

Opinion piece submitted to Christchurch Press by Dr Emma Davies in 2006

The Justice and Electoral Committee has released its recommendations on Sue Bradford's Bill to repeal Section 59 of the Crimes Act 1961, that permits parents to use "reasonable force" on their children. The Committee majority have recommended new wording in the Crimes Act that tries to make children's lives safer and more secure while allaying fears of unnecessary criminalisation of parents.

MPs will soon vote on whether to accept the Committee's recommendations and allow the Bill to go through the second reading, after which it can still be accepted as is, changed again or rejected.

Which way will the MPs vote? For some MPs, their decision may be heavily influenced by what research has to say on the subject. There is evidence that:

- Children learn from their parents' actions.
- Physical punishment is less effective in changing behaviour than non-violent alternatives.
- Mild physical punishment risks more severe abuse.
- Physical punishment can be linked to aggressive behaviour and mental health problems.

But MPs using research to decide how to vote are faced with conflicting reports. One study indicates there is no evidence that an occasional mild smack with an open hand on the clothed backside, the leg or the hand is harmful or instils violence in kids. This is probably true, but how often and how hard do you have to smack before it becomes harmful? Are the levels the same for all children? Can we devise a formula for administering appropriate doses? A controlled study to determine what constitutes "good hitting" as opposed to "bad hitting" would clearly be unethical. Best avoid it altogether.

Some MPs rather than studying all the research will rely on the evidence marshalled by the New Zealand Psychological Society and the Paediatric Society of New Zealand and a raft of children's organisations supporting full repeal.

Some MPs may take into consideration the fact that the United Nations has repeatedly recommended full repeal of Section 59 of the Crimes Act in compliance with the UN Convention on the Rights of the Child ratified by the National government in 1993.

Like researchers, psychologists, lawyers and paediatricians, MPs have their personal principles and beliefs. These will influence their votes too. Some may feel torn between not wanting to interfere in what goes on behind the closed family door while simultaneously taking the needs and status of children seriously. Can they have it both ways?

Many MPs have been lobbied hard by folk who genuinely believe that God said children need to be hit to be good. It is a matter of personal belief whether we see our children as inherently evil, but it is in the realms of politics that the decision to say aye lies.

New Zealand does not base its legislation on the Bible or any other religious instruction. It does have a proud record of law that advances human rights. It is imperative to acknowledge adult fears of criminalisation, but parents who insist on their right to hit their children but not very hard (and to call this a 'smack') have nothing to fear. The police will not be interested. Nevertheless the political dilemma is to allay these fears while sending an unambiguous message that our society does not tolerate violence against children. This is exactly what the proposed bill attempts to do.

Unfortunately, in its proposed form the Bill endeavours to ban parents from using 'reasonable force' for the purposes of correction but not for the purposes of preventing the child from harming themselves or someone else, and/or engaging in offensive or disruptive behaviour. What is the difference? Lawyers may have a field day with the proposed bill, if it were to become law. Take the Timaru case for example. A child swung a baseball bat at his stepfather, so the mother beat the child with a riding crop. If the proposed Bill were law, the mother's action might still be considered 'reasonable force' in the circumstances.

In order to cover the need for restraint of children to change nappies or care for a toddler during a temper tantrum, for example, the words 'reasonable force' and 'parental control' are in the proposed Bill. The intention of the proposed wording, especially S59(2), is that force is only legitimate if it is for the purposes of restraint and not correction. It may be that this will be a clear enough guide for authorities acting under the law. But why not use the words 'restraint' and 'parental care' instead? It is said that these words have no legal status, but in our democracy Parliament is the sovereign body and must ensure that the best words are chosen to reflect the purpose of the Bill.

The best wording for this important legislation is probably not currently on the table. We need to be careful that any new legislation does not inadvertently condone violence against kids or introduce any potential new risks for children. It will take time and wise heads to get the wording right. Full repeal of Section 59 may well still be the best option. It might not. Either way, since the whole Justice and Electoral Committee accept that the *status quo* is untenable, all MPs should surely vote for the Bill at the second reading. To do otherwise risks turning this issue into a football of superficial party politics. To have come this far, to have opened up this complex and emotive issue for debate, and to then bury any chance of getting it right as soon as possible would be most unfortunate. New Zealand's youngest vulnerable citizens deserve better.

928 words

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