

EPOCH New Zealand

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Guidelines for Making a submission on Section 59 Crimes Act 1961

General Information on Making a submission (For further information obtain a copy of “Making a Submission to a Parliamentary Select Committee” www.clerk.parliament.govt.nz/Publications/Other).

You can make a submission as an organisation or as an individual.

How to present a submission

1. Head your submission with the name of the select committee to which it will be addressed – *The Justice and Electoral Select Committee*.
2. Give the Full Title of the Bill – *Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill*
3. State who the submission is from and give a contact address, email and daytime phone number.
4. State whether you want to appear before the committee in person to make an oral submission.
5. Begin your submission with your own or your organisation’s name and function.
6. Describe your support – who you consulted, or who you represent.
7. Submissions are better typed.
8. Use headings and paragraphs. Number your paragraphs.
9. Number pages.
10. Staple pages together.
11. Be clear, concise (keep it brief) and accurate. You may wish to make references and include a list of references but don’t quote long passages from these verbatim.
12. End your submission with a clear recommendation or recommendations.

Send 20 copies of your submission to:

Clerk of the Committee
Justice and Electoral Select Committee
Select Committee Office
Parliament Buildings.
Wellington

Ensure that your submission is sent before the closing date for receiving submissions.

Note: The dot points given below are for guidance only. It is very important that you use your own words and develop sentences and paragraphs. You do not need to include all the points – expand on those that are most relevant to your knowledge and experience. Submissions that are exact copies of others may not be influential.

The following dot points give some information on relevant topics. You do not have to include all these.

The key points to include are that you/your organisation supports full repeal of section 59 and do not support amendment to define “reasonable force”.

Physical punishment of children harms

- International research conclusively demonstrates that physical punishment is ineffective in helping children learn how to behave well and there is ample evidence of many poor outcomes associated with the use of physical punishment. (OCC and Children’s Issues Centre, 2004)
- One of the aims of reform of section 59 must be to strongly discourage physical discipline of children (also known as corporal punishment or physical punishment).
- The removal of the statutory defence (section 59 Crimes Act 1961) would send a strong public message that physical punishment of children is unacceptable.
- Repeal of section 59 should be accompanied by a clear message that one of the intentions is to strongly discourage the use of physical punishment and to encourage parents and caregivers to learn positive, non-physical ways of disciplining children.
- Repeal of section 59 should be accompanied by ongoing parent and public education about the damage that physical punishment can cause to a child’s health and development and about alternative positive forms of discipline.
- Children themselves regard physical discipline ineffective, hurtful and unfair. Many experience forms of physical punishment that far exceed the light tap or smack promoted by supporters of the use of physical punishment (Dobbs, 2005)
- New Zealand may not yet be ready for an explicit ban on corporal punishment such as has been included in civil law in a number of European countries. However, at some point in the near future New Zealand should introduce a principle in legislation that explicitly bans physical punishment. This would not make a new crime but rather establish a principle in law. The General Principles of the Children, Young Persons and their Families Act 1989 would be a suitable place for such a principle to be included.

Protection from abuse

- Section 59 is inconsistently applied in the courts and there have been a number of cases where serious assaults, resulting in visible injuries, have been excused as reasonable force. These cases clearly amount to child

abuse. In such cases the courts are not adequately protecting children from abuse and those that inflict the abuse are not held accountable. (Hancock, 2004).

- The law in regard to assault should be the same for children as it is for adults. There is no good reason why there should be permission or excuse for assault on children.
- Physical punishment is a risk factor for child abuse. Children in homes where physical punishment is the norm are more likely to be abused than children in homes where it is not (Durrant, 2002, Straus 2000). Parents found to have physically abused their children often explain their actions as attempts to discipline (Leach, 1999).

State excused violence

- Child abuse and domestic violence are serious problems in our society (UNICEF, 2003, Fanslow, 2005).
- Considerable government effort and expenditure are going into trying to identify ways of reducing family violence (MSD, 2002). Physical punishment is a form of family violence. Changing the law would help ensure consistent messages about the inappropriateness of violence.
- Physical punishment sets a bad example to children modelling, as it does, violence as a way to express anger or resolve conflict. Children learn from their own experiences.
- In New Zealand the state excusing of physical discipline of children symbolically excuses a form of violence and perpetuates its use.

Physical discipline breaches children's rights

- Article 19 of the United Nations Convention on the Rights of the Child indicates that children have a human right to protection from all forms of violence and abuse. The Committee on the Rights of the Child consistently recommends to all countries that have ratified the Convention and report regularly on compliance that they should prohibit all forms of corporal punishment.
- The last UN Committee on New Zealand's Compliance with the Convention had explicit observations and recommendations to New Zealand in regard to corporal punishment (See Appendix 3).
- The New Zealand Plan of Action on Human Rights published in 2005 explicitly recommends repeal of section 59 (Human Rights Commission, 2005)

Public protest and fears

- There are some indications that the use of physical punishment of children is declining amongst some groups of parents (MSD, 2005, Sanders, 2005).

