

# The Crimes (Substituted Section 59) Amendment Act 2007

## This briefing sheet provides information on:

- Why S59 of the Crimes Act was amended.
- How the law is working in practice.
- What the law says.
- The 2009 referendum.

This briefing sheet has been provided by the following organisations —

- Barnardos NZ
- EPOCH NZ
- Jigsaw
- National Collective of Independent Women's Refuges
- Plunket
- Save the Children NZ
- Unicef NZ
- National Network Stopping of Violence Services
- Institute of Public Policy at AUT
- Te Kahui Mana Ririki
- Relationship Services
- Childspace

## Why S59 was amended

Section 59 of the Crimes Act 1961 was amended in May 2007 by an overwhelming vote of the majority of the House of Representatives. The historic decision made by our Parliament granted children their right to live free from violence, with the same legal protections as other citizens have. The decision was based on evidence showing:

1. *The harm to children caused by physical punishment;*<sup>1</sup>
2. *The vastly increased likelihood of child abuse in homes where physical punishment is used;*<sup>2</sup>
3. *The need for governments to convey consistent messages about the unacceptability of physical punishment;*<sup>3</sup> and
4. *That physical punishment is less effective than positive parenting strategies for disciplining children.*<sup>4</sup>

After much public and political debate, and redrafting of the legislation to increase protection for adults from prosecution for inconsequential offences against children, most politicians voted for the new law.

Our law change took place in the context of a global movement against corporal punishment and we are one of 23 countries who have removed the defence equivalent to S59. Parliament did this because they saw it as their responsibility to make laws that protect the vulnerable, as well as laws that are fair and likely to lead to better lives for all people of New Zealand.

The law entered into force in June 2007 and indications are that the law is working as intended (see information over page).

The debate on physical punishment is sometimes presented by opponents of the law as a conflict between the rights of children and the rights of parents. This argument, like many about human rights, resolves itself into the wish of one group to have unrestricted power in relation to another. The argument is complicated in the case of children by the fact that legitimate parental authority is essential to children's good development. This need for the exercise of parental authority, however, is all the more reason for there to be carefully designed rules of conduct which will be followed by most without serious question but which will be enforceable by law when necessary.

Children are entitled to the minimal human rights standard of freedom from physical assault and the threat of assault. This is no more an encroachment on parental rights than any other legitimate restraint demanded of citizens in preservation of the rights of others. The UN Convention on the Rights of the Child is the world's foremost human rights instrument for children.

*Continued on next page*

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

2 Joan Durrant, *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

3 Nicola Taylor, *Physical Punishment of children: international legal developments*, published in *New Zealand Family Law Journal*, March 2005, 5(1), p 3

4 Children's Issues Centre (University of Otago) and Office of the Children's Commissioner, *The Discipline and Guidance of Children: A Summary of Research*, Dunedin, June 2004, p 14

It has been ratified by New Zealand and all but one country in the world. While it has strong statements on children's rights it is equally clear about the right of families to bring up their children according to their traditions.

### How the law is working in practice

On Saturday 25th October 2008 the NZ Herald reported that, "Sixteen months after the law change in May last year, eight parents have been prosecuted. One received diversion, one was discharged without conviction and six cases are yet to be resolved.

This, says John Key, supports the view that the law is being well administered by police." ([http://www.nzherald.co.nz/nz-election-2008/news/article.cfm?c\\_id=1501799&objectid=10539387&pnum=0](http://www.nzherald.co.nz/nz-election-2008/news/article.cfm?c_id=1501799&objectid=10539387&pnum=0))

Set out below is the third Police review of the cases taken under the Crimes (Substituted Section 59) Amendment Act 2007. Four conclusions may be drawn from the data:

- The impact on police activity remains minimal.
- Only four of the 49 child assault events involving minor acts of physical discipline were prosecuted (Common Assault and Assault Child), with three resulting in convictions and one still to be resolved through the court. Two were sentenced to six months supervision and one was sentenced to nine months supervision.
- There has been a decline in the total number of child assault events attended by Police during this review period and there has also been a decrease in the number of child assault events involving smacking and minor acts of physical discipline.
- There has been no material increase in prosecutions.

