

Physical punishment of children in New Zealand – six years after law reform.

This short report provides current information on: public attitudes towards the use of physical punishment with children, attitudes towards the 2007 law which made the use of physical punishment of children illegal in New Zealand, and information about Police implementation of the law. In 2013, fewer people in New Zealand than in 2008 believe that it is alright to use physical punishment with children.

Background

Until 2007 section 59 of the Crimes Act 1961 provided a statutory defence in law that in effect made physical punishment of children legal in New Zealand (as long as it was reasonable under the circumstances). The pre-2007 law:

- violated children's rights to protection from violence,
- implicitly endorsed the use of physical punishment of children,
- reflected an outdated tradition about the use of force to influence behaviour,
- contradicted mounting evidence about the negative effects of the use of physical punishment,
- was inconsistent with public campaigns to reduce family violence, and
- led to inconsistent court decisions.

The advocacy efforts that preceded law change extended over many years and set the scene so that when MP Sue Bradford's private bill was drawn from a ballot in Parliament in 2005 the opportunity provided was fruitful. There was considerable support from community and professional organisations for law reform. The debate surrounding law change was conducted to a large extent in the media and the issue was both fiercely debated and divisive. A full history of the law change is available¹

On advocates' wish list at the time of law change were: public education campaigns to inform New Zealanders' about the law change aimed at increasing support for the new law, increased promotion of positive parenting, and on-going monitoring of the impact of the new law. There have been no public campaigns to support the law. An existing Government-funded positive discipline initiative, *Strategies with Kids, Information for Parents (SKIP)*² has continued and many organisations provide parents with positive parenting information. More could be done to promote positive parenting particularly with community-led approaches. In 2008 the Children's Commissioner published a report providing information on attitudes towards physical punishment one year after law reform³. It was intended in part to set a baseline for future monitoring of the impact of the law.

Three major factors underpinned opposition to the 2007 law change. These were adherence to the belief that physical punishment was a necessary and positive part of child discipline, resentment of what was seen as Government interference in family life, and fear that the law change would lead to mass prosecutions of parents who occasionally used minor physical punishment.

¹ Wood, Hassall, Hook and Ludbrook. 2009. *Unreasonable Force: New Zealand's journey towards banning the physical punishment of children*. Wellington. Save the Children. <http://epochnz.org.nz/cms1/images/stories/documents/s59%20Book.pdf>

² www.skip.org.nz

³ 2008. *One Year On: Public attitudes and New Zealand's Child Discipline Law*. Wellington. Office of the Children's Commissioner. http://www.occ.org.nz/_data/assets/pdf_file/0008/5669/OCC_UMR-Research_141108.pdf

In 2009 a non-binding referendum was promoted by groups opposed to the law change, under the Citizens' Initiated Referendum mechanism. The petition preceding the referendum and the referendum used a misleading and confusing question. It is likely that the massive publicity surrounding the referendum further fuelled public fears and negative feelings. The new law remained intact and in an effort to address public fears about the law the two-year monitoring of Police implementation of the law, which was established with the new law, was extended by a further three years.

Information sources for this report

Information about attitudes to the law and about the place of physical punishment in the discipline of children came from the results of two questions placed in an April 2013 UMR Research omnibus survey of 750 adult New Zealand residents. These two questions and the methodology are consistent with questions asked in the 2008 survey commissioned by the Children's Commissioner, thus the results are comparable. A copy of the full UMR 2013 report including methodology and detailed results can be obtained by emailing EPOCH New Zealand on: epochnz@gmail.com Information on Police monitoring of the implementation of the law is available in their report, '11th review of the Crimes (Substituted Section 59) Amendment Act 2007'.⁴

HEADLINE Results

Is physical punishment ever alright?

There are certain circumstances when it's alright for parents to use physical punishment with children.

Respondents were asked their degree of agreement or disagreement with this statement as they were in 1981 by Jane and James Ritchie, in 1993 by Dr Gabrielle Maxwell for the Office of the Commissioner for Children and again in 2008 by the Children's Commissioner. In 2008, 58% of respondents agreed and in 2013 40% agreed, a decline of 18%. In the 1980s over 90% agreed and in 1990s over 80%.⁵

Respondents who were parents were almost equally divided in their views on the place of physical punishment with 37% of parents indicating that physical punishment is 'not alright' and 35% indicating that physical punishment is 'sometimes alright'. However the proportion of parents with children under 18 who thought it is alright to use physical punishment with children was down 27% from 2008 (from 62% in 2008 to 35% in 2013).

In 2013 male respondents were more likely to support physical punishment (48%) than women (34%) – this was also the case in 2008.

Comment: The proportion of people who think that it is ever alright to use physical punishment with children is declining steadily. There is a significant reduction in support for the use of physical punishment since 2008. We do not know to what extent this change has been influenced by the law change, the debate that accompanied it or parent education. The trend is a positive one.