- Further progress in reducing the use of physical punishment will be slow without removal of section 59 and ongoing parent education about alternatives.
- Indications are that law change positively influences public attitudes. Countries that explicitly ban physical punishment have, over time experienced a very significant reduction in the use of physical punishment (Durrant, 2004, Bussman, 2004). This is why repeal of section 59 should be accompanied by a clear message that assault of a child will be illegal following repeal and that physical punishment is strongly discouraged.
- In many countries explicit prohibition has followed the removal of statutory defences.
- However, there are strong lobbies for maintaining what some people see as a useful form of discipline and a parental right. Many adults simply do not have, or want to know, information about the poor outcomes that accompany the use of physical discipline and the value of effective positive alternatives. Some of these people can be convinced with information and education.
- A minority are convinced, sometimes because of religious beliefs, that physical punishment is essential. There is no evidence that physical punishment serves any positive purpose in guiding children's behaviour.
- Much protest about repeal of section 59 arises from fears of prosecution for minor assaults. Repeal of section 59 removes the defence used by parents who commit an assault on their child and makes any assault a crime. In reality complaints to the police are unlikely to be made in cases of minor assault, prosecutions are even more unlikely. Some who fear prosecution may have good reason to do so – their use of physical discipline may be excessive.
- It is possible that Member of Parliament will want to allay public fears of prosecution for minor assaults (a little smack). Police Guidelines on prosecutions where children are the victims of assault may be one option.
- Amendment of the Crimes Act to describe how a child can be hit (amendment to describe reasonable force) is not an acceptable option. It perpetuates the view that violence against children is acceptable.

Amendment to define “reasonable force” unacceptable.

- While on the surface amendment to define and limit “reasonable force” might appear an easy option to reduce public fears and increase public acceptance there is much that is wrong with this approach to reform of section 59.
- One of the common suggestions for a definition of reasonable is that reasonable is defined as an assault with an open hand (no implements) on the back or legs.

- This approach maintains an explicit permission to smack or hit a child, setting children apart from other citizens in regard to assault, and implying that physical punishment, a form of violence, is acceptable, possibly even desirable.
- This is a poor public message. It breaches children's rights. It may still fail to protect children because defining what is safe is difficult – children can be badly injured by on open hand if they are hit hard enough, even below the head. Such assaults can go wrong if the parent loses control or the child moves.
- Defining safe hitting is problematic – at what age can a child be struck, at what age does it become illegal to strike a child, who can strike a child, what about emotional harm, how often can a child be struck and what circumstances would be defined as “domestic discipline”? How will the parent's intent be identified (when is something correction and is an assault the best form of correction in the circumstances). How does one measure emotional harm?

Recommendations

End your submission with a clear recommendation or set of recommendations in your own words, for example:

- 1 That section 59 Crimes Act be fully repealed.
- 2 That repeal is accompanied by a clear message that physical discipline is unacceptable.
- 3 That repeal is accompanied by ongoing public education about positive non-violent discipline.

References

The references that have been included in this submission are relatively easily available either from websites or from bethwood@xtra.co.nz. If you have other evidence for the points you make in your submission it will be useful to include these.

Bussmann, KD. (2004). Evaluating the Subtle Impact of a ban on Corporal Punishment of Children in Germany. *Child Abuse Review* Vol 13: 292-311. (Not available electronically. Summary of this research available from bethwood@xtra.co.nz)

Dobbs, T. (2005) *Insights: Children and young people speak out about family discipline*. Wellington. Save the Children. (Copy from Save the Children info@savethechildren.org.nz)

Durrant, J. (2002) Physical Punishment and Physical Abuse. BC Institute Against Family Violence Newsletter: Winter 2002.
[Http://www.bcifv.org/resources/newsletter/2002/winter/durrant.shtml](http://www.bcifv.org/resources/newsletter/2002/winter/durrant.shtml)

