

To the Justice and Electoral Select Committee.

Submission from EPOCH New Zealand on

Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill

Oral Submission

EPOCH New Zealand Trust Inc (EPOCH New Zealand) requests the opportunity to make an oral submission in addition to this written submission.

1 EPOCH New Zealand

EPOCH New Zealand Trust Inc is a charitable trust with the following aims:

- to end physical punishment of children;
- to educate parents and others about the dangers and disadvantages of physical punishment of children;
- to promote alternative non-violent ways of helping children behave well;
- to promote law reform that supports these aims.

EPOCH New Zealand was established in 1997 and has met these aims by:

- raising awareness of the need to change attitudes and behaviour about physical punishment of children and the need to repeal section 59 Crimes Act 1961 – EPOCH New Zealand has done this through the media, through making public presentations, publishing a newsletter and developing four pamphlets entitled “Five Good Reasons”
- supporting parents to learn about alternatives to physical punishment through the booklet “Choose to Hug – not to Smack”
- advocating with parliamentarians and other people with influence about the need to repeal section 59 Crimes Act 1961
- developing a network of agencies that support positive non-violent parenting and repeal of section 59 Crimes Act 1961 and engaging with other organisations working to achieve social change in New Zealand about the use physical punishment.

2 Support for repeal of section 59 Crimes Act 1961

EPOCH New Zealand maintains a large database of supporters and interested parties who receive newsletters from EPOCH NZ. Lists of individuals and organisations who have formally registered their support for repeal of section 59 are attached to this submission (Appendix 1). Some of these organisations will be making submissions in their own right.

Section 59 Crimes Act 1961 (Appendix 2) is a statutory defence that does not give explicit permission to parents hit their children but rather excuses hitting as long as it is reasonable in the circumstances. It is regarded by the much of public as endorsing the value of physical punishment.

3 Physical punishment of children harms

EPOCH NZ is convinced by credible research that physical punishment is ineffective in helping children learn how to behave well. It is a risk factor for many poor outcomes including child abuse, anti-social behaviour in childhood and adolescence. (OCC and Children's Issues Centre, 2004: Durrant, 2004: Durrant 2002: Straus 2000: Leach, 1999) Although physical punishment does not always lead to poor outcomes research tells us that children in homes where it is used are at significantly higher risk of poor outcomes than those from home where it is not used, even when other factors are controlled for.

4 The link between the use of physical force with children and family violence

Child abuse and domestic violence are serious problems in our society (UNICEF, 2003: Fanslow, 2005) and both preventative initiatives and crisis interventions are a big drain on public money, as are downstream consequences in health and welfare costs.

Physical punishment models a form of violence to children. It normalises the use of violence as a way to express anger or resolve conflict. Children learn from their own experiences. Physical punishment contributes to the intergenerational transmission of violence by normalising it and reducing children's sensitivity to its impact on others (Durrant, 2004).

The proponents of smacking defend the use of light physical discipline denying that it causes harm. In reality no smacking is necessary to achieve long term good behaviour, and for many children smacking is hitting and deeply disturbs them (Dobbs, 2005).

5 A change in the culture of hitting

EPOCH New Zealand believes that children in New Zealand will be served well when a cultural change in regard to the use of physical punishment has been achieved. At present it is regarded by many parents as perfectly normal, in fact desirable, to hit children as part of teaching them to behave well. The reality is that despite a strong swing away from seeing physical punishment as effective on the part of many parents a significant number of children are still hit in anger by people who regard the use of force in personal relationships as acceptable and who give little thought to finding out about effective alternatives (Dobbs, 2005). These attitudes need to be strongly discouraged. New Zealand needs a culture where everyone knows that its not ok to hit anybody, including children. This is an achievable objective that has been reached in some European countries.

6 The place of law reform in encouraging social change.

One of the aims of repeal of section 59 must be to strongly discourage physical punishment of children. The removal of the statutory defence (section 59 Crimes Act 1961) would send a strong public message that physical punishment of children is unacceptable. Repeal of section 59 should be accompanied by a clear message that one of the intentions of repeal is to strongly discourage the use of physical punishment and to encourage parents and caregivers to learn positive, non-physical ways of disciplining children.