Support for the law:

⁴ Available at: <https://www.Police.govt.nz/sites/default/files/resources/other-reports/11th-review-section-59.pdf>

⁵ Reported in One Year On: Public Attitudes and New Zealand's Child Discipline Law, http://www.occ.org.nz/_data/assets/pdf_file/0008/5669/OCC_UMR-Research_141108.pdf

To what extent do you oppose or support the 2007 law about physical punishment of children? In 2013 93% of those surveyed were aware of the law change. Of those who are aware of the law change 35% said they supported the law change, down 8% since 2008. Thirty-one percent were opposed to the law change, up 3% since 2008.

Comment: Declared support for the law was down a little, even though there was also a drop in acceptance of physical punishment of children. These results in part reflect people shifting from a support position to a neutral position (perhaps because of the reduction in publicity surrounding the new law). This result is not surprising given there has been little public effort to promote the law positively, and the influence of the referendum.

Police implementation of the 2007 law:

The 11th and final report from the Police was published in April 2013. The Police report said, *The number of child assault events identified in each review period does not reflect the total number of child assault events attended by Police during this time. The events are those most likely to identify incidents which might involve 'smacking' ...* We read this to mean the incidents reported on are those at the less heavy handed end of a scale of assaults on children – those not involving serious injuries or hospitalization, for example. The assaults reported on might have been excused as “reasonable under the circumstances” under the old law. The Police classified the cases they reviewed as:

- *Smacking: A slap with an open hand on buttocks or legs that does not result in any form of injury;*
- *Minor act of physical discipline: A slap with an open hand on any other part of the body that does not result in any injury;*
- *Child assault: Any form of assault (from a slap with the open hand to being hit with an instrument) that results in injury (including redness to the skin and bruising)*

Police attended 355 events during the 6 month period covered by their 11th Review. This was fewer than for the previous five 6-monthly periods. Twelve of these involved smacking, 31 involved minor acts of physical discipline, 252 were other child assault and in 60 cases no offence was disclosed. No ‘smacking’ events resulted in prosecutions and nine of the “minor acts of physical discipline” were prosecuted. One hundred and thirty three incidents of child assaults resulted in prosecution. The cases of ‘minor physical discipline’ prosecuted all involved blows to the head or face with an open hand. In the eight ‘minor physical discipline’ cases convicted, a range of non-custodial sentences was given.

Of the ‘smacking’ and ‘minor acts of physical discipline’ events attended (a total of 43), 32 incidents were referred to the child protection services (Child, Youth and Family), 20 were referred for interagency case management meetings and six were referred to other support services. Some events were referred to both child protection and another agency.

Comment: It appears that Police often use the discretion not to prosecute that was reiterated in the 2007 law⁶ (142 cases out of 355 were prosecuted). Since the law change, the Police have not been overrun with inappropriate referrals, there were relatively few prosecutions at the lower end of the “smacking”

⁶ Section 59 (subsection 4) Crimes Act 1961, <http://www.legislation.govt.nz/act/public/1961/0043/latest/whole.html>

scale, and it is likely that some children are better protected from escalating use of force and parents offered support when appropriate.

Calls for law change were never aimed at increasing the number of parents prosecuted for minor and occasional use of physical punishment (not because smacking is 'ok' but because prosecution is clearly a very disruptive and disturbing event in a family's life). The calls for law change were aimed at respecting children's rights by giving them the same status and protection from assaults under the law as adults and discouraging the use of physical punishment by removing its legal endorsement.

Future research

There is much more that we would like to know, for example, what influenced respondents to answer as they did in regard to their support (or otherwise) for the law. We would like to know what has influenced people's attitudes away from the use of physical punishment. We would like to know what is behind the beliefs of those who say that physical punishment has a place in the discipline of children. We recommend that the next survey to monitor attitudes about physical punishment of children should be funded to include questions that give us more information about the factors influencing responses. For a fuller understanding we also need incidence data: how many children still experience physical punishment?

The Police report provided very little information about what happens to families caught up in investigations or prosecutions. What influences Police not to prosecute and what to prosecute? What advice and support is given to families in the cases that are prosecuted and those that are not? Police files are quite rightly not publicly available, and some of this information may not be recorded.

Conclusion

There is an apparent paradox in recent survey results: while attitudes to the 2007 law change remain split, New Zealanders also increasingly disapprove of physical punishment of children. Disagreement with the law is likely to arise from resentment against perceived 'Government interference in family life' and fears of inappropriate prosecutions. However, pro-physical punishment lobbyists' fears of mass prosecutions for minor incidents of 'smacking' have not been realised. The 2007 law change and the accompanying public debate and parent education are likely to be factors in the positive trend away from support for physical punishment of children.

Since the law changed in New Zealand, international evidence on the negative effects of physical punishment has continued to grow. A recent review conducted for the Global Initiative to End All Corporal Punishment of Children found that 'the evidence that corporal punishment harms children, adults and societies is overwhelming'⁷. The law change in New Zealand is a positive one. We believe that fewer children in New Zealand are subject to physical discipline than in the past.

⁷ Report can be downloaded from <http://www.endcorporalpunishment.org/pages/frame.html> Under "Recent Developments" and "New Review of Effects of Corporal Punishment".

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