- Durrant, J. (2004). *Public Education and Physical Punishment*. Littlies Lobby breakfast presentation June 2004. Parliament Buildings. Wellington. (Copy of powerpoint presentation available from bethwood@xtra.co.nz).
- Fanslow, J. (2005). *Beyond Zero Tolerance: Key Issues and future work directions for family violence work in New Zealand*. Wellington. The Families Commission. <http://www.familiescommission.govt.nz/family-violence.php>
- Hancock J, (2003). Review of NZ case law involving section 59 of the Crimes Act 1961 for the Committee on the Rights of the Child. Auckland Action for Children and Youth Aotearoa. (Electronic copy available from bethwood@xtra.co.nz).
- Human Rights Commission. (2005). New Zealand Action Plan for Human Rights. [www/hrc.co.nz/report/action plan](http://www/hrc.co.nz/report/action_plan).
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- Ministry of Social Development. 2002. *Te Rito: New Zealand Family Violence Strategy* (From publications on www.msd.govt.nz).
- Ministry of Social Development. 2005. *Strategies with Kids: Information for parents (SKIP) Research Report* ((From publications on www.msd.govt.nz).
- Office of the Children's Commissioner and Children's Issues Centre. (June 2004). *The Discipline and Guidance of Children; A summary of Research*. Wellington. Office of the Children's Commissioner. (Copies available from Office of Children's Commissioner)
- Saunders, A (2005) *Survey supports End to Smacking*. Dompost 27 July 2005.
- Straus, M. (2002). Corporal punishment and primary prevention of child abuse. *Child Abuse and Neglect*: 24:1109-1114. (Paper copy available from bethwood@xtra.co.nz)
- UNICEF. (2003). *A league table of child maltreatment deaths in rich nations*. Innocenti Report Card, Issue No 5. Florence: Innocenti Research Centre, UNICEF. <http://www.unicef-icdc.org>

Note: The appendices are included for information only. They do not need to be included in your submission.

Appendix 1 Section 59 Crimes Act 1961

Domestic discipline

- (1) Every parent of a child and every person in the place of a parent of a child is justified in using force by way of correction towards the child, if the force used is reasonable in the circumstances.

Appendix 2 – Text of Sue Bradford’s Bill

Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill

Member’s Bill

Explanatory note

The purpose of this Bill is to stop force, and associated violence being inflicted on children in the context of correction or discipline. Presently, section 59 of the Crimes Act 1961 acts as a justification, excuse or defence for parents and guardians using force against their children where they are doing so for the purposes of correction and the force used is reasonable in the circumstances. The Bill will repeal that provision.

The effect of this amendment is that the statutory protection for use of force by parents and guardians will be removed. Children will now be in the same position as everyone else so far as the use of force (assault) is concerned. The use of force on a child may constitute an assault under section 194(a) of the Crimes Act, a comparatively new provision in the criminal law, and the repeal of section 59 ought not revive any old common law justification, excuse or defence that the provision may have codified.

Clause 4 simply repeals section 59.

Clause 5 makes consequential amendments to section 139A of the Education Act 1989 to remove the exemption for guardians in the prohibition on corporal punishment in schools.

Sue Bradford

Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill

Member’s Bill

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Act 2005.

(2) In this Act, the Crimes Act 1961 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to amend the principal Act to abolish the use of reasonable force by parents as a justification for disciplining children.

4 Domestic discipline

Section 59 of the principal Act is repealed.

5 Consequential amendments to Education Act 1989

(1) Section 139A(1) of the Education Act 1989 is amended by omitting the words “, unless that person is a guardian of the student or child”.

(2) Section 139A(2) of the Education Act 1989 is amended by omitting the words “, unless that person is a guardian of the student or child”.

Appendix 3 European Legislation

From “Ending legalised violence against children: Report for Europe and Central Asia Regional Consultation – The UN Secretary General’s Study on Violence against Children”. Ljubljana, Slovenia 2005.

**Published by Global Initiative to End All Corporal Punishment of Children.
www.endcorporalpunishment.org**

EUROPEAN STATES WITH EXPLICIT LAWS PROTECTING CHILDREN FROM ALL CORPORAL PUNISHMENT

1979
Sweden

"Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment." (*Parenthood and Guardianship Code*, as amended 1979, article 6.1)

Note: In 1957, the legal defence for the use of corporal punishment by parents was removed from criminal law. In 1966, a provision allowing "reprimands" was removed from the *Parenthood and Guardianship Code*.

1983
Finland

"A child shall be brought up in the spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. His growth towards independence, responsibility and adulthood shall be encouraged, supported and assisted." (*Child Custody and Rights of Access Act*, 1983, in force 1984, article 1.3)

Note: In 1969, the Criminal Code was amended to remove parents' defence against prosecution for petty assault if committed during the exercise of their lawful "right" to chastise their child.

1987
Norway

"The child shall not be exposed to physical violence or to treatment which can threaten his physical or mental health." (*Parent and Child Act*, as amended 1987)

Note: In 1972, parents' "right" to use moderate physical punishment was removed from the Criminal Code provisions on assault. Physical restraint is permissible if the child is at risk of injury to him/herself or others.

1989
Austria

"The minor child must follow the parents' orders. In their orders and in the implementation thereof, parents must consider the age, development and personality of the child; the use of force and infliction of physical or psychological suffering are not permitted." (*General Civil Code*, 1989, section 146a)

Note: In 1977, the defence of "reasonable" punishment was removed from the law on assault.

