

Ending physical punishment of children – repeal of section 59 of the Crimes Act.

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Introduction – why repeal section 59?

Physical punishment of children is unjustified for a number of reasons:

- except as a very short term deterrent physical punishment is an ineffective way of guiding and teaching children how to behave well
- parents must be encouraged to learn about and use positive and non-violent child rearing techniques
- although mild forms of physical punishment may be non-damaging when used infrequently in otherwise supportive and loving homes moderate and severe physical punishment is very damaging and dangerous
- there is a tendency to escalate the severity of force used when physical punishment is ineffective and this is one of the factors which contrite to physical punishment becoming abuse
- children learn by example – physical punishment models violence.

Section 59 should be repealed because:

- children should be afforded the same protection from assault as any other person and as animals are
- the existence of section 59 gives implicit permission to parents to use physical punishment
- the government should set a clear and unequivocal standard and send a clear and unequivocal message to parents that hitting children is unacceptable and that there are better ways to discipline children
- section 59 does not define 'reasonable force' and makes no distinction as to the age of the child being punished
- a review of court decisions shows inconsistency in interpretation of section 59
- the United Nations Committee on the Rights of the Child regard section 59 as non-compliant with the UN Convention on the rights of the child and have recommend that it be repealed
- **repeal of 59 is the most significant and symbolic step which can be taken to advance both the status and protection of children at this time.**

Section 59 of the 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.

The courts have been inconsistent in their interpretation of this section when it is used as a defense against an assault on a child. What is reasonable is not defined – to be truly reasonable the circumstances of the behaviour being corrected and the age and understanding of the child need to be taken into account. Many parents admit that

physical punishment is ineffective and that they do not use it *by way of correction* as much as a way of expressing their anger and relieving their stress. These factors are not always taken into account by the courts. Nevertheless court decisions in New Zealand have increasingly shown a move towards intolerance of physical punishment of children.

Would parents become ‘criminals’ if section 59 were repealed?

Smacking children has been part of all cultures in New Zealand for a long time. Most present day parents were smacked as children. Many do not yet know of alternative ways to discipline their children. It must be expected then that a change in the law will not instantly bring about a change in parental behaviour although over a longer period a law change will bring about a change in attitudes and behaviour. The most frequently used justification for not changing the law is that repeal would lead to an increase in prosecutions for assault of children and parents would be labelled criminals.

The purpose of a law change is not punishment and prosecution of parents – it is to draw attention to the issue, to set a clear standard and to deter parents. Parents can currently be prosecuted when there is a serious assault. If section 59 were repealed parents would not become criminals unless they were prosecuted, tried and convicted.

Section 59 does not mean that there has not been an assault when a parent hits a child, it means that the assault is justified in the eyes of the law. If section 59 were repealed no new offence would be created. While in theory there could be more prosecutions in reality this is unlikely to be the case as charges still have to be laid, the cases investigated and a decision made to bring a prosecution. Even if prosecution is brought it seems likely that a common law defence would remain.

A number of European countries have removed sections of legislation similar to section 59 and there have been no increases in prosecutions.

What might repeal achieve?

The value of changing the law has been demonstrated in Sweden, the first country in the world to ban physical punishment, in 1979. A very recent analysis of the effects of this ban was recently published in the journal ‘Child Abuse and Neglect’. The author, Joan Durrant, evaluated data from official Swedish sources on: public support for corporal punishment, reporting of child physical assault, child abuse mortality, prosecution rates, and intervention by the social authorities. Her findings are:

- public support for corporal punishment has declined hugely
- identification of children at risk has increased
- child abuse mortality is rare
- prosecution rates have remained steady
- social service intervention has become increasingly supportive and preventive.

While it might be argued that New Zealand is a very different society from Sweden there are no good reasons why the same results could not be achieved here over time. This is even more likely to be the case if a change in the law is accompanied by increased efforts

on the part of both government agencies and NGOs to promote positive non-violent discipline of children.

The information provided in this short paper is supported by many significant papers and much respected research. The following is a short list of references. Copies of most of these papers can be supplied on request.

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