7 The experience of other countries

A list of countries that have explicitly banned physical punishment of children is attached in Appendix 3. Many of these countries have gone further than removing their statutory defence (similar to section 59) and explicitly banned physical punishment. Such bans are usually placed in family law, as principles, and they do not create new crimes but rather set standards. New Zealand should include such a ban in the principle of the Care of Children Act 2004 or the Children, Young Persons and their Families Act 1961.

Experience in other countries has shown that change in behaviour is accelerated by law change Durrant 2002, Bussman, 2004).

8 Ongoing public education

Law reform alone will not achieve all that is needed in terms of cultural change and parent support. Repeal of section 59 should be accompanied by ongoing parent and public education about the damage that physical punishment can cause to a child's health and development and about alternative positive forms of discipline. The Ministry of Social Development's SKIP (Strategies with Kids: Information for Parents) has been well received by the public. Parent education about alternatives is of little value if it is not sustained. It must be ongoing. It needs to include specific information about why physical punishment is not good for children.

9 Providing children with equal protection as adults

Children are the only section of society not fully protected from assault. Section 59 is inconsistently applied in the courts and there have been a number of cases where serious assaults, resulting in visible injuries, have been excused as reasonable force (Hancock, 2003). Not only is this a breach of children's rights to protection but it sends a very confusing message to parents about the degree of force that is permissible. The only sensible standard should be the one applied in cases of assault.

10 Physical discipline and children's human rights

The Committee on the Rights of the Child (the committee that monitor's countries compliance with the United Nations Convention on the Rights of the Child) consistently recommends to all countries that have ratified the Convention and report regularly on compliance that they should prohibit all forms of corporal punishment. The last United Nations Committee report on New Zealand's compliance with the Convention had explicit observations and recommendations to New Zealand in regard to corporal punishment (See Appendix 4).

The United Nations has commissioned a global study on Violence to Children for which regional meetings were held around the world in 2005. At each of these regional meetings recommendations arising from the meetings included prohibition of all corporal punishment of children (www.endcorporalpunishment.org).

The New Zealand Plan of Action on Human Rights published in 2005 explicitly recommended repeal of section 59 (Human Rights Commission, 2005).

11 Public protest and fears

The public protest that accompanies the debate about repeal of section 59 Crimes Act 1961 and the so called “smacking” debate is based on:

- Lack of information or misinformation about the effects of physical punishment and positive alternatives.
- The beliefs of a small minority of people whose interpretation of the Bible informs them that it is their duty as parents to smack children.

(This is not a view all Christians hold: many theologians do not agree with such an interpretation (Vailaau 2005, Cardy 2005)).

- Fear of prosecution for minor assaults. Repeal of section 59 removes the defence used by parents who commit an assault on their child and makes any assault a crime.

(In reality complaints to the police are unlikely to be made in cases of minor assault (they are not in cases of minor adult to adult assault), and prosecutions are even more unlikely).

Dealing with resistance to change is a matter of providing ongoing public education rather than retaining a law that sets an unhelpful public standard.

If Members of Parliament feel that they must allay public fears of prosecution for minor assaults such reassurances should be found outside the legal provisions, for example, in Police Guidelines on prosecutions where children are the victims of assault or through a system that requires any potential prosecution to be vetted by a senior police officer or panel to ensure that it really is in the child’s best interests that the prosecution proceed. Clearly children’s best interests will not be served well by the family stress that would accompany prosecution and it should be avoided unless the child’s safety, the severity of the assault and/or the parent’s attitudes to physical discipline warrants a court hearing.

12 Amendment to define “reasonable force” is unacceptable.

Amendment of the Crimes Act to describe how a child may be hit, amendment to describe reasonable or unreasonable force (eg. not on the head or neck and not with an implement) may look like an option to protect parents from prosecution for minor assaults but it is not an acceptable option.

Amendment to define reasonable or unreasonable force perpetuates the view that violence against children is acceptable. It may still fail to protect children because it is difficult to define what is safe – children can be badly injured by an open hand if they are hit hard enough, even below the head. Such assaults can be deleterious if the parent loses control or the child moves.