1994
Cyprus

Law prohibits "any unlawful act or controlling behaviour which results in direct actual physical, sexual or psychological injury to any member of the family". (*Family (Prevention and Protection of Victims) Law*, 1994)

Note: It is also an offence for violence to occur in the presence of a child.

1997
Denmark

"The child has the right to care and security. He or she shall be treated with respect as an individual and may not be subjected to corporal punishment or any other degrading treatment." (*Parental Custody and Care Act*, amended 1997)

Note: In 1985, the Custody and Care Act was amended to state "Parental custody implies the obligation to protect the child against physical and psychological violence and against other harmful treatment", but further explicit prohibition was found to be necessary.

1998
Latvia

"A child cannot be treated cruelly, cannot be tormented and physically punished, and his/her dignity and honour cannot be offended." (*Law on Protection of the Rights of the Child*, 1998, article 9.2)

The law criminalises "failure to discharge parental obligations ... the malicious usage of parental authority, the physical punishing of a child, as well as cruel behaviour against him/her" (*Law on Protection of the Rights of the Child*, 1998, article 24.4)

1998
Croatia

"Parents and other family members must not subject the child to degrading treatment, mental or physical punishment and abuse." (*Family Act*, 1998, in force 1999, article 87)

"Children have the right to a non-violent upbringing. Corporal punishment, psychological injuries and other humiliating measures are prohibited." (*Bürgerliches Gesetzbuch* [German civil law], as amended 2000, article 1631)

Local authorities have a duty to "promote ways in which families can resolve conflict without resort to force" (*Sozialgesetzbuch* [German childcare law])

Note: In 1998, an amendment to the Civil Law prohibited "degrading methods of discipline including physical and psychological abuse", but further explicit prohibition was found to be necessary.

2000
Germany

"Every child has a right to protection against all methods of upbringing, that undermine his or her dignity, against physical, psychical or other types of violence; against all forms of influence, which go against his or her interests." (*Child Protection Act*, 2000, article 11.2)

2000
Bulgaria

Note: The complexity of provisions relating to "trivial" bodily injury in the Penal Code seem to limit the protection available to children, and there has been little public education concerning the prohibition.

"It is the parents' obligation to protect their child against any physical or mental violence and other degrading or humiliating behaviour." (*Children's Act*, 2003)

2003
Iceland

Parents have an obligation "to treat their children with care and consideration" and "to safeguard their welfare at all times". (*Child Protection Act*, 2002)

The law concerning the responsibilities of parents towards their children prohibits corporal punishment and any other humiliating punishment or treatment (*Family Code*, 2003 in force 2004, article 150).

2003
Ukraine

Note: The Prevention of Domestic Violence Act (2001, in force 2002) also outlaws violence against children in the home. It defines domestic violence as "any intentional action of one family against another family member if such action infringes Constitutional and civil rights and freedoms of a family member and injures his physical, mental and moral health, and as well as child's development", and physical domestic violence as "an intentional beating, body injuring of one family member by another as well as intentional limitation of freedom, place of residence, food, clothing and other normal life conditions, which may result in victim's death or may cause disturbance of his physical and mental health or may harm his honor and dignity" (article 1).

"(1) The child has the right to be shown respect for his or her personality and individuality and may not be made subject to physical punishment or to other humiliating or degrading treatment. (2) Disciplinary measures concerning the child can only be taken in accordance with the child's dignity, and, under no circumstances are physical punishments allowed, or punishments which relate to the child's physical and mental development or which may affect the child's emotional status." (*Law on Protection and Promotion of the Rights of the Child*, 2004, in force 2005, article 28)

2004
Romania

"It is forbidden to enforce physical punishment of any kind or to deprive the child of his or her rights, which may result in endangerment of the life, the physical, mental, spiritual, moral and social development, the bodily integrity, and the physical and mental health of the child, both within the family, as well as in any institution which ensures the protection, care and education of children." (*Law on Protection and Promotion of the Rights of the Child*, 2004 in force 2005, article 90)

"The child has the right to be respected his/her human dignity, to be protected against abuse – physical, sexual and mental violence –, failure to provide care and injury caused by any information. The child shall not be subjected to torture, corporal punishment and any cruel, inhuman or degrading punishment or treatment." (*Act on the Protection of Children and Guardianship Administration*, 1997, as amended 2004, in force 2005, article 6.5)

2004
Hungary

Appendix 4 United Nations Committee on the Rights of the Child Observations and recommendations on corporal punishment – Report to New Zealand Government – September 2003

Corporal punishment

1. 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, and which should be accompanied by awareness-raising campaigns on the law and on children's right to protection.
2. The Committee recommends that the State party:
 - a) **Amend legislation to prohibit corporal punishment in the home;**
 - b) **Strengthen public education campaigns and activities aimed at promoting positive, non-violent forms of discipline and respect for children's right to human dignity and physical integrity, while raising awareness about the negative consequences of corporal punishment.**