#### Six months review of Police activity following the enactment of the Crimes (substituted Section 59) Amendment Act 2007

Events	3 Months prior to Amendment 17/03/07 to 22/06/07	3 Months following Amendment 23/06/07 to 28/09/07	29/09/07 to 04/04/08 (6 months)	05/04/08 to 03/10/08 (6 months)
"Smacking"	3	3	13	9
"Minor acts of physical discipline"	10	12	69	49
Other child assault	82	96	204	200
<b>Total</b>	<b>95</b>	<b>111</b>	<b>288</b>	<b>258</b>

To view the full report from the Police go to: <http://www.police.govt.nz/news/release/4606.html>

Research from the Children's Issues Centre at Otago University shows parents are using physical punishment less and more parents are moving towards positive disciplinary techniques. From a sample of 117 parents, 41% said that they used smacking. Of the 117 parents, only 9% thought it was effective and 34% said it was ineffective. The research found parents prefer methods such as time-out, distraction, and hugs. **In that research, some parents reported the new law was making them reluctant to use physical**

**punishment.** Among those who support the law, 58% understood it. Among those who are opposed to the law, 30% understood it.

Results of research conducted by UMR Research for the Children's Commissioner are similar to the findings of the Children's Issues Centre research. Forty-three percent of participants in an omnibus survey conducted in June 2008 were supportive of the law about physical punishment of children. Thirty seven percent of respondents disagreed with the statement "physical punishment should be part of child discipline". Thirty two percent were neutral and 30 percent agreed. Most respondents knew about the law but knowledge of its provisions was mixed [1].

In both of these studies it is clear there is a high level of misunderstanding about the law, reinforcing the need for widespread public education about it.

## S59 – What the law now says

### 59 Parental control

(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.

(2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.

(3) Subsection (2) prevails over subsection (1).

(4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

The amending act also included this provision:

### 7 Chief executive to monitor effects of this Act

(1) The chief executive must, in accordance with this section, monitor, and advise the Minister on, the effects of this Act, including the extent to which this Act is achieving its purpose as set out in section 4 of this Act, and of any additional impacts.

(2) As soon as practicable after the expiry of the period of 2 years after the date of the commencement of this Act, the chief executive must—

- (a) review the available data and any trends indicated by that data about the matters referred to in subsection (1); and
- (b) report the chief executive's findings to the Minister.

(3) As soon as practicable after receiving the report under subsection (2), the Minister must present a copy of that report to the House of Representatives.

### The 2009 referendum

In March 2007, before the law was changed, supporters of physical punishment of children launched a petition calling for a referendum on this question:

“Should a smack as part of good parental correction be a criminal offence in New Zealand?”

Petitioners attempted to mobilise public opinion using the threat that changing S59 would result in widespread ‘criminalisation’ of good parents.

The final version of the amendment to S59 minimises the likelihood of parental prosecution whilst affirming the child’s right to be free from violence. Opponents have continued with their opposition and now the country is confronted with a referendum on a question developed in the context of an earlier campaign and before the form and effect of the law change were known.

The referendum question suggests that smacking children is good parental correction. However that is contrary to what is now known about effective positive discipline and the dangers of hitting children.

Further, the law quite specifically indicates that the Police are expected to exercise their discretion in all cases of ‘inconsequential’ physical discipline. Prosecution and conviction are unlikely to follow a light smack.

The question could have relevance as an issue of public concern if in fact it was shown that the Police were failing to exercise that discretion as Parliament had intended — that widespread prosecution and conviction of parents was occurring. There is no such evidence.

The referendum will be a costly exercise polling voters on a loaded question. Nevertheless, non-governmental organizations consider the referendum is an opportunity to better inform the public about the law and we will be working to achieve this.

Members of Parliament will need to remember the strong evidence in support of the law and ensure they are not swayed by the misleading claims of proponents of physical punishment.

*For further information about the law, visit:*

**Section 59 Media Kit** [www.barnardos.org.nz/aboutus/sec59\\_mediakit\\_april08.pdf](http://www.barnardos.org.nz/aboutus/sec59_mediakit_april08.pdf)

**‘Ending legalised violence against children - Global Report’**

<http://www.endcorporalpunishment.org/pages/pdfs/reports/GlobalReport2008.pdf>

**Choose to Hug**

[http://www.occ.org.nz/\\_\\_data/assets/pdf\\_file/0006/3759/OCC\\_Choose\\_to\\_Hug.pdf](http://www.occ.org.nz/__data/assets/pdf_file/0006/3759/OCC_Choose_to_Hug.pdf)

**Children are Unbeatable** [http://www.occ.org.nz/\\_\\_data/assets/pdf\\_file/0017/3293/OCC\\_Children\\_are\\_Unbeatable\\_Pritchard.pdf](http://www.occ.org.nz/__data/assets/pdf_file/0017/3293/OCC_Children_are_Unbeatable_Pritchard.pdf)

**For more copies of this briefing sheet or for general enquiries please contact:**

**Barnardos New Zealand, PO Box 6434, Marion Square, Wellington 6141 or call (04) 385 7560.**