Defining safe hitting is fraught with impossible decisions – at what age may a child be struck? At what age does it become illegal to strike a child? Who may strike a child. How often can a child be struck and what circumstances would be defined as “domestic discipline”? How will the parent’s intent be identified? (When is

something correction and is an assault the best form of correction in the circumstances?) How does one measure emotional harm?

Amendment, rather than repeal, would be in breach of the UN Convention on the Rights of the Child; and would not meet the requirements of the UN Committee on the Rights of the Child.

Recommendations

EPOCH New Zealand recommends that:

- 1 That section 59 Crimes Act 1961 be fully repealed (without any amendments to describe reasonable or unreasonable force).
- 2 That repeal is accompanied by a clear message that physical discipline is unacceptable.
- 3 That repeal is accompanied by ongoing public education about positive non violent discipline.

References

Bussmann, KD. (2004). Evaluating the Subtle Impact of a ban on Corporal Punishment of Children in Germany. *Child Abuse Review* Vol 13: 292-311.

Cardy, G. 2005.

Dobbs, T. (2005) *Insights: Children and young people speak out about family discipline*. Wellington. Save the Children.

Durrant, J. (2002) Physical Punishment and Physical Abuse. BC Institute Against Family Violence Newsletter: Winter 2002.

[Http://www.bcifv.org/resources/newsletter/2002/winter/durrant.shtml](http://www.bcifv.org/resources/newsletter/2002/winter/durrant.shtml)

Durrant, J. (2004). *Public Education and Physical Punishment*. Littlies Lobby breakfast presentation June 2004. Parliament Buildings. Wellington.

Fanslow, J. (2005). *Beyond Zero Tolerance: Key Issues and future work directions for family violence work in New Zealand*. Wellington. The Families Commission. <http://www.familiescommission.govt.nz/family-violence.php>

Hancock, J. (2003). Review of NZ case law involving section 59 of the Crimes Act 1961 for the Committee on the Rights of the Child. Auckland Action for Children and Youth Aotearoa.

Human Rights Commission. (2005). New Zealand Action Plan for Human Rights. [www/hrc.co.nz/report/action plan](http://www/hrc.co.nz/report/action%20plan).

Leach, P. (1999). *The Physical Punishment of Children: Some Input from Recent Research*. London. National Society for the Prevention of Cruelty to Children.

Office of the Children's Commissioner and Children's Issues Centre. (June 2004). *The Discipline and Guidance of Children; A summary of Research*. Wellington. Office of the Children's Commissioner.

Straus, M. (2002). Corporal punishment and primary prevention of child abuse. *Child Abuse and Neglect*: 24:1109-1114.

Vialaau, N. 2005,

UNICEF. (2003). *A league table of child maltreatment deaths in rich nations*. Innocenti Report Card, Issue No 5. Florence: Innocenti Research Centre, UNICEF.
<http://www.unicef-icdc.org>

Appendix 1 - List of Supporters of full repeal of section 59 Crimes Act.

Network of organisations committed to positive non-violent parenting and repeal of section 59 Crimes Act 1961.

January 2006

- Action for Children and Youth
Aotearoa (Auckland)
- Ahu Whakatika Challenge Violence
Trust (Rotorua)
- Alternatives to Violence Project
- Amnesty International New Zealand
- Anger Change Trust Auckland
- Aotearoa New Zealand Association
of Social Workers
- Arai Te Uru Whare Hauora
(Dunedin)
- Auckland Women's Centre
- Awhina Whanau Services Inc
(Hastings)
- Barnardos
- Bream Bay Community Support
Trust (Ruakaka)
- Birthright New Zealand Inc
- Canterbury Home Birth Association
- CCS
- Central Plateau Reap (Taupo)
- Central Hawkes Bay Support and
Counselling Services
- Child Abuse Prevention Services
(National Office Wellington)
- Child Development Foundation
(Auckland)
- Child Helpline Trust (Christchurch)
- Children's Agenda (Auckland)
- Children's Issues Centre (Dunedin)
- Child Poverty Action Group
- Childwise Methodist Mission
(Christchurch)
- Dannevirke Family Services Inc
- Domestic Violence Centre
(Preventing Violence in the Home –
Auckland)
- Dove Hawkes Bay
- Eastbay REAP (Whakatane)
- Education for Change (Christchurch)
- Family Focus (Greymouth)
- Family Help Centre (Rotorua)
- Family Support Services Whanganui
Trust
- Foundation for Peace Studies
(Auckland)
- Hamilton Abuse Intervention Project
- Hamilton Refuge and Support

