21 February, the bill had its Second Reading in Parliament. The bill, amended by the Select Committee, was adopted and agreed to by Parliament. For more information on the progress of the Crimes (Substituted Section 59) Amendment Bill visit www.parliament.govt.nz).

Eminent Swedish experts comment on misrepresentation of the effect of Swedish corporal punishment ban

Given the importance of the decision before the New Zealand Parliament on Section 59 of the Crimes Act, and given how prominent the Swedish situation has become in the debate, we believe that it is critical to provide accurate information about the Swedish situation. We are aware that a number of claims made in the media have raised fears about the consequences of law reform. These claims are unfounded and grossly misrepresent the Swedish situation. We wish to set the record straight.

First, the criminal defence equivalent to Section 59 was repealed in Sweden in 1957 – almost 50 years ago. Since that time, corporal punishment has been considered assault under the law. But just as trivial assaults against adults are not prosecuted, neither are trivial assaults against children prosecuted. In order to charge and prosecute a parent, such action would have to be in the child's, the family's and the public's best interests. Certainly, prosecution in the case of a minor incident would not serve the interests of the child, the family or the society.

Second, the corporal punishment “ban” implemented in 1979 was a symbolic measure. It simply ensures that all Swedes know that children have the same protection that adults enjoy. It did not create a new crime of smacking. The ban is there simply to educate. Because it is so clear, it has been extremely helpful in educating parents about the harms of smacking, as well as motivating them to seek out parent support programs. But it has nothing to do with prosecution because it is not a criminal law. In fact, since the ban was implemented, the prosecution rate has not changed.

Third, law reform in Sweden has not resulted in a greater willingness of child welfare authorities to remove children from their homes. In fact, by far the most common child welfare measure is the provision of in-home support to families, including personal support and provision of contact families who provide assistance and respite to families under stress. Fewer than 4,000 children entering the system for the first time in 2004 were placed in out-of-home care and only about 200 of these were placed in immediate custody.

Fourth, making physical punishment unacceptable in Swedish society has led to greater public awareness of violence against children. It is more likely now that maltreatment of children will be identified and reported. Increased detection and reporting was one of our objectives, as it has been in many countries seeking to address violence against children. Unfortunately, the increase in reporting statistics has been misinterpreted by some as an indication of increased child abuse. In fact, there is no evidence to support the claim that actual child abuse has increased in Sweden. Rather, the reporting rate has increased because professionals are now required to report suspected maltreatment and because members of the public are less likely to look the other way.

Fifth, Swedish parents are not afraid of their children nor are they afraid to discipline them. Studies of Swedish parents have found them to be quite willing to control and set limits on their children's behaviour. But Swedish parents rarely smack their children as discipline. They are much more likely to use positive methods of teaching their children – the kinds of methods that have been shown to encourage children's compliance while building relationships and improving communication between parents and children.

Sixth, the aim of law reform in Sweden has always been to protect children, not to punish parents. The law operates in conjunction with parent education and support. The law sets a clear standard of non-hitting; parent education programs provide the support parents need to achieve that standard. Virtually all Swedish parents participate in parent support and education programs. As they do so, their parenting skills increase and the need for intervention into families declines. In fact, parents' use of physical punishment has declined dramatically over recent decades and child abuse deaths are virtually unheard of.

Seventh, improvements in parenting skills have been reflected in improvements in children's health and well-being. Today's Swedish youth, for example, are extremely unlikely to use drugs on an ongoing basis and they have become less likely to become involved in criminal activity. While some have claimed that Swedish youth have become increasingly violent, this claim is based on misrepresentations of the statistics. In fact, Swedish youth are no more

violent today than they were 20 years ago. What has changed is that bullying is more likely to be reported and it is recorded in the assault statistics.

In summary, law reform in Sweden has not led to greater government intrusion into family life. Rather, it has set a clear standard for which parents now strive and it has reinforced the value of positive parenting. In Sweden, law reform has been a vital and effective tool for public education and child abuse prevention. Our law has been essential to our ability to protect children while supporting families.

Sincerely,

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