

**House of Representatives**

**Supplementary Order Paper**

**Wednesday, 21 February 2007**

**Crimes (Abolition of Force as a Justification for Child  
Discipline) Amendment Bill**  
**(proposed to be amended to Crimes (Substituted Section 59)  
Amendment Bill)**

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*Proposed amendments*

Chester Borrows, in Committee, to move the following amendments:

*Clause 3*

To omit all the words after “provision” (lines 13 to 16 on page 1) and substitute “for the parental control of children by limiting the use of force for the purpose of correction.”

*Clause 4*

*Heading to new section 59:* to add “**and correction**” (line 5 on page 2).

*New section 59(1):* to insert “, subject to **subsection (4)**,” after “Every parent of a child and” (line 6 on page 2).

*New section 59(1)(d):* to add “; or” (line 16 on page 2).

*Proposed new section 59(1)(e):* to add (after line 16 on page 2):

“(e) correction.

*New section 59(2) and (3):* to omit these subsections (lines 17 to 19 on page 2) and substitute:

“(2) The use of force for a purpose specified in any of **paragraphs (a) to (e) of subsection (1)** is unreasonable if—

“(a) it involves conduct prohibited by an enactment creating a criminal offence, other than an offence under—

“(i) section 194 (assault on a child, or by a male on a female); or

“(ii) section 196 (common assault); or

“(iii) section 9 of the Summary Offences Act 1981 (common assault); or

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- “(b) it causes or contributes materially to harm that is more than transitory and trifling; or
  - “(c) any weapon, tool, or other implement is used; or
  - “(d) it is inflicted by any means that is cruel, degrading, or terrifying.
- “(3) **Subsection (2)** does not limit the circumstances in which force used for a purpose specified in any of **paragraphs (a) to (e) of subsection (1)** might be found to be unreasonable.
- “(4) Nothing in this section justifies the use of force towards a child in contravention of section 139A of the Education Act 1989.”

*Clause 5*

To omit this clause (lines 20 to 24 on page 2).

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### **Explanatory note**

This Supplementary Order Paper amends the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill.

The purpose of this Supplementary Order Paper is to amend section 59 of the Crimes Act 1961 so as to prevent serious assaults by parents and guardians being legally justifiable, and letting them get away with such assaults. Simple repeal of section 59 is problematic in that it would leave the decision about whether to prosecute to the police. Although it is debatable whether the police will prosecute in every case, parents and guardians have the right to know that they are living within the law. The protection afforded to parents and children should be enshrined in legislation, not left to government agencies, such as the police, to make social policy by way of guidelines. For the sake of clarity, certainty, and transparency, it is essential to amend this Bill in a manner that fully addresses the problem of the criminalisation of parents.

*Clause 3* is amended to provide that the purpose of the Act is to limit rather than abolish the use of reasonable force by parents when disciplining children.

*Clause 4* is amended particularly by inserting a new subsection (2) into the substituted section 59 to indicate circumstances in which force would be found to be unreasonable.

*New subsection (2)(a)* provides that section 59 can be used only in the most minor of assault cases, and stops parents who seriously assault their children hiding behind section 59 because they would be charged with more serious offences under the Crimes Act 1961 or the Summary Offences Act 1981.

*New subsection (2)(b)* provides that children cannot be injured in the way that they may be now under the law, because the phrase transitory and trifling is currently recognised in our common law, and refers to a sting or redness from a smack which disappears after a few minutes but nothing more serious than that.

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*New subsection (2)(c)* rules out the use of implements of any kind because regulating the type, weight, and description of implements is too difficult and the same implement in different hands creates vastly different results. The law has to be able to be applied equally.

*New subsection (2)(d)* prevents any application of force from motives which are cruel, degrading, or terrifying, which we would always want ruled out.

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