Services

- Hauraki Safety Network
- Healing and Rape Crisis Centre (Te Awamutu)
- Hinengakau Maatua Whangai (Taumarunui)
- Home and Family Society Inc (Auckland)
- Horowhenua Family Violence Intervention
- Human Rights Foundation of Aotearoa New Zealand
- Inner City Group for Men (Auckland)
- Inner City Women's Group (Grey Lynn)
- James Family Presbyterian Support Northern (Auckland)
- Kaitaia Homebased Whanau Support
- Kapiti Men for Non Violence Inc
- La Leche League NZ
- Living Without Violence (Porirua)
- Living Without Violence (Waiheke Network)
- Mana Social Services Trust (Rotorua)
- Manawatu Alternatives to Violence
- Methodist Mission Northern (Glen Eden)
- Motueka Women's Support Link
- Naku Enei Tamariki (Lower Hutt) Women
- Napier Women's Refuge
- National Collective of Independent Women's Refuges
- National Council of Women of New Zealand
- National Network of Stopping Violence Services
- Nelson Rape and Sexual Abuse Network
- New Zealand Association for Adolescent Health and Development
- New Zealand Association of Counsellors
- New Zealand Family Planning Association
- New Zealand Family Research Trust (Auckland)
- New Zealand Federation of Business and Professional
- New Zealand Playcentre Inc

- New Zealand Psychological Society
- North Harbour Living Without Violence Inc (Takapuna)
- North Shore Women's Centre (Glenfield)
- North Taranaki Kindergarten Association (New Plymouth)
- Office of the Children's Commissioner
- O Le Lafitaga Trust (Auckland)
- OMEP (World Organisation for Early Childhood)
- Pacific Foundation (Auckland)
- Paediatric Society of New Zealand
- Parent and Family Counselling Service (Whangarei)
- Parent Help Wellington Inc
- ParentingWorx
- Parentline Charitable Trust (Hamilton)
- Parentline Hawkes Bay Inc
- Parentline Manawatu
- Parent's Centre NZ Inc
- Peace Movement Aotearoa
- Peppertree House – South Auckland Family Refuge
- Presbyterian Support New Zealand
- Public Health Association of New Zealand Inc
- Quakers
- Quaker Peace and Service
- Rahui Pokeka Maatua Whaangai Justice (Huntly)
- Relationship Services NZ Inc
- Rodney Stopping Violence Services
- Royal New Zealand Plunket Society
- Safer Families Foundation (Takapuna)
- Save the Children
- South Canterbury Women's Refuge
- Start Inc (Christchurch)
- Stopping Violence Services Nelson
- Stopping Violence Services Wairarapa
- Supportline Women's Refuge (Auckland)
- Taranaki Social Services (New Plymouth)
- Te Aupouri Iwi Social Services (Kaitia)
- Te Awamutu Womens' Centre
- Te Awamutu Women's Refuge –

