

What the Crimes Amendment Bill achieves

This Briefing Sheet examines The Crimes (Substituted Section 59) Amendment Bill as reported back to Parliament by the Justice and Electoral Committee at the end of 2006. The briefing sheet discusses what the amended Bill achieves and comments on possible risks arising from it.

Achievements include —

- Removal of the old section 59 defence.
- Removal of any common law defence for physical discipline.
- Equal status for children and adults under the law.
- Parents no longer able to administer punishment for schools.
- Congruence with other legislation and policy.
- Compliance with international and domestic human rights obligations.
- Protection for parents who restrain their children for purposes of care or safety.

This briefing sheet has been provided by the following organisations —

- Barnardos NZ
- EPOCH NZ
- National Collective of Independent Women's Refuges
- Plunket
- Save the Children NZ
- Unicef

In 2006 the Justice and Electoral Committee examined Sue Bradford's Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill. Towards the end of 2006 the Committee reported back to Parliament and recommended by majority that the Bill, with some amendments, be passed. They also recommended that the name of the Bill be changed to the Crimes (Substituted Section 59) Amendment Bill.

The amendments to the original bill are significant and its new shape and title reflect the Select Committee's consideration of both written and oral submissions.

The Bill has been re-drafted by the Law Commission for the Select Committee to both —

- repeal the existing section 59, and
- provide reassurance to the public that they would not be prosecuted for using force in controlling or restraining their child when giving day to day care or in protecting the child or other people from harm.

What does the amended Bill achieve?

The re-drafted Bill is a carefully crafted document which seeks to reconcile both the child's right to the full protection of the law and parents' need to be able to restrain a child in confidence that they will not be at risk of prosecution.

In practice the amended Bill achieves the following —

- *Full repeal of the section 59 defence.*

There will no longer be a statutory defence available to parents, and people in the place of parents, who assault their children in the name of correction.

- *The removal of any common law rule.*

A provision in the new bill means that adults who assault children and are prosecuted will not be able to call on a common law defence of reasonable force.

- *An equal status for children and adults under the law.*

Children's status will be exactly the same as adults' under New Zealand's assault laws. All assault is illegal. However as stated in previous briefing sheets it is not expected that law change will result in wholesale prosecutions of parents who occasionally smack a child. Both the Police and the Children and Young Persons Service were reassuring in their advice to the Select Committee on this matter.

- *Parents will no longer be able to administer physical punishment for schools.*

Under existing law it has been illegal for teachers and early childhood workers to use physical discipline with children but the existing Section 59

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provides a loophole in the law by which a few schools ask parents to administer corporal punishment on their behalf. This will no longer be possible under the proposed legislation.

- *Protection for parents restraining children in specific circumstances*

The Bill specifically recognises parents' responsibility to control or restrain a child in a variety of situations.

- *Congruence with other legislation and policy*

The current section 59 is not congruent with the principles and provisions of other existing legislation — in particular, the Domestic Violence Act 1995, Children and Young Persons and Their Families Act 1998 and the Care of Children Act 2004.

Neither is the present section 59 congruent with current parenting and family violence prevention policy initiatives.

The revised bill is congruent with other legislation and policy.

- *Compliance with international and domestic human rights obligations.*

The UN Committee on the Rights of the Child has twice recommended that New Zealand change its legislation to ban the use of physical punishment. The New Zealand Plan of Action on Human Rights (*Human Rights Commission 2005*) recommends repeal of section 59 Crimes Act 1961.

What are the implications of the parental control provisions?

The Bill recognises that restraint (technically an assault) is a necessary part of normal parental

care and control of a child. It also recognises that parents will need to restrain a child to protect the child or other people from harm or even to prevent the child carrying out a crime. The Bill makes clear that restraining a child (legal under the Bill) is different from using physical punishment to correct a child's behaviour (illegal under the Bill).

Correction and control are different

There have been concerns raised that the proposed new section 59, *Parental Control*, could still be used as a defence by parents who have assaulted their child.

Control (essentially restraint) does not have the same purpose as correction.

In practice, it is possible that angry adults may try to justify hitting a child as a necessary part of restraint.

The Purpose Statement of the amended Bill provides some guidance to the courts. It makes

clear that the Bill is making provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction.

Any blows to the body, or other infliction of intentional pain, are essentially violence and not control or restraint.

As with any new legislation interpretation of the Crimes (Substitution of Section 59) Amendment Bill by the courts will need to be monitored.

Force used in restraining a child

There are occasions in any family when parents, or others providing care to a child, need to restrain the child — holding a child firmly while changing clothes, putting a toddler in a car seat, removing a child from a situation in which they are being disruptive, putting a child in their room for time out. Such acts are quite different from using physical punishment as a means of changing a child's behaviour. Yet, technically, such acts constitute an assault.

In recognition of public unease concern possible prosecution of parents Section 1 of the Crimes (Parental Control) Bill makes specific provision for just such action. The amended Bill uses an amendment proposed by the Law Commission which enables parents and people in the place of parents to use reasonable force for the purpose of —

- Keeping a child or another person safe (eg to restrain a child from running on a road)
- Preventing a child from engaging in a criminal offence
- Preventing a child from engaging in disruptive behaviour
- Performing normal daily tasks that are part of care and parenting (eg holding a child down to change nappies or removing a child to their room for time out).