- Nga Maunga Hei Kakahu Inc
- Te Awhina Support (Murupara)
 - Te Hauauru Mahi A Iwi (Kaikohe)
 - Te Korowai Aroha O Ngati Whatua (Wellsford)
 - Te Manawa Services (Fielding)
 - Te Puna O Te Aroha Maori (Women's Refuge (Whangarei))
 - Te Roopu Whakaruruhau (Palmerston North)
 - Te Ruru Resources
 - Te Tari Puna o Aotearoa/NZ Childcare Association
 - Te Whare Oranga Wairua Women's Refuge (Taupo)
 - Te Whanau O te Mangarongo (Lower Hutt)
 - Te Whariki Manawahine O Hauraki (Thames)
 - Thames Women's Resource Centre
 - The Body Shop
 - The Brainwave Trust
 - The Dove Group for Children (New Plymouth)
 - Tongan Tamaki Community Centre (Auckland)
 - Tongariro Whanau Support Trust (Turangi)
 - Tupoho Maatua Whangai Trust (Whanganui)
 - Tu Tama Wahine o Taranaki Inc (New Plymouth)
 - UNICEF New Zealand
 - Violence Free Waitakere
 - Wairarapa Community Counselling Centre
 - Wairarapa Women's Refuge
 - Waitakere Abuse and Trauma Counselling Service Inc
 - Wesley Community Action
 - Wellington Community Law Centre
 - Wellington Ending Violence and Abuse
 - Whanau Awhina Women's Refuge(Whanganui)
 - Whanganui Living Without Violence Trust
 - Women of the Kaipara Resource Centre (Dargaville)
 - Youth Law/Tino Rangatiratanga
 - Youthline Auckland Charitable Trust

Appendix 2 Section 59 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.

Appendix 3 European Legislation

From “Ending legalised violence against children: Report for Europe and Central Asia Regional Consultation – The UN Secretary General’s Study on Violence against Children”. Ljubljana, Slovenia 2005.

**Published by Global Initiative to End All Corporal Punishment of Children.
www.endcorporalpunishment.org**

EUROPEAN STATES WITH EXPLICIT LAWS PROTECTING CHILDREN FROM ALL CORPORAL PUNISHMENT

1979
Sweden

“Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment.” (*Parenthood and Guardianship Code*, as amended 1979, article 6.1)

Note: In 1957, the legal defence for the use of corporal punishment by parents was removed from criminal law. In 1966, a provision allowing “reprimands” was removed from the *Parenthood and Guardianship Code*.

1983
Finland

“A child shall be brought up in the spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. His growth towards independence, responsibility and adulthood shall be encouraged, supported and assisted.” (*Child Custody and Rights of Access Act*, 1983, in force 1984, article 1.3)

Note: In 1969, the Criminal Code was amended to remove parents’ defence against prosecution for petty assault if committed during the exercise of their lawful “right” to chastise their child.

1987
Norway

“The child shall not be exposed to physical violence or to treatment which can threaten his physical or mental health.” (*Parent and Child Act*, as amended 1987)

Note: In 1972, parents’ “right” to use moderate physical punishment was removed from the Criminal Code provisions on assault. Physical restraint is permissible if the child is at risk of injury to him/herself or others.

1989
Austria

“The minor child must follow the parents’ orders. In their orders and in the implementation thereof, parents must consider the age, development and personality of the child; the use of force and infliction of physical or psychological suffering are not permitted.” (*General Civil Code*, 1989, section 146a)

Note: In 1977, the defence of “reasonable” punishment was removed from the law on assault.

1994
Cyprus

Law prohibits “any unlawful act or controlling behaviour which results in direct actual physical, sexual or psychological injury to any member of the family”. (*Family (Prevention and Protection of Victims) Law*, 1994)

Note: It is also an offence for violence to occur in the presence of a child.

1997
Denmark

“The child has the right to care and security. He or she shall be treated with respect as an individual and may not be subjected to corporal punishment or any other degrading treatment.” (*Parental Custody and Care Act*, amended 1997)

Note: In 1985, the Custody and Care Act was amended to state “Parental custody implies the obligation to protect the child against physical and psychological violence and against other harmful treatment”, but further explicit prohibition was found to be necessary.

1998
Latvia

“A child cannot be treated cruelly, cannot be tormented and physically punished, and his/her dignity and honour cannot be offended.” (*Law on Protection of the Rights of the Child*, 1998, article 9.2)

The law criminalises “failure to discharge parental obligations ... the malicious usage of parental authority, the physical punishing of a child, as well as cruel behaviour against him/her” (*Law on Protection of the Rights of the Child*, 1998, article 24.4)

1998
Croatia

“Parents and other family members must not subject the child to degrading treatment, mental or physical punishment and abuse.” (*Family Act*, 1998, in force 1999, article 87)

Note: The Family Act also obliges parents to protect the child from degrading treatment and physical

“Children have the right to a non-violent upbringing. Corporal punishment, psychological injuries and other humiliating measures are prohibited.” (*Bürgerliches Gesetzbuch* [German civil law], as amended 2000, article 1631)

Local authorities have a duty to “promote ways in which families can resolve conflict without resort to force” (*Socialgesetzbuch* [German childcare law])

Note: In 1998, an amendment to the Civil Law prohibited “degrading methods of discipline including physical and psychological abuse”, but further explicit prohibition was found to be necessary.

“Every child has a right to protection against all methods of upbringing, that undermine his or her dignity, against physical, psychical or other types of violence; against all forms of influence, which go against his or her interests.” (*Child Protection Act*, 2000, article 11.2)

Note: The complexity of provisions relating to “trivial” bodily injury in the Penal Code seem to limit the protection available to children, and there has been little public education concerning the prohibition.

“It is the parents’ obligation to protect their child against any physical or mental violence and other degrading or humiliating behaviour.” (*Children’s Act*, 2003)

Parents have an obligation “to treat their children with care and consideration” and “to safeguard their welfare at all times”. (*Child Protection Act*, 2002)

The law concerning the responsibilities of parents towards their children prohibits corporal punishment and any other humiliating punishment or treatment (*Family Code*, 2003 in force 2004, article 150).

Note: The Prevention of Domestic Violence Act (2001, in force 2002) also outlaws violence against children in the home. It defines domestic violence as “any intentional action of one family against another family member if such action infringes Constitutional and civil rights and freedoms of a family member and injures his physical, mental and moral health, and as well as child’s development”, and physical domestic violence as “an intentional beating, body injuring of one family member by another as well as intentional limitation of freedom, place of residence, food, clothing and other normal life conditions, which may result in victim’s death or may cause disturbance of his physical and mental health or may harm his honor and dignity” (article 1).

“(1) The child has the right to be shown respect for his or her personality and individuality and may not be made subject to physical punishment or to other humiliating or degrading treatment. (2) Disciplinary measures concerning the child can only be taken in accordance with the child’s dignity, and, under no circumstances are physical punishments allowed, or punishments which relate to the child’s physical and mental development or which may affect the child’s emotional status.” (*Law on Protection and Promotion of the Rights of the Child*, 2004, in force 2005, article 28)

“It is forbidden to enforce physical punishment of any kind or to deprive the child of his or her rights, which may result in endangerment of the life, the physical, mental, spiritual, moral and social development, the bodily integrity, and the physical and mental health of the child, both within the family, as well as in any institution which ensures the protection, care and education of children.” (*Law on Protection and Promotion of the Rights of the Child*, 2004 in force 2005, article 90)

“The child has the right to be respected his/her human dignity, to be protected against abuse – physical, sexual and mental violence –, failure to provide care and injury caused by any information. The child shall not be subjected to torture, corporal punishment and any cruel, inhuman or degrading punishment or treatment.” (*Act on the Protection of Children and Guardianship Administration*, 1997, as amended 2004, in force 2005, article 6.5)

2000
Germany

2000
Bulgaria

2003
Iceland

2003
Ukraine

2004
Romania

2004
Hungary

Appendix 4 United Nations Committee on the Rights of the Child Observations and recommendations on corporal punishment – Report to New Zealand Government – September 2003

Corporal punishment

1. The Committee is deeply concerned that despite a review of legislation, the State party has still not amended section 59 of the Crimes Act 1961, which allows parents to use reasonable force to discipline their children. While welcoming the Government's public education campaign to promote positive, non-violent forms of discipline within the home, the Committee emphasizes that the Convention requires the protection of children from all forms of violence, which includes corporal punishment in the family, and which should be accompanied by awareness-raising campaigns on the law and on children's right to protection.

2. **The Committee recommends that the State party:**
 - a) **Amend legislation to prohibit corporal punishment in the home;**
 - b) **Strengthen public education campaigns and activities aimed at promoting positive, non-violent forms of discipline and respect for children's right to human dignity and physical integrity, while raising awareness about the negative consequences of corporal punishment.**